Number 7 *of* 2008

CRIMINAL JUSTICE (MUTUAL ASSISTANCE) ACT 2008

REVISED

Updated to 1 November 2023

This Revised Act is an administrative consolidation of the *Criminal Justice (Mutual Assistance) Act 2008*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Screening of Third Country Transactions Act 2023* (28/2023), enacted 31 October 2023, and all statutory instruments up to and including the *Criminal Justice (Miscellaneous Provisions) Act 2023 (Commencement) (No. 2) Order 2023* (S.I. No. 525 of 2023), made 31 October 2023, were considered in the preparation of this revision.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

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CRIMINAL JUSTICE (MUTUAL ASSISTANCE) ACT 2008

REVISED

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

Related legislation

Criminal Justice (Mutual Assistance) Acts 2008 to 2023: this Act is one of a group of Acts included in this collective citation (*Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 1(3)). The Acts in the group are:

- *Criminal Justice (Mutual Assistance) Act 2008* (7/2008)
- *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015)
- *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), Part 6 (ss. 48-54)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions. A version without annotations, showing only textual amendments, is also available.

An explanation of how to read annotations is available at www.lawreform.ie/annotations

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023)
- *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (3/2023)
- *Criminal Justice (Perjury and Related Offences) Act 2021* (13/2021)
- *Criminal Procedure Act 2021* (7/2021)
- *Criminal Justice (International Co-Operation) Act 2019* (27/2019)
- *Criminal Law (Extraterritorial Jurisdiction) Act 2019* (6/2019)
- *Data Protection Act 2018* (7/2018)
- *Protection of Cultural Property in the Event of Armed Conflict (Hague Convention) Act 2017* (36/2017)
- *Prisons Act 2015* (57/2015)
- *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015)
- *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014)
- *Europol Act 2012* (53/2012)
- *Central Bank Reform Act 2010* (23/2010)
- *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* (6/2010)
- *Criminal Justice Act 1994* (15/1994)

All Acts up to and including *Screening of Third Country Transactions Act 2023* (28/2023), enacted 31 October 2023, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Criminal Justice (Mutual Assistance) Act 2008 (Designation of United Kingdom) Order 2022* (S.I. No. 44 of 2021)
- *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2021)
- *Criminal Justice (Mutual Assistance) Act 2008 (Designation of Japan in Accordance with the Agreement with Japan) Order 2020* (S.I. No. 151 of 2020)
- *European Union (Eurojust) Regulations 2019* (S.I. No. 637 of 2019)
- *Criminal Justice (Mutual Assistance) Act 2008 (Designation of States in Accordance with the Protocol of Convention for the Protection of Cultural Property in the Event of Armed Conflict) Order 2018* (S.I. No. 300 of 2018)
- *Criminal Justice (Mutual Assistance) Act 2008 (Commencement) Order 2014* (S.I. No. 541 of 2014)
- *Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2012* (S.I. No. 222 of 2012)
- *Criminal Justice (Mutual Assistance) Act, 2008 (Section 4) (No. 2) Order 2011* (S.I. No. 561 of 2011)
- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2011* (S.I. No. 60 of 2011)
- *Criminal Justice (Mutual Assistance) Act 2008 (Section 4) (No. 2) Order 2010* (S.I. No. 372 of 2010)
- *Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2010* (S.I. No. 42 of 2010)
- *Criminal Justice (Mutual Assistance) Act 2008 (Commencement) Order 2008* (S.I. No. 338 of 2008)

All statutory instruments up to and including *Criminal Justice (Miscellaneous Provisions) Act 2023 (Commencement) (No. 2) Order 2023* (S.I. No. 525 of 2023), made 31 October 2023, were considered in the preparation of this revision.

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CRIMINAL JUSTICE (MUTUAL ASSISTANCE) ACT 2008

REVISED

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Bankers' Books Evidence Act 1879	42 & 43 Vic., c. 11
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Number 7 *of* 2008

CRIMINAL JUSTICE (MUTUAL ASSISTANCE) ACT 2008

REVISED

Updated 1 November 2023

AN ACT—

(*a*) TO ENABLE EFFECT TO BE GIVEN IN THE STATE TO CERTAIN INTERNATIONAL AGREEMENTS, OR PROVISIONS OF SUCH AGREEMENTS, BETWEEN THE STATE AND OTHER STATES RELATING TO MUTUAL ASSISTANCE IN CRIMINAL MATTERS;

(*b*) TO REPEAL AND RE-ENACT, WITH AMENDMENTS, PART VII (INTERNATIONAL CO-OPERATION) OF THE CRIMINAL JUSTICE ACT 1994;

AND TO PROVIDE FOR RELATED MATTERS.

[28*th April*, 2008]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

Short title and commencement.

1.— (1) This Act may be cited as the Criminal Justice (Mutual Assistance) Act 2008.

(2) This Act shall come into operation on such day or days as may be appointed by order or orders of the Minister, either generally or with reference to a particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

Annotations

Editorial Notes:

E1 Power pursuant to section exercised (1.12.2014) by *Criminal Justice (Mutual Assistance) Act 2008 (Commencement) Order 2014* (S.I. No. 541 of 2014).

2. The 1st day of December 2014 is appointed as the day on which Part 3 of the Criminal Justice (Mutual Assistance) Act 2008 (No. 7 of 2008) comes into operation.

E2 Power pursuant to section exercised (1.09.2008) by *Criminal Justice (Mutual Assistance) Act 2008 (Commencement) Order 2008* (S.I. No. 338 of 2008).

2. The 1st day of September 2008 is appointed as the day on which the Criminal Justice (Mutual Assistance) Act 2008 (No. 7 of 2008), other than Part 3, comes into operation.

Interpretation (general).

2.— (1) In this Act, except where the context otherwise requires—

"Act of 1994" means the Criminal Justice Act 1994;

"Agreement with Iceland and Norway" means the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 Convention and 2001 Protocol, done at Brussels on 19 December 2003;

F2**[**"Agreement with Japan" means the Agreement between the European Union and Japan on mutual legal assistance in criminal matters, done at Brussels on 30 November 2009 and at Tokyo on 15 December 2009;**]**

"Articles 49 and 51", in relation to the Schengen Convention, means those Articles of the Convention, as applied to the State by Council Decision (2002/192/EEC) of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*, but does not include paragraph (a) (repealed by Article 2.2 of the 2000 Convention) of Article 49;

"authority" includes a person;

"1959 Convention" means the European Convention on Mutual Assistance in Criminal Matters, done at Strasbourg on 20 April 1959, and includes the Additional Protocol of 17 March 1978 thereto;

"1977 Terrorism Convention" means the European Convention on the Suppression of Terrorism, done at Strasbourg on 27 January 1977;

F3**[**"1999 Protocol" means the Protocol to the Convention for the Protection of Cultural Property in the event of Armed Conflict, done at The Hague on 26 March 1999;**]**

"2000 Convention" means the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, done at Brussels on 29 May 2000;

F2**[**"2003 Framework Decision" means Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence[10];**]**

"2005 Convention" means the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, done at Warsaw on 16 May 2005;

"2005 Council Decision" means Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and co-operation concerning terrorist offences;

F2**[**"2005 Framework Decision" means Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of mutual recognition to financial penalties[11];**]**

F2**[**"2006 Framework Decision" means Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders[12];**]**

F4**[**"2008 Council Decision" means Council Decision 2008/615/JHA of 23 June 2008[9] on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;**]**

[10] OJ L 196, 02.08.2003, p.45.
[11] OJ L 76, 22.3.2005, p.16.
[12] OJ L 328, 24.11.2006, p.59.
[9] O.J. No. L210, 6.8.2008, p.1.

F2**[**"2008 Council Decision (special intervention units)" means Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between special intervention units of the member states of the European Union in crisis situations[7];**]**

F4**[**"2009 Agreement with Iceland and Norway" means the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, done at Stockholm on 26 November 2009 and at Brussels on 30 November 2009;[10]**]**

F2**[**F5**[**...**]]**

F2**[**"2010 Council Decision" means Council Decision 2010/616/EU of 7 October 2010 on the conclusion of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters[9];**]**

F6**[**"2018 Regulation" means Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA1;**]**

"Central Authority" means the authority mentioned in *section 8*;

"criminal conduct" means any conduct—

(*a*) which constitutes an offence, or

(*b*) which occurs in a designated state and would, if it occurred in the State, constitute an offence;

"criminal investigation"—

(*a*) means an investigation into whether a person has committed an offence (within the meaning of the relevant Part) under the law of the State or a designated state in respect of which, where appropriate, a request for assistance may be made under the relevant international instrument, and

(*b*) includes an investigation into whether a person has benefited from assets or proceeds deriving from criminal conduct or is in receipt of or controls such assets or proceeds;

"criminal proceedings" means proceedings, whether in the State or a designated state, against a person for an offence and includes—

(*a*) proceedings to determine whether a person has benefited from assets or proceeds deriving from criminal conduct or is in receipt of or controls such assets or proceeds,

(*b*) proceedings concerning measures relating to—

(i) the deferral of delivery or suspension of enforcement of a sentence or preventive measure,

(ii) conditional release, or

(iii) a stay or interruption of enforcement of a sentence or preventive measure,

[7] OJ L 210, 06.08.2008, p.73.
[10] O.J. No. L353, 31.12.2009, p.3.
[9] OJ L 271, 15.10.2010, p.3.

(*c*) in relation to requests for assistance by a requesting authority in a member state—

(i) without prejudice to *subsection (2)(b)* of *sections 74* and *75* (requests for evidence or evidential material), proceedings brought by an administrative authority in respect of conduct which is punishable under the law of the State or that state or of both of them, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters,

(ii) proceedings in claims for damages arising from wrongful prosecution or conviction,

(iii) clemency proceedings,

(iv) civil actions joined to criminal proceedings, as long as the criminal court concerned has not taken a final decision in the criminal proceedings, and

(v) proceedings in respect of measures relating to—

(I) the deferral of delivery or suspension of enforcement of a sentence or preventive measure,

(II) conditional release, or

(III) a stay or interruption of enforcement of a sentence or preventive measure,

and

(*d*) in relation to requests for assistance by a requesting authority in a designated state (other than a member state), without prejudice to *subsection (3)* of *sections 74* and *75* proceedings brought by an administrative authority in respect of conduct which is punishable under the law of the State or that state or of both of them, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

"designated state" means a member state and any other state designated under *section 4;*

"EC/Swiss Confederation Agreement" means the Co-operation Agreement between the European Community and its member states, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests, done at Luxembourg on 26 October 2004;

F7**[**"EPPO" means the European Public Prosecutor's Office established under Article 3 of Council Regulation (EU) 2017/1939 of 12 October 2017[3] implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO"), as amended by Commission Delegated Regulation (EU) 2020/2153 of 14 October 2020[4];

"EPPO request" means a request for assistance that is made by EPPO in accordance with section 6 (as applied by *section 94K*) and the *Part 7B* Regulations (if any) and includes a request that is deemed under *section 94F(3)* to have been so made;**]**

"evidence" means oral evidence or, as appropriate, any document or thing which could be produced as evidence in criminal proceedings, including any information in non-legible form which could be converted into permanent and legible form for the purposes of those proceedings;

F8**[**...**]**

[3] OJ L 283, 31.10.2017, p. 1-71
[4] OJ L 283, 31.10.2017, p. 1-71

"imprisonment" includes detention and, in relation to a designated state, any other form of deprivation of liberty;

"international instrument" means any of the following agreements, or provisions of agreements, between the State and other states or another state in relation to mutual assistance in criminal matters:

(*a*) the 2000 Convention;

(*b*) the 2001 Protocol;

(*c*) the Agreement with Iceland and Norway;

F9**[**(*ca*) the Agreement with Japan;**]**

(*d*) Articles 49 and 51 of the Schengen Convention;

(*e*) F10**[**2003 Framework Decision**]**;

F9**[**(*ea*) the 2005 Framework Decision;

(*eb*) the 2006 Framework Decision;**]**

(*f*) Title III of the EC/Swiss Confederation Agreement;

(*g*) the 2005 Council Decision;

F4**[**(*ga*) Article 7 of the 2008 Council Decision;

(*gb*) Article 1 of the 2009 Agreement with Iceland and Norway insofar as it applies Article 7 of the 2008 Council Decision in bilateral relations between Iceland or Norway and each member state of the European Union and in relations between Iceland and Norway;**]**

F9**[**(*gc*) the 2008 Council Decision (special intervention units);

(*gd*) F5**[**...**]]**

F6**[**(*ge*) the 2018 Regulation;**]**

F11**[**(*gf*) Titles VIII and XI of Part Three of the Trade and Cooperation Agreement;**]**

(*h*) the 1959 Convention;

(*i*) the Second Additional Protocol;

(*j*) Chapter IV of the 2005 Convention;

F12**[**(*ja*) the Istanbul Convention;**]**

(*k*) Articles 13, 14, 18, 19 and 20 of the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000;

(*l*) Articles 46, 49, 50 and 54 to 57 of the United Nations Convention against Corruption, done at New York on 31 October 2003;

F3**[**(*la*) the 1999 Protocol;**]**

F13**[**(*m*) a bilateral agreement between the State and a designated state, or a multilateral agreement between the State and other designated states, for the provision of such assistance; and**]**

(*n*) any reservation or declaration made in accordance with such an instrument;

F12**[**"Istanbul Convention" means the Council of Europe Convention on preventing and combating violence against women and domestic violence done at Istanbul on 11 May 2011;**]**

"member state" means—

F14**[**(*a*) a member state of the European Union (other than the State), for the purposes of mutual assistance under the provisions of the 2000 Convention, 2001 Protocol, Articles 49 and 51 of the Schengen Convention, 2003 Framework Decision, 2005 Framework Decision, 2005 Council Decision, Article 7 of the 2008 Council Decision, Article 1 of the 2009 Agreement with Iceland and Norway insofar as it applies Article 7 of the 2008 Council Decision in bilateral relations between Iceland or Norway and each member state of the European Union (other than the State) and in relations between Iceland and Norway, 2008 Council Decision (special intervention units), and**]**

(*b*) Iceland and Norway or any other designated state, for the purposes of mutual assistance under any of those provisions;

"Minister" means the Minister for Justice, Equality and Law Reform;

"offence"—

(*a*) means an offence in respect of which a request for mutual assistance may be made under the relevant international instrument,

(*b*) includes a revenue offence, if or to the extent that the relevant international instrument or the law of the designated state concerned provides for mutual assistance in respect of such an offence, but

F15**[**(*c*) does not, other than in relation to a request for mutual assistance made under Title XI of Part Three of the Trade and Cooperation Agreement, include a political offence;**]**

F7**[***"Part 7B* Regulations" has the meaning assigned to it by *section 109(1B)*;**]**

"place" means a physical location and includes—

(*a*) a dwelling, residence, building or abode,

(*b*) a site,

(*c*) a vehicle, whether mechanically propelled or not,

(*d*) a vessel, whether sea-going or not,

(*e*) an aircraft, whether capable of operation or not, and

(*f*) a hovercraft;

"political offence", except in *Part 2* —

(*a*) includes an offence connected with a political offence,

(*b*) does not include any offence in respect of which a person may be surrendered to another state under the European Arrest Warrant Act 2003 or the Extradition Acts 1965 to 2001;

"prison" means a place of custody administered by or on behalf of the Minister (other than a Garda Síochána station) and includes—

(*a*) F16**[**...**]**

(*b*) a place provided under section 2 of the Prisons Act 1970, and

(*c*) a place specified under section 3 of the Prisons Act 1972;

"property", except in *Part 4* , includes—

(*a*) money and all other property, real or personal, movable or immovable,

(*b*) a chose in action and any other intangible or incorporeal property,

(*c*) proceeds of the disposal of property, and

(*d*) evidence;

"2001 Protocol" means the Protocol to the 2000 Convention, done at Luxembourg on 16 October 2001;

F7**[**"relevant EPPO member state" means a member state of the European Union—

(a) that participates in enhanced cooperation on the establishment of EPPO in accordance with Article 86(1) of the Treaty on the Functioning of the European Union or by virtue of a decision adopted in accordance with Article 331(1) of that Treaty, and

(b) where EPPO is conducting a criminal investigation or criminal proceedings that are the subject of an EPPO request;**]**

"relevant international instrument" means the international instrument in accordance with which a request for assistance is made;

"request" means a request for assistance which is made by a requesting authority under and in accordance with a relevant international instrument;

"requesting authority" means—

(*a*) a court or tribunal exercising jurisdiction in criminal proceedings in a designated state and making a request, or

(*b*) any other authority in that state appearing to the Minister to have the function of making the request;

"revenue offence"—

(*a*) means an offence under the law of the State or a designated state in connection with taxes, duties, customs or exchange regulation,

(*b*) includes such an offence under the law of a designated state irrespective of whether the law of the State provides for taxes, duties, customs or exchange regulation of the same kind as that state provides, but

(*c*) does not include—

(i) an offence involving the use or threat of force or perjury or the forging of a document issued under statutory authority, or

(ii) an offence alleged to have been committed by an officer of the Revenue of that state in his or her capacity as such officer;

"Schengen Convention" means the Convention, signed in Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985;

"Second Additional Protocol" means the Second Additional Protocol of 8 November 2001 to the 1959 Convention;

"state", in relation to a state other than the State, includes a territory, whether in the state or outside it—

(*a*) for whose external relations the state or its government is wholly or partly responsible, and

(*b*) to which the relevant international instrument applies or whose law provides for mutual assistance in criminal matters,

and "designated state" and "member state" are to be construed accordingly.

F11**[**"Trade and Cooperation Agreement" means the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, done at Brussels and London on 30 December 2020[1];**]**

(2) Reservations made pursuant to Article 13 of the 1977 Terrorism Convention do not apply to mutual assistance in criminal matters between member states.

(3) The following provisions of this Act give effect to Council Decision (2002/192/EC) of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*, in so far as those provisions relate to mutual assistance in criminal matters:

(*a*) *paragraph (c)* of the definition of "criminal proceedings" in *subsection (1)*;

(*b*) *subsections (1)* and *(2)* of *sections 74* and *75*;

(*c*) *section 82(1)(b).*

(4) Judicial notice shall be taken of a relevant international instrument.

(5) When interpreting any provision of this Act—

(*a*) a court may consider the relevant international instrument and any explanatory document issued in connection with it, and

(*b*) give the instrument and any such document such weight as is appropriate in the circumstances.

(6) For convenience of reference—

(*a*) *Schedule 1* sets out the English text of the 2000 Convention,

(*b*) *Schedule 2* sets out the English text of the 2001 Protocol,

(*c*) *Schedule 3* sets out the English text of the Agreement with Iceland and Norway,

F17**[**(*ca*) *Schedule 3A* sets out the English text of the Agreement with Japan,**]**

(*d*) *Schedule 4* sets out the English text of Articles 49 and 51 of the Schengen Convention,

(*e*) *Schedule 5* sets out the English text of the F18**[**2003 Framework Decision**]**,

F17**[**(*ea*) *Schedule 5A* sets out the English text of the 2005 Framework Decision,

(*eb*) *Schedule 5B* sets out the English text of the 2006 Framework Decision,**]**

(*f*) *Schedule 6* sets out the English text of Title III of the EC/Swiss Confederation Agreement,

(*g*) *Schedule 7* sets out the English text of the 2005 Council Decision,

F17**[**(*ga*) *Schedule 7A* sets out the English text of the 2008 Council Decision (special intervention units),

(*gb*) F5**[**...**]]**

F6**[**(*gc*) Schedule 7C sets out the English text of the 2018 Regulation,**]**

[1] 1 OJ No. L 444, 31.12.2020, p. 14

F11**[**(*gd*) *Schedule 7D* sets out the English text of Titles VIII and XI of Part Three of the Trade and Cooperation Agreement.**]**

(*h*) *Schedule 8* sets out the English text of the 1959 Convention and the First Additional Protocol thereto,

(*i*) *Schedule 9* sets out the English text of the Second Additional Protocol to the 1959 Convention,

(*j*) *Schedule 10* sets out the English text of Chapter IV of the 2005 Convention,

F12**[**(*ja*) *Schedule 10A* sets out the English text of the Istanbul Convention,**]**

(*k*) *Schedule 11* sets out the English text of Articles 13, 14, 18, 19 and 20 of the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000,

(*l*) *Schedule 12* sets out the English text of Articles 46, 49, 50 and 54 to 57 of the United Nations Convention against Corruption, done at New York on 31 October 2003,

(*m*) *Schedule 13* sets out the English text of the Agreement on Mutual Legal Assistance between the European Union and the United States of America, done at Washington D.C. on 25 June 2003, and

(*n*) *Schedule 14* sets out the English text of the Treaty between the Government of Ireland and the Government of the United States on Mutual Assistance in Criminal Matters, done at Washington D.C. on 18 January 2001, as applied by the Instrument contemplated by Article 3(2) of the said Agreement of 25 June 2003 and done at Dublin on 14 July 2005.

Annotations

Amendments

F1 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 50, S.I. 525 of 2023.

F2 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 2(a)(iv), S.I. No. 11 of 2016.

F3 Inserted (17.08.2018) by *Protection of Cultural Property in the event of Armed Conflict (Hague Convention) Act 2017* (36/2017), s. 9, S.I. No. 299 of 2018.

F4 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 128(a), (b), S.I. No. 508 of 2015.

F5 Deleted (12.12.2019) by *European Union (Eurojust) Regulations 2019* (S.I. No. 637 of 2019), reg. 4(a)(i), (ii)(I), (b)(i), in effect as per reg. 1(2).

F6 Inserted (12.12.2019) by *European Union (Eurojust) Regulations 2019* (S.I. No. 637 of 2019), reg. 4(a)(ii)(II), (iii), (b)(ii), in effect as per reg. 1(2).

F7 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 49, S.I. 525 of 2023.

F8 Deleted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 2(a)(iii), S.I. No. 11 of 2016.

F9 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 2(a)(i)(I), (III) and (IV), S.I. No. 11 of 2016.

F10 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 2(a)(i)(II), S.I. No. 11 of 2016.

F11 Inserted (31.01.2021) by *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2022), reg. 3(a)(i), (iii), (b), in effect as per reg. 1(2).

F12 Inserted (29.04.2019) by *Criminal Law (Extraterritorial Jurisdiction) Act 2019* (6/2019), s. 4(a), S.I. No. 173 of 2019.

F13 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 2(a)(i)(V), S.I. No. 11 of 2016.

F14 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 2(a)(ii), S.I. No. 11 of 2016.

F15 Substituted (31.01.2021) by *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2022), reg. 3(a)(ii), in effect as per reg. 1(2).

F16 Deleted (7.04.2017) by *Prisons Act 2015* (57/2015), s. 21, S.I. No. 134 of 2017.

F17 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 2(b)(i), (iii), (iv), S.I. No. 11 of 2016.

F18 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 2(b)(ii), S.I. No. 11 of 2016.

Modifications (not altering text):

C1 Reference to perjury construed (28.07.2021) by *Criminal Justice (Perjury and Related Offences) Act 2021* (13/2021), s. 4(2) and sch. 2 item 51, S.I. No. 378 of 2021.

References to perjury or subornation of perjury

4. ...

(2) A reference in an enactment specified in Schedule 2 to perjury or to subornation of perjury, howsoever described, in relation to an act committed on or after the coming into operation of this subsection, shall be construed as a reference to perjury or to subornation of perjury, as the case may be, within the meaning of this Act.

...

SCHEDULE 2

Section 4 (2)

...

51. Criminal Justice (Mutual Assistance) Act 2008, section 2(1)

...

Editorial Notes:

E3 Previous affecting provision: definition of "2009 Council Decision" inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 2(a)(iv), S.I. No. 11 of 2016; deleted (12.12.2019) by *European Union (Eurojust) Regulations 2019* (S.I. No. 637 of 2019), reg. 4(a)(i), in effect as per reg. 1(2).

E4 Previous affecting provision: para. (a) of definition of "member state" substituted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 128(c), S.I. No. 508 of 2015; substituted as per F-note above.

F19**[**Application for purposes of *Part 7B*

2A.— This Act shall, subject to *Part 7B* and with all other necessary modifications, apply to the provision of assistance referred to in *section 94F(1)* as it applies to the provision of mutual assistance between the State and a designated state.**]**

Annotations

Amendments

F19 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 50, S.I. No. 525 of 2023.

General restriction on providing assistance.

3.— (1) Assistance shall be refused—

(*a*) if the Minister considers that providing assistance would be likely to prejudice the sovereignty, security or other essential interests of the State or would be contrary to public policy (*ordre public*),

(*b*) if there are reasonable grounds for believing—

(i) that the request concerned was made for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation,

(ii) that providing assistance—

(I) may prejudice a person's position for any of those reasons, or

(II) may result in the person being subjected to torture or to any other contravention of the European Convention on Human Rights,

(*c*) if the request is not in accordance with the relevant international instrument, or

(*d*) if, and for as long as, the provision of assistance would prejudice a criminal investigation, or criminal proceedings, in the State,

and may be refused on any other ground of refusal of assistance specified in the relevant international instrument.

(2) In this section, "torture" has the meaning given to it by the Criminal Justice (United Nations Convention against Torture) Act 2000.

Designated state.

4.— The Minister for Foreign Affairs, after consultation with the Minister, may by order designate a state (other than a member state) for the purposes of mutual assistance between the State and that state under this Act or specified Parts or provisions of it in accordance with the relevant international instrument.

Annotations

Editorial Notes:

E5 Power pursuant to section exercised (1.02.2022) by *Criminal Justice (Mutual Assistance) Act 2008 (Designation of United Kingdom) Order 2022* (S.I. No. 44 of 2022).

E6 Power pursuant to section exercised (28.04.2020) by *Criminal Justice (Mutual Assistance) Act 2008 (Designation of Japan in Accordance with the Agreement with Japan) Order 2020* (S.I. No. 151 of 2020).

E7 Power pursuant to section exercised (17.08.2018) by *Criminal Justice (Mutual Assistance) Act 2008 (Designation of States in Accordance with the Protocol of Convention for the Protection of Cultural Property in the Event of Armed Conflict) Order 2018* (S.I. No. 300 of 2018), in effect as per art. 2.

E8 Power pursuant to section exercised (21.06.2012) by *Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2012* (S.I. No. 222 of 2012), in effect as per art. 2.

E9 Power pursuant to section exercised (1.11.2011) by *Criminal Justice (Mutual Assistance) Act 2008 (Section 4) (No. 2) Order 2011* (S.I. No. 561 of 2011), in effect as per art. 2.

E10 Power pursuant to section exercised (4.02.2011) by *Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2011* (S.I. No. 60 of 2011), in effect as per art. 2.

E11 Power pursuant to section exercised (26.07.2010) by *Criminal Justice (Mutual Assistance) Act 2008 (Section 4) (No. 2) Order 2010* (S.I. No. 372 of 2010), in effect as per art. 2. It appears that S.I. No. 372 of 2010 may have been intended to be revoked (21.06.2012) by S.I. No. 222 of 2012, art. 5, which states the order as dated 2012 ("Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2012"). However there is no such (No. 2) order in 2012 and S.I. No. 222 of 2012 largely supersedes the 2010 instrument.

E12 Power pursuant to section exercised (1.02.2010) by *Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2010* (S.I. No. 42 of 2010), in effect as per art. 2.

E13 Previous affecting provision: power pursuant to section exercised (31.12.2020 at 11 p.m.) by *Criminal Justice (Mutual Assistance) Act 2008 (Designation of United Kingdom) Order 2020* (S.I. No. 718 of 2020), in effect as per reg. 2; revoked (1.02.2022) by *Criminal Justice (Mutual Assistance) Act 2008 (Designation of United Kingdom) Order 2022* (S.I. No. 44 of 2022), reg. 3.

Certain Articles of 2000 Convention and Second Additional Protocol to have force of law.

5.— (1) Subject to the provisions of this Act, Articles 4 (formalities and procedures in the execution of requests) and 6 (transmission of requests) of the 2000 Convention and Articles 4 (channels of communication) and 8 (procedure) of the Second Additional Protocol have the force of law in their application to the State.

(2) For the purposes of *subsection (1)*—

(*a*) references in the Articles mentioned in that subsection to a requested state or requested party or to authorities, judicial authorities or competent authorities of that state or party shall be construed as references to, where appropriate, the Central Authority or the judge or court concerned, and

(*b*) references to those Articles are references to the Articles as modified by any reservation or declaration made in relation to them.

Requests (general).

6.— (1) Subject to the provisions of this Act concerning particular requests, the relevant international instrument concerned has effect in the State in relation to—

(*a*) the form of the requests and the information they are to provide,

(*b*) the action that may be taken where a request does not comply with the provisions of the instrument or where the information provided is not sufficient to enable the request to be dealt with,

(*c*) any restrictions in the instrument in relation to the refusal of particular requests,

(*d*) any requirements in the instrument relating to the protection, disclosure, use or transmission of information or evidence received under it,

(*e*) the formalities and procedures in dealing with requests, unless those formalities and procedures are contrary to the fundamental principles of the law of the State, and

(*f*) the transmission and mode of transmission of requests, including, where so provided for in the instrument, transmissions via the International Criminal Police Organisation (Interpol) in urgent cases.

(2) This Act applies only to requests made after the relevant international instrument has entered into force, or, as the case may be, has been applied, between the State and the designated state concerned.

(3) Requests received and not executed before the date on which they would fall to be dealt with under this Act shall be dealt with, or continue to be dealt with, as if this Act had not been passed.

(4) Requests shall—

(*a*) be addressed to the Central Authority, unless the relevant international instrument provides otherwise,

(*b*) where appropriate, indicate the relevant international instrument under which the request is being made, and

(*c*) be in writing or in any form capable of producing a written record under conditions allowing their authenticity to be established.

(5) Requests to a designated state and any supporting or related documents shall be accompanied, where appropriate, by a translation of the requests and of any such documents, or of the material parts of them, into the official language or one of the official languages of that state, unless it is known that such a translation is not required by the appropriate authority in the designated state concerned.

(6) Requests from a designated state and any supporting or related documents, if not in Irish or English, shall be accompanied by a translation into either of those languages of the requests and of any such documents or the material parts of them.

(7) The Central Authority may—

(*a*) accept requests and any supporting or related documents as evidence of the matters mentioned in them unless it has information to the contrary, and

(*b*) seek such additional information from the requesting authority concerned as may be necessary to enable a decision to be taken on a request.

(8) Action on a request may be postponed by the Minister if the action would prejudice criminal proceedings or a criminal investigation.

(9) Before refusing a request or postponing action on it the Minister shall, where appropriate and having consulted the requesting authority, consider whether the request may be granted partially or subject to such conditions as he or she considers necessary.

(10) Reasons shall be given for any such refusal or postponement.

(11) The Minister shall also inform a requesting authority of any circumstances that make it impossible to comply with the request or are likely to delay compliance significantly.

Transmission of evidence to designated state (general).

7.— (1) Evidence obtained in the State in compliance with a request shall be transmitted to the designated state concerned in accordance with the directions of the Minister.

(2) If any such evidence is to be accompanied by a certificate, affidavit or other verifying document, the judge concerned or, as the case may be, the appropriate member of the Garda Síochána or officer of the Revenue Commissioners, shall supply the required document for transmission to the designated state.

(3) Where the evidence consists of a document, the original or a copy shall be transmitted and, where it consists of any other item, the item itself or a description, photograph or other representation of it shall be transmitted, as may be necessary to comply with the request.

Central Authority.

8.— (1) The Minister is the Central Authority for the purposes of this Act.

(2) The Central Authority has the function of receiving, transmitting and otherwise dealing with requests, except those made under *Part 3* , and of co-operating, in accordance with the relevant international instrument, with corresponding persons or bodies in designated states in relation to requests received from them.

(3) The Minister may, if he or she considers it appropriate, designate persons to perform specified functions of the Central Authority, and different persons may be so designated to perform different such functions.

(4) While such a designation is in force, a reference in this Act to the Central Authority, in so far as it relates to the performance of a function specified in the designation, is to be construed as a reference to the person so designated to perform that function.

(5) The Minister may amend or revoke a designation.

(6) The Minister shall, by notice in writing, inform the General Secretariat of the Council of the European Union of the names of any persons designated for the time being under this section.

Spontaneous exchange of information.

9.— (1) Without prejudice to *section 100* , the Director of Public Prosecutions, Commissioner of the Garda Síochána or Revenue Commissioners (in this section referred to as the "providing authority") may, in accordance with the relevant international instrument and without receiving a request to that effect, communicate information to a competent authority in a designated state either relating to matters which might give rise to such a request or for the purpose of current criminal investigations or criminal proceedings or of initiating either of them.

(2) The providing authority may impose conditions on the use by the competent authority of the information so communicated.

(3) *Subsection (2)* does not apply in relation to the competent authority of a designated state which has made a declaration under paragraph 4 of Article 11 of the Second Additional Protocol unless, as required by such a declaration, the authority has received prior notice of the nature of the information to be communicated and has agreed to its being communicated.

(4) Any conditions imposed by a competent authority in a designated state on the use of information communicated by it to the providing authority shall be complied with pursuant to the relevant international instrument.

(5) In this section references to a competent authority in a designated state are references to the authority in such a state appearing to the providing authority to be the appropriate authority for receiving or communicating the information concerned.

Repeals.

10.— Without prejudice to *section 11*, the following provisions are repealed:

(*a*) Part VII (International Co-operation) of the Act of 1994 and the Second Schedule (taking of evidence for use outside State) thereto;

(*b*) section 15 (amendment of Act of 1994) of the Criminal Justice (Miscellaneous Provisions) Act 1997; and

(*c*) section 22 (amendment of section 56A of Act of 1994) of the Criminal Justice (Theft and Fraud Offences) Act 2001.

Saving.

11.— (1) Where—

(*a*) mutual assistance between the State and another state was provided for by or under a provision of Part VII of the Act of 1994 before the repeal of that Part on the commencement of *section 10(a)*, and

(*b*) the state is not designated under *section 4* for the purposes of that assistance,

the assistance concerned shall continue to be provided under and in accordance with the corresponding provision of this Act, which accordingly shall have effect, with any necessary modifications, for that purpose.

(2) The reference in *subsection (1)* to Part VII of the Act of 1994 includes a reference to the Second Schedule to that Act.

(3) References in *subsection (1)* to a state include references to a country or territory within the meaning of the said Part VII.

PART 2

Information about Financial Transactions for Criminal Investigation Purposes

Interpretation(*Part 2*).

12.— (1) In this Part, except where the context otherwise requires—

"account" means an account, of whatever nature, in a financial institution, whether in the State or a designated state, which is held or controlled by a person and includes—

(*a*) an account held by the person under a different name or different version of the person's name,

(*b*) an account held by the person jointly with another person,

(*c*) an account held by another person on which the person is authorised to operate, whether by way of a power of attorney or otherwise,

(*d*) an account held by another person (in this Part referred to as a "sending or recipient account") to or from which payments have been or are being made from or to an account in the name of a person specified in an account information order, and

(*e*) any other account held by another person, where information in relation to it would be relevant to the investigation referred to in the request;

"account information order" means an order under *section 13* or *17* that a specified financial institution shall, within a time to be specified by the applicant for the order by notice in writing or any extension of that time under *subsection (2)*—

(*a*) state—

(i) whether an account or accounts in the name or names of a specified person or persons or in a specified different version or versions of that name or those names is or are held in the financial institution, and

(ii) whether it has become aware, in the ordinary course of business, of any other account or accounts in the institution on which the specified person or persons is or are authorised to operate, whether by way of a power of attorney or otherwise,

and

(*b*) if so, provide to the applicant or his or her nominee, in a manner and form specified in the notice, any information that it has in relation to any such account or accounts and any sending or recipient accounts, including details of any operations thereon specified in the notice during any period so specified;

"account monitoring order" means an order under *section 13* or *17* that a specified financial institution shall enable the applicant for the order to monitor, during a period, and in a manner and form, specified by the applicant by notice in writing, any operations so specified that are being carried out on an account or accounts in a specified name or names or in a specified different version or versions of that name or those names in the financial institution;

"financial institution" means—

(*a*) if the financial institution is in the State—

(i) a person who holds or has held a licence from the F20**[**Central Bank of Ireland**]** under section 9 of the Central Bank Act 1971,

(ii) a person referred to in section 7(4) of that Act, or

(iii) a credit institution (within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992)) which has been authorised by that Authority to carry on the business of a credit institution in accordance with the supervisory enactments within the meaning of those Regulations,

or

(*b*) if the financial institution is in a designated state, a bank or a non-bank financial institution;

"form", where it occurs in the definition of account information order and account monitoring order, means a form which—

(*a*) is permanent and legible, whether or not it has been converted into such a form from an electronic or other non-legible form, or

(*b*) if so specified by the applicant for such an order, is an electronic or other non-legible form which is capable of being converted into a permanent and legible form;

"political offence"—

(*a*) includes an offence connected with a political offence,

(*b*) does not include—

(i) an offence to which section 3 of the Extradition (European Convention on the Suppression of Terrorism) Act 1987 (the " Act of 1987 ") applies, or

(ii) an offence, as defined in *subsection (3)*, of conspiracy or association to commit such an offence;

"2001 Protocol" means the Protocol of 16 October 2001 to the 2000 Convention;

"sending or recipient account" has the meaning given to it by *paragraph (d)* of the definition of "account".

(2) The time specified by an applicant for an account information order—

(*a*) is a time within which a financial institution may reasonably be expected to provide the information specified in the order, and

(*b*) may be extended for a period specified by the applicant in a further notice in writing, after consultation with the financial institution concerned.

(3) The offence of conspiracy or association referred to in *paragraph (b)(ii)* of the definition of "political offence" is an offence—

(*a*) which is constituted by the behaviour described in Article 3(4) of the Convention relating to Extradition between the Member States of the European Union, done at Brussels on 27 September 1996, namely, behaviour by a person which contributes to the commission, by a group of persons acting with a common purpose, of—

(i) one or more than one offence in the field of terrorism as mentioned in Articles 1 and 2 of the 1977 Terrorism Convention, drug trafficking or other forms of organised crime, or

(ii) other acts of violence against the life, physical integrity or liberty of a person or creating a collective danger for persons,

and

(*b*) which is punishable, even if the person does not take part in the actual commission of the offence or offences, by a term of imprisonment for a period of 12 months or a more severe penalty,

where the contribution was intentional and made with knowledge of the purpose and general criminal activity of the group or of its intention to commit the offence or offences concerned.

(4) The reference in this section to section 3 of the Act of 1987 is to that section as amended by section 2 of the Extradition (Amendment) Act 1994 and sections 12 and 27 of the Extradition (European Union Conventions) Act 2001.

Annotations

Amendments

F20 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(14) and sch. 2 part 14 item 29, S.I. No. 469 of 2010.

Information about financial transactions for use in the State

Account information order and account monitoring order.

13.— (1) For the purposes of a criminal investigation in the State, a member of the Garda Síochána not below the rank of inspector may apply *ex parte* and otherwise than in public to a judge of the High Court for an account information order or an account monitoring order or for both of those orders.

(2) The application may relate to—

(*a*) all financial institutions in the State or the designated state concerned,

(*b*) a category or categories of such financial institutions, or

(*c*) a particular such financial institution or particular such financial institutions.

(3) The judge may make the order or orders applied for in relation to the financial institution or financial institutions specified in the application if satisfied that—

(*a*) the Garda Síochána are investigating whether a specified person—

(i) has committed an offence, or

(ii) is in possession or control of assets or proceeds deriving from criminal conduct,

and

(*b*) there are reasonable grounds for believing—

(i) that the financial institution or financial institutions concerned may have information which is required for the purposes of the investigation, and

(ii) that it is in the public interest that any such information should be disclosed for those purposes, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances.

(4) An order under this section shall contain sufficient information in relation to any account specified in it to enable the account to be identified by the financial institution concerned.

(5) An order under this section has effect notwithstanding any obligation as to secrecy or any other restriction on disclosure imposed by statute or otherwise.

(6) A notice in writing given to a financial institution pursuant to an order under this section and specifying operations on accounts kept therein may be modified by the applicant for the order, in consultation with the financial institution, with a view to avoiding as far as practicable the provision by that institution of information that is not relevant to the criminal investigation concerned.

(7) Any information provided by a financial institution in the State in compliance with an order under this section is not admissible in evidence against the financial institution, except in any proceedings for an offence under *section 21(1)(b)*.

Request to designated state for information about financial transactions.

14.— (1) Where an account information order or account monitoring order relates to information concerning an account or accounts in a financial institution in a designated state, the Director of Public Prosecutions may send the order to the Central Authority for transmission to a competent authority in that state, together with a request by the Director for the supply of the information to which the order relates.

(2) Notwithstanding *subsection (1)*, the Director may make a request directly to a competent authority in a designated state for the supply of any information to which an account information order or account monitoring order could relate if a criminal investigation is taking place in the State and the Director has reasonable grounds for believing—

(*a*) that a financial institution or financial institutions in the designated state may have information which is required for the purposes of the investigation, and

(*b*) that it is in the public interest that any such information should be disclosed for those purposes, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances.

(3) Any request under this section shall include—

(*a*) a statement by the Director that an investigation is taking place into a specified offence and that the person mentioned in the request is the subject of the investigation, and

(*b*) the following information:

(i) why the Director considers that the requested information is likely to be of substantial value for the purposes of the investigation;

(ii) why he or she considers that a financial institution or financial institutions in the designated state may keep the account or accounts concerned;

(iii) if available, the name or names of that institution or those institutions;

(iv) the maximum period of imprisonment to which a person of full capacity and not previously convicted is liable on conviction for the offence;

(v) the content of *subsections (4)* and *(5)*; and

(vi) any other information that may facilitate compliance with the request.

(4) Information obtained in response to a request under this section shall not, without the consent of the competent authority, be used for any purpose other than that permitted by the relevant international instrument.

(5) When any such information is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to the competent authority unless the authority indicates that it need not be returned.

Information about financial transactions for use in designated state

Request from designated state for information about financial transactions.

15.— (1) This section applies to a request for information in relation to any account or accounts that may be held in a financial institution in the State by a person who is the subject of a criminal investigation in a designated state.

(2) The request shall include—

(*a*) a statement that a specified offence has been committed in the designated state concerned and that the person mentioned in the request is the subject of an investigation into the offence,

(*b*) a statement that—

(i) any information that may be supplied in response to the request will not, without the Minister's prior consent, be used for any purpose other than that specified in the request, and

(ii) the record of any such information will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless the Minister indicates that its return is not required,

and

(*c*) the following information:

(i) why the requesting authority considers that the requested information is likely to be of substantial value for the purposes of the investigation;

(ii) why it considers that a financial institution or financial institutions in the State may hold the account or accounts concerned;

(iii) if available, the name or names of that institution or those institutions;

F21**[**(iv) in the case of request from a designated state other than the United Kingdom, the maximum period of imprisonment under the law of the designated state by which the offence is punishable; and**]**

(v) any other information that may facilitate compliance with the request.

(3) In *subsection (1)*, "information" includes—

(*a*) information as to whether a financial institution in the State keeps an account or accounts mentioned in that subsection,

(*b*) details of any such account or accounts,

(*c*) details of operations on any such account or accounts during a particular period.

Annotations

Amendments

F21 Substituted (31.01.2021) by *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2022), reg. 4, in effect as per reg. 1(2).

Action on request.

16.— The Minister may, if of opinion that the request complies with *section 15*, authorise a member of the Garda Síochána not below the rank of inspector to apply to a judge of the High Court for an account information order or account monitoring order, or for both of those orders, in relation to the information requested.

Account information order and account monitoring order on foot of request.

17.— (1) On receipt of an authorisation under *section 16* a member of the Garda Síochána not below the rank of inspector may apply *ex parte* and otherwise than in public to a judge of the High Court for an account information order or account monitoring order or for both of those orders.

(2) The application—

(*a*) may relate to—

(i) all financial institutions in the State,

(ii) a category or categories of such financial institutions, or

(iii) a particular such financial institution or particular such financial institutions,

and

(*b*) shall be accompanied by a copy of the request concerned and of any supporting or related documents.

(3) The judge may make the order or orders applied for in relation to the financial institution or financial institutions specified in the application if satisfied that—

(*a*) there are reasonable grounds for believing that an offence under the law of the designated state concerned has been committed,

(*b*) the person mentioned in the request is the subject of an investigation into the offence,

(*c*) the request is otherwise in accordance with the relevant international instrument, and

(*d*) there are reasonable grounds for believing that the specified financial institution or financial institutions may have information which is required for the purposes of the investigation.

(4) An order under this section shall contain sufficient information in relation to any account specified in it to enable the account to be identified by the financial institution concerned.

(5) An order under this section has effect notwithstanding any obligation as to secrecy or any other restriction on disclosure imposed by statute or otherwise.

(6) Any information provided by a financial institution in compliance with such an order is not admissible in evidence against it, except in any proceedings for an offence under *section 21(1)(b)*.

Transmission of information obtained to requesting authority.

18.— Information disclosed by a financial institution in compliance with an account information order or account monitoring order under *section 17* shall be transmitted to the requesting authority concerned in accordance with arrangements approved by the Minister.

Requesting authority to be informed of possible further investigations.

19.— During the execution of a request under this Part the Commissioner of the Garda Síochána, if of opinion that it may be appropriate to undertake investigations which were not initially foreseen or could not be specified when the request was made, shall inform the requesting authority accordingly.

Supplementary

Variation or discharge of account information order or account monitoring order.

20.— (1) A judge of the High Court may vary or discharge an account information order or account monitoring order on application by—

(*a*) a member of the Garda Síochána not below the rank of inspector, or

(*b*) any financial institution affected by the order.

(2) Where the application relates to an order under *section 17*, the judge shall arrange for the competent authority in the designated state concerned to be notified—

(*a*) of the application and the grounds for making it, so as to enable the authority to submit any arguments that it deems necessary at the hearing of the application, and

(*b*) of the outcome of the application.

(3) The application shall be heard otherwise than in public.

Offences under this Part.

21.— (1) A financial institution in the State is guilty of an offence—

(*a*) if, without reasonable excuse, it does not comply with an account information order or account monitoring order, or

(*b*) if, while purporting to comply with such an order, it—

(i) makes a statement which it knows to be false or misleading in a material particular, or

(ii) recklessly makes a statement which is false or misleading in such a particular.

(2) *Subsection (1)* is without prejudice to the law relating to contempt of court.

(3) A financial institution in the State and any person who is a director, or an officer or other employee, of the institution is guilty of an offence if the institution or person, knowing or suspecting that an application has been made under this Part for an account information order or an account monitoring order or both, makes any disclosure which prejudices, or is likely to prejudice, the criminal investigation giving rise to the application.

(4) In proceedings for an offence under *subsection (3)* it is a defence for the financial institution or person to prove that the institution or person—

(*a*) did not know or suspect that the disclosure to which the proceedings relate prejudiced, or was likely to prejudice, the criminal investigation concerned, or

(*b*) had lawful authority or reasonable excuse for making the disclosure.

(5) A person who is guilty of an offence under *subsection (3)* is liable—

(*a*) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, and

(*b*) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

(6) A financial institution which is guilty of an offence under this section is liable—

(*a*) on summary conviction, to a fine not exceeding €5,000, and

(*b*) on conviction on indictment, to a fine.

PART 3

Interception of Telecommunications Messages

Introductory

Interpretation (*Part 3*).

22.— In this Part, unless the context otherwise requires—

"Act of 1983" means the Postal and Telecommunications Services Act 1983;

"Act of 1993" means the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993;

"competent authority" means the person or body in a member state who or which in the opinion of the Minister is the competent authority for the purposes of Title III of the 2000 Convention;

"interception" means the interception of telecommunication messages to or from a person specified in the authorisation of the interception at a telecommunications address so specified;

"telecommunications address" has the meaning that it has in the Act of 1993.

Requests for interception where technical assistance required

Request to member state for interception.

23.— (1) This section applies where—

(*a*) for the purpose of a criminal investigation the Minister has given an authorisation of an interception under section 2 of the Act of 1993,

(*b*) the person specified in the authorisation is present in the State or a member state, and

(*c*) technical assistance from a member state is needed to intercept the telecommunications messages concerned.

(2) Where this section applies, the Minister may cause a request to be made to a competent authority in the member state for—

(*a*) the interception by that authority and immediate transmission to the Commissioner of the Garda Síochána or a member of the Garda Síochána nominated by him or her of telecommunications messages to or from the telecommunications address concerned, or

(*b*) the interception and recording of the messages and the transmission of the recording to the Commissioner or member.

(3) The request shall—

(*a*) confirm that an authorisation of an interception has been given by the Minister under the Act of 1993 for the purpose of a criminal investigation,

(*b*) give sufficient information to identify the person whose telecommunications messages are to be intercepted,

(*c*) give an indication of the criminal conduct under investigation,

(*d*) state the desired duration of the interception,

(*e*) provide sufficient technical data, including the network connection number of the telecommunications address concerned, to ensure that the request can be met, and

(*f*) where the request—

(i) relates to a specified person who is present in the member state concerned, or

(ii) is a request under *subsection (2)(b)*,

provide a summary of the facts relating to the offence being investigated and any further information that the competent authority may require to enable it to decide whether the requested interception would be authorised by it in similar circumstances.

(4) If the request relates to a person who is present in a member state other than that from which the technical assistance is required, that other member state shall be notified of the authorisation in accordance with *section 26*.

(5) Information received in response to the request is deemed to be official information for the purposes of the Official Secrets Act 1963.

(6) For the removal of doubt, it is declared that an authorisation may be given under section 2 of the Act of 1993 where the person whose telecommunications messages are to be intercepted is present in a member state.

Request to State for interception.

24.— (1) This section applies where—

(*a*) a criminal investigation is taking place in a member state,

(*b*) a lawful interception order or warrant for the interception of telecommunications messages to or from a specified person or telecommunications address has been issued in the member state in connection with the investigation,

(*c*) a competent authority in the member state makes a request to the Minister for—

(i) the interception and immediate transmission to the authority or a person nominated by it of telecommunications messages to or from the telecommunications address concerned, or

(ii) the interception and recording of the messages and the transmission of the recording to the authority or the person nominated by it, and

(*d*) the specified person—

(i) is present in the member state or another member state and the competent authority in the former member state needs the technical assistance of the State to intercept the telecommunications messages, or

(ii) is present in the State and the interception can be made therein.

(2) The request shall—

(*a*) indicate the name of the competent authority,

(*b*) confirm that a lawful interception order or warrant has been issued in connection with a criminal investigation,

(*c*) give sufficient information to identify the person whose telecommunication messages are to be intercepted,

(*d*) give an indication of the criminal conduct under investigation,

(*e*) state the desired duration of the interception,

(*f*) provide sufficient technical data, including the network connection number of the telecommunications address concerned, to ensure that the request can be met, and

(*g*) if the person is present in a member state other than that in which the lawful interception order or warrant has been issued and from which no technical assistance is required to carry out the interception, confirm that that member state has been informed of the order or warrant pursuant to Article 20(2)(a) of the 2000 Convention.

(3) Where—

(*a*) the person whose telecommunications messages are to be intercepted is present in the State, or

(*b*) the request is for the interception and recording of the messages and transmission of the recording,

the request shall also include a summary of the facts relating to the offence being investigated and any further information that the Minister may require to enable him or her to decide whether the conduct constituting the offence, if it occurred in the State, would constitute a serious offence within the meaning of the Act of 1993 and otherwise justify the giving of an authorisation under that Act.

Action on request.

25.— (1) Subject to *subsection (3)*, where the request is for the interception and immediate transmission of specified telecommunications messages, the Minister may give an authorisation of the interception if of opinion that *section 24* applies and is complied with in relation to the case.

(2) Subject to *subsection (3)*, where—

(*a*) the request is for the interception and recording of specified telecommunication messages and transmission of the recording, and

(*b*) immediate transmission of the interception is not possible—

(i) from the State,

(ii) to the member state, or

(iii) in both of those cases,

the Minister may give an authorisation of the interception if of opinion that *section 24* applies and is complied with in relation to the case.

(3) Where in a case referred to in *subsection (1)* or *(2)*, the person who is the subject of the request is present in the State, the Minister may give an authorisation of the interception only if of opinion that—

(*a*) the conduct being investigated in the requesting state would, if it occurred in the State, constitute a serious offence within the meaning of the Act of 1993 and otherwise justify the giving of an authorisation under that Act, and

(*b*) *section 24* applies and is complied with in relation to the case.

(4) If a declaration is made by the State under the 2000 Convention that it is bound by paragraph 6 (as given effect to by *subsections (2)* and *(3)*) of Article 18 of the Convention only where immediate transmission from the State of the interception concerned is not possible, *paragraphs (b)(ii)* and *(b)(iii)* of *subsection (2)* thereupon cease to have effect.

(5) Where the person who is the subject of the request is present in the State, the Minister may make the authorisation subject to any condition (including a condition related to the use of the intercepted messages) that would apply if the authorisation were one given under section 2 of the Act of 1993 in relation to a person present in the State.

(6) Where an authorisation is given, the Commissioner of the Garda Síochána shall—

(*a*) arrange for the transmission of the telecommunications messages concerned to the competent authority in the member state or a person nominated by it, or

(*b*) as appropriate, arrange for the recording of the messages and transmission of the recording to that authority or person.

(7) In considering any request under Article 18.8 of the 2000 Convention for a transcript of such a recording, the Minister shall have regard to all the circumstances of the particular case; and the granting of such a request may be subject to any condition to which authorisation of the interception may be subject.

(8) The authorisation is deemed to be an authorisation under section 2 of the Act of 1993, and that Act and section 110 of the Act of 1983 (in so far as it relates to directions related to such authorisations) have effect accordingly, with any necessary modifications, for all purposes as if the authorisation and any such directions had been given under the Act of 1993 and the Act of 1983.

Notifications of other interceptions

Notification to member state of interception.

26.— (1) Where—

(*a*) for the purpose of a criminal investigation the Minister has given an authorisation of an interception under section 2 of the Act of 1993,

(*b*) the telecommunications address of the person specified in the authorisation is being used on the territory of a member state, and

(*c*) technical assistance from the member state is not required to carry out the interception,

the Minister shall inform the competent authority in the member state of the authorisation—

(i) before the interception, if the Minister is then aware that the person is present on that territory, or

(ii) in any other case, immediately after the Minister becomes so aware.

(2) The notification shall include the following information:

(*a*) confirmation that authorisation of an interception has been given by warrant under section 2 of the Act of 1993 in connection with a criminal investigation;

(*b*) details sufficient to identify the subject of the interception;

(*c*) an indication of the criminal conduct under investigation; and

(*d*) the expected duration of the interception.

(3) The Minister shall comply with any condition, requirement or request imposed or made by the competent authority in relation to the interception pursuant to Article 20.4 of the 2000 Convention.

(4) Pending a decision by the competent authority on whether to consent to the interception or to its continuance—

(*a*) any interception made may be continued, but

(*b*) material intercepted may not be used unless—

(i) otherwise agreed between the Minister and the competent authority, or

(ii) in connection with taking urgent measures to prevent an immediate and serious threat to public security (including measures in respect of any serious offence), in which case the Minister shall inform the competent authority of any such use and the reasons justifying it.

(5) In *subsection (4)(b)(ii)*, "serious offence" means an offence specified in the Schedule to the Bail Act 1997 for which a person of full capacity and not previously convicted may be punished by a term of imprisonment for a term of 5 years or by a more severe penalty.

(6) If so requested by the competent authority, the Minister shall supply it with a summary of the facts of the case and any further information necessary to enable it to decide whether an interception would be authorised by it in similar circumstances.

(7) *Subsection (6)* is without prejudice to *subsection (4)*, unless otherwise agreed between the Minister and the competent authority.

(8) Where the Minister is of opinion that the information to be provided under *subsection (2)* is of a particularly sensitive nature, the information may, with the agreement of the competent authority concerned, be transmitted to it through a specific person or body.

(9) This section does not apply in relation to a member state which has declared in accordance with the 2000 Convention that it is not necessary to provide it with information on interceptions as envisaged in Article 20 of that Convention.

Notification by member state of interception.

27.— (1) This section applies where—

(*a*) the competent authority in a member state has authorised an interception,

(*b*) the telecommunications address of the person specified in the authorisation is being used on the territory of the State,

(*c*) technical assistance from the State is not required to carry out the interception, and

(*d*) the competent authority notifies the Minister accordingly in accordance with Article 20 of the 2000 Convention.

(2) Where this section applies, the Minister, without delay and at the latest within a period specified in *subsection (7)*, shall proceed in accordance with *subsection (3)* or *subsections (4)* and *(5)*, as appropriate.

(3) If an authorisation would be given under section 2 of the Act of 1993 in similar circumstances, the Minister shall authorise the interception to be carried out or continued.

(4) If—

(*a*) an authorisation under the said section 2 would not be given,

(*b*) *section 3* applies, or

(*c*) the offence concerned is a political offence or revenue offence,

the Minister shall require that the interception not be carried out or be terminated and give the reasons for so requiring in writing.

(5) Where *subsection (4)* applies, the Minister shall require that any material already intercepted while the telecommunications address was being used in the State may not be used or may be used only under specified conditions, the justification for which shall be communicated by the Minister to the competent authority in writing.

(6) The Minister may request the competent authority to supply a summary of the facts of the case and any further information necessary to enable him or her to decide whether an authorisation would be given under section 2 of the Act of 1993 in similar circumstances.

(7) The following period is specified for the purposes of *subsection (2)*:

(*a*) a period not exceeding 96 hours; or

(*b*) where it is necessary to determine whether an authorisation under section 2 of the Act of 1993 would be given in similar circumstances, a period not exceeding in total 12 days.

(8) Where *paragraph (b)* of *subsection (7)* applies, the Minister shall communicate in writing to the competent authority the conditions which justify the request for an extension of the period mentioned in *paragraph (a)* of that subsection.

(9) Information provided under this section by the competent authority is deemed to be official information for the purposes of the Official Secrets Act 1963.

Miscellaneous

Indirect interception of telecommunications messages.

28.— (1) In this section, "authorised undertaking" has the meaning given to it by the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2003 (S.I. No. 306 of 2003), as amended by the European Communities (Electronic Communications Networks and Services) (Authorisation) (Amendment) Regulations 2007 (S.I. No. 372 of 2007).

(2) Where—

(*a*) a person is present in the State,

(*b*) an authorisation has been given under section 2 of the Act of 1993 for the interception of telecommunications messages to or from the person,

(*c*) the messages cannot be directly intercepted in the State, but

(*d*) an authorised undertaking which has received directions under section 110 of the Act of 1983 in relation to interceptions can facilitate interception of the messages by accessing interception equipment in a member state,

the authorised undertaking shall facilitate the interception of the messages by accessing that equipment.

(3) Where—

(*a*) a person is present in a member state,

(*b*) a lawful order or warrant for the interception of telecommunications messages to or from the person has been made or issued in the member state for the purposes of a criminal investigation and is in force,

(*c*) the messages cannot be directly intercepted in the member state, but

(*d*) an authorised undertaking which has received directions under section 110 of the Act of 1983 in relation to interceptions—

(i) can directly intercept the messages, and

(ii) has interception equipment enabling a provider of telecommunications services in the member state to intercept them,

the authorised undertaking shall facilitate the interception of the messages by the provider.

Application of Act of 1993 in relation to this Part.

29.— The Act of 1993 applies and has effect in relation to this Part with the necessary modifications, including the following:

(*a*) references in the Act of 1993 to "this Act" are to be construed as references to this Part;

(*b*) references therein to an authorisation are to be construed as references to—

(i) an authorisation deemed under *section 25(8)* to be an authorisation under section 2 of the Act of 1993, or

(ii) an authorisation under *section 27(3)*,

as the case may be;

(*c*) references therein to a contravention of a provision of the Act of 1993 are to be construed as references to a contravention of a provision of this Part;

(*d*) references therein to official documents are to be construed as references to official documents available to the Minister in connection with a request under this Part; and

(*e*) references to a person in sections 8(5) and 9(11) of the Act of 1993 are to be construed as references to a person who is present in the State.

Amendment of section 110 of Act of 1983.

30.— Section 110 (general ministerial powers in relation to postal and telecommunications services) of the Act of 1983 is amended by the addition of the following subsections:

"(6) A person who, without reasonable excuse, does not comply with a direction under this section is guilty of an offence and liable—

(*a*) on summary conviction, to a fine not exceeding €5,000, or

(*b*) on conviction on indictment, to a fine.

(7) Proceedings for an offence under subsection (6), including any appeal or subsequent proceedings, shall be held *in camera*.".

PART 4

Freezing, Confiscation and Forfeiture of Property

Chapter 1

Interpretation

Interpretation(*Part 4*).

31.— (1) In this Part:

"appeal" includes any proceedings for the discharge or setting aside of a judgment and any application for a new trial or stay of execution;

F22**[**"certificate" means—

(*a*) the certificate provided for in Article 9 of the 2003 Framework Decision, the standard form of which is set out in the Annex to that Framework Decision, or

(*b*) the certificate provided for in Article 4 of the 2006 Framework Decision, the standard form of which is set out in the Annex to that Framework Decision,

as the context requires;**]**

F23**[**"competent authority"—

(*a*) in relation to a member state, means the authority or authorities determined by that state in accordance with Article 3 of the 2006 Framework Decision to be the competent authority of that member state, and

(*b*) in relation to a designated state other than one referred to in *paragraph (a)*, means the authority or authorities determined by that state in accordance with the relevant international instrument to be the competent authority of that designated state;**]**

"confiscation co-operation order" has the meaning given to it by *section 51*;

"confiscation order" means a confiscation order within the meaning of the Act of 1994;

"defendant" means the person to whose property an external freezing order or external confiscation order relates;

"external confiscation order" means an order made by a court in a designated state for the purpose of—

(*a*) recovering property in the State which was received or obtained as a result of or in connection with conduct which would, if it occurred in the State, constitute an indictable offence,

(*b*) recovering the value of such property, or

(*c*) depriving a person of a pecuniary advantage so received or obtained;

"external forfeiture order" means an order for the forfeiture of property in the State which is made by a court in a designated state in or in connection with proceedings resulting from conduct which would, if it occurred in the State, constitute an indictable offence;

"external freezing order" means any measure—

F24**[**(*a*) taken provisionally by a competent judicial authority of -

(i) a designated state in criminal proceedings, or

(ii) the United Kingdom in a criminal investigation,

to prevent the destruction, transformation, moving, transfer, disposal or use of specified property in the State that could be subject to confiscation or be evidence in those proceedings, and**]**

(*b*) made for the purpose of—

(i) subsequent confiscation of the property, or

(ii) protection of evidence;

"forfeiture co-operation order" has the meaning given to it by *section 60*;

"freezing co-operation order" has the meaning given to it by *section 35*;

"freezing order" means—

(*a*) an order under section 24 (as amended by *section 105(a)* of this Act) of the Act of 1994,

(*b*) an order under section 14 or 15 of the Criminal Justice (Terrorist Offences) Act 2005, or

(*c*) an order under *section 32*,

which relates to property in a designated state or in so far as it does so;

"issuing judicial authority" means a judicial authority in a designated state, as defined in the law of that state, which makes, validates or in any way confirms an external freezing order;

"issuing state" means the designated state in which an issuing judicial authority exercises jurisdiction;

"property" includes property of any description, corporeal or incorporeal, movable or immovable and wherever situated, which the competent judicial authority in the designated state considers—

(*a*) to be the proceeds of an offence,

(*b*) to be equivalent to either the full value or a part of the value of such proceeds, or

(*c*) to be the instrumentalities or objects of an offence,

and includes documents evidencing title to or an interest in the property;

"realisable property" means—

F25**[**(*a*) in relation to a freezing co-operation order, a confiscation co-operation order or an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state made in respect of specified property, the property specified in the order, and**]**

(*b*) in any other case—

(i) any property held by the defendant, and

(ii) any property held by a person to whom the defendant has directly or indirectly made a gift,

but does not include property which is the subject of an order made by a court in other proceedings in the State unless or until that order is discharged.

(2) For the purposes of this Part, dealing with property held by any person includes (without prejudice to the generality of the expression)—

(*a*) where a debt is owed to that person, making a payment to any person in settlement or reduction of the debt, and

(*b*) removing the property from the State.

(3) References in this Part to a gift are to a gift which, if the external confiscation order were a confiscation order, would be a gift caught by the Act of 1994, and the provisions of that Act concerning a gift so caught apply and have effect in relation to a gift referred to in this Part.

Annotations

Amendments

F22 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 3(a), S.I. No. 11 of 2016.

F23 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 3(b), S.I. No. 11 of 2016.

F24 Substituted (31.01.2021) by *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2022), reg. 5, in effect as per reg. 1(2).

F25 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 3(c), S.I. No. 11 of 2016.

Chapter 2

Freezing of Property

Freezing order relating to evidence.

32.— (1) This section applies where criminal proceedings have been instituted, or a criminal investigation is taking place, in the State.

(2) Where this section applies, the Director of Public Prosecutions or a member of the Garda Síochána not below the rank of inspector may apply *ex parte* and otherwise than in public to a judge of the High Court for an order (a "freezing order") prohibiting the destruction, transformation, moving, transfer, disposal or use by any person of specified property, whether in or outside the State, that could be evidence in those proceedings or, as the case may be, in any such proceedings that may be instituted.

(3) The judge may make the order applied for if satisfied—

(*a*) that criminal proceedings have been instituted or a criminal investigation is taking place,

(*b*) that evidence relating to the offence concerned—

(i) is on specified premises,

(ii) is likely to be of substantial value (whether by itself or together with other evidence) to the proceedings or investigation, and

(iii) is likely to be admissible at a trial for the offence,

and

(*c*) in case the evidence is in a designated state, that a request has been or will be made for it to be transferred to the Commissioner of the Garda Síochána.

(4) An order under this section does not apply in relation to any documents subject to legal privilege.

(5) The High Court may vary or discharge an order under this section on application by—

(*a*) a member of the Garda Síochána not below the rank of inspector, or

(*b*) any person affected by it,

and shall discharge it if its continuance in force would not be in the interests of justice.

(6) If—

(*a*) an order under this section is transmitted for enforcement in a designated state pursuant to F26**[***section 33***]**, and

(*b*) the order is later varied or discharged in relation to property in the designated state,

the Court shall cause the Central Authority to be informed as soon as practicable of the variation or discharge, and that Authority shall thereupon notify the appropriate authority in the designated state accordingly.

Annotations

Amendments

F26 Substituted (1.02.2016) by*Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 4, S.I. No. 11 of 2016.

Transmission of freezing order for enforcement outside the State.

33.— (1) If—

(*a*) any property to which an application for a freezing order relates is in a member state, and

(*b*) the application is granted,

the applicant may request the judge concerned to cause a certificate to be completed.

(2) The certificate shall—

(*a*) bear a signature (which may be an electronic signature) by or on behalf of the court concerned, and

(*b*) include a statement as to the accuracy of the information in the certificate.

(3) If the freezing order is an order under *section 32* for the protection of evidence, the court concerned may indicate to the judicial authority of the member state any formalities and procedures in enforcing the order that are necessary to ensure that the evidence is admissible in criminal proceedings.

(4) The freezing order and certificate shall be sent by a registrar of the Court to the applicant, who shall send them to the Central Authority for transmission to the appropriate authority in the member state concerned with a view to having the freezing order enforced.

(5) If a freezing order relates to property in a designated state (other than a member state), the Director of Public Prosecutions may send to the Central Authority, for transmission to the appropriate authority in the designated state with a view to having the freezing order enforced—

(*a*) a duly authenticated copy of the order, and

(*b*) such other information as may be required by the appropriate authority in accordance with the relevant international instrument.

Transmission of external freezing orders to State for enforcement.

34.— (1) An external freezing order from a member state and a certificate duly completed and certified as accurate by the issuing judicial authority together with a request or instruction relating to the subsequent treatment of the evidence or property concerned shall, unless otherwise provided by a declaration by the State under Article 4.2 of the F27**[**2003 Framework Decision**]**, be transmitted to the Central Authority in connection with a request for enforcement of the order.

(2) A request from any other designated state for the enforcement of an external freezing order shall be accompanied by—

(*a*) a duly certified copy of the order,

(*b*) a statement of the grounds—

(i) for making the order, and

(ii) for believing that the evidence or property concerned will be subject to an order of confiscation,

and any other information required by the relevant international instrument.

(3) Transmission of the documents mentioned in *subsection (1)* or *(2)* shall be by any means capable of producing a written record under conditions which allow the Central Authority or the High Court to establish the documents' authenticity.

(4) An issuing judicial authority is deemed to have complied with *subsection (3)* if facsimile copies of the external freezing order, the certificate (where appropriate) and any translation thereof are transmitted in compliance with any regulations that may be made under *subsection (6)*.

(5) If the Central Authority or the High Court is not satisfied that a facsimile copy of a document transmitted in accordance with this section corresponds to the document of which it purports to be such a copy, the Central Authority or the Court shall—

(*a*) request the issuing judicial authority to cause the original or a copy of the document to be transmitted to the Central Authority, and

(*b*) agree with that judicial authority on the manner in which the original or copy is to be so transmitted.

(6) The Minister may, if he or she considers it necessary for the purposes of ensuring the accuracy of documents transmitted in accordance with this section, make regulations—

(*a*) prescribing procedures to be followed in connection with the transmission of documents in accordance with this section, and

(*b*) specifying features to be present in any equipment being used in that connection.

Annotations

Amendments

F27 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 5, S.I. No. 11 of 2016.

Recognition and enforcement of external freezing orders.

35.— (1) The Central Authority shall, on receipt of an external freezing order, certificate (where appropriate), any other supporting or related documents and any translation, forthwith cause an application to be made to the High Court for an order (in this Part referred to as a "freezing co-operation order") recognising the external freezing order and prohibiting any person from dealing with the property specified in the external freezing order.

(2) The application may be made *ex parte* and otherwise than in public and shall be accompanied by the documents mentioned in *subsection (1)* or copies thereof and, in the case of a designated state (other than a member state), shall be made with the consent of the Minister.

(3) An application from a member state for the enforcement of an external freezing order shall be dealt with as soon as possible and, whenever practicable, within 24 hours of receipt of the order and a duly completed certificate.

F28**[**(3A) An application for the enforcement of an external freezing order from the United Kingdom shall be dealt with —

(*a*) as soon as possible, and

(*b*) where the designated state informs the Central Authority that there are legitimate grounds to believe that the property specified in the order will be immediately removed or destroyed, where practicable, within 96 hours of receipt of the order, the statement referred to in *section 34(2)(b)* and any other information required by Title XI of Part Three of the Trade and Cooperation Agreement.**]**

(4) On an application under this section the Court may, subject to *subsection (5)*, make a freezing co-operation order, subject to any conditions that may be specified in the order.

(5) The Court may—

(*a*) refuse to make a freezing co-operation order on a ground mentioned in *section 3* or *46*, or

(*b*) postpone its making on a ground mentioned in *section 47*.

(6) Where a request from a member state concerns an offence referred to in Article 3(2) of the F29**[**2003 Framework Decision**]** which is punishable in that state by a maximum term of imprisonment of not less than 3 years, the Court may not refuse to make a freezing co-operation order solely on the ground that the conduct constituting the offence concerned does not constitute an offence under the law of the State.

(7) Where—

(*a*) an external freezing order is for the protection of evidence,

(*b*) it is necessary to ensure that the evidence is admissible in the proceedings concerned, and

(*c*) for that purpose certain formalities and procedures in the enforcement of the external freezing order are expressly indicated by the issuing judicial authority,

the freezing co-operation order shall make provision for observing those formalities and procedures, unless their observance would be contrary to the fundamental principles of the law of the State.

(8) The Court shall cause notice of the freezing co-operation order to be given to any person who appears to be or is affected by it, unless the Court is satisfied that it is not reasonably possible to ascertain the person's whereabouts.

Annotations

Amendments

F28 inserted (31.01.2021) by *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2022), reg. 6, in effect as per reg. 1(2).

F29 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 6, S.I. No. 11 of 2016.

Application, etc., of freezing co-operation orders.

36.— (1) A freezing co-operation order may apply—

(*a*) where particular property is specified in the external freezing order, to the property so specified, and

(*b*) in any other case—

(i) to realisable property held by a specified person, whether the property is described in the freezing co-operation order or not, and

(ii) to any realisable property held by a specified person, being property transferred to the person after the external freezing order was made.

(2) A freezing co-operation order may make such provision as the Court thinks fit for the living expenses and legal expenses of the person possessing the property concerned.

(3) The Court—

(*a*) may at any time appoint a receiver—

(i) to take possession of any realisable property to which a freezing co-operation order applies, and

(ii) in accordance with the Court's directions, to manage or otherwise deal with the property, subject to such exceptions and conditions as it may specify,

and

(*b*) may require any person having possession or control of the property to give up possession of it to the receiver.

(4) Where the Court has made a freezing co-operation order, a member of the Garda Síochána or an officer of customs and excise may seize any realisable property for the purpose of preventing its removal from the State.

(5) Property taken possession of under *subsection (4)* shall be dealt with in accordance with the Court's directions.

Registration of freezing co-operation orders.

37.— (1) Where a freezing co-operation order is made in relation to land, or an order is made varying or discharging such an order, the registrar of the High Court shall send to the Property Registration Authority a notice of the making of the order, together with a copy of the order.

(2) On receipt of those documents the Authority shall—

(*a*) if the land is registered land, cause an entry to be made in the register kept by it under the Registration of Deeds and Title Acts 1964 and 2006 inhibiting, until the order is discharged, any dealing with the land and any charge thereon, and

(*b*) if the order is subsequently varied or discharged, cause the entry to be varied accordingly or cancelled, as the case may be.

(3) If *subsection (2)(a)* does not apply, the Authority shall cause the notice of the making, variation or discharge of the freezing co-operation order to be registered in the register of deeds maintained by the Authority under section 35 of the Registration of Deeds and Title Act 2006.

(4) Where a freezing co-operation order is made which affects an interest in a company or its property, or an order is made varying or discharging such an order, the registrar of the High Court shall send to the Registrar of Companies a notice of the making of the order, together with a copy of the order.

(5) On receipt of those documents the Registrar of Companies shall, if the company is a registered company, cause the notice to be entered in the Register of Companies and—

(*a*) if the company is an existing company within the meaning of the Companies Acts 1963 to 2006, send a copy of the notice to each director and the secretary of the company at the company's registered office, or

(*b*) in any other case, send a copy of the notice by post to the person resident in the State who has been authorised to accept, on behalf of the company concerned, service of process and any notices required to be served on it.

(6) In this section—

"Register of Companies" means the Register of Companies maintained under the Companies Acts 1963 to 2006;

"registered company" means—

(*a*) a company formed and registered under those Acts,

(*b*) an existing company within the meaning of those Acts, or

(*c*) a company registered under Part XI of the Companies Act 1963 or the European Communities (Branch Disclosure) Regulations 1993 (S.I. No. 395 of 1993).

Exercise of powers under this Chapter by High Court or receiver.

38.— (1) The powers of the High Court under *section 36* or of a receiver appointed under that section shall be exercised, subject to this section, with a view to making available for recovery property which may become liable to be recovered under any confiscation co-operation order F30**[**or, in the case of an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state, that external confiscation order**]** that may be made in the defendant's case.

(2) The powers shall be exercised with a view to allowing any person, other than the defendant or the recipient of a gift, to retain or recover the value of any property held by the person.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) In exercising the powers no account shall be taken of any obligations of the defendant or the recipient of any gift that conflict with the obligation to satisfy

F31**[**any order referred to in *subsection (1)***]** that may be made in the defendant's case.

Annotations

Amendments

F30 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 7(a), S.I. No. 11 of 2016.

F31 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 7(b), S.I. No. 11 of 2016.

Receivers: supplementary provisions.

39.— A receiver appointed under *section 36* who takes any action—

(*a*) in relation to property which is not realisable property, being an action which he or she would be entitled to take if it were such property,

(*b*) believing, and having reasonable grounds for believing, that he or she is entitled to take that action in relation to that property,

is not liable to any person in respect of any loss or damage resulting from the action except in so far as the loss or damage is caused by his or her negligence.

Bankruptcy of defendant, etc.

40.— (1) Where a person who holds realisable property is adjudicated bankrupt—

(*a*) property for the time being subject to a freezing co-operation order made before the order adjudicating the person bankrupt, and

(*b*) any proceeds of property realised by virtue of *section 36*, for the time being in the hands of a receiver,

is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act 1988.

(2) Where a person has been adjudicated bankrupt, the powers of the High Court under *section 36* or of a receiver appointed under that section shall not be exercised in relation to property of the bankrupt for the purposes of the said Act of 1988.

(3) Where a person is adjudicated bankrupt and has directly or indirectly made a gift—

(*a*) no decision as to whether the gift is void shall be made under section 57, 58 or 59 of the said Act of 1988 in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a freezing co-operation order, and

(*b*) any decision as to whether it is void made under any of those sections after the discharge of the freezing co-operation order shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(4) In any case in which a petition in bankruptcy was presented, or an adjudication in bankruptcy was made, before 1 January 1989, this section has effect with the modification that for references to the property of the bankrupt for the purposes of the said Act of 1988 there shall be substituted references to the property of the bankrupt vesting in the assignees for the purposes of the law of bankruptcy existing before that date.

Property subject to freezing co-operation order dealt with by Official Assignee.

41.— (1) Without prejudice to the generality of any provision of any other enactment, where—

(*a*) the Official Assignee or a trustee appointed under Part V of the Bankruptcy Act 1988 seizes or disposes of any property in relation to which his or her functions are not exercisable because it is for the time being subject to a freezing co-operation order, and

(*b*) at the time of the seizure or disposal he or she believes, and has reasonable grounds for believing, that he or she is entitled (whether under an order of the court or otherwise) to seize or dispose of the property,

he or she is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his or her negligence in so acting, and he or she has a lien on the property, or the proceeds of its sale, for such of his or her expenses as were incurred in connection with the bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his or her remuneration as may reasonably be assigned for his or her acting in connection with those proceedings.

(2) Where the Official Assignee or a trustee appointed as aforesaid incurs expenses in respect of any property mentioned in *subsection (1)(a)* and, when doing so, does not know and has no reasonable grounds for believing that the property is subject to a freezing co-operation order, he or she is entitled (whether or not he or she has seized or disposed of that property so as to have a lien) to payment of those expenses under *section 42*.

Application of proceeds of realisation.

42.— (1) Money paid or recovered in respect of a freezing co-operation order (including any variation of such an order) may, to the extent necessary, be applied to meet expenses incurred in exercising any powers under this Act and the remuneration of any person employed for that purpose.

(2) Money paid or recovered in respect of a freezing co-operation order, after payment of any expenses or remuneration in accordance with *subsection (1)*—

(*a*) shall be applied towards satisfaction of the order, and

(*b*) shall, subject to any provision to the contrary in the relevant international instrument, be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance unless, on request by or on behalf of the designated state concerned, the Court provides otherwise.

Annotations

Modifications (not altering text):

C2 Functions transferred and references to "Department of Finance" and "Minister for Finance" construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2).

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year	Short Title	Provision
...	...	...
No. 7 of 2008	Criminal Justice (Mutual Assistance) Act 2008	Sections 42 and 60(6)
...	...	...

Winding up of company holding realisable property.

43.— (1) Where realisable property is held by a company and an order for its winding up has been made or a resolution has been passed by it for a voluntary winding up, the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to—

(*a*) property for the time being subject to a freezing co-operation order made before the relevant time, and

(*b*) any proceeds of property realised by virtue of *section 36* for the time being in the hands of a receiver.

(2) Where such an order has been made or such a resolution passed, the powers conferred on the High Court under *section 36* or on a receiver appointed under that section shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

(*a*) so as to inhibit him or her from exercising those functions for the purpose of distributing any property held by the company to the company's creditors, or

(*b*) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) In this section—

"company" means any company which may be wound up under the Companies Acts 1963 to 2006;

"relevant time" means—

(*a*) where no order for the winding up of the company has been made, the time of the passing of the resolution for its voluntary winding up,

(*b*) where such an order has been made and, before presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution, and

(*c*) in any other case where such an order has been made, the time of the making of the order.

Duration of freezing co-operation order.

44.— A freezing co-operation order remains in force—

(*a*) where the external freezing order is for the purpose of securing evidence, until the evidence is transferred to the issuing state or a request for such a transfer is refused,

F32**[**(b) where the order is for the purpose of subsequent confiscation of property—

(i) in the case of confiscation on foot of an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state, until the execution of that external confiscation order or until the Central Authority has informed the competent authority in the designated state concerned of one of the matters under paragraphs *(c)*, *(d)*, *(e)*, *(f)* and *(g)* of *section 51G*, and

(ii) in any other case, until a confiscation co-operation order is made or the request for such an order is refused and the refusal is upheld on any appeal against it, or**]**

(*c*) until the freezing co-operation order is discharged in accordance with *section 45*.

Annotations

Amendments

F32 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 8, S.I. No. 11 of 2016.

Variation or discharge of freezing co-operation order.

45.— (1) Subject to the provisions of this section, the High Court, on application by F33**[**the Central Authority or**]** any person affected by a freezing co-operation order—

(*a*) may vary or discharge it, and

(*b*) shall discharge it—

(i) if proceedings in respect of the offence are not instituted, or an application for the transfer of the evidence or for a confiscation order is not made, within such time as the court considers reasonable, or

(ii) if the court considers that for any other reason the continuance in force of the order would not be in the interests of justice.

(2) Notice of an application under this section and of the grounds for it shall be given by the applicant, in such manner as may be prescribed by rules of court or as the Court may direct, to the Central Authority for transmission to the issuing authority.

(3) The making of an application under this section does not have suspensive effect.

(4) The substantive grounds for making the external freezing order may be reviewed only by a judicial authority in the issuing state concerned.

(5) The registrar of the Court shall inform the issuing judicial authority of the outcome of the application.

Annotations

Amendments

F33 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 9, S.I. No. 11 of 2016.

Refusal to make freezing co-operation order.

46.— (1) Without prejudice to *section 3*, the High Court may refuse to make a freezing co-operation order only if—

(*a*) the offence to which the external freezing order relates is not an offence to which the relevant international instrument relates,

(*b*) where the external freezing order was made in a member state, the certificate is not produced, is incomplete or manifestly does not correspond to the external freezing order,

(*c*) there is an immunity or privilege under the law of the State which makes it impossible to make a freezing co-operation order,

(*d*) it is immediately clear from the information provided in a certificate that compliance with a request for the transfer of evidence or confiscation of property in relation to the offence in respect of which the external freezing order has been made would infringe the *ne bis in idem* principle, or

(*e*) in the case of an external freezing order from a designated state (other than F34**[**a member state or the United Kingdom**]**), there is not a reasonable basis for believing—

(i) that there are sufficient grounds for making the order, or

(ii) that the property will be subject to an external confiscation order.

(2) In a case referred to in *subsection (1)(b)*, the High Court may—

(*a*) specify a deadline for presentation of a certificate or for its completion or correction,

(*b*) accept an equivalent document, or

(*c*) if the Court considers that the information provided is sufficient, dispense with the requirement to produce the certificate.

(3) Where—

(*a*) the High Court refuses to make a freezing co-operation order, or

(*b*) notwithstanding consultation with the issuing judicial authority concerned, it is not possible to make such an order because—

(i) the evidence or property has disappeared, has been destroyed or cannot be found in the location indicated in the certificate, or

(ii) its location has not been indicated in a sufficiently precise manner,

the Court shall direct the Central Authority to inform the judicial authority accordingly by any means capable of producing a written record.

Annotations

Amendments

F34 Substituted (31.01.2022) by *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2022), in effect as per reg. 1(2).

Postponement of freezing co-operation order.

47.— (1) The High Court may postpone the making of a freezing co-operation order—

(*a*) where making it might prejudice an ongoing criminal investigation in the State, until such time as the Court deems reasonable,

(*b*) where the property or evidence concerned is already subject to a freezing order in criminal proceedings in the State, until that order is discharged, or

(*c*) subject to *subsection (2)*, where, in the case of an external freezing order freezing property with a view to its subsequent confiscation, the property is already subject to an order made in other proceedings in the State, until that order is discharged.

(2) *Subsection (1)(c)* applies only if the order made in such other proceedings would have priority over a subsequent freezing order in criminal proceedings.

(3) Where the ground for postponement ceases to exist, the Court shall forthwith make a freezing co-operation order.

(4) The Court shall direct the Central Authority to inform the issuing judicial authority by any means capable of producing a written record of—

(*a*) any postponement under this section of the making of a freezing co-operation order, the reasons for the postponement and its expected duration,

(*b*) the making of a freezing co-operation order under *subsection (3)*, and

(*c*) any other measure of restraint to which the property concerned may be subject.

Subsequent treatment of frozen property.

48.— (1) A request to transfer evidence subject to a freezing co-operation order to the issuing state shall be treated as a request for assistance in obtaining evidential material under *section 75*.

(2) A request to make a confiscation co-operation order in relation to property subject to such an order shall be dealt with in accordance with F35**[**this Part**]**.

(3) Notwithstanding *subsection (1)*, where—

(*a*) a request from a member state concerns an offence to which Article 3(2) of the F35**[**2003 Framework Decision**]** applies, and

(*b*) the offence is punishable in the issuing state by a term of imprisonment of not less than 3 years,

the High Court may not refuse a request for evidence to be transferred to that state on the ground that the conduct constituting the offence is not an offence under the law of the State.

Annotations

Amendments

F35 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 10(a) and (b), S.I. No. 11 of 2016.

Chapter 3

Confiscation of Property

Request for confiscation of property in designated state.

49.— (1) If a confiscation order relates to property in a designated state, the registrar or clerk of the court concerned shall, on request and subject to any conditions that may be specified by rules of court, give to the Director of Public Prosecutions—

(*a*) a duly authenticated copy of the order, and

(*b*) a certificate signed by the registrar or clerk and stating that the prescribed time for lodging an appeal has expired or, as the case may be, will expire on a specified date.

(2) If such a confiscation order has not been satisfied, the Director of Public Prosecutions may send to the Central Authority, for transmission to the competent authority in the designated state concerned—

(*a*) the documents mentioned in *subsection (1)*,

(*b*) a document signed by or on behalf of the Director stating—

(i) that the order is in force and has not been satisfied, and

(ii) that the defendant appeared or was represented at the proceedings in which the order was made or, if not, the date on which the court proceedings began and the date on which the defendant received notice of them,

(*c*) a brief description of the conduct which resulted in the making of the order, and

(*d*) a request that the property concerned be realised and the proceeds applied in accordance with the law of that state.

F36**[**(2A) Where the Director of Public Prosecutions sends a request to the Central Authority under *subsection (2)* the Director of Public Prosecutions shall inform the Central Authority—

(*a*) if there is a risk that the amount that may be realised in pursuance of such a request is greater than the amount ordered to be paid under the confiscation order, stating that there is that risk and requesting that the amount to be realised not exceed the amount specified in the request,

(*b*) if all or part of the confiscation order has been executed in the State or in another designated state, stating the amount of the proceeds of realisation and requesting that the amount to be realised in the designated state concerned not exceed the difference between the amount specified in the confiscation order and those proceeds of realisation,

(*c*) if the defendant has made any voluntary payment in respect of the confiscation order after it was transmitted, stating the amount of that voluntary payment and requesting that the amount to be realised in the designated state concerned not exceed the difference between the amount specified in the confiscation order and the amount paid voluntarily, or

(*d*) if the confiscation order ceases to be enforceable, stating that fact.**]**

(3) If—

(*a*) property is realised in pursuance of such a request, and

(*b*) the amount realised is less than, or equal to, the amount ordered to be paid under the confiscation order,

the amount so ordered is deemed to be reduced by an amount equal to the proceeds of realisation or, as the case may be, the confiscation order is deemed to be discharged.

(4) In any proceedings a certificate purporting to be issued by a competent authority in the designated state and stating—

(*a*) that property has been realised pursuant to the request,

(*b*) the date of realisation, and

(*c*) the proceeds of realisation,

is admissible, without further proof, as evidence of those matters.

F36**[**(4A) Transmission of documents referred to in *subsections (2)* and *(2A)* shall be by any means capable of producing a written record under conditions which allow the competent authority or competent authorities concerned to establish the documents' authenticity.**]**

(5) If the proceeds of realisation are stated in the certificate otherwise than in euro, they are to be taken as their euro equivalent calculated at the baseline rate of exchange prevailing on the date of realisation.

Annotations

Amendments

F36 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 11(a) and (b), S.I. No. 11 of 2016.

Transmission to State of external confiscation order.

50.— (1) An external confiscation order may be transmitted by or on behalf of the court that made it to the Central Authority with a request for its enforcement.

(2) The external confiscation order shall be accompanied by—

(*a*) a duly certified copy of the order,

(*b*) a statement by or on behalf of the court that made the order—

(i) that it is in force and not subject to appeal, and

(ii) that, if the person against whom it was made did not appear in the proceedings concerned, notice thereof was received by the person in good time to defend the proceedings,

(*c*) a brief description of the conduct constituting the offence which resulted in the making of the order, and

(*d*) any required translations,

and shall include any further information required by the relevant international instrument.

Confiscation co-operation order.

F37**[51.** (1) The Central Authority, on receipt of an external confiscation order and accompanying documents transmitted by or on behalf of a court in a designated state other than a member state, may cause an application to be made to the High Court for an order (a "confiscation co-operation order") for the confiscation of realisable property to which the external confiscation order relates and that is in the State.

(2) The application shall be accompanied by the request, the accompanying documents and any other related documents or by copies thereof.

(3) On the application the Court may, subject to *section 51B*, *51C* or *51D*, as may be appropriate, make a confiscation co-operation order.**]**

Annotations

Amendments

F37 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 12, S.I. No. 11 of 2016.

F38**[**External confiscation orders (member states)

51A.— (1) Where the Central Authority receives an external confiscation order that has been transmitted by or on behalf of a court in a designated state that is a member state, it shall, subject to *subsection (2)*, transmit the external confiscation order to the Director of Public Prosecutions for execution under this Act.

(2) Where the Central Authority considers that there are grounds for refusal, postponement, variation or termination of the execution of an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state, in accordance with the relevant international instrument, the Central Authority shall cause an application to be made to the High Court for an order under *section 51B*, *51C*, *51E* or *51F*, as the case may be.**]**

Annotations

Amendments

F38 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 13, S.I. No. 11 of 2016.

Editorial Notes:

E14 Provision made for compensation arising from default in execution of order under section by *Criminal Justice Act 1994* (15/1994), s. 65(4A), as inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015) s. 34, S.I. No. 11 of 2016.

E15 The section heading is taken from the amending section in the absence of one included in the amendment.

F39**[**Refusal to confiscate

51B.— (1) On application made in accordance with *section 51(1)* or *51A(2)* and without prejudice to *section 3*, the High Court shall refuse to make a confiscation co-operation order in respect of an external confiscation order, or shall make an order refusing the execution of an external confiscation order made by or on behalf of a court in a designated state that is a member state, as the case may be, if—

(*a*) subject to *subsection (4)*, the conduct which resulted in the making of the external confiscation order is not an offence to which the relevant international instrument relates,

(*b*) F40**[**where the designated state concerned is a state other than the United Kingdom, there is immunity or privilege**]** under the law of the State which makes it impossible to make the confiscation co-operation order or execute the external confiscation order, as the case may be,

(*c*) it is immediately clear from the information provided in a certificate that compliance with the external confiscation order in relation to the offence that resulted in the making of that order would infringe the ne bis in idem principle,

(*d*) the defendant did not appear in person at the trial resulting in the external confiscation order, unless the certificate from the court in the designated state concerned states that—

(i) he or she was notified of the time when, and place at which, the proceedings were to take place, or he or she was otherwise aware of the scheduled proceedings, and he or she was informed that an external confiscation order could be made even if he or she did not appear,

(ii) he or she was aware of the proceedings concerned and was represented at those proceedings by a lawyer whom he or she has appointed,

(iii) after having been served with the external confiscation order and expressly informed of his or her right to a retrial or an appeal in which he or she would have been able to participate and which could have led to the original decision being reversed, he or she—

(I) expressly stated that he or she did not contest the external confiscation order, or

(II) did not request the retrial or appeal within the time limit for exercising that right,

or

(iv) in a case where he or she was not personally served with the external confiscation order, an undertaking has been given by the designated state concerned that he or she will be personally served with the external confiscation order without delay and will be expressly informed of his or her right to a retrial or an appeal in which he or she will be able to participate and which could lead to a reversal of the order, and of the time limit for exercising that right,

(*e*) F40**[**where the designated state concerned is a state other than the United Kingdom, the criminal conduct concerned**]** was either committed outside the territory of the designated state concerned or committed wholly or partly in the State, or

(*f*) the enforcement of the confiscation co-operation order, or the execution of the external confiscation order, as the case may be, is statute barred.

(2) Where the copy of the external confiscation order is not accompanied by the documents required under *section 50(2)*, or is incomplete or does not correspond to the external confiscation order, the High Court—

(a) may permit the certified copy of the order, or a completed or corrected certified copy of the order, to be produced by or on behalf of the court concerned in accordance with a specified deadline, or

(b) shall refuse to make a confiscation co-operation order or, as the case may be, to execute the external confiscation order, unless it is satisfied, by the production of an equivalent document or otherwise, that the information provided by or on behalf of the court concerned is sufficient.

(3) F40**[**Where the designated state concerned is a state other than the United Kingdom, the High Court**]** shall not make a confiscation co-operation order or, as the case may be, shall make an order refusing the execution of the external confiscation order if it is satisfied that the rights of any person holding an interest in the property the subject of the external confiscation order concerned make it impossible to execute that order.

(4) Where an external confiscation order is transmitted by or on behalf of a court in a designated state that is a member state, and the offence that resulted in the making of the order is an offence referred to in Article 6(1) of the 2006 Framework

Decision punishable in that designated state by a maximum term of imprisonment of not less than 3 years, the High Court shall not make an order refusing the execution of the external confiscation order solely on the ground that the conduct constituting the offence that resulted in the making of that external confiscation order does not constitute an offence under the law of the State.**]**

Annotations

Amendments

F39 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 14, S.I. No. 11 of 2016.

F40 Substituted (31.01.2021) by *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2022), reg. 8(a)(i), (ii), (b), in effect as per reg. 1(2).

Editorial Notes:

E16 The section heading is taken from the amending section in the absence of one included in the amendment.

F41**[**Postponement of confiscation

51C.— (1) Where an application is made in accordance with *section 51(1)* or *51A(2)*, the High Court may order the postponement of confiscation under this Chapter until such time as the Court considers reasonable, where to proceed with the confiscation, on foot of, as the case may be, a confiscation co-operation order or an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state, might prejudice an ongoing criminal investigation in the State.

(2) The High Court may order the postponement of confiscation under this Chapter where the realisable property concerned is already subject to confiscation proceedings in the State.

(3) An order of the High Court postponing confiscation shall include an order that such measures as may be necessary to provide for the availability of the realisable property for the execution of the external confiscation order concerned be taken during the postponement period.

(4) When the grounds for the postponement cease to exist, the High Court shall, without delay—

(*a*) where the designated state is a member state, make an order for the execution of the external confiscation order concerned, or

(*b*) in any other case, make a confiscation co-operation order in respect of the external confiscation order concerned.

(5) For the purposes of this section the "postponement of confiscation" means—

(*a*) the postponement of the execution of an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state, and

(*b*) in any other case, the postponement of the making of a confiscation co-operation order in respect of an external confiscation order.**]**

Annotations

Amendments

F41 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 15, S.I. No. 11 of 2016.

Editorial Notes:

E17 The section heading is taken from the amending section in the absence of one included in the amendment.

F42**[**Variation or discharge of confiscation co-operation orders

51D.— (1) Where a confiscation co-operation order has been made, the High Court, on application by the Central Authority or any person affected by the confiscation co-operation order—

(*a*) may vary or discharge it,

(*b*) shall vary it to the extent of any amount in respect of which there has already been confiscation in any state, if the High Court is satisfied that there has been such confiscation where—

(i) the person concerned has provided evidence that there has been such confiscation, in part, in that other state, and

(ii) the High Court has consulted with the competent authority in the designated state where the external confiscation order concerned was made, and that competent authority has confirmed that there has been confiscation in that other state and the extent of that confiscation,

and

(*c*) shall discharge it if the High Court is satisfied that there is no need for the confiscation co-operation order where—

(i) the person concerned has provided evidence that there has been confiscation in any state, the High Court has consulted with the competent authority in the designated state where the external confiscation order was made and that competent authority has confirmed that that external confiscation order has been satisfied by confiscation in that other state, or

(ii) it has been informed by the competent authority in the designated state where the external confiscation order concerned was made that that order has ceased to be enforceable.

(2) Notice of an application under this section and of the grounds for it shall be given by the applicant, in such manner as may be prescribed by rules of court or as the High Court may direct, to the Central Authority for transmission to the designated state concerned.

(3) The making of an application under *subsection (1)* shall not suspend the execution of the confiscation co-operation order concerned.**]**

F43**[**(4) Where the external confiscation order was made in the United Kingdom, the substantive grounds for making the external confiscation order may be reviewed only by a judicial authority in that state.**]**

Annotations

Amendments

F42 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 16, S.I. No. 11 of 2016.

F43 Inserted (31.01.2021) by *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2022), reg. 9, in effect as per reg. 1(2).

Editorial Notes:

E18 The section heading is taken from the amending section in the absence of one included in the amendment.

Variation or discharge of external confiscation orders from member states

F44**[51E.**— (1) A person who claims to be affected by an external confiscation order that has been transmitted by or on behalf of a court in a designated state that is a member state to the Central Authority and then transmitted to the Director of Public Prosecutions under *section 51A* for execution in the State may make an application to the High Court to vary or discharge that external confiscation order.

(2) The High Court shall consider an application made under *subsection (1)* and may vary or discharge the external confiscation order concerned only if it is informed by the competent authority in the designated state where the external confiscation order concerned was made that it has reviewed the substantive grounds for the order and has concluded that the external confiscation order concerned should be varied or discharged.

(3) Notice of an application under this section and of the grounds for it shall be given by the applicant, in such manner as may be prescribed by rules of court or as the High Court may direct, to the Central Authority for transmission to the designated state concerned.

(4) The making of an application under *subsection (1)* shall not suspend the execution of the external confiscation order concerned.**]**

Annotations

Amendments

F44 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 17, S.I. No. 11 of 2016.

Editorial Notes:

E19 The section heading is taken from the amending section in the absence of one included in the amendment.

F45**[**Termination of external confiscation orders from member states

51F.— Where an external confiscation order has been transmitted by or on behalf of a court in a designated state that is a member state to the Central Authority and the Central Authority has transmitted it to the Director of Public Prosecutions under *section 51A* for execution in the State, the execution of that external confiscation order shall be terminated by order of the High Court only if a request to terminate it has been received from the competent authority of the designated state concerned.**]**

Annotations

Amendments

F45 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 18, S.I. No. 11 of 2016.

Editorial Notes:

E20 The section heading is taken from the amending section in the absence of one included in the amendment.

F46[Central Authority to inform competent authority

51G.— The Central Authority shall inform, by any means capable of producing a written record, the competent authority in the designated state that transmitted an external confiscation order of the following:

(*a*) where the external confiscation order was transmitted by or on behalf of a court in a designated state that is a member state, when the Central Authority receives the external confiscation order;

(*b*) where the external confiscation order was transmitted by or on behalf of a court in a designated state that is a member state, when the execution of the external confiscation order has been completed;

(*c*) where it is impossible to execute the external confiscation order under *section 51A* because, after consultation with that competent authority, the realisable property the subject of that order has been destroyed or cannot be found in the location indicated in the documents accompanying that order or that location has not been indicated in a sufficiently precise manner;

(*d*) where the High Court refuses under *section 51B* to make a confiscation co-operation order, or makes an order refusing the execution of an external confiscation order made by or on behalf of a designated state that is a member state because, after consultation with that competent authority, the realisable property the subject of that external confiscation order has been destroyed or cannot be found in the location indicated in the documents accompanying the external confiscation order or that location has not been indicated in a sufficiently precise manner;

(*e*) where there has been postponement of confiscation ordered in respect of that external confiscation order under *section 51C*, or the grounds for such a postponement have ceased and an order has therefore been made under *subsection (4)* of that section;

(*f*) where there has been variation or discharge in respect of that external confiscation order under *section 51D* or *51E*; or

(*g*) where the execution of the external confiscation order has been terminated under *section 51F*.**]**

Annotations

Amendments

F46 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 19, S.I. No. 11 of 2016.

Enforcement, etc., of confiscation co-operation orders.

52.— (1) Where the High Court makes a confiscation co-operation order for the payment of a sum of money, the order may, without prejudice to *section 38* enabling property of the defendant in the hands of a receiver appointed under this Act to be applied in satisfaction of the order, be enforced by the Director of Public Prosecutions at any time after it is made (or, if the order provides for payment at a later time, then at any time after the later time) as if it were a judgment of the Court for the payment to the State of the sum specified in the order or of any lesser sum remaining due under it.

(2) Nothing in *subsection (1)* enables a person to be imprisoned.

(3) Subject to *subsections (4)* and *(5)*, if, at any time after payment of a sum due under a confiscation co-operation order has become enforceable in the manner provided for by *subsection (1)*, it is reported to the Court by the Director of Public Prosecutions that any such sum or any part of it remains unpaid, the Court may, without prejudice to the validity of anything previously done under the order or to the power to enforce the order subsequently in accordance with *subsection (1)*, order

that the defendant be imprisoned for a period not exceeding that set out in the second column of the table to this section opposite to the amount remaining unpaid under the confiscation co-operation order as set out in the first column thereof.

(4) An order under *subsection (3)* shall not be made unless—

(*a*) the defendant has been given a reasonable opportunity to make any representations to the Court, and

(*b*) the Court has taken into account those representations and any representations made by the Director of Public Prosecutions in reply.

(5) A defendant shall not be imprisoned for non-compliance F47**[**with a confiscation co-operation order in respect of an external confiscation order transmitted by or on behalf of a court in a designated state other than the United Kingdom**]** if the request for the enforcement of the external confiscation order so specifies and the relevant international instrument so provides.

F48**[**(5A) A defendant shall not be imprisoned for non-compliance with a confiscation co-operation order in respect of an external confiscation order transmitted by or on behalf of a court in the United Kingdom unless the competent authority in United Kingdom consents to such imprisonment.**]**

(6) Any term of imprisonment imposed under *subsection (3)* of this section shall be reduced in proportion to any sum or sums paid or recovered from time to time under the confiscation co-operation order.

TABLE

Amount outstanding under confiscation order	Period of imprisonment
Not exceeding €650	45 days
Exceeding €650 but not exceeding €1,300	3 months
Exceeding €1,300 but not exceeding €3,250	4 months
Exceeding €3,250 but not exceeding €6,500	6 months
Exceeding €6,500 but not exceeding €13,000	9 months
Exceeding €13,000 but not exceeding €26,000	12 months
Exceeding €26,000 but not exceeding €65,000	18 months
Exceeding €65,000 but not exceeding €130,000	2 years
Exceeding €130,000 but not exceeding €325,000	3 years
Exceeding €325,000 but not exceeding €1,300,000	5 years
Exceeding €1,300,000	10 years

Annotations

Amendments

F47 Substituted (31.01.2021) by *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2022), reg. 10(a), in effect as per reg. 1(2).

F48 Inserted (31.01.2021) by *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2022), reg. 10(b), in effect as per reg. 1(2).

Realisation of property subject to confiscation co-operation order.

53.— (1) Where—

(*a*) F49**[**an external confiscation order or**]** a confiscation co-operation order for the payment of a sum of money has not been satisfied, or

(*b*) such an order is for the confiscation of property other than such a sum,

the High Court may, on application by the Director of Public Prosecutions, appoint a person to be a receiver in respect of realisable property.

(2) The Court may empower the receiver to take possession of any realisable property subject to such conditions or exceptions as may be specified by the Court.

(3) The Court may order any person having possession or control of any realisable property to give possession of it to the receiver.

(4) The Court may empower the receiver to realise any realisable property in such manner as the Court may direct.

(5) The Court may order any person holding an interest in realisable property to make such payment to the receiver as the Court may direct in respect of any beneficial interest held by the defendant or the recipient of any gift caught by this Act and the Court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(6) The Court shall not, in respect of any property, exercise the powers conferred by this section unless a reasonable opportunity has been given to persons holding any interest in the property to make representations to it.

F50**[**(7) Where property recovered by the execution of an external confiscation order or confiscation co-operation order is not a sum of money, the receiver may—

(*a*) cause the property recovered to be transferred to the state concerned, or

(*b*) cause the property recovered to be sold and, subject to F51**[***subsections (8)* and *(9)***]**, the proceeds transferred to the state concerned.

(8) Where property recovered by the execution of an external confiscation order transmitted by or on behalf of a court in a designated state F52**[**that is a member state or the United Kingdom**]** is a sum of money or the proceeds of a sale under *subsection (7)(b)* —

(*a*) if that sum is less than €10,000, it shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct, and

(*b*) if that sum is €10,000 or more, 50 per cent of the sum shall be transferred to the designated state concerned and the remaining 50 per cent shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.**]**

F53**[**(9) Where property recovered by the execution of a confiscation co-operation order transmitted by or on behalf of a court in a designated state, other than a member state or the United Kingdom, is a sum of money or the proceeds of a sale under *subsection (7)(b)*, the Court, on application by the Central Authority and in accordance with the relevant international instrument, may—

(*a*) order the money or the proceeds of sale to be transferred to the designated state, or

(*b*) order part of the money or the proceeds of sale to be transferred to the designated state and the remaining balance shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.**]**

Annotations

Amendments

F49 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 20(a), S.I. No. 11 of 2016.

F50 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 20(b), S.I. No. 11 of 2016.

F51 Substituted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 51(a), S.I. No. 525 of 2023.

F52 Substituted (31.01.2021) by *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2022), reg. 11, in effect as per reg. 1(2).

F53 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 51(b), S.I. No. 525 of 2023.

Interest on sums unpaid under confiscation co-operation orders.

54.— (1) Subject to *subsection (2)*, if any sum required to be paid by a person under a confiscation co-operation order is not paid when it is required to be paid (whether on the making of the order or at a later time specified by the Court), the person shall be liable to pay interest on the sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from the person under the order.

(2) The amount of interest payable under *subsection (1)* shall be disregarded when calculating the term of imprisonment to be imposed under *section 52*.

(3) The rate of interest payable under *subsection (1)* is that for the time being applying in relation to a High Court civil judgment debt.

Payments under confiscation co-operation orders to be expressed in euro.

55.— (1) Where a sum of money payable or remaining to be paid under an external confiscation order is expressed in a currency other than the euro, the confiscation co-operation order shall require payment of an equivalent euro amount, calculated at the baseline rate of exchange prevailing between that currency and the euro on the date of the making of the confiscation co-operation order.

(2) For the purposes of *subsection (1)*, a certificate—

(*a*) purporting to be signed by an officer of a financial institution (within the meaning of *Part 2*) in the State, and

(*b*) stating the baseline rate of exchange prevailing on a specified date between a specified currency and the euro,

is admissible, without further proof, as evidence of the exchange rate so prevailing on that date.

Exercise of powers under this Chapter by High Court or receiver.

56.— (1) The powers of the High Court under *section 53* or of a receiver appointed under that section shall be exercised, subject to this section, with a view to recovering property which is liable to be recovered under the confiscation co-operation order concerned.

(2) The powers shall be exercised with a view to allowing any person, other than the defendant or the recipient of a gift, to retain or recover the value of any property held by the person.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) In exercising the powers no account shall be taken of any obligations of the defendant or the recipient of any gift that conflict with the obligation to satisfy the confiscation co-operation order.

F54**[**(5) Where realisable property is the subject of an external confiscation order and a request under *section 75*, whether or not transmitted from the same designated state, the request under *section 75* shall have priority over the external confiscation order.**]**

Annotations

Amendments

F54 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 21, S.I. No. 11 of 2016.

Application to confiscation co-operation orders of certain provisions relating to freezing co-operation orders.

57.— *Sections 39*, *40*, *41*, *42* and *43* apply in relation to confiscation co-operation orders as they apply in relation to freezing co-operation orders, and accordingly—

(*a*) references to *section 36* in *sections 39*, *40* and *43* shall be construed as references to *section 53*, and

(*b*) references in *sections 40*, *41*, *42* and *43* to a freezing co-operation order shall be construed as references to F55**[**an external confiscation order or**]** a confiscation co-operation order.

Annotations

Amendments

F55 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 22, S.I. No. 11 of 2016.

F56**[**Application of provisions on enforcement and realisation to execution of external confiscation order from member states

57A.— *Sections 52*, *54*, *55*, *56* and *57* apply in relation to external confiscation orders transmitted by or on behalf of courts in designated states that are member states (except where the execution of such orders is subject to refusal, postponement, variation or discharge, or termination under *sections 51B*, *51C*, *51E* and *51F* respectively) as they apply in relation to confiscation co-operation orders.**]**

Annotations

Amendments

F56 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 23, S.I. No. 11 of 2016.

Editorial Notes:

E21 The section heading is taken from the amending section in the absence of one included in the amendment.

Chapter 4

Forfeiture of Property

Transmission of external forfeiture order to designated state for enforcement.

58.— (1) If an order of a court relates to the forfeiture of property in a designated state, the registrar or clerk of the court concerned shall, on request and subject to any conditions that may be specified by rules of court, give to the Director of Public Prosecutions—

(*a*) a duly authenticated copy of the order, and

(*b*) a certificate signed by the registrar or clerk and stating that the prescribed time for lodging an appeal has expired or, as the case may be, will expire on a specified date.

(2) The Director of Public Prosecutions may send to the Central Authority, for transmission to the appropriate authority in the designated state concerned—

(*a*) the documents mentioned in *subsection (1)*,

(*b*) a document signed by or on behalf of the Director stating—

(i) that the order is in force and has not been satisfied, and

(ii) that the defendant appeared or was represented at the proceedings in which the order was made or, if not, the date on which the court proceedings began and the date on which the defendant received notice of them,

(*c*) a brief description of the conduct which resulted in the making of the order,

(*d*) any other information required by the relevant international instrument, and

(*e*) a request for forfeiture of the property concerned and its disposal.

Transmission of external forfeiture order to State for enforcement.

59.— (1) An external forfeiture order may be transmitted by or on behalf of the court that made it to the Central Authority with a request for its enforcement.

(2) The external forfeiture order shall be accompanied by—

(*a*) a duly certified copy of the order,

(*b*) a statement by or on behalf of the court that made the order—

(i) that it is in force and not subject to appeal, and

(ii) that, if the person against whom it was made did not appear in the proceedings concerned, notice thereof was received by the person in good time to defend the proceedings,

(*c*) a brief description of the conduct constituting the offence which resulted in the making of the order, and

(*d*) any required translations,

and shall include any further information required by the relevant international instrument.

Forfeiture co-operation order.

60.— (1) The Central Authority, on receipt of an external forfeiture order and accompanying documents, may cause an application to be made to the High Court for an order (a "forfeiture co-operation order") for the forfeiture of realisable property in the State to which the external forfeiture order relates.

(2) The application shall be accompanied by the request, the accompanying documents and any other related documents or by copies thereof.

(3) On the application the Court may, subject to *subsection (4)*, make a forfeiture co-operation order.

(4) The Court may not make a forfeiture co-operation order unless—

(*a*) it is satisfied—

(i) that the application is made with the consent of the Minister,

(ii) as to the matters mentioned in *section 59(2)(b),*

(iii) that the conduct which resulted in the making of the external forfeiture order constitutes criminal conduct, and

(iv) that the making of the order is otherwise in accordance with the relevant international instrument,

and

(*b*) an opportunity has been given to any person claiming to own, or have an interest in, the property subject to the external forfeiture order to show cause why the order should not be made.

(5) A forfeiture co-operation order operates to deprive the defendant in the proceedings in which the external forfeiture order was made of any right or interest in the property and to vest the property in the Commissioner of the Garda Síochána.

(6) The forfeited property or the proceeds of any sale of the property shall be disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance, unless, on request by or on behalf of the designated state concerned and in accordance with the relevant international instrument, the Court provides otherwise.

(7) The Court—

(*a*) may vary or discharge a forfeiture co-operation order on the application of any person claiming to own or have an interest in the property concerned or to be otherwise affected by the order and may in that connection consult the court which made the external forfeiture order, and

(*b*) shall—

(i) vary a forfeiture co-operation order in accordance with any variation in the external forfeiture order, and

(ii) if satisfied that the external forfeiture order has been revoked, discharge it.

(8) The Police (Property) Act 1897 does not apply to property which vests in the Commissioner of the Garda Síochána by virtue of this section.

(9) This section applies to any property which is in the possession of the Garda Síochána under section 61(4) of the Act of 1994.

(10) Nothing in this section affects any enactment whereby property is, or may be ordered to be, forfeited as a result of a conviction for an offence.

Annotations

Modifications (not altering text):

C3 Functions transferred and references to "Department of Finance" and "Minister for Finance" construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2).

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year	Short Title	Provision
...	...	...
No. 7 of 2008	Criminal Justice (Mutual Assistance) Act 2008	Sections 42 and 60(6)
...	...	...

F57[PART 4A

Financial Penalties]

Annotations

Amendments

F57 Inserted (23.09.2019) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 24, S.I. No. 468 of 2019.

F58[Interpretation **60A.**— In this Part—

"appropriate court", in relation to an external financial penalty order, means a court in the State that has jurisdiction to impose a financial penalty of the same amount as the sum mentioned in the external financial penalty order;

"certificate" means the certificate provided for in Article 4 of the 2005 Framework Decision, the standard form of which is provided for in the Annex to that Framework Decision;

"competent authority", in relation to a member state, means—

(*a*) the issuing judicial authority in the member state, or

(**b**) the authority in the member state that the General Secretariat of the Council of the European Union has, in accordance with Article 2 of the 2005 Framework Decision, been informed is to be the competent authority in that member state;

"executing state", in relation to a financial penalty order, means the member state to which the order is transmitted for enforcement;

"external financial penalty order" means a financial penalty order that is made by an issuing judicial authority in an issuing state;

"financial penalty", in relation to a defendant, means an obligation for the defendant to pay, further to a conviction for an offence, in an issuing state or the State—

(*a*) a fine, costs or any other sum of money to the issuing state or the State, as the case may be,

(*b*) a sum as compensation for the benefit of a victim of the offence, or

(*c*) a sum of money to a public fund or victim support organisation;

"financial penalty order", means an order of—

(*a*) a court in the State imposing a financial penalty, or

(*b*) an issuing judicial authority in an issuing state imposing a financial penalty that is enforceable under the law of that state;

"issuing judicial authority", in relation to an external financial penalty order, means a judicial authority in an issuing state, as defined in the law of that state, which makes, validates or in any way confirms the external financial penalty order;

"issuing state", in relation to an external financial penalty order, means the member state in which that order was made.**]**

Annotations

Amendments

F58 Inserted (23.09.2019) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 24, S.I. No. 468 of 2019.

F59**[**Request for execution of financial penalty order in member state

60B.— (1) If a financial penalty order relates to a defendant who has property or income, or is normally resident, in a member state, the registrar or clerk of the court concerned shall, on request of the prosecuting authority and subject to any conditions that may be specified by rules of court, give to the Central Authority—

(*a*) a duly authenticated copy of the order, and

(*b*) a certificate signed by the registrar or clerk and stating that the prescribed time for lodging an appeal has expired or, as the case may be, will expire on a specified date.

(2) If the financial penalty which is the subject of the financial penalty order has not been paid in whole or in part, the Central Authority may transmit to the competent authority in the member state concerned—

(*a*) the documents mentioned in *subsection (1)*,

(*b*) a certificate, and

(*c*) a request that the financial penalty order be executed in accordance with the 2005 Framework Decision.

(3) Where the Central Authority makes a request under subsection (2) —

(*a*) if all or part of the financial penalty order has not been executed in the State or in another member state, stating the amount paid and requesting that the amount to be paid in the member state concerned not exceed the difference between the amount specified in the financial penalty order and the amount paid, and

(*b*) if the defendant has made any voluntary payment in respect of the financial penalty order after it was transmitted, stating the amount of that voluntary payment and requesting that the amount to be paid to the member state concerned not exceed the difference between the amount specified in the financial penalty order and the amount paid voluntarily, and

(*c*) if the financial penalty order ceases to be enforceable, stating that fact.

(4) If—

(*a*) an amount is paid to the member state concerned in pursuance of a request under *subsection (2)*, and

(*b*) the amount paid is less than, or equal to, the amount ordered to be paid under the financial penalty order,

the amount so ordered under the financial penalty order is deemed to be reduced by an amount equal to the amount paid or, as the case may be, the financial penalty order is deemed to be discharged.

(5) In any proceedings a certificate purporting to be issued by a competent authority in a member state and stating—

(*a*) the amount of any payment made to the member state pursuant to the request, and

(*b*) the date of that payment,

is admissible, without further proof, as evidence of those matters.

(6) Transmission of documents referred to in *subsections (2)* and *(3)* shall be by any means capable of producing a written record under conditions which allow the competent authority concerned to establish the documents' authenticity.**]**

Annotations

Amendments

F59 Inserted (23.09.2019) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 24, S.I. No. 468 of 2019.

F60**[**Transmission to State of external financial penalty order

60C.— (1) An external financial penalty order may be transmitted by the competent authority of an issuing state to the Central Authority with a request for its execution.

(2) The external financial penalty order shall be accompanied by—

(*a*) a certificate signed and certified as accurate by the competent authority in the issuing state and any supporting documentation, and

(*b*) any required translations,

and shall include any further information required by the 2005 Framework Decision.

(3) Transmission of the documents referred to in *subsections (1)* and *(2)* shall be by any means capable of producing a written record under conditions which allow the Central Authority or the appropriate court to establish the documents' authenticity.

(4) *Subsection (3)* is deemed to have been complied with if facsimile copies of those documents and any translation thereof are transmitted in compliance with any regulations that may be made under *subsection (6)*.

(5) If the Central Authority or the appropriate court is not satisfied that a facsimile copy of a document transmitted in accordance with this section corresponds to the document of which it purports to be such a copy, the Central Authority or the appropriate court shall—

(*a*) request the competent authority in the issuing state to cause the original or a copy of the document to be transmitted to the Central Authority, and

(*b*) agree with that competent authority regarding the manner in which the original or copy is to be so transmitted.

(6) The Minister may, if he or she considers it necessary for the purposes of ensuring the accuracy of documents transmitted in accordance with this section, make regulations—

(*a*) prescribing procedures to be followed in connection with the transmission of documents in accordance with this section, and

(*b*) specifying features to be present in any equipment being used in that connection.**]**

Annotations

Amendments

F60 Inserted (23.09.2019) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 24, S.I. No. 468 of 2019.

F61**[**External financial penalty orders

60D.— (1) Where the Central Authority receives an external financial penalty order that has been transmitted by a competent authority in an issuing state, it shall proceed to the execution of that order as though it were an order of an appropriate court.

(2) Where the Central Authority considers that there are grounds for refusal, variation or termination of the execution of an external financial penalty order transmitted to it in accordance with the 2005 Framework Decision, the Central Authority shall cause an application to be made to the appropriate court for an order under *section 60E*, *60F* or *60G*.

(3) Where the Central Authority proceeds to execute an external financial penalty order that has been transmitted by a competent authority in an issuing state, the Fines (Payment and Recovery) Act 2014 shall apply to the execution of that financial penalty order as though it were an order of an appropriate court.

(4) Where a sum of money payable or remaining to be paid under an external financial penalty order is expressed in a currency other than euro, the external financial penalty order shall require payment of an equivalent euro amount, calculated at the baseline rate of exchange prevailing between that currency and the euro on the date of the making of the external financial penalty order.**]**

Annotations

Amendments

F61 Inserted (23.09.2019) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 24, S.I. No. 468 of 2019.

Editorial Notes:

E22 Provision made for compensation arising from default in execution of order under section by *Criminal Justice Act 1994* (15/1994), s. 65(4A), as inserted (23.09.2019) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 34, S.I. No. 468 of 2019.

F62[Refusal to execute external financial penalty order

60E.— (1) On application made under *section 60D(2)* and without prejudice to *section 3*, the appropriate court shall make an order refusing the execution of an external financial penalty order made by an issuing judicial authority if—

(*a*) a financial penalty order has been made in the State against the defendant in respect of the conduct which resulted in the making of the external financial penalty order,

(*b*) a financial penalty order has been made in a state other than the issuing state or the State, in respect of the conduct which resulted in the making of the external financial penalty order, and has been executed,

(*c*) the conduct which resulted in the making of the external financial penalty order is not an offence in the State,

(*d*) the execution of the financial penalty order is statute barred in the State,

(*e*) the criminal conduct concerned was either committed outside the territory of the issuing state concerned or committed wholly or partly in the State,

(*f*) there is immunity or privilege under the law of the State which makes it impossible to execute the external financial penalty order,

(*g*) the defendant could not have been convicted in the State of an offence in respect of the conduct which resulted in the making of the external financial penalty order because of his or her age,

(*h*) the defendant did not appear in person at the proceedings resulting in the external financial penalty order, unless the certificate from the issuing judicial authority states that—

(i) he or she was summonsed to attend in person the proceedings, or he or she was otherwise made aware, by official notification, of the time when, and the place at which, those proceedings were to take place, and he or she was informed that an external financial penalty order could be made even if he or she did not appear,

(ii) he or she was aware of the proceedings concerned and was represented at those proceedings by a lawyer whom he or she appointed,

(iii) after having been served with the external financial penalty order and expressly informed of his or her right to a retrial or an appeal at which he or she would have been able to participate (and which would have been an examination of the case on its merits, including the possibility of adducing fresh evidence), and which could have led to a reversal of the original decision, he or she—

(I) expressly stated that he or she did not contest the external financial penalty order, or

(II) did not request the retrial or appeal within the time limit for exercising that right,

or

(iv) where he or she was not personally served with the external financial penalty order, an undertaking has been given by the issuing state concerned that he or she will be personally served with the external financial penalty order without delay and will be expressly informed of his or her right to a retrial or an appeal in which he or she will be able to participate (and which will be an examination of the case on its merits, including the possibility of adducing fresh evidence), and which could lead to a reversal of the order, and of the time limit for exercising that right,

or

(*i*) the amount of the financial penalty the subject of the external financial penalty order is less than €70.

(2) If the certificate did not accompany the external financial penalty order, or is incomplete or manifestly does not correspond to the external financial penalty order, the appropriate court—

(*a*) may permit the certificate, or a completed or corrected certificate, to be produced by or on behalf of the court concerned in accordance with a specified deadline, or

(*b*) may refuse to execute the external financial penalty order, unless it is satisfied, by the production of an equivalent document or otherwise, that the information provided by or on behalf of the court concerned is sufficient.**]**

Annotations

Amendments

F62 Inserted (23.09.2019) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 24, S.I. No. 468 of 2019.

F63**[**Variation of amount payable under external financial penalty order

60F.— On application made under *section 60D(2)* and without prejudice to section 3, the appropriate court may make an order—

(*a*) where that court is satisfied that, had the conduct which was the subject of the conviction on which that external financial penalty order was made been carried out in the State, the maximum amount of a penalty that could have been imposed was less than the sum mentioned in that order, reducing the amount that the defendant is to pay to that maximum amount,

(*b*) where the court is satisfied that there has been partial payment of the sum mentioned in the external financial penalty order, reducing the amount that the defendant is to pay to the difference between the sum mentioned in the order and the amount already paid, or

(*c*) where the court is satisfied that, in all the circumstances, the defendant should be excused from paying all or part of the sum mentioned in the external financial penalty order, ordering that the amount be so reduced.**]**

Annotations

Amendments

F63 Inserted (23.09.2019) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 24, S.I. No. 468 of 2019.

F64[Termination of execution of external financial penalty order

60G.— Where an external financial penalty order has been transmitted to the Central Authority for execution in the State, the execution of the external financial penalty order shall terminate as soon as may be after the Central Authority is informed by the competent authority of the issuing state concerned that that external financial penalty order has ceased to be enforceable or has been withdrawn by that issuing state or where the court is satisfied on an application made under *section 60D(2)* that, in all the circumstances, the defendant should be excused from paying all or part of the sum mentioned in the external financial penalty order, ordering that the amount be so reduced.**]**

Annotations

Amendments

F64 Inserted (23.09.2019) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 24, S.I. No. 468 of 2019.

F65[Central Authority to inform competent authority

60H.— The Central Authority shall inform, by any means capable of producing a written record, the competent authority in the issuing state that transmitted an external financial penalty order of the following:

(*a*) the Central Authority has received the external financial penalty order, as soon as may be after the Central Authority receives it;

(*b*) an order refusing the execution of the financial penalty order under *section 60E*, or reducing the amount to be paid on foot of it under *section 60F*, has been made, as soon as may be after it is made;

(*c*) an order terminating the execution of the external financial penalty order has been made, as soon as may be after it is made;

(*d*) the execution of the external financial penalty order is complete, as soon as may be after it is complete; or

(*e*) imprisonment or another alternative sanction has been imposed by a court in the State on the defendant in accordance with Article 10 of the 2005 Framework Decision, as soon as may be after it is imposed.**]**

Annotations

Amendments

F65 Inserted (23.09.2019) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 24, S.I. No. 468 of 2019.

F66[Amounts to accrue to Exchequer

60I.— An amount paid on foot of an external financial penalty order shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct, unless an agreement is made between the Central Authority and the competent authority in the issuing state concerned that all or part of that amount will be paid to that issuing state.**]**

Annotations

Amendments

F66 Inserted (23.09.2019) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 24, S.I. No. 468 of 2019.

PART 5

Provision of Evidence

Chapter 1

Interpretation

Interpretation (*Part 5*).

61.— In this Part—

"evidence" does not include information provided under *Part 2* in relation to financial transactions;

"place" includes premises;

"witness" includes an expert witness and a person suspected of the offence which has given rise to the request concerned.

Chapter 2

Taking of Evidence

Evidence from person in designated state.

62.— (1) Where it appears to a judge at a sitting of any court that criminal proceedings have been instituted or a criminal investigation is taking place in the State, the judge may issue a letter (a "letter of request") requesting assistance in obtaining from a person in a designated state such evidence as is specified in the letter for use in the proceedings or investigation.

(2) Application for a letter of request may be made by the Director of Public Prosecutions or a person charged in any such proceedings that have been instituted.

(3) The letter of request shall be sent to the Central Authority for transmission to the appropriate authority.

(4) Notwithstanding *subsections (1)* to *(3)*, where proceedings in respect of an offence have been instituted or a criminal investigation is taking place, the Director of Public Prosecutions may issue and transmit a letter of request directly to the appropriate authority.

(5) The letter of request shall include—

(*a*) a statement that the evidence is required for the purpose of criminal proceedings or a criminal investigation,

(*b*) a brief description of the conduct constituting the offence concerned, and

(*c*) any other available information that may assist the appropriate authority in complying with the request.

(6) Evidence obtained by virtue of this section shall not, without the consent of the appropriate authority, be used for any purpose other than that permitted by the relevant international instrument or specified in the letter of request.

(7) When any such evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to the appropriate authority unless the authority indicates that it need not be returned.

(8) A statement of the evidence of a witness—

(*a*) taken in accordance with a letter of request, and

(*b*) certified by or on behalf of the court, tribunal or authority by which it was taken to be an accurate statement of the evidence,

is admissible, without further proof, in proceedings relating to the offence concerned as evidence of any fact stated therein of which oral evidence would be so admissible.

(9) A court, when considering whether any evidence taken from a person pursuant to a letter of request should be excluded in the exercise of its discretion to exclude evidence otherwise admissible, shall, where appropriate, have regard to—

(*a*) whether the law of the state concerned allowed the person and any other party concerned, when the evidence was being taken, to be legally represented and cross-examined, and

(*b*) any other respects in which the taking of the evidence may have differed from the taking of comparable evidence in the State.

(10) Nothing in this section prevents the Director of Public Prosecutions from issuing a letter of request for assistance in obtaining a statement of evidence or taking possession of material evidence in a designated state for the purposes of criminal proceedings or a criminal investigation where the witness or witnesses concerned will give evidence in those proceedings or any proceedings that may be instituted after the investigation.

(11) In this section, "appropriate authority", in relation to the place where the evidence is to be obtained, means—

(*a*) a court or tribunal specified in the letter of request and exercising jurisdiction in that place, or

(*b*) any other authority recognised by the government of the state concerned as the appropriate authority for receiving the letter.

Evidence for use in designated state.

63.— (1) This section applies, subject to *section 64*, in relation to a request for assistance in obtaining evidence in the State from a person (in this section referred to as a "witness") for the purpose of criminal proceedings, or a criminal investigation, in a designated state.

(2) On receipt of such a request the Minister, if of opinion that this section applies in relation to it, may, subject to *subsection (3)*—

(*a*) request the President of the District Court to nominate a judge of that Court to receive the evidence to which the request relates, and

(*b*) send the judge a copy of the request and of any accompanying or related documents.

(3) The Minister shall not exercise the power conferred by *subsection (2)* unless an assurance is given by the requesting authority that any evidence that may be supplied in response to the request will not, without the consent of the nominated judge or the witness, be used for any purpose other than that permitted by the relevant international instrument or specified in the letter of request.

(4) For the purposes of this section the nominated judge—

(*a*) has the powers of the District Court in criminal proceedings, including its powers—

(i) in relation to securing the attendance of witnesses, the production of documents or other articles, taking evidence on oath, compelling witnesses to give evidence or to produce documents or other things and the conduct generally of the proceedings for the taking of evidence, and

(ii) under any enactment or rule of law relating to the protection of witnesses against intimidation,

(*b*) may direct that the evidence, or any part of it, be received otherwise than in public if of opinion that such a direction is necessary to protect—

(i) the witness or other person, or

(ii) confidential or sensitive information, and

(*c*) shall inform the witness of his or her rights under *section 64*.

(5) The evidence may be given through a live television link in any case where it may be so given in proceedings under any enactment.

(6) Any person who is summoned to give evidence and who, without reasonable excuse, does not answer any question or comply with a requirement to produce any document or other thing is guilty of an offence and liable, on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(7) The Bankers' Books Evidence Act 1879 applies to proceedings under this section as it applies to other proceedings before a court.

(8) No order for costs may be made in the proceedings.

Privilege of witnesses.

64.— (1) A person is not compelled to give any evidence in proceedings under *section 63* which he or she could not be compelled to give—

(*a*) in criminal proceedings in the State, or

(*b*) subject to *subsection (2)*, in criminal proceedings in the state concerned.

(2) *Subsection (1)(b)* does not apply unless the claim of the person to be exempt from giving the evidence is conceded by the requesting authority.

(3) Where the claim is not conceded, the person may (subject to the other provisions of this section) be required to give the evidence to which the claim relates, but the evidence shall not be transmitted to the requesting authority if a court in the state concerned, on the matter being referred to it, upholds the claim.

(4) Without prejudice to *subsection (1)*, a person may not be compelled under this section to give any evidence—

(*a*) in his or her capacity as an officer or servant of the State, or

(*b*) if to do so would be prejudicial to the security of the State.

(5) In any proceedings referred to in *subsection (1)* a certificate purporting to be signed by or on behalf of the Minister to the effect that it would be prejudicial to the security of the State for a person to give any evidence is admissible, without further proof, as evidence of that fact.

(6) In this section references to giving evidence include references to answering any question and to producing any document or other thing, and the reference in *subsection (3)* to the transmission of evidence given by a person is to be construed accordingly.

Evidence of prisoners

Transfer of prisoner to give evidence or assist criminal investigation in State.

65.— (1) In this section, "prisoner" means a person who is detained in custody in a designated state—

(*a*) under a sentence or order of a court exercising criminal jurisdiction in that state, or

(*b*) having been transferred there from the State under section 5 (issue of warrants for the transfer of sentenced prisoners outside State) of the Transfer of Sentenced Prisoners Act 1995 F67**[**or under section 22 (transfer warrant for removal of sentenced person from State) of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023**]**.

(2) Where—

(*a*) a witness order has been made or a witness summons issued in criminal proceedings in respect of a prisoner, or

(*b*) it appears to the Minister that it is desirable for a prisoner to be identified in, or otherwise to assist by his or her presence, such proceedings or a criminal investigation,

the Minister, at the request of the Director of Public Prosecutions or a person charged in any such proceedings, may issue a warrant providing for the prisoner to be transferred to the State.

(3) A warrant shall not be issued unless the appropriate authority in the designated state concerned provides a written statement by the prisoner consenting to be transferred for that purpose.

(4) A warrant issued under this section shall be transmitted by the Central Authority to the authority in the designated state that appears to the Central Authority to be the appropriate authority for receiving it, together with a request for the transfer of the prisoner to the State.

(5) The warrant is authority for—

(*a*) bringing the prisoner to the State,

(*b*) taking the prisoner to, and detaining him or her in, a prison,

(*c*) taking the prisoner to and from the place where the prisoner's evidence is to be heard, and

(*d*) returning the prisoner in custody to the designated state.

(6) A prisoner is deemed to be in lawful custody while in the State.

(7) A prisoner who escapes from custody or is unlawfully at large may be arrested without warrant by a member of the Garda Síochána and taken in custody to a prison.

(8) A person (other than a member of the Garda Síochána) who is authorised to have custody of a prisoner by or for the purposes of a warrant under this section is deemed to be such a member for the purposes of this section.

(9) The law relating to—

(*a*) the control of entry into the State of non-nationals (within the meaning of the Immigration Act 1999),

(*b*) the duration and conditions of their stay in the State,

(*c*) their obligations while in the State, and

(*d*) their removal from the State,

does not apply in relation to a prisoner who is a non-national while he or she is present in the State in pursuance of a warrant under this section but, if the warrant ceases to have effect while the prisoner is so present, that law shall thereupon apply, with any necessary modifications, in relation to him or her.

(10) A prisoner while in the State pursuant to the warrant may not be proceeded against, sentenced, detained or subjected to any other restriction on his or her personal freedom in respect of any offence committed before arriving in the State.

Annotations

Amendments

F67 Inserted (3.03.2023) by *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (3/2023), s. 77, S.I. No. 213 of 2023.

Transfer of prisoner to give evidence or assist investigation outside State.

66.— (1) The Minister may, on receipt of a request in that behalf, issue a warrant for the transfer of a person serving a sentence of imprisonment in a prison (a "prisoner") to a designated state for the purpose of—

(*a*) giving evidence in criminal proceedings, or assisting in a criminal investigation, in that state, or

(*b*) being identified in, or otherwise assisting by his or her presence, such proceedings or investigation.

(2) A warrant may be issued only if the prisoner has made a written statement consenting to his or her being transferred for that purpose.

(3) Where, by reason of the prisoner's youth or physical or mental condition, it appears to the Minister inappropriate for the prisoner to act for himself or herself, the consent shall be given by a person appearing to the Minister to be an appropriate person to act on the prisoner's behalf.

(4) A warrant is authority for—

(*a*) taking the prisoner from the prison and delivering him or her into the custody of a person representing the requesting authority concerned at a place of departure from the State,

(*b*) detaining the prisoner in the designated state, and

(*c*) bringing the prisoner back to the State and returning him or her to the prison.

(5) A warrant may not be issued unless an assurance is given by the requesting authority that the prisoner will not be proceeded against, sentenced, detained or subjected to any other restriction on his or her personal freedom in respect of any offence under the law of the designated state committed before the prisoner's departure from the State.

(6) The period spent in custody under the warrant is included in the period of imprisonment or detention to be served by the prisoner in the State.

(7) A prisoner is deemed to be in lawful custody when being taken from or to a prison under the warrant.

(8) A prisoner who escapes from custody or is unlawfully at large may be arrested without warrant by a member of the Garda Síochána and taken in custody to a prison.

(9) A person (other than a member of the Garda Síochána) who is authorised to have custody of a prisoner by or for the purposes of a warrant under this section is deemed to be such a member for the purposes of this section.

Evidence through television link

Evidence through television link for use in State.

67.— (1) This section applies where—

(*a*) criminal proceedings have been instituted in the State against a person,

(*b*) a witness in the proceedings is in a designated state, and

(*c*) it is not desirable or F68**[**practicable**]** for the witness to give evidence in person.

(2) Where this section applies, an application may be made by or on behalf of the Director of Public Prosecutions or the accused to a judge of the court of trial at a sitting of the court to issue a letter (a "letter of request") requesting the provision of facilities in the designated state concerned to enable the witness to give evidence in the proceedings through a live television link.

(3) The judge may grant the application if satisfied that it is not desirable or F68**[**practicable**]** for the witness to give evidence in person.

(4) The letter of request shall be accompanied by a document signed by the judge and stating—

(*a*) the name, address and, if known, the nationality of the witness,

(*b*) the court which is to hear the evidence,

(*c*) the name of the judge conducting the hearing,

(*d*) why it is not desirable or F68**[**practicable**]** for the witness to give evidence in person, and

(*e*) the likely date of the hearing.

(5) The request shall be sent to the Central Authority for transmission—

(*a*) in urgent cases, to the court or tribunal specified in the request, or

(*b*) in any other case, to any authority recognised by the state concerned as the appropriate authority for receiving such requests.

(6) If the name of the judge conducting the hearing is not available at the time the letter of request is issued, it shall be sent to the Central Authority for such transmission as soon as it becomes available.

(7) The accused shall be given an opportunity to cross-examine and re-examine the witness at the hearing.

(8) Evidence given through the live television link at the hearing shall be videorecorded.

(9) The videorecording of the evidence or, if the accused consents, an edited version of it, is admissible at the trial of the offence as evidence of any fact of which direct oral evidence would be admissible, unless the trial judge is of the opinion that to do so would not be in the interests of justice.

(10) The provisions of the relevant international instrument concerning a hearing through a live television link, in so far as they relate to a requesting state and are not incorporated in this section, have effect in the State, with the necessary modifications, in relation to a hearing under this section.

(11) A witness who makes a statement which is material in the proceedings and which he or she knows to be false or does not believe to be true is guilty of an offence and liable—

(*a*) on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both, or

(*b*) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years or both.

(12) Proceedings for an offence under *subsection (11)* may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the State.

(13) In this section "videorecording" means any recording, on any medium, from which a moving image may be produced and includes the accompanying soundtrack, and cognate words shall be construed accordingly.

Annotations

Amendments

F68 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 25(a), (b) and (c), S.I. No. 11 of 2016.

Editorial Notes:

E23 Power of court to make order under section at preliminary hearing provided (28.02.2022) by *Criminal Procedure Act 2021* (7/2021), s. 6(7), (8), S.I. No. 79 of 2022.

Request for evidence through television link for use outside State.

68.— (1) This section applies to a request for a witness who is present in the State to give evidence through a television link in criminal proceedings before a court or tribunal in a designated state.

(2) The request shall include the following information:

(*a*) the name, address and, if known, the nationality of the witness;

(*b*) the court or authority making the request;

(*c*) the name of the person or persons who will conduct the hearing;

(*d*) a statement as to why it is not desirable or F69**[**practicable**]** for the witness to give evidence in person;

(*e*) the likely date of the hearing.

Annotations

Amendments

F69 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 26, S.I. No. 11 of 2016.

Action on request.

69.— The Minister, if of opinion—

(*a*) that it is not desirable or F70**[**practicable**]** for the witness to give evidence in person in the state concerned, and

(*b*) that the request complies with *section 68*,

may request the President of the District Court to nominate a judge of that Court to summon the witness to attend at a suitable venue within the judge's district for the purpose of giving effect to the request.

Annotations

Amendments

F70 Substituted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 27, S.I. No. 11 of 2016.

Taking of the evidence.

70.— (1) The nominated judge of the District Court shall summon the witness concerned to give evidence through a live television link at a suitable venue within the district to which the judge is assigned.

(2) For the purpose of ensuring compliance with the request the nominated judge has the powers of the District Court in criminal proceedings, including its powers—

(*a*) in relation to securing the attendance of the witness, taking evidence on oath and compelling the witness to give evidence or to produce documents or other things, and

(*b*) under any enactment or rule of law relating to the protection of witnesses against intimidation.

(3) The evidence shall be given in accordance with the laws and procedures of the requesting state to the extent that they do not contravene the fundamental principles of the law of the State.

(4) In particular, the witness may not be compelled to give any evidence which he or she could not be compelled to give in criminal proceedings in the State or the designated state.

(5) Where necessary for the protection of the witness and in agreement with the requesting authority, the evidence may be taken otherwise than in public.

(6) Subject to *subsection (7)*, the proceedings shall be conducted directly by, or under the direction of, a judge of the designated state in accordance with its own laws.

(7) Where the nominated judge is of opinion that the taking of evidence is not in accordance with the fundamental principles of the law of the State, he or she shall take immediate action to ensure that those principles are complied with.

(8) The nominated judge and the witness shall be assisted by an interpreter, where necessary.

(9) When the evidence has been taken, the nominated judge shall send a record of the evidence given by the witness to the Minister for transmission to the requesting authority, indicating—

(*a*) the date and place of the taking of the evidence,

(*b*) the name of the witness,

(*c*) the name and function of any other person present and participating in the proceedings,

(*d*) whether an oath was administered to the witness, and

(*e*) the technical conditions under which the proceedings took place.

(10) A witness who—

(*a*) makes a statement material in the proceedings which he or she knows to be false or does not believe to be true, or

(*b*) does not testify when under an obligation to do so,

is guilty of an offence and liable—

(i) on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both, or

(ii) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years or both.

Evidence by telephone link for use outside State

Request for evidence by telephone link.

71.— (1) This section applies to a request for a witness who is present in the State to give evidence by telephone link in criminal proceedings before a court or tribunal in a designated state.

(2) The request shall include the following information:

(*a*) the name, address and, if known, the nationality of the witness;

(*b*) the court or tribunal which is to hear the evidence;

(*c*) the person or persons who will conduct the proceedings;

(*d*) a statement that the witness is willing to give evidence by telephone link in the proceedings;

(*e*) the likely date of the hearing.

Taking of evidence.

72.— (1) The Minister, if of opinion that the witness is willing to give evidence by telephone link in the proceedings concerned, may request the President of the District Court to nominate a judge of that Court to summon the witness to attend at a suitable venue within the judge's district for the purpose of giving effect to the request.

(2) Before the evidence is taken, the witness shall be asked to confirm that he or she is willing to give the evidence by telephone link.

(3) *Section 70* applies in relation to taking evidence under this section by telephone link as it applies in relation to taking evidence under that section by television link.

Search for evidence

Search for evidence at place in designated state.

73.— (1) Where it appears to a judge at a sitting of any court that—

(*a*) criminal proceedings have been instituted or a criminal investigation is taking place, and

(*b*) evidence for the purposes of the proceedings or investigation may be obtained at a place in a designated state,

the judge may, in accordance with the relevant international instrument, issue a letter (a "letter of request") requesting assistance in obtaining the evidence.

(2) Application for a letter of request may be made by the Director of Public Prosecutions or a person charged in any such proceedings that have been instituted.

(3) The letter of request shall be sent to—

(*a*) the Central Authority for transmission to the appropriate authority, or

(*b*) in urgent cases, directly to that authority.

(4) Notwithstanding *subsections (1)* to *(3)*, where proceedings for an offence have been instituted or an offence is being investigated, the Director of Public Prosecutions may issue and transmit a letter of request directly to the appropriate authority.

(5) The letter of request shall include—

(*a*) a statement that the evidence is required for the purpose of criminal proceedings or a criminal investigation and will be returned to the appropriate authority when no longer required for that purpose, unless the authority indicates otherwise,

(*b*) information relating to the nature and location of the evidence concerned,

(*c*) a brief description of the conduct constituting the offence concerned, and

(*d*) any other available information that may assist the appropriate authority in complying with the letter of request.

(6) Evidence obtained by virtue of this section shall not, without the consent of the appropriate authority, be used for any purpose other than that permitted by the relevant international instrument or specified in the letter of request.

(7) When any such evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to the appropriate authority unless the authority indicates that it need not be returned.

(8) In any proceedings relating to the offence—

(*a*) evidence (other than documentary evidence) which purports—

(i) to have been obtained as a result of a request under this section, and

(ii) to be certified by or on behalf of the appropriate authority to be such evidence,

is admissible without further proof, and

(*b*) documentary evidence which purports—

(i) to have been so obtained, and

(ii) to be so certified,

is admissible, without further proof, as evidence of any fact stated in it of which oral evidence would be admissible.

(9) In this section, "appropriate authority" means—

(*a*) a court or tribunal exercising criminal jurisdiction in the place in a designated state where the evidence referred to in the letter of request is to be obtained, or

(*b*) any other body or authority recognised by the government of that state as the appropriate authority for receiving the letter.

Search for evidence for use outside State (general).

74.— (1) Subject to *subsections (2)* and *(3)*, this section applies to a request for assistance in obtaining evidence for the purposes of criminal proceedings, or a criminal investigation, in a designated state, where there is power under any enactment to issue a warrant for the search of a place in respect of an offence constituted by the conduct giving rise to the request.

(2) This section does not apply to such a request from a member state unless the act is punishable—

(*a*) under the law of the State and the member state by imprisonment for a maximum period of at least 6 months, or

(*b*) under the law of the State by such imprisonment and under the law of the member state by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

(3) This section does not apply to such a request from a designated state (other than a member state) unless the conduct giving rise to the request is punishable under both the law of the State and the law of that state.

(4) The Minister, if of opinion that this section applies to the request, may, subject to *subsection (5)*, send the request and any accompanying and related documents to the Commissioner of the Garda Síochána to arrange for the request to be complied with.

(5) In the case of a request from a designated state, the Minister may not proceed in accordance with *subsection (4)* unless an assurance is given by the requesting authority—

(*a*) that any evidence that may be supplied in response to the request will not, without the Minister's prior consent, be used for any purpose other than that permitted by the relevant international instrument or specified in the request, and

(*b*) that the evidence will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless the Minister indicates that its return is not required.

(6) A member of the Garda Síochána shall not enter any place in furtherance of the request without the consent of the occupier or the entry being authorised by a warrant under this section.

(7) Unless the evidence sought is already in the possession of the Garda Síochána, a member of the Garda Síochána not below the rank of inspector shall, on production of a copy of the request and of any accompanying or related documents, apply to the judge of the District Court for the district where the place concerned is situated for a warrant under *subsection (8)*.

(8) If, on the application, the judge is satisfied that this section applies to the request and it appears to him or her that there are reasonable grounds for believing that entry to any place is necessary for the purposes of complying with it, the judge may issue a warrant for the search of the place and any persons found there.

(9) The warrant shall be expressed and operate to authorise a named member of the Garda Síochána, accompanied by such other members or persons or both as the member thinks necessary—

(*a*) to enter the place named in the warrant at any time or times within one week of the date of its issue, on production, if so requested, of the warrant and, if necessary, by the use of reasonable force,

(*b*) to search it and any person found there,

(*c*) to access, examine, seize, take away and retain any material found there, or in the possession of a person present there at the time of the search—

(i) which the member reasonably believes to be evidence of, or relating to, the commission of the offence concerned or assets or proceeds deriving from criminal conduct in the designated state or their identity or whereabouts, or

(ii) whose retention is necessary to comply with the request,

(*d*) to make a copy of any document so seized and to take the copy away, and

(*e*) to take such other steps as appear to the member to be necessary for preserving any such material and preventing interference with it.

(10) Where material referred to in *subsection (9)* consists of or includes information in non-legible form, the warrant has effect as an order to produce the material, or to give access to it, in a form which is legible and in which it can be taken away.

(11) The warrant—

(*a*) does not confer any right to examine, seize, take away or retain documents which are subject to legal privilege or to have them produced or to be given access to them, and

(*b*) subject to *paragraph (a)* and *subsection (14)*, has effect notwithstanding any other obligation as to secrecy or other restriction on the disclosure of information under any enactment or rule of law.

(12) A member acting under the warrant may—

(*a*) require any person present at the place where the search is being carried out to give his or her name and address to the member, and

(*b*) arrest without warrant any person who—

(i) obstructs or attempts to obstruct the member in carrying out his or her duties,

(ii) does not comply with a requirement under *paragraph (a)*, or

(iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

F71**[**(12A) Where the evidence sought is already in the possession of the Garda Síochána, or where material referred to in *subsection (9)* is obtained on foot of a warrant under this section, the Commissioner of the Garda Síochána shall arrange for the evidence to be transmitted, to the requesting authority—

(a) without delay,

(b) in accordance with the request, and

(c) in accordance with any directions that the Minister may give.**]**

F71**[**(12B) Any evidential material taken away by a member of the Garda Síochána under this section may be dealt with in accordance with the request.**]**

(13) A person who—

(*a*) obstructs or attempts to obstruct a member acting under the authority of a warrant under this section,

(*b*) does not comply with a requirement under *subsection (12)(a)*, or

(*c*) gives a false or misleading name or address to a member,

is guilty of an offence and liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(14) Where—

(*a*) material has been supplied to a Government department or other authority by or on behalf of the government of another state, and

(*b*) an undertaking was given that the material would be used only for a particular purpose or purposes,

an order under this section does not have the effect of requiring or permitting the production of, or the giving of access to, the material for any other purpose without the consent of that government.

(15) The power to issue a warrant under this section is without prejudice to any other power conferred by statute to issue a warrant for the search of any place or person.

(16) In this section—

"evidence" includes evidence of or relating to assets or proceeds deriving from criminal conduct in the designated state concerned or their identity or whereabouts;

"member state" includes the Swiss Confederation.

Annotations

Amendments

F71 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015, s. 28, S.I. No. 11 of 2016.

Search for particular evidence for use outside State.

75.— (1) Subject to *subsections (2)* and *(3)*, this section applies to a request for assistance in obtaining specified evidential material or evidential material of a specified description for the purposes of criminal proceedings, or a criminal investigation, in a designated state, where there is power under any enactment to issue a warrant for the search of a place in respect of an offence constituted by the conduct giving rise to the request.

(2) This section does not apply to such a request from a member state unless the act is punishable—

(*a*) under the law of the State and the member state by imprisonment for a maximum period of at least 6 months, or

(*b*) under the law of the State by such imprisonment and under the law of the member state by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

(3) This section does not apply to such a request from a designated state (other than a member state) unless the conduct giving rise to the request is punishable under both the law of the State and the law of that state.

(4) This section also applies to such a request from a member state which is made in connection with a request under *Part 4* for the freezing of evidence in proceedings for an offence which may be punished in that state by imprisonment for a term of not less than 3 years.

(5) The Minister, if of opinion that this section applies to the request, may, subject to *subsection (6)*, send the request and any accompanying and related documents to the Commissioner of the Garda Síochána to arrange for the request to be complied with.

(6) The Minister shall not proceed in accordance with *subsection (5)* unless an assurance is given by the requesting authority—

(*a*) that any material that may be furnished in response to the request will not, without his or her prior consent, be used for any purpose other than that permitted by the relevant international instrument or specified in the request, and

(*b*) that the material will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless he or she indicates that its return is not required.

(7) A member of the Garda Síochána shall not enter any place in furtherance of the request without the consent of the occupier or the entry being authorised by an order under this section.

(8) Unless the material sought is already in the custody of the Garda Síochána, a member of the Garda Síochána not below the rank of inspector shall, on production of a copy of the request and of any accompanying or related documents, apply to the judge of the District Court for the district where the evidential material is situated for an order under *subsection (10)*.

F72**[**(8A) Where the material sought is already in the custody of the Garda Síochána or has been obtained on foot of an order under *subsection (10)*, the Commissioner of the Garda Síochána shall arrange for the material to be transmitted to the requesting authority—

(a) without delay,

(b) in accordance with the request, and

(c) in accordance with any directions that the Minister may give.**]**

(9) If, on the application, the judge is satisfied that this section applies to the request and it appears to him or her that there are reasonable grounds for believing that the person named in the request possesses the evidential material, the judge may make an order under *subsection (10).*

(10) An order under this subsection—

(*a*) shall require any person who appears to the judge to be in possession of the evidential material—

(i) to produce it to a named member of the Garda Síochána so that he or she may take it away, or

(ii) to give the member access to it, either immediately or within a period specified in the order,

(*b*) may, if the order relates to evidential material at any place and on application by a member of the Garda Síochána, require any person who appears to the judge to be entitled to grant entry to the place to allow the member to enter it to obtain access to the material,

(*c*) shall authorise such a member, if the person who is so required to grant entry to the place does not do so—

(i) to enter the place, accompanied by such other members or persons or both as the member thinks necessary, on production if so requested of the order and, if necessary, by the use of reasonable force,

(ii) to search the place and any persons present there,

(iii) to access, examine, seize, take away and retain any evidential material which is found at the place or in the possession of a person so present and which the member reasonably believes to be the material concerned, and

(iv) to take such other steps as appear to the member to be necessary for preserving the evidential material and preventing interference with it.

(11) Where the evidential material consists of information contained in a computer, an order under this section has effect as an order to produce the material, or to give access to it, in a form which is legible and comprehensible or can be made so and in which it can be taken away.

(12) Such an order—

(*a*) in so far as it may empower a member of the Garda Síochána to take away a document or to be given access to it, authorises him or her to make a copy of it and to take the copy away,

(*b*) does not confer any right to production of, or access to, any evidential material subject to legal privilege, and

(*c*) subject to *paragraph (b)* and *subsection (17)*, has effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise.

(13) Any evidential material taken away by a member of the Garda Síochána under this section shall be dealt with in accordance with the request.

(14) A judge of the District Court may at a sitting of the Court vary or discharge an order under this section on the application of a member of the Garda Síochána or of any person to whom the order relates.

(15) A member searching a place under the authority of an order under *subsection (10)* may—

(*a*) require any person present at the place where the search is being carried out to give his or her name and address to the member, and

(*b*) arrest without warrant any person who—

(i) obstructs or attempts to obstruct the member in carrying out his or her duties,

(ii) fails to comply with a requirement under *paragraph (a)*, or

(iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

(16) A person who—

(*a*) obstructs or attempts to obstruct a member of the Garda Síochána acting under the authority of an order under this section,

(*b*) fails to comply with a requirement in an order under this section, or

(*c*) gives a false or misleading name or address to a member,

is guilty of an offence and liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(17) Where—

(*a*) material has been supplied to a Government department or other authority by or on behalf of the government of another state,

(*b*) an undertaking was given that the material would be used only for a particular purpose or purposes,

an order under this section does not have the effect of requiring or permitting the production of, or the giving of access to, the material for any other purpose without the consent of that government.

(18) This section is without prejudice to *section 74*.

(19) In this section—

"evidential material" includes any such material relating to assets or proceeds deriving from criminal conduct in the designated state concerned or their identity or whereabouts;

"member state" includes the Swiss Confederation.

Annotations

Amendments

F72 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015, s. 29, S.I. No. 11 of 2016.

F73**[**Powers of officers of Revenue Commissioners

75A.— Where a request under *section 74* or *75* is in relation to a revenue offence, the powers of a member of the Garda Síochána may also be exercised by an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section, and *sections 74* and *75* apply, subject to the following and any other necessary modifications:

(*a*) a reference to the "Commissioner of the Garda Síochána" shall be read, in relation to such a request, as a reference to the "Revenue Commissioners";

(*b*) a reference to a "member", in relation to the Garda Síochána, shall be read, in relation to such a request, as including a reference to an "officer of the Revenue Commissionersauthorised by them in writing to exercise the powers conferred by this section";

(*c*) a reference to evidence being "in the possession of the Garda Síochána" shall be read, in relation to such a request, as including a reference to its being "in the possession of the Revenue Commissioners";

(*d*) a reference to "a member of the Garda Síochána not below the rank of inspector" shall be read, in relation to such a request, as including a reference to "an officer of the Revenue Commissioners not below the rank of Higher Executive Officer";

(*e*) a reference to material being "in the custody of the Garda Síochána" shall be read as including a reference to its being "in the custody of the Revenue Commissioners".**]**

Annotations

Amendments

F73 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015, s. 30, S.I. No. 11 of 2016.

Editorial Notes:

E24 The section heading is taken from the amending section in the absence of one included in the amended section.

Chapter 3

Identification evidence

Annotations

Modifications (not altering text):

C4 Further provisions regarding taking of certain identification evidence under Act prescribed (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 155, S.I. 508 of 2015.

Further provisions regarding taking of samples under this Act or certain identification evidence under Act of 2008 or Act of 2006

155. (1) A sample under this Act or identification evidence under the Act of 2008 or the Act of 2006—

(*a*) shall be taken from a person in circumstances affording reasonable privacy to the person, and

(*b*) shall not be taken from a person in the presence or view of a person whose presence is not necessary for the purposes of the taking of the sample or that identification evidence, as the case may be, or required or permitted by this Act or each of those Acts, as the case may be.

(2) Nothing in this Act authorises the taking of a sample or such identification evidence from a person in a cruel, inhuman or degrading manner.

(3) A sample shall not be taken under *Part 2* from a person who is in custody under any of the provisions referred to in *section 9(1)* while he or she is being questioned under that provision and, if questioning has not been completed before the sample is to be taken, it shall be suspended while the sample is being taken.

(4) In this section "identification evidence"—

(*a*) in the case of the Act of 2008, has the meaning given to it by section 76 of that Act other than a fingerprint, palm print or photograph of a person, and

(*b*) in the case of the Act of 2006, has the meaning given to it by section 50 of that Act other than a fingerprint, palm print, iris identification or photograph of a person.

Definitions (*Chapter 3*).

76.—F74**[**(1)**]** In this Chapter—

F75**[**"Act of 2014" means the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014;**]**

"bodily sample" means any of the following:

(*a*) a sample of blood, hair, urine or saliva;

(*b*) a nail or any material found under a nail;

(*c*) a swab from any part of the body;

(*d*) a footprint or a similar impression of any part of the body, including a dental impression;

F75**[**"child" means a person who has not attained the age of 18 years;

F76**[**"controller" means a controller within the meaning of Part 5 of the Data Protection Act 2018;**]**

"data controller" has the meaning it has in section 1(1) of the Data Protection Act 1988;**]**

"dentist" means a person whose name is entered for the time being in the Register of Dentists maintained under the Dentists Act 1985;

F75**[**"DNA" means deoxyribonucleic acid;

"DNA profile", in relation to a person, means information comprising a set of identification characteristics of the non-coding part of DNA derived from an examination and analysis of a bodily sample or DNA sample from the person and that is capable of comparison with similar information derived from an examination and analysis of another sample of biological material for the purpose of determining whether or not that other sample could relate to that person;

"DNA sample", in relation to a person, means a sample of hair other than pubic hair of the person or a swab from the mouth (including the inside of the mouth) of the person;**]**

"doctor" means a person whose name is entered for the time being in the General Register of Medical Practitioners established under section 26 of the Medical Practitioners Act 1978;

F75**[**"guardian", in relation to a child (including a protected person who is a child), has the meaning it has in the Act of 2014;**]**

F77**[**"identification evidence", in relation to a person, means—

(*a*) a fingerprint, palm print or photograph of the person,

(*b*) a bodily sample from the person or the DNA profile of the person generated from such a sample, or

(*c*) a DNA sample from the person or the DNA profile of the person generated from such a sample,

and includes any related records;**]**

F75**[**"inadequately labelled" and "insufficient", in relation to a DNA sample, have the meanings they have in the Act of 2014;**]**

F75**[**"non-coding part of DNA", in relation to a person, means the chromosome regions of the person's DNA that are not known to provide for any functional properties of the person;**]**

"nurse" means a person whose name is entered for the time being in the register of nurses established under section 27 of the Nurses Act 1985.

F75**[**"parent", in relation to a protected person or a child, has the meaning it has in the Act of 2014;

"protected person" means, subject to subsection (2), a person (including a child) who, by reason of a mental or physical disability—

(*a*) lacks the capacity to understand the general nature and effect of the taking of identification evidence from him or her, or

(*b*) lacks the capacity to indicate (by speech, sign language or any other means of communication) whether or not he or she consents to identification evidence being taken from him or her;

"relevant offence" has the meaning it has in the Act of 2014.**]**

F78**[**(2) The reference in the definition of "protected person" in *subsection (1)* to a mental or physical disability in relation to a person (including a child) shall be construed as not including a reference to the person being under the intoxicating influence of any alcoholic drink, drug, solvent or any other substance or combination of substances.

(3) In the application of this Chapter in relation to a protected person or a child who is married, the references in *sections 79* and *79B* to a parent or guardian of the person or child, as the case may be, shall be construed as references to his or her spouse.**]**

Annotations

Amendments

F74 Section designated as subs. (1) (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 129(c), S.I. No. 508 of 2015.

F75 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 129(a), S.I. No. 508 of 2015.

F76 Inserted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 208(a), S.I. No. 174 of 2018.

F77 Substituted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 129(b), S.I. No. 508 of 2015.

F78 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 129(d), S.I. No. 508 of 2015.

Identification evidence for use in State.

77.— (1) Where it appears to a judge of any court that—

(*a*) criminal proceedings have been instituted or a criminal investigation is taking place, and

(*b*) identification evidence for the purposes of the proceedings or investigation may be obtained from an authority in a designated state,

the judge may issue a letter (a "letter of request") requesting assistance in obtaining the evidence.

(2) Application for a letter of request may be made by the Director of Public Prosecutions or a person charged in any proceedings that have been instituted.

(3) The letter of request shall be sent to—

(*a*) the Central Authority for transmission to the appropriate authority, or

(*b*) in urgent cases, directly to that authority.

(4) Notwithstanding *subsections (1)* to *(3)*, where proceedings for an offence have been instituted or an offence is being investigated, the Director of Public Prosecutions may issue and transmit a letter of request directly to the appropriate authority.

(5) The letter of request shall include—

(*a*) a statement that the evidence is required for the purpose of criminal proceedings or a criminal investigation and will be returned to the appropriate authority when no longer required for that purpose, unless the authority indicates otherwise,

(*b*) a brief description of the conduct constituting the offence concerned, F79**[**...**]**

F80**[***(ba)* in the case of a request pursuant to Article 7 of the 2008 Council Decision, or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway, for the DNA profile of a person who is suspected of having committed the offence concerned whose DNA profile is not in the possession of the appropriate authority, a statement issued by the Commissioner of the Garda Síochána or the Director of Public Prosecutions, as may be appropriate, confirming that the requirements for the taking of a DNA sample from the person under the law of the State would be complied with if the person were in the State, and**]**

(*c*) any other available information that may assist the appropriate authority in complying with the request.

(6) Evidence obtained by virtue of this section shall not, without the consent of the appropriate authority, be used for any purpose other than that specified in the letter of request.

(7) When any such evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to the appropriate authority unless the authority indicates that it need not be returned.

(8) In any proceedings a document purporting to be—

(*a*) a report of the taking of the identification evidence in the designated state and to be signed by, and to state the rank or other qualification of, the person who took the evidence, or

(*b*) a record of the evidence kept by the appropriate authority and certified by it or on its behalf,

is admissible, without further proof, as evidence of the matters stated in it.

(9) In this section, "appropriate authority" means the authority in the designated state concerned appearing to the Director of Public Prosecutions to possess the identification evidence requested or to have the function of obtaining or arranging to obtain it.

Annotations

Amendments

F79 Deleted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 130(a), S.I. No. 508 of 2015.

F80 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 130(b), S.I. No. 508 of 2015.

Modifications (not altering text):

C5 Application of subs. (7) restricted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 125(7), S.I. No. 508 of 2015, subject to restriction in art. 2(g).

Correction of inaccurate data, destruction of incorrectly supplied data and storage of data

125.—...

(7) Subject to subsection (8) and notwithstanding section 77(7) of the Act of 2008, a data controller shall destroy data received pursuant to an Article 7 request when they are no longer required for the purpose for which they were supplied and, in any event, shall do so not later than the expiration of the maximum period (if any) prescribed by the law of the Member State concerned or Iceland or Norway, as the case may be, and specified by the authority in that Member State or Iceland or Norway, as the case may be, at the time the data were supplied.

(8) Where, under subsection (6) or (7), a national contact point or a data controller, as the case may be, reasonably believes that the destruction of the data concerned would prejudice the interests of the data subject, the data shall instead be blocked and those data may be supplied or otherwise further processed only for a purpose relating to the protection of those interests.

...

Identification evidence for use outside State.

78. —F81**[**(1)**]**A request for obtaining identification evidence for use in a designated state shall include—

(*a*) a statement that the evidence is required in connection with criminal proceedings, or a criminal investigation, in that state, F82**[**...**]**

F83**[**(*b*) a brief description of the conduct constituting the offence,**]**

F84**[**(*c*) a statement of the purpose for which the evidence is sought,

(*d*) a statement confirming that any evidence that may be furnished in response to the request will not, without the consent of the Minister, be used for any purpose other than that specified in the request, and

(*e*) in the case of a request pursuant to Article 7 of the 2008 Council Decision, or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway, for the DNA profile of a person who is suspected of having committed the offence concerned whose DNA profile is not in the possession of the Garda Síochána—

(i) an investigation warrant in respect of the person, or

(ii) a statement issued by the competent authority in the member state concerned in connection with a criminal investigation in that member state confirming that the requirements for the taking of a DNA sample from the person under the law of that member state would be complied with if the person were in that member state.

(2) In this section—

"competent authority", in relation to a member state, means the authority in the member state that is competent to issue an investigation warrant or statement for the purposes of Article 7 of the 2008 Council Decision or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway;

"investigation warrant" means a warrant or order issued by the competent authority in a member state requiring a person to have identification evidence, other than fingerprints, palm prints or photographs, taken from him or her for the purposes of a criminal investigation, or criminal proceedings, in that member state.**]**

Annotations

Amendments

F81 Section designated as subs. (1) (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 131(c), S.I. No. 508 of 2015.

F82 Deleted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 131(a), S.I. No. 508 of 2015.

F83 Substituted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 131(b), S.I. No. 508 of 2015.

F84 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 131(d), S.I. No. 508 of 2015.

Action on request.

79.— (1) The Minister may send the request to the Commissioner of the Garda Síochána for the necessary action if satisfied—

(*a*) that it complies with *section 78*,

F85**[**(*b*) that the purpose for which the evidence is sought specified in the request, or any other purpose for which the consent of the Minister is sought, is one in respect of which the evidence could be obtained in the State if the criminal proceedings for, or the criminal investigation of, the offence concerned in the designated state concerned were being conducted in the State, and

(*c*) that the evidence—

(i) will be returned by the requesting authority—

(I) when no longer required for the purpose specified in the request (or any other purpose for which the consent of the Minister has been obtained), unless the Minister indicates otherwise, or

(II) when requested by the Minister for the purposes of destroying the evidence—

(A) to comply with a request to do so by or on behalf of the person to whom the identification evidence relates, or

(B) in accordance with section 4 of the Criminal Justice (Forensic Evidence) Act 1990, Part 10 of the Act of 2014 or any statutory provision providing for the destruction of fingerprints, palm prints or photographs of persons, as may be appropriate,

or

(ii) will be dealt with in accordance with *subsections (10)* and *(11)*.**]**

(2) If or in so far as F85**[**the identification evidence requested is not in the possession of the Garda Síochána and subject to *section 79A*, the Commissioner shall instruct**]** a member of the Garda Síochána (a "member") to inform the person who is to provide the evidence—

(*a*) of the nature of the evidence,

(*b*) that it has been requested in connection with criminal proceedings, or a criminal investigation, in the designated state concerned,

(*c*) that he or she is not obliged to provide the evidence, F86**[**...**]**

F85**[**(*d*) that, if he or she does consent to provide it, it may be given in evidence in any proceedings in that state, and**]**

F87**[**(*e*) that the evidence may be destroyed in accordance with this section.**]**

(3) F85**[**Subject to *subsections (11H)* to *(11Q)*, if the person consents to provide the evidence**]**, the member may take the evidence, or cause it to be taken, in compliance with the request and any requirements specified in the request in relation to its taking.

(4) If a person who is to provide the identification evidence is in a prison—

(*a*) evidence may be taken under this section only if it relates to an offence other than that for which the person is in custody, and

(*b*) any evidence provided may be taken at the prison or at another place.

(5) A bodily sample consisting of blood, pubic hair or a swab from a body orifice (other than the mouth) or a genital region may be taken under this section only by a doctor or nurse, and a dental impression may be so taken only by a dentist or doctor.

(6) If required by the requesting authority, the Commissioner may arrange for a forensic test to be performed on a swab from a body orifice or a genital region.

(7) Where a sample of hair other than pubic hair is taken in accordance with this section—

(*a*) the sample may be taken by plucking hairs with their roots and, in so far as it is reasonably practicable, the hairs shall be plucked singly, and

(*b*) no more hairs shall be plucked than the person taking the sample reasonably considers to be necessary to constitute a sufficient sample for the purpose of forensic testing.

(8) The following particulars shall be recorded by the member who takes identification evidence:

(*a*) the place, time and date at which it was taken;

(*b*) the result of any forensic test on the evidence;

(*c*) any other relevant particulars, including any specified by the requesting authority,

and the record shall F87**[**,if appropriate,**]** include a copy of the consent to the taking of the evidence.

(9) The Commissioner shall send to the Central Authority any identification evidence—

(*a*) in the possession of the Garda Síochána, or

(*b*) F85**[**taken under *subsection (3)* or *section 79A***]**, together with a copy of the record made under *subsection (8)*,

for transmission to the requesting authority.

F87**[**(9A) When transmitting the identification evidence to the requesting authority, the Minister may specify conditions regarding the use of the evidence.

(9B) Subject to *subsections (10)* and *(11)* —

(*a*) any identification evidence taken under *subsection (3)* or *section 79A* that is transmitted to the requesting authority and returned by that authority when no longer required for the purpose specified in the request (or any other purpose for which the consent of the Minister had been obtained) shall be destroyed as soon as practicable after its return, and

(*b*) a DNA sample that is taken from a person under *section 79A*, and the DNA profile of the person generated from the sample, shall be destroyed when the Central Authority receives confirmation from the requesting authority that it has received the DNA profile of the person generated from the sample.

(9C) The provisions of subsections (7), (8), (9) and (11) of section 3, and section 97, of the Act of 2014 insofar as they apply to the destruction of samples and DNA profiles of persons under that Act shall apply, with any necessary modifications, in relation to the destruction of identification evidence, other than fingerprints, palm prints or photographs of persons, under *subsection (9B)*.

(9D) The provisions of section 8H of the Criminal Justice Act 1984 insofar as they apply to the destruction of fingerprints, palm prints or photographs of persons shall

apply, with any necessary modifications, in relation to the destruction of fingerprints, palm prints or photographs of persons under *subsection (9B)*.**]**

F85**[**(10) When transmitting the identification evidence to the requesting authority the Central Authority shall, if *subsection (1) (c) (i)* does not apply and subject to *subsection (11)*, obtain an assurance that the evidence, as well as the record of any analysis of the evidence, or any other record relating to it, that may be made in the requesting state, will be destroyed when no longer required for the purpose specified in the request concerned (or any other purpose for which the consent of the Minister is obtained) and, in any event, not later than the expiration of the period of 3 months from the date on which any of the following circumstances first apply to the person the subject of that request:

(*a*) proceedings for an offence are not instituted against that person within the period of 12 months from the taking of the identification evidence concerned from him or her and the failure to institute such proceedings within that period is not due to the fact that he or she has absconded or cannot be found;

(*b*) proceedings for an offence have been instituted against that person and he or she is acquitted or the charge against him or her is dismissed or the proceedings are discontinued;

(*c*) that person—

(i) in proceedings for an offence, is the subject of an order corresponding to or in the nature of a probation order under section 1(1) or (2) of the Probation of Offenders Act 1907, other than an order corresponding to or in the nature of an order under the said section 1(2) that is discharged on the appeal of that person against conviction for the offence if on appeal his or her conviction is affirmed, and

(ii) has not been convicted of an offence during the period of 3 years from the making of an order referred to in *subparagraph (i)*;

(*d*) that person is convicted of an offence and the conviction is quashed; or

(*e*) that person is convicted of an offence and the conviction is declared to be a miscarriage of justice under the law of that state corresponding to section 2 of the Criminal Procedure Act 1993.

(11) The Minister may, at the request of the requesting authority and having consulted the Commissioner, direct that the retention period in respect of identification evidence transmitted to the requesting authority be extended in accordance with an order made under *subsection (11A)*.**]**

F87**[**(11A) If a judge of the District Court is satisfied, on an application in that behalf by the Commissioner, that there is good reason why identification evidence transmitted pursuant to a request should not be destroyed by the requesting authority in accordance with *subsection (10)*, or a request to do so under *subsection (11R)*, the judge may make an order authorising the retention of the identification evidence for such purpose permitted by this section for such period as he or she considers appropriate.

(11B) If the Commissioner intends to make an application under *subsection (11A)*, he or she shall inform by notice in writing the person from whom the identification evidence concerned was taken, and any person who gave consent to the taking of that identification evidence from that person, of that intention.

(11C) If, on an application under *subsection (11A)*, the person from whom the identification evidence was taken, or any other person who gave consent to the taking of that identification evidence from that person, applies to be heard by the judge of the District Court, an order shall not be made under that subsection unless a reasonable opportunity has been given to that person to be heard.

(11D) An application under *subsection (11A)* shall be made to a judge of the District Court who is assigned to the district court district in which the person from whom the identification evidence concerned was taken resides.

(11E) An application under *subsection (11A)* shall be heard otherwise than in public.

(11F) In determining an application under *subsection (11A)*, a judge of the District Court may make such order as to costs as the judge considers appropriate.

(11G) A notice under *subsection (11B)* may be sent or given to a person in one of the following ways:

(*a*) by delivering it to the person or his or her solicitor;

(*b*) by addressing it to the person and leaving it at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address or by addressing it to his or her solicitor and leaving it at the solicitor's office;

(*c*) by sending it to the person by post in a prepaid registered letter to the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, to that address or to his or her solicitor at the solicitor's office.

(11H) Subject to *subsection (11I)*, in this section "consent" means—

(*a*) subject to *paragraph (b)*, in the case of a person who has attained the age of 18 years, the consent in writing of the person,

(*b*) in the case of a protected person—

(i) the consent in writing of a parent or guardian of the person, or

(ii) an order of the District Court under *section 79B* authorising the taking of the identification evidence concerned from the person,

(*c*) in the case of a child (other than a protected person)—

(i) who has attained the age of 14 years, the consent in writing of the child and either—

(I) the consent in writing of a parent or guardian of the child, or

(II) an order of the District Court under *section 79B* authorising the taking of the identification evidence concerned from the child,

(ii) who has not attained the age of 14 years, either—

(I) the consent in writing of a parent or guardian of the child, or

(II) an order of the District Court under section 79B authorising the taking of the identification evidence concerned from the child.

(11I) Where, in relation to the criminal proceedings for, or the criminal investigation of, the offence concerned in the designated state concerned, identification evidence is to be taken from a protected person or a child, the consent in writing of a parent or guardian of the protected person or child shall not be sought from a parent or guardian of the protected person or child, as the case may be, if—

(*a*) he or she is the victim of that offence in circumstances in which the protected person or child, as the case may be, is suspected of having committed that offence,

(*b*) he or she has been arrested in respect of that offence,

(*c*) a member not below the rank of inspector has reasonable grounds for suspecting him or her of complicity in that offence, or

(*d*) a member not below the rank of inspector has reasonable grounds for believing that he or she is likely to obstruct the course of justice.

(11J) *Subsection (11I)* shall not prevent a parent or guardian of a protected person or a child who does not fall under *paragraph (a), (b), (c)* or *(d)* of that subsection from giving the consent required.

(11K) Before a member seeks the consent in writing of a parent or guardian of a protected person to the taking of identification evidence from the person, the member shall inform the parent or guardian of the matters referred to in *subsection (2)* in relation to the person.

(11L) Before a member seeks the consent in writing of a parent or guardian of a child to the taking of identification evidence from the child, the member shall inform the parent or guardian of the matters referred to in *subsection (2)* in relation to the child.

(11M) If a person withdraws a consent he or she had given to the taking of identification evidence under this section (or if the withdrawal of that consent can reasonably be inferred from the conduct of the person) before or during the taking of the identification evidence, that withdrawal of consent shall be treated as a refusal to give consent to the taking of that identification evidence.

(11N) A withdrawal of consent under *subsection (11M)* shall be recorded in writing by a member as soon as practicable after such withdrawal.

(11O) Subject to *subsections (11R)* and *(11S)*, the consent of a person to the taking of identification evidence under this section may not be withdrawn after the identification evidence has been taken.

(11P) In this section references to a person giving his or her consent in writing to the taking of identification evidence under this section (whether from the person himself or herself or another person) shall include references to—

(*a*) the person signing a document, or

(*b*) in case the person is unable to write, the person making his or her mark on a document,

to indicate his or her consent.

(11Q) The identification evidence concerned shall, if it is reasonably practicable to do so, be taken from a protected person or a child in the presence of the person who gave consent under this section for the taking of that identification evidence from the protected person or child, as the case may be, unless the protected person or child indicates that he or she does not wish to have that person present.

(11R) If the identification evidence taken under this section and transmitted pursuant to a request relates to a person who was not, at the time the evidence was taken, suspected of having committed the offence concerned in the designated state concerned, the person, or another person who gave consent to the taking of the identification evidence from the person, may by notice in writing sent or given to the Commissioner request the destruction of the evidence.

(11S) The Commissioner shall, following the receipt of a notice under *subsection (11R)*, inform the Minister of it and the Minister shall, subject to an order made under *subsection (11A)*, request the requesting authority to which the identification evidence concerned was transmitted to destroy the evidence as soon as practicable and, in any event, to do so not more than 4 months after the receipt by the Commissioner of the notice under *subsection (11R)*.

(11T) In this section and in *section 79A* a reference to identification evidence in the possession of the Garda Síochána shall include a reference to identification evidence in the possession of Forensic Science Ireland of the Department of Justice and Equality.**]**

F85**[**(12) In this section "retention period" means—

(*a*) in the case of identification evidence, other than a fingerprint, palm print or photograph of a person, the period from the taking of the evidence concerned from the person to the latest date for the destruction of that evidence under *subsection (10)*, and

(*b*) in the case of identification evidence consisting of a fingerprint, palm print or photograph of a person (including any related records)—

(i) 6 years from the taking of the evidence concerned from the person, or

(ii) if the person falls under *paragraph (d)* or *(e)* of *subsection (10)*, 3 months from the quashing of the conviction concerned or the declaration that the conviction concerned is a miscarriage of justice, as the case may be,

whichever is the later.**]**

Annotations

Amendments

F85 Substituted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 132(a)-(c), (e), (g), (h), (j), S.I. No. 508 of 2015.

F86 Deleted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 132(b)(ii), S.I. No. 508 of 2015.

F87 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 132(b)(iii), (d), (f), (i), S.I. No 508 of 2015.

F88**[**Request pursuant to Article 7 of 2008 Council Decision or that Article as applied by 2009 Agreement with Iceland and Norway

79A.— (1) If the request for obtaining identification evidence for use in a member state under *section 78*—

(*a*) is pursuant to Article 7 of the 2008 Council Decision or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway, and

(*b*) is for the DNA profile of a person who is suspected of having committed the offence concerned,

then, following compliance with *section 79(1)*, this section shall apply to the request if the identification evidence sought pursuant to the request is not in the possession of the Garda Síochána.

(2) The Commissioner shall instruct a member of the Garda Síochána to inform the person whose DNA profile is sought pursuant to the request that—

(*a*) his or her DNA profile has been requested by the member state concerned for the purposes of criminal proceedings, or a criminal investigation, in that member state,

(*b*) if he or she consents to provide a DNA sample from which his or her DNA profile may be generated, the DNA profile will be transmitted to the member state concerned in accordance with this Chapter,

(*c*) the DNA profile of the person may be given in evidence in any proceedings in the member state concerned, and

(*d*) if he or she does not consent to provide a DNA sample, an application may be made to a judge of the District Court under *subsection (5)* for an order under that subsection.

(3) If the person concerned consents to provide a DNA sample, a member of the Garda Síochána may take, or cause to be taken, a DNA sample from him or her.

(4) If the person concerned does not consent to provide a DNA sample, an application may be made for an order under *subsection (5)*.

(5) A judge of the District Court may, on an application in that behalf by a member of the Garda Síochána not below the rank of superintendent, make an order—

(*a*) authorising the Garda Síochána to send a notice to the person concerned requiring him or her to attend at a named Garda Síochána station on a day, and at a time of day or between times of day, specified in the notice for the purpose of having a DNA sample taken from him or her, and

(*b*) in the event of his or her failure or refusal to comply with the notice, authorising the Garda Síochána to arrest the person concerned and detain him or her in a Garda Síochána station for a period not exceeding 4 hours from the time the person concerned is arrested for that purpose,

if the judge is satisfied that—

(i) the request concerned complies with *section 79(1)*, and

(ii) the conduct alleged to constitute the offence concerned would, if it took place in the State, constitute a relevant offence, and

(iii) the person concerned has not consented to the taking of a DNA sample from him or her pursuant to the request concerned.

(6) If an order is made under *subsection (5)*, a notice pursuant to the order may be sent by a member of the Garda Síochána to the person concerned.

(7) A notice under *subsection (6)* shall, in the case of a child, also be sent to a parent or guardian of the child and, if the member of the Garda Síochána sending the notice knows or believes that the person concerned to whom the notice is being sent is a protected person, the member shall also send the notice to a parent or guardian of the person.

(8) If the person concerned to whom a notice is sent under *subsection (6)* fails or refuses to comply with the notice, a member of the Garda Síochána may arrest that person and detain him or her in a Garda Síochána station for such period as is authorised by the order made under *subsection (5)* concerned for the purpose of having a DNA sample taken from him or her.

(9) If—

(*a*) the person concerned, in compliance with a notice sent to him or her under *subsection (6)*, attends at the Garda Síochána station named in the notice, or

(*b*) he or she fails or refuses to comply with a notice sent to him or her under *subsection (6)* and he or she is arrested and detained in a Garda Síochána station,

for the purpose of having a DNA sample taken from him or her, a member of the Garda Síochána may, subject to *subsection (11)*, take, or cause to be taken, a DNA sample from him or her.

(10) The provisions of sections 10(1), 14, 23 and 24, subsections (3) to (7) of section 21 and subsections (3) to (7) of section 22, of the Act of 2014 insofar as they relate to the taking of a non-intimate sample (within the meaning of that Act) from a person

shall apply, with any necessary modifications, to the taking of a DNA sample from a person under *subsection (9)*, *(13)* or *(17)*, as may be appropriate.

(11) Before a member of the Garda Síochána takes, or causes to be taken, a DNA sample from a person under *subsection (9)*, *(13)* or *(17)*, the member shall, as may be appropriate, inform the person of the following:

(*a*) that the DNA profile of the person has been requested by the member state concerned for the purposes of criminal proceedings, or a criminal investigation, in that member state;

(*b*) that an order has been made by a judge of the District Court under *subsection (5)* authorising the sending of a notice to the person requiring him or her to attend at a named Garda Síochána station on a day, and at a time of day or between times of day, specified in the notice, or, in the event of his or her failure or refusal to comply with the notice, the arrest and detention of the person in a Garda Síochána station for the period specified in the order, for the purpose of having a DNA sample taken from him or her;

(*c*) in a case in which a DNA sample already taken from the person has proved to be insufficient or was inadequately labelled—

(i) that that DNA sample has proved to be insufficient or was inadequately labelled, as may be appropriate, and

(ii) that another DNA sample may be taken from the person under *subsection (13)* or *(17)*, as the case may be;

(*d*) that the DNA sample will be used to generate a DNA profile in respect of the person and that the DNA profile will be transmitted to the member state concerned in accordance with this Chapter;

(*e*) that the DNA profile of the person generated from the DNA sample may be given in evidence in any proceedings in the member state concerned;

(*f*) that the provisions of sections 10(1), 14, 23 and 24, subsections (3) to (7) of section 21 and subsections (3) to (7) of section 22, of the Act of 2014 insofar as they relate to the taking of a non-intimate sample (within the meaning of that Act) from a person shall apply, with any necessary modifications, to the taking of the DNA sample from the person; and

(*g*) that the DNA sample, and the DNA profile of the person generated from the sample, may be destroyed in accordance with *section 79*.

(12) Where a DNA sample taken from a person under *subsection (3)* proves to be insufficient or is inadequately labelled, this section insofar as it relates to the taking of a DNA sample from the person shall apply, with any necessary modifications, to the taking of a second or further sample from the person.

(13) Where—

(*a*) a person is arrested and detained under *subsection (8)*, and

(*b*) a DNA sample taken from the person during the period of detention proves to be insufficient or is inadequately labelled,

a second DNA sample may be taken from the person in accordance with *subsections (9)* to *(11)* while he or she is so detained.

(14) When a DNA sample or, if appropriate, a second DNA sample has been taken from a person who is detained under *subsection (8)*, the person shall be released from custody forthwith unless his or her detention is authorised apart from this section.

(15) Where—

(*a*) a DNA sample is taken from a person who is detained under *subsection (8)*,

(*b*) the person is released from that detention, and

(*c*) the DNA sample proves to be insufficient or is inadequately labelled,

a member of the Garda Síochána not below the rank of superintendent may apply to a judge of the District Court for an order under *subsection (16)*.

(16) A judge of the District Court may, on an application in that behalf under *subsection (15)*, make an order—

(*a*) authorising the Garda Síochána to send a notice to the person concerned requiring him or her to attend at a named Garda Síochána station on a day, and at a time of day or between times of day, specified in the notice for the purpose of having a second DNA sample taken from him or her, and

(*b*) in the event of his or her failure to comply with the notice, authorising the Garda Síochána to arrest the person concerned and detain him or her in a Garda Síochána station for a period not exceeding 4 hours from the time the person concerned is arrested for that purpose,

if the judge is satisfied that—

(i) the first DNA sample concerned was taken from the person concerned in accordance with this section,

(ii) the first DNA sample concerned taken from the person concerned has proved to be insufficient or was inadequately labelled, as the case may be, and

(iii) the member state concerned is still seeking the DNA profile of the person concerned pursuant to the request concerned.

(17) If an order is made under *subsection (16)* for the purpose of having a second DNA sample taken from the person, *subsections (6)* to *(9)* shall, with any necessary modifications, apply to the taking of the second DNA sample from him or her.

(18) When a second DNA sample has been taken from a person who is detained pursuant to an order under *subsection (16)*, the person shall be released from custody forthwith unless his or her detention is authorised apart from this section.

(19) If a second DNA sample is taken from a person under *subsection (13)*, the references in *subsections (15)* to *(18)* —

(*a*) to a first DNA sample shall be construed as references to a second DNA sample, and

(*b*) to a second DNA sample shall be construed as references to a third DNA sample,

taken, or to be taken, from the person.

(20) *Subsections (4)*, *(7)*, *(8)*, *(9)*, *(9A)*, *(10)*, *(11)* and *(11A)* to *(11Q)* of *section 79* shall apply in respect of a request to which this section applies.

(21) An application under *subsection (4)* or *(15)* shall be made to a judge of the District Court who is assigned to the district court district in which the person whose DNA profile is being sought pursuant to the request concerned resides.

(22) If—

(*a*) the conduct alleged to constitute the offence concerned would not, if it took place in the State, constitute a relevant offence, or

(*b*) the request is for the DNA profile of a person who is not suspected of having committed the offence concerned in the member state concerned,

then, *section 79* and not this section shall apply to the request.**]**

Annotations

Amendments

F88 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 133, S.I. No. 508 of 2015.

Editorial Notes:

E25 The section heading is taken from the amending section in the absence of one included in the amendment.

F89**[**Application for court order authorising taking of identification evidence from protected person or child under Act of 2008

79B.— (1) If—

(*a*) a member of the Garda Síochána is unable, having made reasonable efforts to do so, to contact a parent or guardian of a protected person or child, as the case may be, for the purposes of ascertaining whether or not he or she consents to the taking of the identification evidence concerned from the person or child, as the case may be, under *section 79*,

(*b*) subject to *subsection (11J)* of *section 79*, the circumstances referred to in *subsection (11I)* of that section exist in relation to a parent or guardian of a protected person or child, as the case may be, or

(*c*) a protected person or child, as the case may be, does not have, or a member of the Garda Síochána not below the rank of inspector cannot, having made reasonable efforts to do so, ascertain within a reasonable period whether the person or child, as the case may be, has, a living parent or guardian from whom consent to the taking of the identification evidence concerned from the person or child, as the case may be, may be sought under *section 79*,

a member of the Garda Síochána not below the rank of inspector may apply to a judge of the District Court for an order authorising the taking of the identification evidence concerned from the protected person or child, as the case may be.

(2) A member of the Garda Síochána who intends to make an application under *subsection (1)* shall inform the protected person or child, as the case may be, concerned of that intention.

(3) A judge of the District Court may order—

(*a*) that an application under *subsection (1)* shall be heard otherwise than in public, or

(*b*) that a parent or guardian of the protected person or child, as the case may be, concerned to whom *section 79(11I)* applies shall be excluded from the Court during the hearing of the application,

or both if—

(i) on an application in that behalf by a member of the Garda Síochána not below the rank of inspector, the judge is satisfied that it is desirable to do so in order to avoid a risk of prejudice to the criminal proceedings, or the criminal investigation, for the offence concerned in the designated state concerned in connection with which the identification evidence concerned has been sought pursuant to the request, or

(ii) the judge considers that it is otherwise desirable in the interests of justice to do so.

(4) A judge of the District Court shall, for the purposes of determining an application under *subsection (1)* —

(*a*) be satisfied that the request for the identification evidence concerned complies with *section 79(1)*, and

(*b*) have regard to—

(i) the nature and seriousness of the offence concerned in the designated state concerned,

(ii) in so far as they can be ascertained, the wishes of the protected person or child, as the case may be, concerned regarding whether the identification evidence concerned should be taken from him or her, and

(iii) whether it would be in the interests of justice in all the circumstances of the case, having due regard to the best interests of the protected person or child, as the case may be, concerned, to make an order authorising the taking of the identification evidence concerned from the protected person or child, as the case may be, concerned,

before making an order under this section.

(5) If, on an application under *subsection (1)*, a parent or guardian of the protected person or child, as the case may be, concerned applies to be heard by the judge of the District Court, an order shall not be made under this section unless a reasonable opportunity has been given to the parent or guardian, as the case may be, of that person or child, as the case may be, to be heard.

(6) A judge of the District Court may, if he or she considers it appropriate to do so, make an order authorising the taking of the identification evidence concerned from the protected person or child, as the case may be, concerned in accordance with *section 79*.

(7) An application under *subsection (1)* shall be made to a judge of the District Court who is assigned to the district court district in which the protected person or child concerned resides.**]**

Annotations

Amendments

F89 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 134, S.I. No. 508 of 2015.

Editorial Notes:

E26 The section heading is taken from the amending section in the absence of one included in the amendment.

F90**[**Recording of supply and receipt of data for requests pursuant to Article 7 of 2008 Council Decision or that Article as applied by 2009 Agreement with Iceland and Norway

79C.— (1) The Central Authority shall record, in accordance with *subsection (2)*, the supply and receipt of data—

(*a*) in the case of requests under *section 77*, and

(*b*) in the case of requests referred to in *section 78*,

that are made pursuant to Article 7 of the 2008 Council Decision or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway.

(2) The recording of the supply and receipt of data under *subsection (1)* shall be in a permanent legible form or be capable of being converted into a permanent legible form and shall include the following particulars in relation to the data:

(*a*) a description of the data supplied or received;

(*b*) the reason for the request concerned;

(*c*) the date the data were supplied or received;

(*d*) the name or reference code of the Central Authority and the name or reference code of the appropriate authority within the meaning of *section 77* concerned or of the authority which supplied or received the data, as the case may be.

(3) Records created under this section may be used only for the purposes of monitoring data protection and ensuring data security.

(4) The Central Authority shall—

(*a*) retain the records created under this section for a period of 2 years from the time of their creation, and

(*b*) immediately after that period, destroy those records.

(5) Whenever requested to do so by the Data Protection Commissioner, the Central Authority shall furnish the records created under this section to the Data Protection Commissioner as soon as practicable, but in any event not later than 4 weeks, after the receipt of a request to do so.

(6) The Central Authority shall—

(*a*) using the records created under this section, carry out random checks on the lawfulness of the supply and receipt of data,

(*b*) retain the results of those random checks for a period of 18 months from the time that they were carried out for the purposes of inspection by the Data Protection Commissioner, and

(*c*) immediately after that period, destroy those results.

(7) A data controller F91**[**or, as the case may be, controller**]** who supplies or receives data—

(*a*) in the case of requests under *section 77*, or

(*b*) in the case of requests referred to in *section 78*,

that are made pursuant to Article 7 of the 2008 Council Decision, or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway, shall furnish such of the particulars specified in *subsection (2)* in relation to those data as the data controller F91**[**or, as the case may be, controller**]** has, as soon as reasonably practicable, to the Central Authority for the purposes of enabling the Central Authority to comply with this section.

(8) In this section "reference code", in relation to the Central Authority or other authority, means the reference code that is assigned to the Central Authority or that other authority, as the case may be, for the purposes of the 2008 Council Decision or the 2009 Agreement with Iceland and Norway.**]**

Annotations

Amendments

F90 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 135, S.I. No. 508 of 2015.

F91 Inserted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 208(b), S.I. No. 174 of 2018.

Editorial Notes:

E27 The section heading is taken from the amending section in the absence of one included in the amendment.

PART 6

Other Forms of Assistance

Chapter 1

Service of documents

Documents for service outside State.

80.— (1) A document may be issued by a court in the State for the purposes of or in connection with criminal proceedings notwithstanding that the person on whom it is to be served is in another state.

(2) Where the document is not in the official language or one of the official languages of that state, the person at whose request it was issued shall provide the court with a translation of the document, or the material parts of it, into that language or one of those languages, unless *subsection (3)* applies.

(3) Where such a person believes that the person on whom it is to be served does not understand Irish, English or another language which is the official language or one of the official languages of that state, he or she shall—

(*a*) inform the court of that belief, and

(*b*) provide it with a translation of the document, or of the material parts of it, into a language that he or she believes that the person understands.

(4) The document—

(*a*) if it requires the recipient to appear in proceedings, shall not refer to a penalty for non-appearance, and

(*b*) shall be accompanied by—

(i) a notice stating that—

(I) no measure of restraint or punishment may be enforced directly by the court in the territory of the other state, and

(II) the person to be served may obtain information regarding his or her rights or obligations concerning the document from the court or a specified person or authority,

(ii) a notice giving any other information required to be given by rules of court, and

(iii) where necessary, a translation of the document, or of the material parts of it, into an appropriate language.

(5) Subject to *subsection (6)*, non-compliance by a person with a requirement specified in the document is not contempt of court or a ground for issuing a warrant to compel the person to attend the proceedings concerned.

(6) *Subsection (5)* does not apply if the document is subsequently served on the person in the State.

(7) Subject to *subsection (9)*, a person who is in the State in compliance with a requirement in the document to appear as a defendant in criminal proceedings may not be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in respect of any offence committed before arriving in the State other than an offence or offences specified in the document.

(8) Subject to *subsection (9)*, a person who is in the State in compliance with a requirement in the document to appear as a witness in criminal proceedings may not be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in respect of any offence committed before arriving in the State.

(9) The immunity provided for in *subsections (7)* and *(8)* ceases when—

(*a*) a period of 15 days has elapsed from the date when the person's presence in the State is no longer required by the court concerned and the person, having had an opportunity to leave the State during that period, has not done so, or

(*b*) the person, having left the State during that period, returns to it.

Mode of service.

81.— (1) A document referred to in *section 80* may be served in a designated state by post.

(2) Subject to *subsection (3)*, it may be transmitted to a designated state with a request for service otherwise than by post in accordance with the relevant international instrument.

(3) Where the person to be served is in a member state, service otherwise than by post may be requested only if—

(*a*) the address of the person is unknown or uncertain,

(*b*) it has not been possible to serve the document by post, or

(*c*) the person at whose request the document was issued has good reason for believing that service by post would not be effective or is inappropriate.

(4) Such a document may be served in a state other than a designated state in accordance with arrangements made by the Minister.

Service of documents in State.

82.— (1) This section applies to a request for service on a person in the State of—

(*a*) a document requiring the person to appear as a defendant or attend as a witness in criminal proceedings in a designated state, and

(*b*) any other document issued by a court or authority (including a prosecuting authority) in that state in criminal proceedings, including a document relating to the enforcement of a sentence or a preventive measure, the imposition of a fine or the payment of costs of proceedings.

(2) Unless the request is for personal service, the Minister may cause the document, together with the notice referred to in *subsection (11)*, to be served by post on the person concerned.

(3) Where the request is for personal service, the document, if not in Irish or English, shall be accompanied—

(*a*) by a translation of the document, or of the material parts of it, into either of those languages, and

(*b*) if it is known that the person understands only another language or languages and the document is not in that language or one of those languages, by such a translation into that other language or one of those other languages.

(4) Where the request is for personal service, the Minister shall, subject to *subsection (5)*, direct the Commissioner of the Garda Síochána to cause the document to be served personally on the person concerned.

(5) *Subsection (4)* does not apply to a request for personal service from a member state unless—

(*a*) the address of the person concerned is unknown or uncertain,

(*b*) under the law of the member state proof of service on the person is required, other than proof that can be obtained by post,

(*c*) it has not been possible to serve the document by post, or

(*d*) the applicant for the issue of the document or the issuing authority has good reason for believing that service by post would not be effective or is inappropriate.

(6) The Commissioner shall—

(*a*) cause the document, together with the notice referred to in *subsection (11)*, to be served by a member of the Garda Síochána in accordance with the request and send proof of the service to the Minister for transmission to the requesting authority concerned, or

(*b*) if it is not possible to effect service, cause the Minister to be notified accordingly, stating the reason for the non-service.

(7) A person served under this section with a document is not under any obligation under the law of the State to comply with any requirement in it.

(8) A document requiring a person to appear as a defendant in criminal proceedings in a designated state may not be served under this section unless an assurance is given by the requesting authority concerned that, if the person so appears, he or she will not, subject to *subsection (10)*, be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in that state in respect of any conduct taking place before his or her departure from the State, other than conduct constituting the offence or offences specified in the document.

(9) A document requiring a person to attend as a witness in criminal proceedings in a designated state may not be served under this section unless an assurance is given by the requesting authority concerned that, if the person so attends, he or she will not, subject to *subsection (10)*, be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in that state in respect of any offence committed before his or her departure from the State.

(10) The immunity provided for in *subsections (8)* and *(9)* ceases when—

(*a*) a period of at least 15 days has elapsed from the date when the person's presence in the designated state is no longer required by the judicial authorities concerned and the person, having had an opportunity to leave the designated state during that period, has not done so, or

(*b*) the person, having left the state during that period, returns to it.

(11) The notice to accompany a document served under this section shall—

(*a*) state the content of *subsection (7)*, *(8)* or *(9)*, as appropriate, and *subsection (10)*,

(*b*) indicate that the person on whom the document is served may wish to seek advice as to the possible consequences of failure to comply with it under the law of the state where it was issued, and

(*c*) indicate that under that law the person may not, as a defendant or witness, have the same rights and privileges as he or she would have in that capacity in criminal proceedings in the State.

(12) If there is reason to believe that the person understands only a language or languages other than Irish or English, the notice shall be translated into that other language or one of those other languages.

Chapter 2

Examining objects and sites

Examining objects and sites.

83.— (1) A request for the examination of an object or site in a designated state for the purposes of a criminal investigation or criminal proceedings may be sent by the Director of Public Prosecutions either to the Central Authority for transmission to the appropriate authority in the designated state or directly to that authority.

(2) A request from a designated state for the examination of an object or site for such purposes may be sent by the Minister to the Commissioner of the Garda Síochána to arrange for the request to be complied with.

(3) A request under this section shall include a description of the object or site that is sufficient to enable it to be clearly identified.

(4) *Section 74* shall apply and have effect in relation to such a request from a designated state with the modification that, where necessary, a warrant may be issued under *subsection (8)* of that section requiring the owner or occupier of the object or site to allow access to it by a member of the Garda Síochána and such other persons as may accompany the member for the purposes of the examination and with any other necessary modifications.

(5) *Subsection (4)* is without prejudice to *section 97.*

Chapter 3

Restitution

Restitution of stolen property from designated state.

84.— (1) An order under paragraph (i) of section 56 (orders for restitution) of the Criminal Justice (Theft and Fraud Offences) Act 2001 may be made by the court by or before which a person is convicted in relation to property in a designated state.

(2) The return of property to its owner in accordance with such an order does not prejudice the rights of any *bona fide* third parties in relation to it.

(3) The Central Authority, on the application of the person entitled under the order to recover the property, shall send a copy of the order to the person or body in the designated state appearing to it to have the function of dealing with a request for the restitution of the property concerned.

(4) The request shall be accompanied by a document provided by the applicant containing—

(*a*) a statement that—

(i) a specified person obtained the property concerned by committing an offence under the law of the State, and

(ii) the return of the property to its owner does not prejudice the rights of any *bona fide* third parties in relation to it,

and

(*b*) the following information:

(i) a description of the property;

(ii) its location;

(iii) the name and address of its owner; and

(iv) any other information likely to facilitate compliance with the request.

Request to State for restitution of stolen property.

85.— (1) This section applies to a request for property obtained by criminal means to be placed at the disposal of the requesting authority with a view to the return of the property to its owner.

(2) The request shall be in writing and shall include or be accompanied by—

(*a*) a statement that—

(i) a specified person has obtained the property by committing an offence under the law of the requesting state, and

(ii) the return of the property to its owner does not prejudice the rights of any *bona fide* third parties in relation to it,

and

(*b*) the following information:

(i) a description of the property;

(ii) its location;

(iii) the name and address of its owner; and

(iv) any other information likely to facilitate compliance with the request.

Action on request.

86.— (1) On receipt of the request the Minister may, if of opinion that the request complies with *section 85*, cause an application to be made to the District Court for an order under *section 87* in relation to the property.

(2) The Court shall provide for notice of the application to be given to any person who appears to be or is affected by such an order unless the Court is satisfied that it is not reasonably possible to ascertain the person's whereabouts.

Order for restitution.

87.— (1) On application by or on behalf of the Minister, the District Court may, if satisfied—

(*a*) that *sections 85* and *86(2)* have been complied with, and

(*b*) that the property concerned is in the possession or control of a specified person,

order that person to deliver the property to the member in charge of the Garda Síochána station named in the application.

(2) The Central Authority shall arrange for the delivery of the property to the requesting authority with a view to the return of the property to its owners.

(3) An order may also be made by the District Court under this section for the delivery of property which is in the custody of the Garda Síochána.

(4) An order under this section may not be made—

(*a*) where the property is required as evidence in civil or criminal proceedings, or

(*b*) unless an opportunity has been given to any person claiming to own, or have an interest in, the property to show cause why the order should not be made.

(5) A person who does not comply with an order under this section is guilty of an offence and liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(6) The jurisdiction of the District Court under this section may be exercised—

(*a*) by the judge of that Court assigned to the district court district in which the property is located, or

(*b*) if the property is located in more than one district court district, by a judge of that Court assigned to any one of those districts.

Chapter 4

Controlled deliveries

Interpretation (*Chapter 4*).

88.— (1) In this Chapter—

"competent authority in a designated state", in relation to a request for a controlled delivery to or from a designated state, means a person or body in that state appearing to the Competent Authority in the State to have the function of receiving or making the request;

"Competent Authority in the State", in relation to a request for a controlled delivery to or from a designated state, means—

(*a*) the Commissioner of the Garda Síochána or a member of the Garda Síochána authorised by him or her for the time being to exercise his or her functions under this Chapter, or

(*b*) if the controlled delivery is concerned with a revenue offence, the Revenue Commissioners or a person authorised by them for the time being to exercise their functions under this Chapter;

"controlled delivery" means a delivery permitted in the State in accordance with this Chapter or in a designated state in accordance with the relevant international instrument for the purposes of an investigation into an offence;

"controlled drug" has the meaning given to it by section 2 of the Misuse of Drugs Act 1977;

"offence" includes an offence which is suspected, with reasonable cause, to have been or to be about to be committed.

(2) F92**[**...**]**

Annotations

Amendments

F92 Repealed (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 36(a), S.I. No. 11 of 2016.

Controlled delivery in designated state.

89.— (1) The Competent Authority in the State may request the competent authority in a designated state to permit—

(*a*) a controlled delivery to be made in that state, and

(*b*) specified persons or persons of a specified description, including members of the Garda Síochána and officers of customs and excise, to participate in the operations connected with the delivery.

(2) The request shall include particulars of the offence with which the controlled delivery is concerned.

Controlled delivery in State.

90.— (1) This section applies to a request to the Competent Authority in the State from a competent authority in a designated state to permit—

(*a*) a controlled delivery to be made in the State, and

(*b*) specified persons, or persons of a specified description, from the designated state to participate in the operations connected with the controlled delivery.

(2) The request shall include particulars of the offence with which the controlled delivery is concerned.

(3) The Competent Authority in the State may grant the request if satisfied that—

(*a*) the controlled delivery is being made for the purposes of an investigation into an offence, or

(*b*) there are reasonable grounds for believing that it is in the public interest, having regard to the benefit likely to accrue to the investigation, to permit the delivery to take place.

(4) The operations related to a controlled delivery shall, if the delivery is concerned with the illegal importation of controlled drugs, be regulated in accordance with—

(*a*) the Memorandum of Understanding of 12 January 1996 concerning the relationship between the Customs and Excise Service of the Revenue Commissioners and the Garda Síochána with respect to Drugs Law Enforcement and agreed between the Commissioner of the Garda Síochána and the chairman of the Revenue Commissioners, and

(*b*) the Operational Protocol for co-operation between An Garda Síochána, the Customs and Excise and the Naval Service in relation to Drugs Law Enforcement,

including any modifications or extensions of the Memorandum or Protocol for the time being in force.

(5) If the delivery is concerned with a revenue offence (other than an offence constituted by the illegal importation of controlled drugs), the operations shall be under the direction and control of the officers of customs and excise assigned to the delivery.

(6) If the delivery is concerned with any other offence, the operations shall be under the direction and control of the members of the Garda Síochána so assigned.

(7) A member of the Garda Síochána or officer of customs and excise participating in operations connected with a controlled delivery in the State may, at the request of a person from a designated state so participating, take such action as may be open to the member or officer in furtherance of the operations.

(8) Copies of the Memorandum of Understanding and Operational Protocol have been placed in the Oireachtas Library.

Amendment of Garda Síochána Act 2005.

91.— Section 51 (International Service) of the Garda Síochána Act 2005 is amended—

(*a*) in subsection (2)(a), by the deletion of "State, or" and the substitution of "State,", and

(*b*) by the substitution of the following subsections for subsections (b) and (c):

"(*b*) as members of a joint investigation team within the meaning of the Criminal Justice (Joint Investigation Teams) Act 2004, as amended by *section 96* of the *Criminal Justice (Mutual Assistance) Act 2008*,

(*c*) in connection with the making of a controlled delivery outside the State pursuant to a request under *section 89* of the said Act of 2008, or

(*d*) on secondment to an international organisation with the consent of the Minister.".

Application of Criminal Justice (Joint Investigation Teams) Act 2004 in relation to controlled deliveries.

92.— Sections 11 (Use of Information), 12 (Criminal Liability) and 13 (Civil Liability) of the Criminal Justice (Joint Investigation Teams) Act 2004 apply, with the necessary modifications, in relation to a person participating in operations connected with a controlled delivery as they apply in relation to a member or seconded member of a joint investigation team within the meaning of that Act.

PART 7

Mutual Assistance in Criminal Matters Between the State and the United States of America

Definitions (*Part 7*).

93.— In this Part—

"Article" means an Article of the Ireland-US Treaty;

"Explanatory Note" means the Explanatory Note which—

(*a*) is annexed to the Council Decision of 6 June 2003 concerning the signature of the Agreements between the European Union and the United States of America on extradition and mutual assistance in criminal matters, and

(*b*) records an understanding between the European Union and the United States of America on the EU - US Agreement;

"Instrument" means the Instrument contemplated by Article 3(2) of the EU - US Agreement as to the application of the US - Ireland Treaty and done at Dublin on 14 July 2005;

"EU - US Agreement" means the Agreement on Mutual Legal Assistance between the European Union and the United States of America, done at Washington D.C. on 25 June 2003;

"Ireland - US Treaty" means the Treaty between the Government of Ireland and the Government of the United States of America on Mutual Assistance in Criminal Matters, done at Washington D.C. on 18 January 2001, as applied by the Instrument.

Application in State of Ireland - US Treaty.

94.— (1) The Ireland - US Treaty has the force of law in its application in relation to the State.

(2) Judicial notice shall be taken of the Treaty.

(3) For the purpose of giving full effect to the Treaty, the relevant provisions of this Act relating to requests for mutual legal assistance between the State and member states, including those relating to applications to courts or judges—

(*a*) to make orders to give effect to or enforce compliance with requests for such assistance, and

(*b*) to make, vary or discharge those orders,

have also effect, subject to the Treaty, in relation to requests for mutual legal assistance between the State and the United States of America, where necessary for that purpose and with the necessary modifications; in particular, for that purpose the reference in Article 16 *bis* 4 to money laundering and terrorist activity include, respectively, an offence under F93**[**Part 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010**]**, and an offence under section 6 of the Criminal Justice (Terrorist Offences) Act 2005.

(4) Section 7 (operation of joint investigation teams) of the Criminal Justice (Joint Investigation Teams) Act 2004 applies in relation to a joint investigation team established under Article 16 *ter* and operating in the State as if it were a joint investigation team established under that Act.

F94**[**(5) Article 7, in its application in relation to the use of personal data contained in evidence or information obtained under the Treaty by a person in the State, is without prejudice to the application of—

(a) subject to section 8 of the Act of 2018, section 7 (duty of care owed by data controllers and data processors) of the Act of 1988 in respect of the use of such data (within the meaning of the Act of 1988), and

(b) Part 5 of the Act of 2018, in respect of the use of such data (within the meaning of that Part).

(6) (a) Subject to section 8 of the Act of 2018, the Data Protection Acts 1988 and 2003 apply in relation to personal data referred to in *subsection (5)(a)*, in respects other than those related to their use.

(b) Part 5 of the Act of 2018 applies in relation to personal data referred to in *subsection (5)(b)*, in respects other than those related to their use.**]**

(7) A court may consider—

(*a*) the Explanatory Note when interpreting any provision of the EU - US Agreement, and

(*b*) the Note and Agreement when interpreting any provision of the Treaty,

and give them such weight as is appropriate in the circumstances.

F95**[**(8) In this section—

"Act of 1988' means the Data Protection Act 1988;

"Act of 2018" means the Data Protection Act 2018.**]**

Annotations

Amendments

F93 Substituted (15.07.2010) by *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* (6/2010), s. 118, S.I. No. 342 of 2010.

F94 Substituted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 208(c)(i), S.I. No. 174 of 2018.

F95 Inserted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 208(c)(ii), S.I. No. 174 of 2018.

F96[PART 7A

Special Intervention Units]

Annotations

Amendments

F96 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 31, S.I. No. 11 of 2016.

F97[Interpretation

94A.— In this Part—

"competent authority", in relation to the State, means the Minister and, in relation to a member state, means the authority designated by that member state to be the competent authority of that member state for the purposes of the 2008 Council Decision (special intervention units);

"crisis situation" means any situation in which the competent authority or the competent authority of a member state has reasonable grounds to believe that, as a result of a criminal offence, there exists a serious direct physical threat to persons, property, infrastructure or institutions in the State or in that member state;

"special intervention unit"—

(*a*) if and when operating in a member state, has the meaning assigned to it by *section 94B*,

(*b*) if and when operating in the State, means a special intervention unit consisting of a law enforcement unit of another member state which is specialised in the control of a crisis situation.]

Annotations

Amendments

F97 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 31, S.I. No. 11 of 2016.

F98[Special intervention unit

94B.— For the purpose of providing assistance under *section 94E*, the Garda Commissioner may establish a special intervention unit, where required for the control of a crisis situation, from such members of the Garda Síochána as the Garda Commissioner considers appropriate.]

Annotations

Amendments

F98 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 31, S.I. No. 11 of 2016.

F99**[**Request to member state for assistance of special intervention unit in dealing with crisis situation

94C.— (1) Where the competent authority is satisfied that—

(*a*) as a result of the commission of a criminal offence, a crisis situation exists in the State, and

(*b*) there are reasonable grounds for believing that it is in the public interest to seek the assistance of a special intervention unit from a member state, and

(*c*) the Government has agreed to the request for the assistance of a special intervention unit,

the competent authority may request the competent authority of that member state to provide the assistance of a special intervention unit in accordance with the 2008 Council Decision (special intervention units).

(2) A request under *subsection (1)* shall specify the following:

(*a*) the competent authority making the request;

(*b*) the nature of the crisis situation;

(*c*) the criminal offence giving rise to the crisis situation;

(*d*) the nature and form of the assistance requested;

(*e*) the operational necessity for the assistance requested; and

(*f*) the expected period for which the assistance is required.

(3) The competent authority shall furnish to the other competent authority such other information (if any) as would reasonably be required by that authority to decide whether or not to agree to provide the assistance sought.

(4) Where the requested competent authority accedes to the request, the competent authority may, subject to this Chapter, agree with that authority the form of assistance required including—

(*a*) the provision of equipment,

(*b*) the provision of expertise,

(*c*) the assistance in the State of a special intervention unit of the member state concerned.**]**

Annotations

Amendments

F99 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 31, S.I. No. 11 of 2016.

F100[Request to State for assistance of special intervention unit in dealing with crisis situation

94D.— (1) In accordance with the 2008 Council Decision (special intervention units), the competent authority shall consider a request for assistance in dealing with a crisis situation received from the competent authority of a member state.

(2) A request under *subsection (1)* shall specify the following:

(*a*) the competent authority making the request;

(*b*) the nature of the crisis situation;

(*c*) the criminal offence giving rise to the crisis situation;

(*d*) the nature and form of the assistance requested;

(*e*) the operational necessity for the assistance requested; and

(*f*) the expected period for which the assistance is required.

(3) The competent authority may seek from the requesting competent authority such other information (if any) as would reasonably be required to decide whether or not to agree to provide the assistance sought.

(4) Where the competent authority accedes to the request for assistance, the competent authority may, subject to Government approval, agree with the requesting competent authority the form of assistance including:

(*a*) equipment;

(*b*) expertise;

(*c*) assistance in the member state of a special intervention unit established under *section 94B*.**]**

Annotations

Amendments

F100 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 31, S.I. No. 11 of 2016.

F101[Operation of special intervention unit

94E.— (1) A special intervention unit formed under *section 94B* shall be established for a specific purpose and a limited period of time which may be extended, if the circumstances so require, for such period or periods as may be agreed by the competent authority and the other competent authority concerned.

(2) Notwithstanding *subsection (1)*, the competent authority may terminate the provision of assistance when—

(*a*) the purpose for which the assistance was agreed has been served, or

(*b*) no further benefit is likely to accrue from the continued operation of the special intervention unit.

(3) Subject to *subsection (1)*, a special intervention unit may operate in the State or in a member state, as the case may be, for so long as it is necessary to do so for the purpose of dealing with the crisis situation for which the unit was established.

(4) A special intervention unit operating in the State shall do so in a supporting capacity to the law enforcement authorities of the State and shall operate—

(*a*) under the responsibility, authority and direction of the Garda Commissioner,

(*b*) in accordance with the law of the State, and

(*c*) within the limits of the powers conferred on the unit under the national law of the member state concerned.**]**

Annotations

Amendments

F101 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 31, S.I. No. 11 of 2016.

F102[PART 7B

Assistance in Criminal Matters between State and EPPO

Chapter 1

General]

Annotations

Amendments

F102 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F103[Application of Part

94F.—(1) This Part shall apply to the provision of assistance in criminal matters between the State and EPPO.

(2) This Part shall apply to EPPO requests whether made before, on or after the coming into operation of section 52 of the Criminal Justice (Miscellaneous Provisions) Act 2023.

(3) Where, before the coming into operation of section 52 of the Criminal Justice (Miscellaneous Provisions) Act 2023, EPPO has sought assistance from the State, the seeking of such assistance shall, for the purposes of this Part, be deemed—

(*a*) to be an EPPO request,

(*b*) to have been made in accordance with this Act, and

(*c*) subject to *subsection (4)*, to have been received by the State on the coming into operation of that section.

(3) Where assistance referred to in *subsection (3)* involves—

(*a*) the notification of the Minister as referred to in *subsection (1)(d)* of *section 27*, *subsection (2)* of that section shall apply as if "and at the latest within a period specified in *subsection (7)*," was deleted, and

(*b*) an external freezing order, *section 35(3)* shall apply as if "and, whenever practicable, within 24 hours of receipt of the order and a duly completed certificate" was deleted.**]**

Annotations

Amendments

F103 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F104[Cooperation with EPPO

94G.—(1) The State shall cooperate with EPPO in respect of EPPO requests.

(2) An EPPO request and a request to EPPO by the State may be made under this Act, notwithstanding that such requests are not made in accordance with the provisions of an international instrument.

(3) Where the State has received a request in accordance with a relevant international instrument from a member state that is a relevant EPPO member state, the Minister may, notwithstanding the purposes permitted by the relevant international instrument, permit the evidence and information obtained in the State in compliance with the request, to be shared by the member state with EPPO.

(4) Where the State has received a request referred to in *subsection (3)*, assistance shall not be refused solely on the ground that evidence or information regarding the request is to be provided by the State to EPPO.**]**

Annotations

Amendments

F104 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F105[Modification of references for purposes of Part (general)

94H.—For the purposes of this Part a reference in this Act—

(*a*) to a member state shall, subject to *paragraph (b)*, unless the context otherwise requires, be construed as a reference to a relevant EPPO member state,

(*b*) to a request from a member state shall be construed as a reference to an EPPO request,

(*c*) to an assurance by a requesting authority shall, subject to *section 94AG* and *paragraph (c)* of *section 94AQ*, be construed as a reference to an assurance by—

(i) EPPO, or

(ii) the relevant EPPO member state in which EPPO is conducting a criminal investigation or criminal proceedings that are the subject of an EPPO request,

(*d*) to an order, an interception order, a warrant or a document being issued, or made, by EPPO shall be construed as including a reference to an order, an interception order, a warrant or a document, as the case may be, being issued, or made, by the relevant EPPO member state on the request of EPPO, and,

(*e*) to the law of the designated state shall—

(i) in *section 15(2)(c)(iv)*, be construed as a reference to the law of the relevant EPPO member state,

(ii) in *section 17(3)(a)*, be construed as a reference to the law of the relevant EPPO member state, and

(iii) in *section 66(5)*, be construed as a reference to the law of the relevant EPPO member state.**]**

Annotations

Amendments

F105 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F106**[**Chapter 2

Modification of Part 1 *for purposes of Part***]**

Annotations

Amendments

F106 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F107**[**Application of *section 2* for purposes of Part

94I.—For the purposes of this Part, *section 2(1)* shall apply subject to the following and any other necessary modifications:

(*a*) in the definition of "criminal conduct", *paragraph (b)* shall be construed as if the following paragraph were substituted for that paragraph:

"(*b*) which occurs in a state (other than the State) and would, if it occurred in the State, constitute an offence;",

(*b*) in the definition of "criminal investigation", *paragraph (a)* shall be construed as if the following paragraph were substituted for that paragraph:

"(*a*) means an investigation conducted by EPPO, and",

(*c*) the definition of "criminal proceedings" shall apply as if *paragraph (d)* was deleted,

(*d*) in the definition of "offence"—

(i) *paragraph (a)* shall be construed as if the following paragraph were substituted for that paragraph:

"(*a*) means an offence in respect of which an EPPO request may be made,",

and

(ii) in *paragraph (b)*, as if "if or to the extent that the relevant international instrument or the law of the designated state concerned provides for mutual assistance in respect of such an offence," was deleted,

and

(*e*) in the definition of "requesting authority"—

(i) *paragraph (a)* shall be construed as if the following paragraph were substituted for that paragraph:

"(*a*) EPPO, or",

and

(ii) in *paragraph (b)*, the reference to any other authority in that state shall be construed as a reference to any person.**]**

Annotations

Amendments

F107 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F108**[**Application of *section 3* for purposes of Part

94J.—For the purposes of this Part, *section 3* shall apply subject to the following and any other necessary modifications—

(*a*) as if *paragraph (c)* of *subsection (1)* was deleted, and

(*b*) a reference in *subsection (1)* to specified in the relevant international instrument shall be construed as a reference to specified in or under this Act.**]**

Annotations

Amendments

F108 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F109**[**Application of *section 6* for purposes of Part

94K.—For the purposes of this Part, *section 6* shall be construed as if the following section were substituted for that section:

"**6.** (1) Subject to the provisions of this Act concerning particular requests and such matters as may be provided for in *Part 7B* Regulations (if any), an EPPO request shall—

(*a*) be addressed to the Central Authority,

(*b*) be in writing or in any form capable of producing a written record under conditions allowing its authenticity to be established, and

(*c*) if not in the Irish, or English, language, be accompanied by a translation into either of those languages.

(2) The Minister may—

(*a*) accept an EPPO request and any supporting or related documents as evidence of the matters mentioned in them unless he or she has information to the contrary,

(*b*) seek such additional information from EPPO as may be necessary to enable a decision to be taken on an EPPO request, and

(*c*) accept a request from EPPO and treat the request as an EPPO request notwithstanding that the request is expressed as a request made in accordance with a relevant international instrument.

(3) Action on an EPPO request may be postponed by the Minister if the action would prejudice criminal proceedings or a criminal investigation.

(5) Reasons shall be given for any such refusal or postponement.

(6) The Minister shall inform EPPO of any circumstances that make it impossible to comply with an EPPO request or are likely to significantly delay compliance.".**]**

Annotations

Amendments

F109 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F110**[**Application of *section 7* for purposes of Part

94L.—For the purposes of this Part, *section 7* shall apply subject to the modification (and any other necessary modifications) that a reference in that section to the designated state concerned or the designated state shall be construed as a reference to EPPO.**]**

Annotations

Amendments

F110 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F111**[**Application of *section 8* for purposes of Part

94M.—For the purposes of this Part, *section 8* shall apply subject to the modification that the reference in *subsection (2)* to the function of co-operating, in accordance with the relevant international instrument, with corresponding persons or bodies in designated states shall be construed as including a reference to co-operating with EPPO as referred to in *section 94G(1)*.**]**

Annotations

Amendments

F111 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F112**[**Application of *section 9* for purposes of Part

94N.—For the purposes of this Part, *section 9* shall apply subject to the following and any other necessary modifications—

(*a*) a reference to—

(i) a competent authority, and

(ii) a competent authority in a designated state,

shall be construed as a reference to EPPO,

(*b*) in *subsection (1)*, as if "in accordance with the relevant international instrument and" was deleted,

(*c*) as if *subsections (3)* and *(5)* were deleted, and

(*d*) in *subsection (4)*, as if the "pursuant to the relevant international instrument" was deleted.**]**

Annotations

Amendments

F112 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F113**[**Chapter 3

Modification of Part 2 *for purposes of Part***]**

Annotations

Amendments

F113 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F114**[**Application of *section 14* for purposes of Part

94O.—For the purposes of this Part, *section 14* shall apply subject to the following and any other necessary modifications—

(*a*) in *subsection (1)*, the reference to a competent authority in that state shall be construed as a reference to EPPO,

(*b*) in *subsection (2)*, the reference to a competent authority in a designated state shall be construed as a reference to EPPO,

(*c*) in *subsection (4)*, a reference—

(i) to the competent authority shall be construed as a reference to EPPO, and

(ii) to the relevant international instrument shall be construed as a reference to EPPO,

and

(*d*) in *subsection (5)*, the reference to—

(i) the competent authority, and

(ii) the authority,

shall be construed as a reference to EPPO.**]**

Annotations

Amendments

F114 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F115**[**Application of *section 17* for purposes of Part

94P. For the purposes of this Part, *section 17* shall apply (subject to the modification in *section 94H(e)(ii)* and any other necessary modifications) as if *subsection (3)(c)* was deleted.**]**

Annotations

Amendments

F115 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F116[Application of *section 20* for purposes of Part

94Q.—For the purposes of this Part, *section 20* shall apply subject to the modification (and any other necessary modifications) that the reference in *subsection (2)* to the competent authority in the designated state concerned shall be construed as a reference to EPPO.]

Annotations

Amendments

F116 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F117[Chapter 4

Modification of Part 3 *for purposes of Part*]

Annotations

Amendments

F117 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F118[Application of *section 24* for purposes of Part

94R.—For the purposes of this Part, *section 24* shall apply subject to the following and any other necessary modifications—

(*a*) in *subsection (1)*—

(i) in *paragraph (b)*, the reference to issued in the member state shall be construed as a reference to issued by EPPO, and

(ii) in *paragraph (c)*, a reference to a competent authority in a member state shall be construed as a reference to EPPO,

(*b*) in *subsection (1)(d)(i)*, the reference to the competent authority in the former member state shall be construed as a reference to EPPO, and

(*c*) in *subsection (2)*—

(i) as if *paragraph (a)* was deleted, and

(ii) in *paragraph (g)*, as if "pursuant to Article 20(2)(a) of the 2000 Convention" was deleted.]

Annotations

Amendments

F118 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F119[Application of *section 25* for purposes of Part

94S.—For the purposes of this Part, *section 25* shall apply subject to the following and any other necessary modifications—

(*a*) in *subsection (2)(b)(ii)*, the reference to the member state shall be construed as a reference to EPPO,

(*b*) in *subsection (3)(a)*, the reference to the requesting state shall be construed as a reference to the relevant EPPO member state,

(*c*) in *subsection (6)*, a reference to a competent authority in the member state shall be construed as a reference to EPPO, and

(*d*) as if the following subsection were substituted for *subsection (7)*:

"(7) In considering a request for a transcript of a recording to which this section applies, the Minister shall have regard to all the circumstances of the particular case, and may make the granting of such a request subject to any condition to which authorisation of the interception may be subject.".**]**

Annotations

Amendments

F119 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F120[Application of *section 27* for purposes of Part

94T.—For the purposes of this Part, *section 27* shall apply subject to the following and any other necessary modifications—

(*a*) a reference to—

(i) a competent authority, and

(ii) a competent authority in a member state,

shall be construed as a reference to EPPO, and

(*b*) in *subsection (1)*, as if the following paragraph were substituted for *paragraph (d)*:

"(*d*) EPPO notifies the Minister accordingly.".**]**

Annotations

Amendments

F120 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F121[Application of *section 28* for purposes of Part

94U.—For the purposes of this Part, *section 28* shall apply subject to the modification (and any other necessary modifications) that the reference in *subsection (3)(b)* to issued in the member state shall be construed as a reference to issued by EPPO.**]**

Annotations

Amendments

F121 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F122**[**Chapter 5

Modification of Part 4 *for purposes of Part***]**

Annotations

Amendments

F122 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F123**[**Modification of reference to competent authority

94V.—For the purposes of this Part, a reference in *Part 4* to—

(*a*) a competent authority in a designated state shall be construed as if "in a designated state" was deleted, and

(*b*) a competent judicial authority in the designated state, shall be construed as a reference to EPPO.**]**

Annotations

Amendments

F123 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F124**[**Application of *section 31* for purposes of Part

94W.—For the purposes of this Part, *section 31* shall apply subject to the following and any other necessary modifications:

(*a*) as if the following were substituted for the definition of "competent authority":

""competent authority" means EPPO;",

(*b*) in the definition of "external freezing order", as if the following paragraph were substituted for *paragraph (a)*:

"(*a*) taken provisionally by EPPO in criminal proceedings to prevent the destruction, transformation, moving, transfer, disposal or use of specified property in the State that could be subject to confiscation or be evidence in those proceedings, and",

and

(*c*) as if the following were substituted for the definition of "issuing state":

""issuing state" means EPPO;".**]**

Annotations

Amendments

F124 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F125[Application of *section 34* for purposes of Part

94X.—For the purposes of this Part, *section 34* shall apply subject to the following and any other necessary modifications:

(*a*) *subsection (1)* shall be construed as if the following were substituted for that subsection:

"1) A request from EPPO for the enforcement of an external freezing order shall be accompanied by—

(*a*) a duly certified copy of the order, and

(*b*) a statement of the grounds for the making of the order.",

(*b*) as if *subsection (2)* was deleted,

(*c*) *subsection (3)* shall apply as if the reference therein to *subsection (2)* was deleted,

(*d*) in *subsection (4)*, the reference to an issuing judicial authority shall be construed as a reference to EPPO, and

(*e*) in *subsection (5)*, the reference to—

(i) the issuing judicial authority, and

(ii) that judicial authority,

shall be construed as a reference to EPPO.**]**

Annotations

Amendments

F125 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F126[Application of *section 35* for purposes of Part

94Y.—For the purposes of this Part, *section 35* shall apply subject to the following and any other necessary modifications:

(*a*) in *subsection (2)*, as if "and, in the case of a designated state (other than a member state), shall be made with the consent of the Minister" was deleted,

(*b*) in *subsection (3)*, the reference to a member state shall be construed as reference to EPPO,

(*c*) as if *subsection (6)* was deleted, and

(*d*) in *subsection (7)(c)*, the reference to the issuing judicial authority shall be construed as a reference to EPPO.**]**

Annotations

Amendments

F126 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F127[Application of *section 42* for purposes of Part

94Z.—For the purposes of this Part, *section 42(2)* shall apply subject to the following and any other necessary modifications:

(*a*) as if "subject to any provision to the contrary in the relevant international instrument," was deleted, and

(*b*) the reference to the designated state concerned shall be construed as a reference to EPPO.**]**

Annotations

Amendments

F127 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F128[Application of *section 45* for purposes of Part

94AA.—For the purposes of this Part, *section 45(5)* shall apply subject to the modification (and any other modifications) that the reference to the issuing judicial authority shall be construed as a reference to EPPO.**]**

Annotations

Amendments

F128 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F129[Application of *section 46* for purposes of Part

94AB.—For the purposes of this Part, *section 46* shall apply subject to the following and any other necessary modifications:

(*a*) in *subsection (1)*—

(i) as if *paragraphs (a)* and *(b)* were deleted, and

(ii) in *paragraph (d)*, as if "in a certificate" was deleted,

(*b*) as if *subsection (2)* was deleted, and

(*c*) in *subsection (3)*—

(i) the reference to—

(I) the issuing judicial authority concerned, and

(II) the judicial authority,

shall be construed as a reference to EPPO, and

(ii) in *subparagraph (i)*, as if "in the certificate" was deleted.**]**

Annotations

Amendments

F129 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F130[Application of *section 47* for purposes of Part

94AC.— For the purposes of this Part, *section 47(4)* shall apply subject to the modification (and any other modifications) that the reference to the issuing judicial authority shall be construed as a reference to EPPO.]

Annotations

Amendments

F130 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F131[Chapter 6

Modification of Part 5 *for purposes of Part*]

Annotations

Amendments

F131 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F132[Application of *section 62* for purposes of Part

94AD.—For the purposes of this Part, *section 62* shall apply subject to the following and any other necessary modifications—

(*a*) the definition of "*appropriate authority*" shall be construed as including the following paragraph after paragraph (a):

"(*ab*) EPPO, or",

and

(*b*) *subsection (6)* shall be construed as if "permitted by the relevant international instrument or" was deleted.]

Annotations

Amendments

F132 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F133[Application of *section 63* for purposes of Part

94AE.—For the purposes of this Part, *section 63(3)* shall apply as if (and with any other necessary modifications) "permitted by the relevant international instrument or" was deleted.]

Annotations

Amendments

F133 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F134[Application of *section 64* for purposes of Part

94AF.—For the purposes of this Part, *section 64(3)* shall apply subject to the modification (and any other necessary modifications) that the reference to a court in the state concerned shall be construed as a reference to a court in the relevant EPPO member state.**]**

Annotations

Amendments

F134 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F135[Application of *section 66* for purposes of Part

94AG.—For the purposes of this Part, *section 66(5)* shall apply subject to the modification (and any other necessary modifications) that the reference to an assurance by a requesting authority shall be construed as a reference to an assurance by the relevant EPPO member state in which EPPO is conducting a criminal investigation or criminal proceedings that are the subject of an EPPO request.**]**

Annotations

Amendments

F135 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F136[Application of *section 67* for purposes of Part

94AH.—For the purposes of this Part, *section 67* shall apply as if *subsection (10)* was deleted and subject to any other necessary modifications.**]**

Annotations

Amendments

F136 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F137[Application of *section 70* for purposes of Part

94AI.—For the purposes of this Part, *section 70* shall apply subject to the following and any other necessary modifications—

(a) in *subsection (3)*, the reference to the requesting state shall be construed as a reference to the relevant EPPO member state, and

(b) in *subsection (6)*, the reference to a judge of the designated state shall be construed as a reference to a judge of the relevant EPPO member state.**]**

Annotations

Amendments

F137 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F138[Application of *section 73* for purposes of Part

94AJ.—For the purposes of this Part, *section 73* shall apply subject to the following and any other necessary modifications—

(*a*) the definition of "appropriate authority" shall be construed as including the following paragraph after *paragraph (a)*:

"(*ab*) EPPO, or",

(*b*) in *subsection (1)*, as if ", in accordance with the relevant international instrument," was deleted, and

(*c*) in *subsection (6)*, as if "permitted by the relevant international instrument or" was deleted.**]**

Annotations

Amendments

F138 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F139[Application of *section 74* for purposes of Part

94AK.—For the purposes of this Part, *section 74* shall apply subject to the following and any other necessary modifications—

(*a*) as if *subsection (3)* was deleted, and

(*b*) in *subsection (5)(a)*, as if "permitted by the relevant international instrument or" was deleted.**]**

Annotations

Amendments

F139 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F140[Application of *section 75* for purposes of Part

94AL.—For the purposes of this Part, *section 75* shall apply subject to the following and any other necessary modifications—

(*a*) as if *subsection (3)* was deleted,

(*b*) in *subsection (4)*, a reference to that state shall be construed as a reference to the relevant EPPO member state, and

(*c*) in *subsection (6)(a)*, as if "permitted by the relevant international instrument or" was deleted.**]**

Annotations

Amendments

F140 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F141[Application of *section 78* for purposes of Part

94AM.—For the purposes of this Part, *section 78* shall apply subject to the following (and any other necessary) modification, as if the following paragraph were substituted for *paragraph (e)* of *subsection (1)*:

"(*e*) in the case of an EPPO request for the DNA profile of a person who is suspected of having committed the offence concerned whose DNA profile is not in the possession of the Garda Síochána—

(i) a warrant or order issued by EPPO or by an appropriate authority in the relevant EPPO member state on the request of EPPO requiring a person to have identification evidence, other than fingerprints, palm prints or photographs, taken from him or her for the purposes of a criminal investigation, or criminal proceedings, in that member state, or

(ii) a statement issued by EPPO or by an appropriate authority in the relevant EPPO member state on the request of EPPO confirming that the requirements for the taking of a DNA sample from the person under the law of the relevant EPPO member state would be complied with if the person were in that state.".**]**

Annotations

Amendments

F141 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F142[Application of *section 79* for purposes of Part

94AN.—For the purposes of this Part, *section 79* shall apply subject to the modification (and any other necessary modifications) that the reference in *subsection (10)* to the requesting state shall be construed as a reference to the relevant EPPO member state.**]**

Annotations

Amendments

F142 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F143[Application of *section 79A* for purposes of Part

94AO.—For the purposes of this Part, *section 79A* shall apply subject to the following (and any other necessary) modification, as if the following were substituted for *paragraph (a)* of *subsection (1)*:

"(*a*) is an EPPO request, and".**]**

Annotations

Amendments

F143 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F144[Application of *section 79C* for purposes of Part

94AP.—For the purposes of this Part, *section 79C* shall apply subject to the following and any other necessary modifications:

(*a*) a reference to a request made pursuant to Article 7 of 2008 Council Decision or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway designated state shall be construed as a reference to an EPPO request,

(*b*) in *subsection (2)*, as if *paragraph (d)* was deleted, and

(*c*) as if *subsection (8)* was deleted.**]**

Annotations

Amendments

F144 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F145[Chapter 7

Modification of Part 6 *for purposes of Part*]

Annotations

Amendments

F145 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F146[Application of *section 82* for purposes of Part

94AQ.—For the purposes of this Part, *section 82* shall apply subject to the following and any other necessary modifications—

(*a*) in *subsection (1)(b)*, the reference to a prosecuting authority shall be construed as including a reference to EPPO,

(*b*) a reference to issuing authority shall be construed as a reference to EPPO,

(*c*) in *subsections (8)* and *(9)*, the reference to that state shall be construed as a reference to the relevant EPPO member state,

(*d*) in *subsection (10)(a)*, the reference to judicial authorities shall be construed as including EPPO, and

(*e*) in *subsection (11)(b)*, the reference to law of the state where it was issued shall be construed as a reference to the law of the relevant EPPO member state.**]**

Annotations

Amendments

F146 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F147[Application of *section 83* for purposes of Part

94AR.—For the purposes of this Part, *section 83* shall apply subject to the modification (and any other necessary modifications) that a reference in *subsection (1)* to—

(*a*) the appropriate authority in the designated state, and

(*b*) that authority,

shall be construed as a reference to EPPO.**]**

Annotations

Amendments

F147 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F148[Application of *section 88* for purposes of Part

94AS.—For the purposes of this Part, *section 88* shall apply subject to the following and any other necessary modifications—

(*a*) in the definition of "competent authority in a designated state", the reference to a person or body in that state appearing to the Competent Authority in the State to have the function of receiving or making the request shall be construed as reference to EPPO, and

(*b*) in the definition of "controlled delivery", as if "in accordance with the relevant international instrument" was deleted.**]**

Annotations

Amendments

F148 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F149[Chapter 8

Modification of Part 8 *for purposes of Part*]

Annotations

Amendments

F149 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F150[Application of *section 97* for purposes of Part

94AT.—For the purposes of this Part, *section 97* shall apply subject to the following and any other necessary modifications, the reference in *subsection (1)* to—

(*a*) the designated state concerned, and

(*b*) a representative of the authority concerned in that state,

shall be construed as a reference to EPPO.**]**

Annotations

Amendments

F150 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F151**[**Application of *section 99* for purposes of Part

94AU.—For the purposes of this Part, *section 99* shall apply subject to the modification (and any other necessary modifications) that the reference to in accordance with the relevant international instrument shall be construed as a reference to with the consent of EPPO.**]**

Annotations

Amendments

F151 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F152**[**Application of *section 102* for purposes of Part

94AV.— For the purposes of this Part, *section 102* shall apply subject to the following and any other necessary modifications—

(*a*) in *subsection (1)(a)(ii)*, the reference to made or issued by a court, tribunal or authority in a designated state shall be construed as including a reference to made or issued by EPPO,

(*b*) in *subsection (4)*, the reference to certified by or on behalf of the court, tribunal or authority issuing it shall be construed as including a reference to certified by or on behalf of EPPO,

(*c*) in *subsection (5)*—

(i) in *paragraph (a)*, the reference to given by or on behalf of a court, tribunal or authority in a designated state shall be construed as including a reference to given by or on behalf of EPPO,

(ii) as if *paragraph (b)* was deleted, and

(iii) the reference to such a certificate or seal shall be construed as a reference to such certificate,

and

(*d*) as if *subsection (6)* was deleted.**]**

Annotations

Amendments

F152 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F153[Application of *section 103* for purposes of Part

94AW.—For the purposes of this Part, *section 103* shall apply subject to the following and any other necessary modifications—

(*a*) the reference to a competent authority in that state shall be construed as a reference to EPPO,

(*b*) in *subsection (1)*—

(i) as if "in accordance with the relevant international instrument" was deleted, and

(ii) as if "within the meaning of that instrument" was deleted,

and

(*c*) in *subsection (3)*, as if "having had regard to the provisions of the relevant international instrument" was deleted.**]**

Annotations

Amendments

F153 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

F154[Application of *section 104* for purposes of Part

94AX.—For the purposes of this Part, *section 104* shall apply (subject to any other necessary modifications) as if ", and shall if so required by the relevant international instrument," in *subsection (1)* was deleted.**]**

Annotations

Amendments

F154 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

PART 8

Miscellaneous

Exchange of information concerning terrorist offences between Europol, Eurojust and member states.

95.— (1) The national unit designated under the F155[Europol Act 2012] is deemed to be the specialised service within the Garda Síochána referred to in Article 2(1) of the 2005 Council Decision and has the functions assigned under that Article to such a service.

(2) The Minister may, in accordance with Article 2(2) of the 2005 Council Decision, designate an authority or authorities as the Eurojust national correspondent for terrorism matters, and any authority so designated has the functions assigned under that Article to such a correspondent.

F156[(3) The Minister may, in accordance with Article 20 of the 2018 Regulation, designate an authority or authorities as the Eurojust national correspondent or correspondents and, subject to *subsection (4)*, any authority so designated has the functions assigned under that Regulation to such a correspondent.

(4) Where the Minister designates more than one authority as a Eurojust national correspondent pursuant to *subsection (3)*, the Minister may specify the matter or

matters for which each national correspondent being designated shall have responsibility.

(5) Where the Minister designates more than one authority as a Eurojust national correspondent pursuant to *subsection (2)* or *(3)*, the Minister shall nominate one such correspondent to act as the correspondent with responsibility for the functioning of the Eurojust national coordination system in the State in accordance with Article 20(5) of the 2018 Regulation.**]**

Annotations

Amendments

F155 Substituted (1.02.2013) by *Europol Act 2012* (53/2012), s. 18, S.I. No. 15 of 2013.

F156 Inserted (12.12.2019) by *European Union (Eurojust) Regulations 2019* (S.I. No. 637 of 2019), reg. 5, in effect as per reg. 1(2).

F157**[**Eurojust national member

95A.— F158**[**(1)**]** The Minister may, in accordance with the F159**[**2018 Regulation**]**, designate an authority or authorities as the Eurojust national member who may transmit and receive information in accordance with F159**[**that Regulation**]**.**]**

F158**[**(2) The following persons or bodies shall, upon the request of the Eurojust national member, grant the member access to, or provide the member with the information contained in, the register or registers specified in *paragraphs (a)* to *(k)* in respect of the person or body concerned, in accordance with Article 9 of the 2018 Regulation, where such access or information is necessary for the performance by the member of the member's functions:

(*a*) the Commissioner of the Garda Síochána, in respect of registers held by the Garda Síochána relating to investigations, arrested persons and criminal records, including the Criminal Records Database and the database commonly known as PULSE;

(*b*) Forensic Science Ireland of the Department of Justice and Equality, in respect of the DNA Database System;

(*c*) the Director of Public Prosecutions, in respect of the case management system of the Office of the Director of Public Prosecutions;

(*d*) the Courts Service, in respect of court records;

(*e*) the Revenue Commissioners, in respect of the case management system of the Commissioners;

(*f*) the Criminal Assets Bureau, in respect of the case management system of the Bureau;

(*g*) the Central Authority, in respect of the case management system of the Authority;

(*h*) the Central Authority in the State (within the meaning of section 3(1C) of the Extradition Act 1965), in respect of the case management system of the Authority;

(*i*) the Garda Síochána Ombudsman Commission, in respect of the case management system of the Commission;

(*j*) the Director of Corporate Enforcement, in respect of the case management system of the Office of the Director of Corporate Enforcement;

(*k*) any other public authority, in respect of a register held by the authority.

(3) Section 31 of the Garda Síochána Act 2005 shall apply to the function of the Commissioner of the Garda Síochána under *subsection (2)(a)* and a reference in that section to a function under that Act or under a provision of that Act shall be construed as including a reference to the function of the Commissioner under *subsection (2)(a)*.

(4) *Subsection (2)* is without prejudice to an obligation or power to provide or request information under any other enactment or rule of law.

(5) In this section—

"Criminal Records Database" means the database maintained by the Garda Síochána that contains a record of convictions;

"public authority" means—

(*a*) a person or body established—

(i) by or under any enactment (other than the Companies Act 2014 or a former enactment relating to companies within the meaning of section 5 of that Act) or charter,

(ii) by any scheme administered by a Minister of the Government, or

(iii) under the Companies Act 2014, or a former enactment relating to companies within the meaning of section 5 of that Act, in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of money provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government,

or

(*b*) a company (within the meaning of Companies Act 2014), a majority of the shares in which are held by or on behalf of a Minister of the Government;

"register" has the meaning it has in the 2018 Regulation.**]**

Annotations

Amendments

F157 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 32, S.I. No. 11 of 2016.

F158 Inserted (12.12.2019) by *European Union (Eurojust) Regulations 2019* (S.I. No. 637 of 2019), reg. 6(a), (c), in effect as per reg. 1(2).

F159 Substituted (12.12.2019) by *European Union (Eurojust) Regulations 2019* (S.I. No. 637 of 2019), reg. 6(b), in effect as per reg. 1(2).

Editorial Notes:

E28 The section heading is taken from the amending section in the absence of one included in the amendment.

Application and amendment of Criminal Justice (Joint Investigation Teams) Act 2004.

96.— (1) The Criminal Justice (Joint Investigation Teams) Act 2004 applies and has effect, with the necessary modifications, as if references in it to another Member State or other such States included references to a designated state or states (other than a member state or states).

(2) Section 9 (participants in joint investigation teams) of the said Act of 2004 is amended—

(*a*) in *subsection (1)*, by the substitution of the following paragraph for paragraph (*d*):

"(*d*) one or more officers designated by an authority of a designated state (other than a Member State or part of such a State) within the meaning of the *Criminal Justice (Mutual Assistance) Act 2008*,"

and

(*b*) by the deletion of subsections (5) and (6).

Presence of representatives of requesting state at execution of request.

97.— (1) The Minister may, at the instance of the designated state concerned, authorise a representative of the authority concerned in that state (in this section referred to as "the representative") to be present at the place where its request is being executed by a member or members of the Garda Síochána.

(2) Such an authorisation may be subject to such conditions as the Minister may determine.

(3) The presence of the representative at any such place does not require the consent of the person affected by the execution of the request.

(4) The representative, while so present—

(*a*) shall be subject to the direction of the member or members executing the request,

(*b*) shall have access to the same places and objects (including documents) as that member or those members, and

(*c*) may be authorised to put or propose questions and suggest measures of investigation.

(5) The representative shall not disclose, in breach of the rights of the person affected by the execution of the request, confidential information resulting from his or her presence, except to any other such representative or representatives and to his or her authorities.

Presence of members of Garda Síochána at execution of request in designated state.

98.— Where a member of the Garda Síochána is authorised by the relevant authority in a designated state to be present at the execution of a request—

(*a*) the member shall not disclose, in breach of judicial confidentiality or the rights of the person affected by the execution of the request, information resulting from his or her presence, except to any other member, and

(*b*) any such information may not be admitted as evidence in any proceedings until a decision on transmission of the documents relating to execution has acquired the force of *res judicata* in the designated state.

Use of information or evidence obtained in response to request in designated state.

99.— Information or evidence obtained in response to a request by a court or the Director of Public Prosecutions may not be used for purposes other than those for which the request was made unless such use is in accordance with the relevant international instrument.

Disclosure prejudicing investigation.

100.— (1) Where a request is made in connection with a criminal investigation in the State or a designated state, any person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

(2) A person guilty of an offence under this section is liable—

(*a*) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(*b*) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

(3) In proceedings for an offence under this section it is a defence to prove that the defendant—

(*a*) did not know or suspect that the disclosure to which the proceedings relate was likely to prejudice the investigation concerned, or

(*b*) had lawful authority or reasonable excuse for making the disclosure.

Liability of officers of body corporate.

101.— (1) Where—

(*a*) an offence under this Act is committed by a body corporate, and

(*b*) it is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person who—

(i) was a director, manager, secretary or other similar officer of the body corporate, or

(ii) was purporting to act in any such capacity,

the person is guilty of an offence and liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts or defaults of a member in connection with the member's functions of management as if he or she were a director or manager of the body corporate.

(3) *Subsections (1)* and *(2)* apply, with the necessary modifications, in relation to offences under this Act committed by an unincorporated body.

Evidence in proceedings (general).

102.— (1) In any proceedings a document purporting—

(*a*) to be—

(i) a request or a supporting or related document,

(ii) an order made or warrant issued by a court, tribunal or authority in a designated state,

(iii) a record of the making or issue of such an order or warrant, or

(iv) a record of the date and mode of service of a document in a designated state,

and

(*b*) to be signed by or on behalf of the court or tribunal concerned or an authority appearing to be competent to do so,

is admissible, without further proof, as evidence of the matters mentioned in the document.

(2) In any proceedings a document purporting to—

(*a*) relate to—

(i) the identity of an item required as evidence in criminal proceedings or for the purposes of a criminal investigation,

(ii) the continuity of its custody, or

(iii) the integrity of its condition,

and

(*b*) to be signed by a person appearing to have responsibility for custody of the item,

is admissible, without further proof, as evidence of the matters mentioned in the document.

(3) In any proceedings a document purporting—

(*a*) to be a translation of a document mentioned in *subsection (1)* or *(2)* or of a statement or document mentioned in *section 62(8), 73(8)* or *77 (8)*, and

(*b*) to be certified as correct by a person appearing to be competent to do so,

is admissible, without further proof, as evidence of the translation.

(4) In any proceedings a document purporting to be a copy of a document mentioned in *subsection (1)* or *(2),* and—

(*a*) to be certified to be such a copy by or on behalf of the court, tribunal or authority issuing it or by an officer of the central authority of the state concerned, or

(*b*) to bear the seal of the court, tribunal or either such authority concerned,

is deemed to be a true copy of the document.

(5) In any proceedings a document purporting—

(*a*) to be a certificate given by or on behalf of a court, tribunal or authority in a designated state, or

(*b*) to bear the seal of such a court, tribunal or other authority,

is admissible, without further proof, as evidence of such a certificate or seal.

(6) In any proceedings a document purporting—

(*a*) to set out the text of a reservation or declaration under a relevant international instrument, and

(*b*) to be signed by an officer of the Department of Foreign Affairs,

is admissible, without further proof, as evidence of the reservation or declaration.

Provisional measures.

103.— (1) Where—

(*a*) criminal proceedings have been instituted, or a criminal investigation is taking place, in a designated state, and

(*b*) a competent authority in that state makes a request to the Minister, in accordance with the relevant international instrument, for the taking of provisional measures within the meaning of that instrument,

the Minister may cause an application to be made to the High Court for the grant of the requested measures.

(2) On such an application the High Court may grant provisional, including protective, measures of any kind that the Court has power to grant in proceedings that, apart from this section, are within its jurisdiction.

(3) The measures may be granted for such period, and subject to such conditions or limitations, as the Court, having had regard to the provisions of the relevant international instrument, may specify.

(4) The Court may refuse to grant the measures sought if, in its opinion, the fact that it has not jurisdiction, apart from this section, in relation to the subject matter of the proceedings concerned makes it inexpedient for it to grant such measures.

Recognition of third party rights.

104.— (1) A court, when having regard under this Act to the rights of third parties, may, and shall if so required by the relevant international instrument, recognise any decision relating to those rights made by a court or tribunal in the designated state concerned.

(2) Such recognition may be refused if—

(*a*) the third parties did not have an adequate opportunity to assert their rights,

(*b*) the decision is irreconcilable with a court decision already made in the State in regard to those rights, or

(*c*) it is contrary to public policy (*ordre public*).

Amendment of Criminal Justice Act 1994.

105.— The Act of 1994 is amended—

(*a*) in sections 3(1), 24 and 25, 28 to 30 and 65, by the substitution of "freezing order" for "restraint order",

(*b*) in section 30, by the substitution of "freezing" for "restraint",

(*c*) by the insertion of the following subsection after section 3(16):

"(16A) References in this Act (other than section 9) to an offence in respect of which a confiscation order might be made under section 9 of this Act shall be construed as references to an indictable offence (other than a drug trafficking offence), irrespective of whether a person has been convicted of it on indictment.",

(*d*) by the substitution of the following Table for the Table to section 19:

"

Amount outstanding under confiscation order	Period of imprisonment
Not exceeding €650	45 days
Exceeding €650 but not exceeding €1,300	3 months
Exceeding €1,300 but not exceeding €3,250	4 months
Exceeding €3,250 but not exceeding €6,500	6 months
Exceeding €6,500 but not exceeding €13,000	9 months
Exceeding €13,000 but not exceeding €26,000	12 months
Exceeding €26,000 but not exceeding €65,000	18 months
Exceeding €65,000 but not exceeding €130,000	2 years
Exceeding €130,000 but not exceeding €325,000	3 years
Exceeding €325,000 but not exceeding €1,300,000	5 years
Exceeding €1,300,000	10 years

",

(*e*) by the addition to Part IV of the following section:

"Revenue offence.

32A.— For the avoidance of doubt it is hereby declared that, in relation to an offence under the law of a country or territory other than the State, references in this Part to an offence shall be construed as including references to an offence in connection with taxes, duties, customs or exchange regulation.",

and

(*f*) in section 60, by the substitution of "restraint (including a freezing order)" for "restraint",

(*g*) by the substitution of the following section for section 63:

"Order to make material available.

63.— (1) For the purposes of an investigation into whether a person has engaged in criminal conduct or criminal proceedings in relation thereto, a member of the Garda Síochána may apply for an order under subsection (3) of this section in relation to any particular material or material of a particular description to a judge of the District Court for the district where the material is situated.

(2) On such an application the judge may make an order under subsection (3) of this section, if satisfied—

(*a*) that there are reasonable grounds for suspecting that the person has engaged in criminal conduct,

(*b*) that the material concerned is likely to be of substantial value (whether by itself or together with other material) for the purposes of such investigation or proceedings, and

(*c*) that there are reasonable grounds for believing that material should be produced or that access to it should be given, having regard to the benefit likely to accrue to the investigation or proceedings and any other relevant circumstances.

(3) An order under this subsection—

(*a*) shall require any person who appears to the judge to be in possession of the material—

(i) to produce it to a named member of the Garda Síochána so that he or she may take it away, or

(ii) to give the member access to it within 7 days, unless it appears to the judge that another period would be appropriate in the particular circumstances of the case,

(*b*) may, if the order relates to material at any place and on application by the member concerned, require any person who appears to the judge to be entitled to grant entry to the place to allow the member to enter it to obtain access to the material,

(*c*) shall authorise the member, if the person so required to grant entry to the place does not do so—

(i) to enter the place, accompanied by such other members or persons or both as the member thinks necessary, on production if so requested of the order and, if necessary, by the use of reasonable force,

(ii) to search the place and any persons present there,

(iii) to take away the material, and

(iv) to take such other steps as appear to the member to be necessary for preserving the material and preventing interference with it.

(4) Where the material consists of information contained in a computer, an order under subsection (3) of this section shall have effect as an order to produce the material, or to give access to it, in a form which is legible and comprehensible or can be made so and in which it can be taken away.

(5) Such an order—

(*a*) in so far as it may empower a member to take away a document or to be given access to it, shall authorise him or her to make a copy of it and to take the copy away,

(*b*) shall not confer any right to production of, or access to, any material subject to legal privilege, and

(*c*) subject to paragraph (*b*) of this subsection and subsection (10) of this section, shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise.

(6) Any material taken away by a member under this section may be retained by him or her for use as evidence in any proceedings.

(7) A judge of the District Court may at a sitting of the Court vary or discharge an order under this section on the application of a member or any person to whom the order relates.

(8) A member searching a place under the authority of an order under this section may—

(*a*) require any person present at the place where the search is being carried out to give his or her name and address to the member, and

(*b*) arrest without warrant any person who—

(i) obstructs or attempts to obstruct the member in the carrying out of his or her duties,

(ii) fails to comply with a requirement under paragraph (*a*) of this subsection, or

(iii) gives a name or address which the member has reasonable cause to believe is false or misleading.

(9) A person who—

(*a*) obstructs or attempts to obstruct a member acting under the authority of an order under this section,

(*b*) fails to comply with a requirement under subsection (3)(*a*) of this section, or

(*c*) gives a false or misleading name or address to a member,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(10) Where—

(*a*) material has been supplied to a Government department or other authority by or on behalf of the government of another state, and

(*b*) an undertaking was given that the material would be used only for a particular purpose or purposes,

an order under subsection (3) of this section shall not have the effect of requiring or permitting the production of, or the giving of access to, the material for any other purpose without the consent of that government.

(11) In this section—

"criminal conduct" means—

(*a*) drug trafficking,

(*b*) the commission of an indictable offence or more than one such offence,

(*c*) holding funds subject to confiscation,

(*d*) benefiting from—

(i) drug trafficking,

(ii) an indictable offence or more than one such offence,

(iii) assets or proceeds deriving from criminal conduct or the receipt or control of such assets or proceeds, including conduct which occurs outside the State and which would constitute an indictable offence or more than one such offence—

(I) if it occurred in the State, and

(II) if it constituted an offence or more than one such offence under the law of the state or territory concerned.".

Amendment of section 8(7) of Criminal Assets Bureau Act 1996.

106.— Section 8(7) of the Criminal Assets Bureau Act 1996 is amended by the deletion of "Any information" and the substitution of "Subject to section 5(1), any information".

Personal data protection.

107.— (1) The provisions of the relevant international instrument have effect in respect of the use of personal data communicated to or otherwise obtained by a person in the State under the instrument.

F160**[**(2) *Subsection (1)* is without prejudice to the application of—

(a) subject to section 8 of the Act of 2018, section 7 (duty of care owed by data controllers and data processors) of the Act of 1988 in respect of the use of such data (within the meaning of the Act of 1988), and

(b) Part 5 of the Act of 2018, in respect of the use of such data (within the meaning of that Part).

(3) (a) Subject to section 8 of the Act of 2018, the Data Protection Acts 1988 and 2003 apply in relation to personal data referred to in *subsection (2)(a)*, in respects other than those related to their use.

(b) Part 5 of the Act of 2018 applies in relation to personal data referred to in F161**[***subsection (2)(b)***]**, in respects other than those related to their use.**]**

F162**[**(4) This section is without prejudice to the application of Chapter 4 of Part 12 of the Act of 2014 to requests made or received under Chapter 3 of Part 5 pursuant to Article 7 of the 2008 Council Decision or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway.**]**

F163**[**(5) In this section—

"Act of 1988" means the Data Protection Act 1988;

"Act of 2018" means the Data Protection Act 2018.**]**

Annotations

Amendments

F160 Substituted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 208(d)(i), S.I. No. 174 of 2018.

F161 Substituted (4.09.2019) by *Criminal Justice (International Co-Operation) Act 2019* (27/2019), s. 8, S.I. No. 443 of 2019.

F162 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 136, S.I. No. 508 of 2015.

F163 Inserted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 208(d)(ii), S.I. No. 174 of 2018.

Exercise of powers by judge of District Court outside district court district.

108.— Section 32A of the Courts (Supplemental Provisions) Act 1961 applies, with any necessary modifications, in relation to the exercise by a judge of the District Court of a power conferred by *section 74(8), 75(9)* F164**[**, *79A(5)* or *(16)***]** or *87* of this Act or under subsection (2) of section 63 (as substituted by *section 105(g)* of this Act) of the Act of 1994.

Annotations

Amendments

F164 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 137, S.I. No. 508 of 2015.

Regulations.

109.— (1) Regulations may be made by the Minister for the purpose of enabling any provision of this Act, and of any of the following international instruments in their application to the State, to have full effect:

(*a*) a relevant international instrument;

(*b*) the EU - US Agreement, the Ireland - US Treaty, and the Instrument as to the application of that Treaty, as defined in *section 93*.

F165**[**(1A) Without prejudice to the generality of *subsection (1)*, regulations may be made by the Minister for the purposes of *Chapter 3* of *Part 5* regarding the obtaining or transmission of identification evidence within the meaning of that Chapter.**]**

F166**[**(1B) Without prejudice to *section 94K*, the generality of *subsection (1)* and subject to the provisions of this Act concerning particular requests, regulations (in this Act referred to as the "*Part 7B* Regulations") may be made by the Minister for the purposes of *Part 7B* and in particular such regulations may make provision for—

(*a*) the limitations, restrictions or conditions applicable to EPPO requests,

(*b*) the form of EPPO requests and the information such requests are to provide,

(*c*) the action that may be taken where the information provided is not sufficient to enable the request to be dealt with,

(*d*) without prejudice to section 3, the grounds for refusal of EPPO requests,

(*e*) the requirements relating to the protection, disclosure, use or transmission of information or evidence received under EPPO requests,

(*f*) the formalities and procedures in dealing with EPPO requests, and

(*g*) the transmission and mode of transmission of EPPO requests, including, transmission via the International Criminal Police Organisation (Interpol) in urgent cases.

(1C) Regulations under *subsection (1B)* may be made by the Minister for the purposes of requests by the State to EPPO and *paragraphs (a)* to *(g)* of *subsection (1B)* shall apply *mutatis mutandis* to such requests.**]**

(2) Regulations under this section may include such consequential, incidental, transitional or supplementary provisions as may be necessary for that purpose.

Annotations

Amendments

F165 Inserted (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 138, S.I. No. 508 of 2015.

F166 Inserted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 52, S.I. No. 525 of 2023.

Expenses.

110.— The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Laying of orders or regulations before Houses of Oireachtas.

111.— An order (other than an order under *section 1(2)*) or regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling it is passed by either such House within the next 21 days on which that House has sat after it is laid before it, the order or regulation is annulled accordingly, but without prejudice to the validity of anything previously done under it.

Section 2(6).

SCHEDULE 1

Text of 2000 Convention

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Council Act establishing the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union,

WISHING to improve judicial cooperation in criminal matters between the Member States of the Union, without prejudice to the rules protecting individual freedom,

POINTING OUT the Member States' common interest in ensuring that mutual assistance between the Member States is provided in a fast and efficient manner compatible with the basic principles of their national law, and in compliance with the individual rights and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950,

EXPRESSING their confidence in the structure and functioning of their legal systems and in the ability of all Member States to guarantee a fair trial,

RESOLVED to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and other Conventions in force in this area, by a Convention of the European Union,

RECOGNISING that the provisions of those Conventions remain applicable for all matters not covered by this Convention,

CONSIDERING that the Member States attach importance to strengthening judicial cooperation, while continuing to apply the principle of proportionality,

RECALLING that this Convention regulates mutual assistance in criminal matters, based on the principles of the Convention of 20 April 1959,

WHEREAS, however, Article 20 of this Convention covers certain specific situations concerning interception of telecommunications, without having any implications with regard to other such situations outside the scope of the Convention,

WHEREAS the general principles of international law apply in situations which are not covered by this Convention,

RECOGNISING that this Convention does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, and that it is a matter for each Member State to determine, in accordance with Article 33 of the Treaty on European Union, under which conditions it will maintain law and order and safeguard internal security,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

TITLE I

GENERAL PROVISIONS

Article 1

Relationship to other conventions on mutual assistance

1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union, of:

(a) the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, hereinafter referred to as the "European Mutual Assistance Convention";

(b) the Additional Protocol of 17 March 1978 to the European Mutual Assistance Convention;

(c) the provisions on mutual assistance in criminal matters of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (hereinafter referred to as the "Schengen Implementation Convention") which are not repealed pursuant to Article 2(2);

(d) Chapter 2 of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1962, as amended by the Protocol of 11 May 1974, (hereinafter referred to as the "Benelux Treaty"), in the context of relations between the Member States of the Benelux Economic Union.

2. This Convention shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States or, as provided for in Article 26(4) of the European Mutual Assistance Convention, arrangements in the field of mutual assistance in criminal matters agreed on the basis of uniform legislation or of a special system providing for the reciprocal application of measures of mutual assistance in their respective territories.

Article 2

Provisions relating to the Schengen acquis

1. The provisions of Articles 3, 5, 6, 7, 12 and 23 and, to the extent relevant to Article 12, of Articles 15 and 16, to the extent relevant to the Articles referred to, of Article 1 constitute measures amending or building upon the provisions referred to in Annex A to the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*.

2. The provisions of Articles 49(a), 52, 53 and 73 of the Schengen Implementation Convention are hereby repealed.

Article 3

Proceedings in connection with which mutual assistance is also to be afforded

1. Mutual assistance shall also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Member State, or both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

2. Mutual assistance shall also be afforded in connection with criminal proceedings and proceedings as referred to in paragraph 1 which relate to offences or infringements for which a legal person may be held liable in the requesting Member State.

Article 4

Formalities and procedures in the execution of requests for mutual assistance

1. Where mutual assistance is afforded, the requested Member State shall comply with the formalities and procedures expressly indicated by the requesting Member State, unless otherwise provided in this Convention and provided that such formalities

and procedures are not contrary to the fundamental principles of law in the requested Member State.

2. The requested Member State shall execute the request for assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the requesting Member State. The requesting Member State shall explain the reasons for the deadline.

3. If the request cannot, or cannot fully, be executed in accordance with the requirements set by the requesting Member State, the authorities of the requested Member State shall promptly inform the authorities of the requesting Member State and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting and the requested Member State may subsequently agree on further action to be taken concerning the request, where necessary by making such action subject to the fulfilment of those conditions.

4. If it is foreseeable that the deadline set by the requesting Member State for executing its request cannot be met, and if the reasons referred to in paragraph 2, second sentence, indicate explicitly that any delay will lead to substantial impairment of the proceedings being conducted in the requesting Member State, the authorities of the requested Member State shall promptly indicate the estimated time needed for execution of the request. The authorities of the requesting Member State shall promptly indicate whether the request is to be upheld nonetheless. The authorities of the requesting and requested Member States may subsequently agree on further action to be taken concerning the request.

Article 5

Sending and service of procedural documents

1. Each Member State shall send procedural documents intended for persons who are in the territory of another Member State to them directly by post.

2. Procedural documents may be sent via the competent authorities of the requested Member State only if:

(a) the address of the person for whom the document is intended is unknown or uncertain; or

(b) the relevant procedural law of the requesting Member State requires proof of service of the document on the addressee, other than proof that can be obtained by post; or

(c) it has not been possible to serve the document by post; or

(d) the requesting Member State has justified reasons for considering that dispatch by post will be ineffective or is inappropriate.

3. Where there is reason to believe that the addressee does not understand the language in which the document is drawn up, the document, or at least the important passages thereof, must be translated into (one of) the language(s) of the Member State in the territory of which the addressee is staying. If the authority by which the procedural document was issued knows that the addressee understands only some other language, the document, or at least the important passages thereof, must be translated into that other language.

4. All procedural documents shall be accompanied by a report stating that the addressee may obtain information from the authority by which the document was issued or from other authorities in that Member State regarding his or her rights and obligations concerning the document. Paragraph 3 shall also apply to that report.

5. This Article shall not affect the application of Articles 8, 9 and 12 of the European Mutual Assistance Convention and Articles 32, 34 and 35 of the Benelux Treaty.

Article 6

Transmission of requests for mutual assistance

1. Requests for mutual assistance and spontaneous exchanges of information referred to in Article 7 shall be made in writing, or by any means capable of producing a written record under conditions allowing the receiving Member State to establish authenticity. Such requests shall be made directly between judicial authorities with territorial competence for initiating and executing them, and shall be returned through the same channels unless otherwise specified in this Article. Any information laid by a Member State with a view to proceedings before the courts of another Member State within the meaning of Article 21 of the European Mutual Assistance Convention and Article 42 of the Benelux Treaty may be the subject of direct communications between the competent judicial authorities.

2. Paragraph 1 shall not prejudice the possibility of requests being sent or returned in specific cases:

(a) between a central authority of a Member State and a central authority of another Member State; or

(b) between a judicial authority of one Member State and a central authority of another Member State.

3. Notwithstanding paragraph 1, the United Kingdom and Ireland, respectively, may, when giving the notification provided for in Article 27(2), declare that requests and communications to it, as specified in the declaration, must be sent via its central authority. These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 1. They shall do so when the provisions on mutual assistance of the Schengen Implementation Convention are put into effect for them. Any Member State may apply the principle of reciprocity in relation to the declarations referred to above.

4. Any request for mutual assistance may, in case of urgency, be made via the International Criminal Police Organisation (Interpol) or any body competent under provisions adopted pursuant to the Treaty on European Union.

5. Where, in respect of requests pursuant to Articles 12, 13 or 14, the competent authority is a judicial authority or a central authority in one Member State and a police or customs authority in the other Member State, requests may be made and answered directly between these authorities. Paragraph 4 shall apply to these contacts.

6. Where, in respect of requests for mutual assistance in relation to proceedings as envisaged in Article 3(1), the competent authority is a judicial authority or a central authority in one Member State and an administrative authority in the other Member State, requests may be made and answered directly between these authorities.

7. Any Member State may declare, when giving the notification provided for in Article 27(2), that it is not bound by the first sentence of paragraph 5 or by paragraph 6 of this Article, or both or that it will apply those provisions only under certain conditions which it shall specify. Such a declaration may be withdrawn or amended at any time.

8. The following requests or communications shall be made through the central authorities of the Member States:

(a) requests for temporary transfer or transit of persons held in custody as referred to in Article 9 of this Convention, in Article 11 of the European Mutual Assistance Convention and in Article 33 of the Benelux Treaty;

(b) notices of information from judicial records as referred to in Article 22 of the European Mutual Assistance Convention and Article 43 of the Benelux Treaty. However, requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the European Mutual Assistance Convention may be made directly to the competent authorities.

Article 7

Spontaneous exchange of information

1. Within the limits of their national law, the competent authorities of the Member States may exchange information, without a request to that effect, relating to criminal offences and the infringements of rules of law referred to in Article 3(1), the punishment or handling of which falls within the competence of the receiving authority at the time the information is provided.

2. The providing authority may, pursuant to its national law, impose conditions on the use of such information by the receiving authority.

3. The receiving authority shall be bound by those conditions.

TITLE II

REQUEST FOR CERTAIN SPECIFIC FORMS OF MUTUAL ASSISTANCE

Article 8

Restitution

1. At the request of the requesting Member State and without prejudice to the rights of *bona fide* third parties, the requested Member State may place articles obtained by criminal means at the disposal of the requesting State with a view to their return to their rightful owners.

2. In applying Articles 3 and 6 of the European Mutual Assistance Convention and Articles 24(2) and 29 of the Benelux Treaty, the requested Member State may waive the return of articles either before or after handing them over to the requesting Member State if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of *bona fide* third parties shall not be affected.

3. In the event of a waiver before handing over the articles to the requesting Member State, the requested Member State shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles.

A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Member State to collect taxes or duties from the rightful owner.

Article 9

Temporary transfer of persons held in custody for purpose of investigation

1. Where there is agreement between the competent authorities of the Member States concerned, a Member State which has requested an investigation for which the presence of the person held in custody on its own territory is required may temporarily transfer that person to the territory of the Member State in which the investigation is to take place.

2. The agreement shall cover the arrangements for the temporary transfer of the person and the date by which he or she must be returned to the territory of the requesting Member State.

3. Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Member State.

4. The period of custody in the territory of the requested Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Member State.

5. The provisions of Articles 11(2) and (3), 12 and 20 of the European Mutual Assistance Convention shall apply *mutatis mutandis* to this Article.

6. When giving the notification provided for in Article 27(2), each Member State may declare that, before an agreement is reached under paragraph 1 of this Article, the consent referred to in paragraph 3 of this Article will be required or will be required under certain conditions indicated in the declaration.

Article 10

Hearing by videoconference

1. If a person is in one Member State's territory and has to be heard as a witness or expert by the judicial authorities of another Member State, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by videoconference, as provided for in paragraphs 2 to 8.

2. The requested Member State shall agree to the hearing by videoconference provided that the use of the videoconference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Member State has no access to the technical means for videoconferencing, such means may be made available to it by the requesting Member State by mutual agreement.

3. Requests for a hearing by videoconference shall contain, in addition to the information referred to in Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

4. The judicial authority of the requested Member State shall summon the person concerned to appear in accordance with the forms laid down by its law.

5. With reference to hearing by videoconference, the following rules shall apply:

(a) a judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State. If the judicial authority of the requested Member State is of the view that during the hearing the fundamental principles of the law of the requested Member State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;

(b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Member States;

(c) the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Member State in accordance with its own laws;

(d) at the request of the requesting Member State or the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary;

(e) the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Member State.

6. Without prejudice to any measures agreed for the protection of the persons, the judicial authority of the requested Member State shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Member State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Member State to the competent authority of the requesting Member State.

7. The cost of establishing the video link, costs related to the servicing of the video link in the requested Member State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the requested Member State shall be refunded by the requesting Member State to the requested Member State, unless the latter waives the refunding of all or some of these expenses.

8. Each Member State shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory in accordance with this Article and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.

9. Member States may at their discretion also apply the provisions of this Article, where appropriate and with the agreement of their competent judicial authorities, to hearings by videoconference involving an accused person. In this case, the decision to hold the videoconference, and the manner in which the videoconference shall be carried out, shall be subject to agreement between the Member States concerned, in accordance with their national law and relevant international instruments, including the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.

Any Member State may, when giving its notification pursuant to Article 27(2), declare that it will not apply the first subparagraph. Such a declaration may be withdrawn at any time. Hearings shall only be carried out with the consent of the accused person. Such rules as may prove to be necessary, with a view to the protection of the rights of accused persons, shall be adopted by the Council in a legally binding instrument.

Article 11

Hearing of witnesses and experts by telephone conference

1. If a person is in one Member State's territory and has to be heard as a witness or expert by judicial authorities of another Member State, the latter may, where its national law so provides, request assistance of the former Member State to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 5.

2. A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.

3. The requested Member State shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.

4. A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the European Mutual Assistance Convention

and Article 37 of the Benelux Treaty, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.

5. The practical arrangements regarding the hearing shall be agreed between the Member States concerned.

When agreeing such arrangements, the requested Member State shall undertake to:

(a) notify the witness or expert concerned of the time and the venue of the hearing;

(b) ensure the identification of the witness or expert;

(c) verify that the witness or expert agrees to the hearing by telephone conference.

The requested Member State may make its agreement subject, fully or in part, to the relevant provisions of Article 10(5) and (8). Unless otherwise agreed, the provisions of Article 10(7) shall apply *mutatis mutandis*.

Article 12

Controlled deliveries

1. Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.

2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that Member State.

3. Controlled deliveries shall take place in accordance with the procedures of the requested Member State. The right to act and to direct and control operations shall lie with the competent authorities of that Member State.

Article 13

Joint investigation teams

1. By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

(a) a Member State's investigations into criminal offences require difficult and demanding investigations having links with other Member States;

(b) a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved.

A request for the setting up of a joint investigation team may be made by any of the Member States concerned. The team shall be set up in one of the Member States in which the investigations are expected to be carried out.

2. In addition to the information referred to in the relevant provisions of Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3. A joint investigation team shall operate in the territory of the Member States setting up the team under the following general conditions:

(a) the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;

(b) the team shall carry out its operations in accordance with the law of the Member State in which it operates. The members of the team shall carry out their tasks under the leadership of the person referred to in subparagraph (a), taking into account the conditions set by their own authorities in the agreement on setting up the team;

(c) the Member State in which the team operates shall make the necessary organisational arrangements for it to do so.

4. In this Article, members of the joint investigation team from Member States other than the Member State in which the team operates are referred to as being "seconded" to the team.

5. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Member State of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Member State where the team operates, decide otherwise.

6. Seconded members of the joint investigation team may, in accordance with the law of the Member State where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Member State of operation and the seconding Member State.

7. Where the joint investigation team needs investigative measures to be taken in one of the Member States setting up the team, members seconded to the team by that Member State may request their own competent authorities to take those measures. Those measures shall be considered in that Member State under the conditions which would apply if they were requested in a national investigation.

8. Where the joint investigation team needs assistance from a Member State other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operations to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.

9. A member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Member State which has seconded him or her for the purpose of the criminal investigations conducted by the team.

10. Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Member States concerned may be used for the following purposes:

(a) for the purposes for which the team has been set up;

(b) subject to the prior consent of the Member State where the information became available, for detecting, investigation and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Member State concerned or in respect of which that Member State could refuse mutual assistance;

(c) for preventing an immediate and serious threat to public security, and without prejudice to subparagraph (b) if subsequently a criminal investigation is opened;

(d) for other purposes to the extent that this is agreed between Member States setting up the team.

11. This Article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

12. To the extent that the laws of the Member States concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Member States setting up the joint investigation team to take part in the activities of the team. Such persons may, for example, include officials of bodies set up pursuant to the Treaty on European Union. The rights conferred upon the members or seconded members of the team by virtue of this Article shall not apply to these persons unless the agreement expressly states otherwise.

Article 14

Covert investigations

1. The requesting and the requested Member State may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).

2. The decision on the request is taken in each individual case by the competent authorities of the requested Member State with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Member States with due regard to their national law and procedures.

3. Covert investigations shall take place in accordance with the national law and procedures of the Member States on the territory of which the covert investigation takes place. The Member States involved shall cooperate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.

4. When giving the notification provided for in Article 27(2), any Member State may declare that it is not bound by this Article. Such a declaration may be withdrawn at any time.

Article 15

Criminal liability regarding officials

During the operations referred to in Articles 12, 13 and 14, officials from a Member State other than the Member State of operation shall be regarded as officials of the Member State of operation with respect of offences committed against them or by them.

Article 16

Civil liability regarding officials

1. Where, in accordance with Articles 12, 13 and 14, officials of a Member State are operating in another Member State, the first Member State shall be liable for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.

2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.

3. The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.

4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Member State.

TITLE III

INTERCEPTION OF TELECOMMUNICATIONS

Article 17

Authorities competent to order interception of telecommunications

For the purpose of the application of the provisions of Articles 18, 19 and 20, "competent authority" shall mean a judicial authority, or, where judicial authorities have no competence in the area covered by those provisions, an equivalent competent authority, specified pursuant to Article 24(1)(e) and acting for the purpose of a criminal investigation.

Article 18

Requests for interception of telecommunications

1. For the purpose of a criminal investigation, a competent authority in the requesting Member State may, in accordance with the requirements of its national law, make a request to a competent authority in the requested Member State for:

(a) the interception and immediate transmission to the requesting Member State of telecommunications; or

(b) the interception, recording and subsequent transmission to the requesting Member State of the recording of telecommunications.

2. Requests under paragraph 1 may be made in relation to the use of means of telecommunications by the subject of the interception, if this subject is present in:

(a) the requesting Member State and the requesting Member State needs the technical assistance of the requested Member State to intercept his or her communications;

(b) the requesting Member State and his or her communications can be intercepted in that Member State;

(c) a third Member State which has been informed pursuant to Article 20(2)(a) and the requesting Member State needs the technical assistance of the requested Member State to intercept his or her communications.

3. By way of derogation from Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests under this Article shall include the following:

(a) an indication of the authority making the request;

(b) confirmation that a lawful interception order or warrant has been issued in connection with a criminal investigation;

(c) information for the purpose of identifying the subject of this interception;

(d) an indication of the criminal conduct under investigation;

(e) the desired duration of the interception; and

(f) if possible, the provision of sufficient technical data, in particular the relevant network connection number, to ensure that the request can be met.

4. In the case of a request pursuant to paragraph 2(b), a request shall also include a summary of the facts. The requested Member State may require any further information to enable it to decide whether the requested measure would be taken by it in a similar national case.

5. The requested Member State shall undertake to comply with requests under paragraph 1(a):

(a) in the case of a request pursuant to paragraph 2(a) and 2(c), on being provided with the information in paragraph 3. The requested Member State may allow the interception to proceed without further formality;

(b) in the case of a request pursuant to paragraph 2(b), on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested Member State may make its consent subject to any conditions which would have to be observed in a similar national case.

6. Where immediate transmission is not possible, the requested Member State shall undertake to comply with requests under paragraph 1(b) on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested Member State may make its consent subject to any condition which would have to be observed in a similar national case.

7. When giving the notification provided for in Article 27(2), any Member State may declare that it is bound by paragraph 6 only when it is unable to provide immediate transmission. In this case the other Member State may apply the principle of reciprocity.

8. When making a request under paragraph 1(b), the requesting Member State may, where it has a particular reason to do so, also request a transcription of the recording. The requested Member State shall consider such requests in accordance with its national law and procedures.

9. The Member State receiving the information provided under paragraphs 3 and 4 shall keep that information confidential in accordance with its national law.

Article 19

Interceptions of telecommunications on national territory by the use of service providers

1. Member States shall ensure that systems of telecommunications services operated via a gateway on their territory, which for the lawful interception of the communications of a subject present in another Member State are not directly accessible on the territory of the latter, may be made directly accessible for the lawful interception by that Member State through the intermediary of a designated service provider present on its territory.

2. In the case referred to in paragraph 1, the competent authorities of a Member State shall be entitled, for the purposes of a criminal investigation and in accordance with applicable national law and provided that the subject of the interception is present in that Member State, to carry out the interception through the intermediary

of a designated service provider present on its territory without involving the Member State on whose territory the gateway is located.

3. Paragraph 2 shall also apply where the interception is carried out upon a request made pursuant to Article 18(2)(b).

4. Nothing in this Article shall prevent a Member State from making a request to the Member State on whose territory the gateway is located for the lawful interception of telecommunications in accordance with Article 18, in particular where there is no intermediary in the requesting Member State.

Article 20

Interception of telecommunications without the technical assistance of another Member State

1. Without prejudice to the general principles of international law as well as to the provisions of Article 18(2)(c), the obligations under this Article shall apply to interception orders made or authorised by the competent authority of one Member State in the course of criminal investigations which present the characteristics of being an investigation following the commission of a specific criminal offence, including attempts in so far as they are criminalised under national law, in order to identify and arrest, charge, prosecute or deliver judgment on those responsible.

2. Where for the purpose of a criminal investigation, the interception of telecommunications is authorised by the competent authority of one Member State (the "intercepting Member State"), and the telecommunication address of the subject specified in the interception order is being used on the territory of another Member State (the "notified Member State") from which no technical assistance is needed to carry out the interception, the intercepting Member State shall inform the notified Member State of the interception:

(a) prior to the interception in cases where it knows when ordering the interception that the subject is on the territory of the notified Member State;

(b) in other cases, immediately after it becomes aware that the subject of the interception is on the territory of the notified Member State.

3. The information to be notified by the intercepting Member State shall include:

(a) an indication of the authority ordering the interception;

(b) confirmation that a lawful interception order has been issued in connection with a criminal investigation;

(c) information for the purpose of identifying the subject of the interception;

(d) an indication of the criminal conduct under investigation; and

(e) the expected duration of the interception.

4. The following shall apply where a Member State is notified pursuant to paragraphs 2 and 3:

(a) Upon receipt of the information provided under paragraph 3 the competent authority of the notified Member State shall, without delay, and at the latest within 96 hours, reply to the intercepting Member State, with a view to:

(i) allowing the interception to be carried out or to be continued. The notified Member State may make its consent subject to any conditions which would have to be observed in a similar national case;

(ii) requiring the interception not to be carried out or to be terminated where the interception would not be permissible pursuant to the national law of the notified Member State, or for the reasons specified in Article 2 of the European Mutual Assistance Convention. Where the notified Member State imposes such a requirement, it shall give reasons for its decision in writing;

(iii) in cases referred to in point (ii), requiring that any material already intercepted while the subject was on its territory may not be used, or may only be used under conditions which it shall specify. The notified Member State shall inform the intercepting Member State of the reasons justifying the said conditions;

(iv) requiring a short extension, of up to a maximum period of eight days, to the original 96-hour deadline, to be agreed with the intercepting Member State, in order to carry out internal procedures under its national law. The notified Member State shall communicate, in writing, to the intercepting Member State, the conditions which, pursuant to its national law, justify the requested extension of the deadline.

(b) Until a decision has been taken by the notified Member State pursuant to points (i) or (ii) of subparagraph (a), the intercepting Member State:

(i) may continue the interception; and

(ii) may not use the material already intercepted, except:

— if otherwise agreed between the Member States concerned; or

— for taking urgent measures to prevent an immediate and serious threat to public security. The notified Member State shall be informed of any such use and the reasons justifying it.

(c) The notified Member State may request a summary of the facts of the case and any further information necessary to enable it to decide whether interception would be authorised in a similar national case. Such a request does not affect the application of subparagraph (b), unless otherwise agreed between the notified Member State and the intercepting Member State.

(d) The Member States shall take the necessary measures to ensure that a reply can be given within the 96-hour period. To this end they shall designate contact points, on duty twenty-four hours a day, and include them in their statements under Article 24(1)(e).

5. The notified Member State shall keep the information provided under paragraph 3 confidential in accordance with its national law.

6. Where the intercepting Member State is of the opinion that the information to be provided under paragraph 3 is of a particularly sensitive nature, it may be transmitted to the competent authority through a specific authority where that has been agreed on a bilateral basis between the Member States concerned.

7. When giving its notification under Article 27(2), or at any time thereafter, any Member State may declare that it will not be necessary to provide it with information on interceptions as envisaged in this Article.

Article 21

Responsibility for charges made by telecommunications operators

Costs which are incurred by telecommunications operators or service providers in executing requests pursuant to Article 18 shall be borne by the requesting Member State.

Article 22

Bilateral arrangements

Nothing in this Title shall preclude any bilateral or multilateral arrangements between Member States for the purpose of facilitating the exploitation of present and future technical possibilities regarding the lawful interception of telecommunications.

TITLE IV

Article 23

Personal data protection

1. Personal data communicated under this Convention may be used by the Member State to which they have been transferred:

(a) for the purpose of proceedings to which this Convention applies;

(b) for other judicial and administrative proceedings directly related to proceedings referred to under point (a);

(c) for preventing an immediate and serious threat to public security;

(d) for any other purpose, only with the prior consent of the communicating Member State, unless the Member State concerned has obtained the consent of the data subject.

2. This Article shall also apply to personal data not communicated but obtained otherwise under this Convention.

3. In the circumstances of the particular case, the communicating Member State may require the Member State to which the personal data have been transferred to give information on the use made of the data.

4. Where conditions on the use of personal data have been imposed pursuant to Articles 7(2), 18(5)(b), 18(6) or 20(4), these conditions shall prevail. Where no such conditions have been imposed, this Article shall apply.

5. The provisions of Article 13(10) shall take precedence over this Article regarding information obtained under Article 13.

6. This Article does not apply to personal data obtained by a Member State under this Convention and originating from that Member State.

7. Luxembourg may, when signing the Convention, declare that where personal data are communicated by Luxembourg under this Convention to another Member State, the following applies:

Luxembourg may, subject to paragraph 1(c), in the circumstances of a particular case require that unless that Member State concerned has obtained the consent of the data subject, the personal data may only be used for the purposes referred to in paragraph 1(a) and (b) with the prior consent of Luxembourg in respect of proceedings for which Luxembourg could have refused or limited the transmission or use of the personal data in accordance with the provisions of this Convention or the instruments referred to in Article 1.

If, in a particular case, Luxembourg refuses to give its consent to a request from a Member State pursuant to the provisions of paragraph 1, it must give reasons for its decision in writing.

TITLE V

FINAL PROVISIONS

Article 24

Statements

1. When giving the notification referred to in Article 27(2), each Member State shall make a statement naming the authorities which, in addition to those already indicated in the European Mutual Assistance Convention and the Benelux Treaty, are competent for the application of this Convention and the application between the Member States of the provisions on mutual assistance in criminal matters of the instruments referred to in Article 1(1), including in particular:

(a) the competent administrative authorities within the meaning of Article 3(1), if any;

(b) one or more central authorities for the purposes of applying Article 6 as well as the authorities competent to deal with the requests referred to in Article 6(8);

(c) the police or customs authorities competent for the purpose of Article 6(5), if any;

(d) the administrative authorities competent for the purposes of Article 6(6), if any; and

(e) the authority or authorities competent for the purposes of the application of Articles 18 and 19 and Article 20(1) to (5).

2. Statements made in accordance with paragraph 1 may be amended in whole or in part at any time by the same procedure.

Article 25

Reservations

No reservations may be entered in respect of this Convention, other than those for which it makes express provision.

Article 26

Territorial application

The application of this Convention to Gibraltar will take effect upon extension of the European Mutual Assistance Convention to Gibraltar.

The United Kingdom shall notify in writing the President of the Council when it wishes to apply the Convention to the Channel Islands and the Isle of Man following extension of the European Mutual Assistance Convention to those territories. A decision on this request shall be taken by the Council acting with the unanimity of its members.

Article 27

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Convention.

3. This Convention shall, 90 days after the notification referred to in paragraph 2 by the State, member of the European Union at the time of adoption by the Council of the Act establishing this Convention, which is the eighth to complete this formality, enter into force for the eight Member States concerned.

4. Any notification by a Member State subsequent to the receipt of the eighth notification referred to in paragraph 2 shall have the effect that, 90 days after the subsequent notification, this Convention shall enter into force as between this Member State and those Member States for which the Convention has already entered into force.

5. Before the Convention has entered into force pursuant to paragraph 3, any Member State may, when giving the notification referred to in paragraph 2 or at any time thereafter, declare that it will apply this Convention in its relations with Member States which have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.

6. This Convention shall apply to mutual assistance initiated after the date on which it has entered into force, or is applied pursuant to paragraph 5, between the Member States concerned.

Article 28

Accession of new Member States

1. This Convention shall be open to accession by any State which becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. The instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State which accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Convention if it has not already entered into force at the time of expiry of the said period of 90 days.

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 27(5) shall apply to acceding Member States.

Article 29

Entry into force for Iceland and Norway

1. Without prejudice to Article 8 of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis* (the "Association Agreement"), the provisions referred to in Article 2(1) shall enter into force for Iceland and Norway 90 days after the receipt by the Council and the Commission of the information pursuant to Article 8(2) of the Association Agreement upon fulfilment of their constitutional requirements, in their mutual relations with any Member State for which this Convention has already entered into force pursuant to Article 27(3) or (4).

2. Any entry into force of this Convention for a Member State after the date of entry into force of the provisions referred to in Article 2(1) for Iceland and Norway, shall

render these provisions also applicable in the mutual relations between that Member State and Iceland and Norway.

3. The provisions referred to in Article 2(1) shall in any event not become binding on Iceland and Norway before the date to be fixed pursuant to Article 15(4) of the Association Agreement.

4. Without prejudice to paragraphs 1, 2 and 3 above, the provisions referred to in Article 2(1) shall enter into force for Iceland and Norway not later than on the date of entry into force of this Convention for the fifteenth State, being a member of the European Union at the time of the adoption by the Council of the Act establishing this Convention.

Article 30

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

2. The depositary shall publish in the *Official Journal of the Euro pean Communities* information on the progress of adoptions and accessions, statements and reservations and also any other notification concerning this Convention.

Done at Brussels on the twenty-ninth day of May in the year two thousand in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all texts being equally authentic, such original being deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall forward a certified copy thereof to each Member State.

Council Declaration on Article 10(9)

When considering the adoption of an instrument as referred to in Article 10(9), the Council shall respect Member States' obligations under the European Convention on Human Rights.

Declaration by the United Kingdom on Article 20

This Declaration shall form an agreed, integral part of the Convention.

In the United Kingdom, Article 20 will apply in respect of interception warrants issued by the Secretary of State to the police service or HM Customs & Excise where, in accordance with national law on the interception of communications, the stated purpose of the warrant is the detection of serious crime. It will also apply to such warrants issued to the Security Service where, in accordance with national law, it is acting in support of an investigation presenting the characteristics described in Article 20(1).

SCHEDULE 2

TEXT OF 2001 PROTOCOL

THE HIGH CONTRACTING PARTIES to this Protocol, Member States of the European Union,

REFERRING to the Council Act of 16 October 2001 establishing the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union,

TAKING ACCOUNT of the conclusions adopted at the European Council held in Tampere on 15 and 16 October 1999, and of the need to implement them immediately in order to achieve an area of freedom, security and justice,

BEARING IN MIND the recommendations made by the experts when presenting the mutual evaluation reports based on Council Joint Action 97/827/JHA of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime,

CONVINCED of the need for additional measures in the field of mutual assistance in criminal matters for the purpose of the fight against crime, including in particular organised crime, money laundering and financial crime,

HAVE AGREED UPON THE FOLLOWING PROVISIONS, which shall be annexed to, and form an integral part of, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000, hereinafter referred to as the 2000 Mutual Assistance Convention:

Article 1

Request for information on bank accounts

1. Each Member State shall, under the conditions set out in this Article, take the measures necessary to determine, in answer to a request sent by another Member State, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide all the details of the identified accounts.

The information shall also, if requested and to the extent that it can be provided within a reasonable time, include accounts for which the person that is the subject of the proceedings has powers of attorney.

2. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank keeping the account.

3. The obligation set out in this Article shall apply only if the investigation concerns:

— an offence punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State, or

— an offence referred to in Article 2 of the 1995 Convention on the Establishment of a European Police Office (Europol Convention), or in the Annex to that Convention, as amended, or

— to the extent that it may not be covered by the Europol Convention, an offence referred to in the 1995 Convention on the Protection of the European Communities' Financial Interests, the 1996 Protocol thereto, or the 1997 Second Protocol thereto.

4. The authority making the request shall, in the request:

— state why it considers that the requested information is likely to be of substantial value for the purpose of the investigation into the offence,

— state on what grounds it presumes that banks in the requested Member State hold the account and, to the extent available, which banks may be involved,

— include any information available which may facilitate the execution of the request.

5. Member States may make the execution of a request according to this Article dependent on the same conditions as they apply in respect of requests for search and seizure.

6. The Council may decide, pursuant to Article 34(2)(c) of the Treaty of European Union, to extend the scope of paragraph 3.

Article 2

Requests for information on banking transactions

1. On request by the requesting State, the requested State shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.

2. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.

3. The requesting Member State shall in its request indicate why it considers the requested information relevant for the purpose of the investigation into the offence.

4. Member States may make the execution of a request according to this Article dependent on the same conditions as they apply in respect of requests for search and seizure.

Article 3

Requests for the monitoring of banking transactions

1. Each Member State shall undertake to ensure that, at the request of another Member State, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Member State.

2. The requesting Member State shall in its request indicate why it considers the requested information relevant for the purpose of the investigation into the offence.

3. The decision to monitor shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that Member State.

4. The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested Member States.

Article 4

Confidentiality

Each Member State shall take the necessary measures to ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been transmitted to the requesting State in accordance with Articles 1, 2 or 3 or that an investigation is being carried out.

Article 5

Obligation to inform

If the competent authority of the requested Member State in the course of the execution of a request for mutual assistance considers that it may be appropriate to

undertake investigations not initially foreseen, or which could not be specified when the request was made, it shall immediately inform the requesting authority accordingly in order to enable it to take further action.

Article 6

Additional requests for mutual assistance

1. Where the competent authority of the requesting Member State makes a request for mutual assistance which is additional to an earlier request, it shall not be required to provide information already provided in the initial request. The additional request shall contain information necessary for the purpose of identifying the initial request.

2. Where, in accordance with the provisions in force, the competent authority which has made a request for mutual assistance participates in the execution of the request in the requested Member State, it may, without prejudice to Article 6(3) of the 2000 Mutual Assistance Convention, make an additional request directly to the competent authority of the requested Member State while present in that State.

Article 7

Banking secrecy

A Member State shall not invoke banking secrecy as a reason for refusing any cooperation regarding a request for mutual assistance from another Member State.

Article 8

Fiscal offences

1. Mutual assistance may not be refused solely on the ground that the request concerns an offence which the requested Member State considers a fiscal offence.

2. If a Member State has made the execution of a request for search and seizure dependent on the condition that the offence giving rise to the request is also punishable under its law, this condition shall be fulfilled, with regard to offences referred to in paragraph 1, if the offence corresponds to an offence of the same nature under its law.

The request may not be refused on the ground that the law of the requested Member State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the requesting Member State.

3. Article 50 of the Schengen Implementation Convention is hereby repealed.

Article 9

Political offences

1. For the purposes of mutual legal assistance between Member States, no offence may be regarded by the requested Member State as a political offence, an offence connected with a political offence or an offence inspired by political motives.

2. Each Member State may, when giving the notification referred to in Article 13(2), declare that it will apply paragraph 1 only in relation to:

(a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism of 27 January 1977; and

(b) offences of conspiracy or association, which correspond to the description of behaviour referred to in Article 3(4) of the Convention of 27 September 1996 relating to extradition between the Member States of the European Union,

to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

3. Reservations made pursuant to Article 13 of the European Convention on the Suppression of Terrorism shall not apply to mutual legal assistance between Member States.

Article 10

Forwarding refusals to the Council and involvement of Eurojust

1. If a request is refused on the basis of:

— Article 2(b) of the European Mutual Assistance Convention or Article 22(2)(b) of the Benelux Treaty, or

— Article 51 of the Schengen Implementation Convention or Article 5 of the European Mutual Assistance Convention, or

— Article 1(5) or Article 2(4) of this Protocol,

and the requesting Member State maintains its request, and no solution can be found, the reasoned decision to refuse the request shall be forwarded to the Council for information by the requested Member State, for possible evaluation of the functioning of judicial cooperation between Member States.

2. The competent authorities of the requesting Member State may report to Eurojust, once it has been established, any problem encountered concerning the execution of a request in relation to the provisions referred to in paragraph 1 for a possible practical solution in accordance with the provisions laid down in the instrument establishing Eurojust.

Article 11

Reservations

No reservations may be entered in respect of this Protocol, other than those provided for in Article 9(2).

Article 12

Territorial application

The application of this Protocol to Gibraltar will take effect when the 2000 Mutual Assistance Convention has taken effect in Gibraltar, in accordance with Article 26 of that Convention.

Article 13

Entry into force

1. This Protocol shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Protocol.

3. This Protocol shall enter into force in the eight Member States concerned 90 days after the notification referred to in paragraph 2 by the State, member of the European Union at the time of adoption by the Council of the Act establishing this Protocol, which is the eighth to complete that formality. If, however, the 2000 Mutual Assistance

Convention has not entered into force on that date, this Protocol shall enter into force on the date on which that Convention enters into force.

4. Any notification by a Member State subsequent to the entry into force of this Protocol under paragraph 3 shall have the effect that, 90 days after such notification, this Protocol shall enter into force as between that Member State and those Member States for which this Protocol has already entered into force.

5. Before the entry into force of this Protocol pursuant to paragraph 3, any Member State may, when giving the notification referred to in paragraph 2 or at any time thereafter, declare that it will apply this Protocol in its relations with Member States which have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.

6. Notwithstanding paragraphs 3 to 5, the entry into force or application of this Protocol shall not take effect in relations between any two Member States before the entry into force or application of the 2000 Mutual Assistance Convention between these Member States.

7. This Protocol shall apply to mutual assistance initiated after the date on which it enters into force, or is applied pursuant to paragraph 5, between the Member States concerned.

Article 14

Acceding States

1. This Protocol shall be open to accession by any State which becomes a member of the European Union and which accedes to the 2000 Mutual Assistance Convention.

2. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. The instruments of accession shall be deposited with the depositary.

4. This Protocol shall enter into force with respect to any State which accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Protocol if it has not already entered into force at the time of expiry of the said period of 90 days.

5. Where this Protocol is not yet in force at the time of the deposit of their instrument of accession, Article 13(5) shall apply to acceding Member States.

6. Notwithstanding paragraphs 4 and 5, the entry into force or application of this Protocol with respect to the acceding State shall not take effect before the entry into force or application of the 2000 Mutual Assistance Convention with respect to that State.

Article 15

Position of Iceland and Norway

Article 8 shall constitute measures amending or based upon the provisions referred to in Annex A to the Agreement concluded by the Council of the European Union with the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis* (hereinafter referred to as the ë"Association Agreement").

Article 16

Entry into force for Iceland and Norway

1. Without prejudice to Article 8 of the Association Agreement, the provision referred to in Article 15 shall enter into force for Iceland and Norway 90 days after the receipt by the Council and the Commission of the information pursuant to Article 8(2) of the Association Agreement upon fulfilment of their constitutional requirements, in their mutual relations with any Member State for which this Protocol has already entered into force pursuant to Article 13(3) or (4).

2. Any entry into force of this Protocol for a Member State after the date of entry into force of the provision referred to in Article 15 for Iceland and Norway, shall render that provision also applicable in the mutual relations between that Member State and Iceland and Norway.

3. The provision referred to in Article 15 shall in any event not become binding on Iceland and Norway before the entry into force of the provisions referred to in Article 2(1) of the 2000 Mutual Assistance Convention with respect to those two States.

4. Without prejudice to paragraphs 1, 2 and 3, the provision referred to in Article 15 shall enter into force for Iceland and Norway not later than on the date of entry into force of this Protocol for the fifteenth State, being a member of the European Union at the time of the adoption by the Council of the Act establishing this Protocol.

Article 17

Depositary

The Secretary-General of the Council of the European Union shall act as depositary of this Protocol. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and also any other notification concerning this Protocol.

IN WITNESS WHEREOF, the undersigned plenipotentiaries have hereunto set their hands. Done at Luxembourg, on 16 October 2001 in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, the original being deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall forward a certified copy thereof to each Member State.

SCHEDULE 3

Text of Agreement with Iceland and Norway

THE EUROPEAN UNION, on the one hand, and THE REPUBLIC OF ICELAND and THE KINGDOM OF NORWAY, on the other hand, hereinafter referred to as "the Contracting Parties",

WISHING to improve judicial cooperation in criminal matters between the Member States of the European Union and Iceland and Norway, without prejudice to the rules protecting individual freedom,

CONSIDERING that current relationships among the Contracting Parties require close cooperation in the fight against crime,

POINTING OUT the Contracting Parties' common interest in ensuring that mutual assistance between the Member States of the European Union and Iceland and Norway is provided in a fast and efficient manner compatible with the basic principles of their national law, and in compliance with the individual rights and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950,

EXPRESSING their mutual confidence in the structure and functioning of their legal systems and in the ability of all Contracting Parties to guarantee a fair trial,

RESOLVED to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and other Conventions in force in this area, by an Agreement between the European Union, Iceland and Norway,

RECOGNISING that the provisions of those Conventions remain applicable for all matters not covered by this Agreement,

RECALLING that this Agreement, including Annex I thereto, regulates mutual assistance in criminal matters, based on the principles of the Convention of 20 April 1959,

CONSIDERING that in Article 2 paragraph 1 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, and in Article 15 of the Protocol of 16 October 2001 thereto, the provisions have been identified which constitute a development of the Schengen *acquis*, and which therefore have been accepted by Iceland and Norway by virtue of their obligations under the Agreement of 18 May 1999 concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway on the latters' association with the application, implementation and development of the provisions of the Schengen *acquis*,

CONSIDERING that Iceland and Norway have expressed their wish to enter into an agreement enabling them to apply also the other provisions of the 2000 Mutual Assistance Convention and of the 2001 Protocol in their relations with the Member States of the European Union,

CONSIDERING that the European Union also considers it necessary to have such an agreement in place,

HAVE AGREED AS FOLLOWS:

Article 1

1. Subject to the provisions of this Agreement, the content of the following provisions of the Convention of 29 May 2000, established by the Council of the European Union in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, hereinafter referred to as "the EU Mutual Assistance Convention", shall be applicable in the relations between the Republic of Iceland and the Kingdom of Norway and in the mutual relations between each of these States and the Member States of the European Union:

Articles 4, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25 and 26, as well as Articles 1 and 24 to the extent that they are relevant for any of those other Articles.

2. Subject to the provisions of this Agreement, the content of the following provisions of the Protocol of 16 October 2001, established by the Council of the European Union in accordance with Article 34 of the Treaty on European Union, to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, hereinafter referred to as "the EU Mutual Assistance Protocol", shall be applicable in the relations between the Republic of Iceland and the Kingdom of Norway and in the mutual relations between each of these States and the Member States of the European Union:

Articles 1 (paragraphs 1 to 5), 2, 3, 4, 5, 6, 7, 9, 11 and 12.

3. The declarations made by Member States under Articles 9(6), 10(9), 14(4), 18(7) and 20(7) of the EU Mutual Assistance Convention and Article 9(2) of the EU Mutual

Assistance Protocol shall also be applicable in the relations with the Republic of Iceland and the Kingdom of Norway.

Article 2

1. The Contracting Parties, in order to achieve the objective of arriving at as uniform an application and interpretation as possible of the provisions referred to in Article 1, shall keep under constant review the development of the case-law of the Court of Justice of the European Communities, as well as the development of the case-law of the competent courts of Iceland and Norway relating to such provisions. To this end a mechanism shall be set up to ensure regular mutual transmission of such case-law.

2. Iceland and Norway shall be entitled to submit statements of case or written observations to the Court of Justice in cases where a question has been referred to it by a court or tribunal of a Member State for a preliminary ruling concerning the interpretation of any provisions referred to in Article 1.

Article 3

If a request is refused, Norway or Iceland may ask the requested Member State to report to Eurojust any problem encountered concerning the execution of the request, for a possible practical solution.

Article 4

Any dispute between either Iceland or Norway and a Member State of the European Union regarding the interpretation or the application of this Agreement or of any of the provisions referred to in Article 1 thereof may be referred by a Party to the dispute to a meeting of representatives of the governments of the Member States of the European Union and of Iceland and Norway, with a view to its settlement within six months.

Article 5

The Contracting Parties agree to carry out a common review of this Agreement no later than five years after its entry into force. The review shall in particular address the practical implementation, interpretation and development of the Agreement and may also include issues such as the consequences of further development of the European Union relating to the subject matter of this Agreement.

Article 6

1. The Contracting Parties shall notify each other of the completion of the procedures required to express their consent to be bound to this Agreement.

2. When giving their notification under paragraph 1 or, if so provided, at any time thereafter, Iceland and Norway may make any of the declarations provided for in Articles 9(6), 10(9), 14(4), 18(7) and 20(7) of the EU Mutual Assistance Convention and Article 9(2) of the EU Mutual Assistance Protocol.

3. As far as the relevant provisions of the EU Mutual Assistance Convention are concerned, this Agreement shall enter into force on the first day of the third month following the day on which the Secretary-General of the Council of the European Union establishes that all formal requirements concerning the expression of the consent by or on behalf of the Parties to this Agreement have been fulfilled, or on the date on which the EU Mutual Assistance Convention enters into force in accordance with Article 27(3) thereof, if such date is later. As far as the relevant provisions of the EU Mutual Assistance Convention are concerned, the entry into force of this Agreement creates rights and obligations between Iceland and Norway and between Iceland, Norway and those EU Member States in respect of which the EU Mutual Assistance Convention has entered into force.

4. As far as the relevant provisions of the EU Mutual Assistance Protocol are concerned, this Agreement shall enter into force on the first day of the third month following the day on which the Secretary-General of the Council of the European Union establishes that all formal requirements concerning the expression of the consent by or on behalf of the Parties to this Agreement have been fulfilled, or on the date on which the EU Mutual Assistance Protocol enters into force in accordance with Article 13(3) thereof, if such date is later. As far as the relevant provisions of the EU Mutual Assistance Protocol are concerned, the entry into force of this Agreement creates rights and obligations between Iceland and Norway and between Iceland, Norway and those EU Member States in respect of which the EU Mutual Assistance Protocol has entered into force.

5. Subsequently, such rights and obligations shall come into being between Norway, Iceland and other EU Member States as from the dates on which the EU Mutual Assistance Convention and/or the EU Mutual Assistance Protocol enter into force for such other EU Member States.

6. This Agreement shall apply only to mutual assistance procedures initiated after the date on which it creates rights and obligations by virtue of paragraphs 3 and 4.

Article 7

Accession by new Member States of the European Union to the EU Mutual Assistance Convention and/or to the EU Mutual Assistance Protocol shall create rights and obligations under this Agreement between those new Member States and Iceland and Norway.

Article 8

1. This Agreement may be terminated by the Contracting Parties. In the event of termination by either Iceland or Norway, this Agreement shall remain in force between the European Union and the State for which it has not been terminated.

2. Termination of this Agreement pursuant to paragraph 1 shall take effect six months after the deposit of the notification of termination. Procedures for complying with requests for mutual legal assistance still pending at that date shall be completed in accordance with the provisions of this Agreement.

3. This Agreement shall be terminated in the event of termination of the Agreement of 18 May 1999 concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway on the latters' association with the application, implementation and development of the Schengen *acquis*.

4. Termination of this Agreement pursuant to paragraph 3 shall take effect for the same Party or Parties and on the same date as the termination of the Agreement of 18 May 1999 referred to in paragraph 3.

Article 9

1. The Secretary-General of the Council of the European Union shall act as the depository of this Agreement.

2. The depository shall make public information on any notification made concerning this Agreement.

Article 10

This Agreement shall be drawn up in one single copy in the Danish, Dutch, English, Finnish, French, German, Greek, Icelandic, Irish, Italian, Norwegian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

Done at Brussels, this nineteenth day of December, in the year two thousand and three.

ANNEX I

Application to Gibraltar

The United Kingdom of Great Britain and Northern Ireland, as Member State responsible for Gibraltar, including its external relations, confirms that this Agreement will take effect in the territory upon extension of the 2000 EU Mutual Assistance Convention and the 2001 Protocol to Gibraltar, which is contingent upon the 1959 Council of Europe Mutual Assistance Convention having been extended to Gibraltar. At that time, the United Kingdom will designate a relevant Gibraltarian authority as competent for the purposes of the Agreement. Any formal communication with this authority will be conducted in accordance with the Agreed Arrangements between the United Kingdom and the Kingdom of Spain relating to Gibraltar authorities in the context of EU and EC instruments and related treaties, which were notified to the Member States and institutions of the European Union on 19 April 2000. A copy of these Arrangements shall be notified to the Republic of Iceland and Kingdom of Norway by the Secretary-General of the Council of the European Union.

ANNEX II

Declaration by the Contracting Parties to the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto

The Contracting Parties agree to consult, as appropriate, when the Republic of Iceland or the Kingdom of Norway or one of the Member States of the European Union considers that there is occasion to do so, to enable the most effective use to be made of this Agreement, including with a view to preventing any dispute regarding the practical implementation and interpretation of this Agreement. This consultation shall be organised in the most convenient way, taking into account the existing structures of cooperation.

Declaration by the Republic of Iceland and the Kingdom of Norway

The Republic of Iceland and the Kingdom of Norway declare, in view of the provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters enabling direct contact between judicial authorities, that their competent judicial authorities wish, where appropriate, to make requisite enquiries through the contact points of the European Judicial Network, in order to establish which judicial authority of a Member State of the European Union has the territorial competence for initiating and executing requests for mutual assistance.

F167[SCHEDULE 3A

Text of Agreement Between the European Union and Japan on Mutual Legal Assistance in Criminal Matters

AGREEMENT

between the European Union and Japan on mutual legal assistance in criminal matters

THE EUROPEAN UNION,

and

JAPAN

DESIRING to establish more effective cooperation between the European Union Member States and Japan in the area of mutual legal assistance in criminal matters,

DESIRING that such cooperation will contribute to combating crime,

REAFFIRMING their commitment to respect for justice, principles of the rule of law and democracy, and judicial independence,

HAVE AGREED AS FOLLOWS:

Article 1

Object and purpose

1. The requested State shall, upon request by the requesting State, provide mutual legal assistance (hereinafter referred to as "assistance") in connection with investigations, prosecutions and other proceedings, including judicial proceedings, in criminal matters in accordance with the provisions of this Agreement.

2. This Agreement does not apply to extradition, transfer of proceedings in criminal matters and enforcement of sentences other than confiscation provided for under Article 25.

Article 2

Definitions

For the purpose of this Agreement:

(a) the term "Contracting Parties" means the European Union and Japan;

(b) the term "Member State" means a Member State of the European Union;

(c) the term "State" means a Member State or Japan;

(d) the term "items" means documents, records and other articles of evidence;

(e) the term "property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

(f) the term "instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence;

(g) the term "proceeds" means any property derived from or obtained, directly or indirectly, through the commission of a criminal offence;

(h) the term "freezing or seizure" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority; and

(i) the term "confiscation", which includes forfeiture where applicable, means a penalty or a measure, ordered by a court or other judicial authority following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property.

Article 3

Scope of assistance

Assistance shall include the following:

(a) taking testimony or statements;

(b) enabling the hearing by videoconference;

(c) obtaining items, including through the execution of search and seizure;

(d) obtaining records, documents or reports of bank accounts;

(e) examining persons, items or places;

(f) locating or identifying persons, items or places;

(g) providing items in the possession of the legislative, administrative or judicial authorities of the requested State as well as the local authorities thereof;

(h) serving documents and informing a person of an invitation to appear in the requesting State;

(i) temporary transfer of a person in custody for testimony or other evidentiary purposes;

(j) assisting in proceedings related to freezing or seizure and confiscation of proceeds or instrumentalities; and

(k) any other assistance permitted under the laws of the requested State and agreed upon between a Member State and Japan.

Article 4

Designation and responsibilities of Central Authorities

Each State shall designate the Central Authority that is the authority responsible for sending, receiving and responding to requests for assistance, the execution of such requests or their transmission to the authorities having jurisdiction to execute such requests under the laws of the State. The Central Authorities shall be the authorities listed in Annex I to this Agreement.

Article 5

Communication between Central Authorities

1. Requests for assistance under this Agreement shall be sent by the Central Authority of the requesting State to the Central Authority of the requested State.

2. The Central Authorities of the Member States and Japan shall communicate directly with one another for the purpose of this Agreement.

Article 6

Authorities competent to originate requests

The authorities which are competent under the laws of the States to originate requests for assistance pursuant to this Agreement are set out in Annex II to this Agreement.

Article 7

Authentication

Documents transmitted by a State pursuant to this Agreement which are attested by the signature or seal of a competent authority or the Central Authority of the State need not be authenticated.

Article 8

Requests for assistance

1. The requesting State shall make a request in writing.

2. The requesting State may, in urgent cases, after having been in contact with the requested State, make a request by any other reliable means of communication, including fax or e-mail. In such cases, the requesting State shall provide supplementary confirmation of the request in writing promptly thereafter, if the requested State so requires.

3. A request shall include the following:

(a) the name of the competent authority conducting the investigation, prosecution or other proceeding, including judicial proceeding;

(b) the facts pertaining to the subject of the investigation, prosecution or other proceeding, including judicial proceeding;

(c) the nature and stage of the investigation, prosecution or other proceeding, including judicial proceeding;

(d) the text or a statement of the relevant laws, including applicable penalties, of the requesting State;

(e) a description of the assistance requested; and

(f) a description of the purpose of the assistance requested.

4. A request shall, to the extent possible and relevant to the assistance requested, include the following:

(a) information on the identity and location of any person from whom testimony, statements or items are sought;

(b) a list of questions to be asked to the person from whom testimony or statements are sought;

(c) a precise description of persons or places to be searched and of items to be sought;

(d) a description of why the requesting State considers that the requested records, documents or reports of bank accounts are relevant and necessary for the purpose of the investigation into the offence, and other information that may facilitate the execution of the request;

(e) information regarding persons, items or places to be examined;

(f) information regarding persons, items or places to be located or identified;

(g) information on the identity and location of a person to be served with a document or informed of an invitation, that person's relationship to the proceeding, and the manner in which service is to be made;

(h) information on the allowances and expenses to which a person whose appearance is sought before the competent authority of the requesting State will be entitled; and

(i) a precise description of proceeds or instrumentalities, the location thereof, and the identity of the owner thereof.

5. A request shall, to the extent necessary, also include the following:

(a) a description of any particular manner or procedure to be followed in executing the request;

(b) a description of the reasons for confidentiality concerning the request; and

(c) any other information that should be brought to the attention of the requested State to facilitate the execution of the request.

6. If the requested State considers that the information contained in a request for assistance is not sufficient to meet the requirements under this Agreement to enable the execution of the request, the requested State may request that additional information be provided.

Article 9

Language

A request and any documents attached thereto shall be accompanied by a translation into an official language of the requested State or, in all or, in urgent cases, into a language specified in Annex III to this Agreement.

Article 10

Execution of requests

1. The requested State shall promptly execute a request in accordance with the relevant provisions of this Agreement. The competent authorities of the requested State shall take every possible measure in their power to ensure the execution of a request.

2. A request shall be executed by using measures that are in accordance with the laws of the requested State. The particular manner or procedure described in the request referred to in paragraph 4(g) or paragraph 5(a) of Article 8 shall be followed to the extent that it is not contrary to the laws of the requested State, and where it is practically possible. In case the execution of the request in the manner or procedure described in the request poses a practical problem for the requested State, the requested State shall consult with the requesting State in order to solve the practical problem.

3. If the execution of a request is deemed to interfere with an ongoing investigation, prosecution or other proceeding, including judicial proceeding, in the requested State, the requested State may postpone the execution. The requested State shall inform the requesting State of the reasons for the postponement and consult the further procedure. Instead of postponing the execution, the requested State may make the execution subject to conditions deemed necessary after consultations with the requesting State. If the requesting State accepts such conditions, the requesting State shall comply with them.

4. The requested State shall make its best efforts to keep confidential the fact that a request has been made, the contents of the request, the outcome of the execution of the request and other relevant information concerning the execution of the request if such confidentiality is requested by the requesting State. If a request cannot be executed without disclosure of such information, the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

5. The requested State shall respond to reasonable inquiries by the requesting State concerning the status of the execution of a request.

6. The requested State shall promptly inform the requesting State of the result of the execution of a request, and shall provide the requesting State with the testimony, statements or items, obtained as a result of the execution, including any claim from

a person from whom testimony, statements or items are sought regarding immunity, incapacity or privilege under the laws of the requesting State. The requested State shall provide originals or, if there are reasonable grounds, certified copies of records or documents. If a request cannot be executed in whole or in part, the requested State shall inform the requesting State of the reasons therefore.

Article 11

Grounds for refusal of assistance

1. Assistance may be refused if the requested State considers that:

(a) a request concerns a political offence or an offence connected with a political offence;

(b) the execution of a request is likely to prejudice its sovereignty, security, ordre public or other essential interests. For the purpose of this subparagraph, the requested State may consider that the execution of a request concerning an offence punishable by death under the laws of the requesting State or, in the relations between one Member State, set out in Annex IV to this Agreement, and Japan, an offence punishable by life imprisonment under the laws of the requesting State, could prejudice essential interests of the requested State, unless the requested State and the requesting State agree on the conditions under which the request can be executed;

(c) there are well-founded reasons to suppose that the request for assistance has been made with a view to prosecuting or punishing a person by reason of race, religion, nationality, ethnic origin, political opinions or sex, or that such person's position may be prejudiced for any of those reasons;

(d) the person, who is subject to criminal investigations, prosecutions or other proceedings, including judicial proceedings, for which the assistance is requested, in the requesting State, has already been finally convicted or acquitted for the same facts in a Member State or Japan; or

(e) a request does not conform to the requirements of this Agreement.

2. The requested State may refuse assistance which would necessitate coercive measures under its laws if it considers that the conduct that is the subject of the investigation, prosecution or other proceeding, including judicial proceeding, in the requesting State would not constitute a criminal offence under the laws of the requested State. In the relations between Japan and two Member States, set out in Annex IV to this Agreement, assistance may be refused if the requested State considers that the conduct that is the subject of the investigation, prosecution or other proceeding, including judicial proceeding, in the requesting State would not constitute a criminal offence under the laws of the requested State.

3. Assistance shall not be refused on the ground of bank secrecy.

4. Before refusing assistance pursuant to this Article, the requested State shall consult with the requesting State when the requested State considers that assistance may be provided subject to certain conditions. If the requesting State accepts such conditions, the requesting State shall comply with them.

5. If assistance is refused, the requested State shall inform the requesting State of the reasons for the refusal.

Article 12

Costs

1. The requested State shall bear all costs related to the execution of a request, unless otherwise agreed between the requesting State and the requested State.

2. Notwithstanding the provisions of paragraph 1, the requesting State shall bear:

(a) the fees of an expert witness;

(b) the costs of translation, interpretation and transcription;

(c) the allowances and expenses related to travel of persons pursuant to Articles 22 and 24;

(d) the costs of establishing a video link and costs related to the servicing of a video link in the requested State; and

(e) the costs of an extraordinary nature;

unless otherwise agreed between the requesting State and the requested State.

3. If the execution of a request would impose costs of an extraordinary nature, the requesting State and the requested State shall consult in order to determine the conditions under which the request will be executed.

Article 13

Limitations on use of testimony, statements, items or information

1. The requesting State shall not use testimony, statements, items or any information, including personal data, provided or otherwise obtained under this Agreement other than in the investigation, prosecution or other proceeding, including judicial proceeding, described in the request without prior consent of the requested State. In giving such prior consent, the requested State may impose such conditions as it deems appropriate.

2. The requested State may request that testimony, statements, items or any information, including personal data, provided or otherwise obtained under this Agreement be kept confidential or be used only subject to other conditions it may specify. If the requesting State agrees to such confidentiality or accepts such conditions, it shall comply with them.

3. In exceptional circumstances a State may, at the time it is providing testimony, statements, items or any information, including personal data, request that the receiving State will give information on the use made of them.

Article 14

Transport, maintenance and return of items

1. The requested State may request that the requesting State transport and maintain items provided under this Agreement in accordance with the conditions specified by the requested State, including the conditions deemed necessary to protect third-party interests in the items to be transferred.

2. The requested State may request that the requesting State return any items provided under this Agreement in accordance with the conditions specified by the requested State, after such items have been used for the purpose described in a request.

3. The requesting State shall comply with a request made pursuant to paragraph 1 or 2. When such a request has been made, the requesting State shall not examine the items without the prior consent of the requested State if the examination impairs or could impair the item.

Article 15

Taking of testimony or statements

1. The requested State shall take testimony or statements. The requested State shall employ coercive measures in order to do so, if such measures are necessary and the requesting State provides the requested State with information justifying those measures under the laws of the requested State.

2. The requested State shall make its best efforts to make possible the presence of such persons as specified in a request for taking testimony or statements during the execution of the request, and to allow such persons to question the person from whom testimony or statements are sought. In the case that such direct questioning is not permitted, such persons shall be allowed to submit questions to be posed to the person from whom testimony or statements are sought.

3. If a person, from whom testimony or statements are sought pursuant to this Article, asserts a claim of immunity, incapacity or privilege under the laws of the requesting State, testimony or statements may nevertheless be taken, unless the request includes a statement from the requesting State that when such immunity, incapacity or privilege is claimed, the testimony or statements cannot be taken.

Article 16

Hearing by videoconference

1. If a person is in the requested State and has to be heard as a witness or an expert witness by the competent authorities of the requesting State, the requested State may enable testimony or a statement to be taken from that person by those competent authorities by videoconference, if such hearing is necessary for the proceedings of the requesting State. The requesting and the requested States shall consult, if necessary, in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

2. The following rules shall apply to the hearing by videoconference unless otherwise agreed between the requesting State and the requested State:

(a) the authority of the requested State will identify the person to be heard specified in the request, and invite the person to facilitate his or her appearance;

(b) the hearing will be conducted directly by, or under the direction of, the competent authority of the requesting State in accordance with its own laws and the fundamental principles of the law of the requested State;

(c) the authority of the requested State will be present during the hearing, where necessary assisted by an interpreter, and will observe the hearing. If the authority of the requested State is of the view that during the hearing the fundamental principles of the law of the requested State are being infringed, it will immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;

(d) at the request of the requesting State or the person to be heard, the requested State will ensure, if necessary, that the person is assisted by an interpreter; and

(e) the person to be heard may claim the right not to testify which would accrue to him or her under the laws of either the requesting or the requested State. Other measures necessary for the protection of the person as agreed upon between the authorities of the requesting and the requested States will also be taken.

Article 17

Obtaining of items

1. The requested State shall obtain items. The requested State shall employ coercive measures, including search and seizure in order to do so, if such measures are necessary and the requesting State provides the requested State with information justifying those measures under the laws of the requested State.

2. The requested State shall make its best efforts to make possible the presence of such persons as specified in a request for obtaining items during the execution of the request.

Article 18

Bank accounts

1. The requested State shall confirm whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts in the banks specified in the request.

2. The requested State shall provide the specified records, documents or reports of the specified accounts, the records of banking operations which have been carried out during a specified period through the accounts specified in the request, or identified in accordance with paragraph 1 and the specified records, documents or reports of any sending or recipient account.

3. The obligations set out in this Article shall apply only to the extent that the information is in the possession of the bank keeping the account.

4. The requested State may make an execution of a request in paragraphs 1 and 2 dependent on the conditions it applies in respect of requests for obtaining items.

Article 19

Examination of persons, items or places

1. The requested State shall examine persons, items or places. The requested State shall employ coercive measures in order to do so, if such measures are necessary and the requesting State provides the requested State with information justifying those measures under the laws of the requested State.

2. The requested State shall make its best efforts to make possible the presence of such persons as specified in a request for examining persons, items or places during the execution of the request.

Article 20

Locating or identifying persons, items or places

The requested State shall make its best efforts to locate or identify persons, items or places.

Article 21

Providing items in possession of the legislative, administrative, judicial or local authorities

1. The requested State shall provide the requesting State with items that are in the possession of the legislative, administrative or judicial authorities of the requested State as well as the local authorities thereof and are available to the general public.

2. The requested State shall make its best efforts to provide the requesting State with items, including criminal records, that are in the possession of the legislative, administrative or judicial authorities of the requested State as well as the local authorities thereof and are not available to the general public, to the same extent and under the same conditions as such items would be available to its investigative and prosecuting authorities.

Article 22

Service of documents and informing a person of an invitation

1. The requested State shall effect service of documents, including service of summons or other documents requiring the appearance of a person before the competent authority of the requesting State, on persons in the requested State. The requested State shall inform a person in that State of an invitation to appear before the competent authority of the requesting State.

2. Where a request concerns service of a document requiring the appearance of a person before the competent authority of the requesting State, the request shall be received by the Central Authority of the requested State not less than 50 days before the scheduled appearance date. In urgent cases, the requested State may waive this requirement.

3. Where the requesting State knows that the addressee does not understand the language which the documents, served or sent pursuant to paragraph 1, are drawn up in or translated into, the requesting State shall endeavour to translate the documents, or shall, at least, translate the important passages thereof, also into the language the addressee understands.

4. Documents served pursuant to paragraph 1 shall include a statement that the addressee may obtain information from the competent authority by which the document was issued or from other authorities of the requesting State regarding his or her essential rights and obligations concerning the documents, if any.

5. In informing the result of the service of documents in accordance with paragraph 6 of Article 10, the requested State shall give proof of service by means of a receipt dated and signed by the person served or by means of a statement made by the requested State that service has been effected, as well as on the date, place and manner of service. The requested State shall, upon request by the requesting State, promptly inform the requesting State, where possible, of the response of the person who is invited or required to appear before the competent authority of the requesting State under paragraph 1.

6. A person who has been invited or required to appear before the competent authority of the requesting State under paragraph 1, but does not appear before that authority shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure in the requesting State, notwithstanding any contrary statement in the request or documents served or sent.

Article 23

Safe conduct

1. A person who is invited or required to appear before the competent authority of the requesting State under paragraph 1 of Article 22 shall not:

(a) be subject to detention or any restriction of personal liberty in that State by reason of any conduct or conviction that precedes the departure of the person from the requested State; or

(b) be obliged to give evidence or to assist in any investigation, prosecution or other proceeding, including judicial proceeding, other than the proceeding specified in the request.

2. If the safe conduct provided for in paragraph 1 cannot be provided, the requesting State shall be able to make a decision whether to appear before the competent authority of the requesting State.

3. The safe conduct provided for in paragraph 1 shall cease when:

(a) the person, having had, for a period of 15 consecutive days from the date when his or her presence is no longer required by the competent authority or from the day when he or she failed to appear before that authority on the scheduled appearance date, an opportunity of leaving, has nevertheless remained voluntarily in the requesting State; or

(b) the person, having left the requesting State, voluntarily returns to it.

4. When the requesting State knows that the safe conduct provided for in paragraph 1 has ceased pursuant to paragraphs 3(a) and 3(b), the requesting State shall so inform the requested State without delay, if such information is requested by the requested State and considered necessary by the requesting State.

Article 24

Temporary transfer of persons in custody

1. A person in custody of the requested State whose presence in the requesting State is necessary for testimony or other evidentiary purposes shall be temporarily transferred for those purposes to the requesting State, if the person consents and if the requesting State and the requested State agree, when permitted under the laws of the requested State.

2. The requesting State shall keep the person transferred pursuant to paragraph 1 in the custody of the requesting State, unless permitted by the requested State to do otherwise.

3. The requesting State shall immediately return the person transferred to the requested State, as agreed beforehand, or as otherwise agreed between the requesting State and the requested State.

4. The person transferred shall receive credit for service of the sentence being served in the requested State for the time spent in the custody of the requesting State.

5. The person transferred to the requesting State pursuant to this Article shall enjoy the safe conduct provided for in paragraph 1 of Article 23 in the requesting State until the return to the requested State, unless the person consents to give evidence or assist in any investigation, prosecution or other proceeding, including judicial proceeding, other than the proceeding specified in the request and the requesting State and the requested State agree thereto.

6. A person who does not consent to be transferred pursuant to this Article shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure in the requesting State, notwithstanding any contrary statement in the request.

Article 25

Freezing or seizure and confiscation of proceeds or instrumentalities

1. The requested State shall assist, to the extent permitted by its laws, in proceedings related to freezing or seizure and confiscation of the proceeds or instrumentalities.

2. A request for the confiscation described in paragraph 1 shall be accompanied by a decision of a court or other judicial authority imposing the confiscation.

3. The requested State that has custody over proceeds or instrumentalities may transfer such proceeds or instrumentalities, in whole or in part, to the requesting State, to the extent permitted by the laws of the requested State and upon such conditions as it deems appropriate.

4. In applying this Article, the legitimate rights and interests of bona fide third parties shall be respected under the laws of the requested State.

Article 26

Spontaneous exchange of information

1. Member States and Japan may, without prior request, provide information relating to criminal matters to each other to the extent permitted by the laws of the providing State.

2. The providing State may impose conditions on the use of such information by the receiving State. In such a case, the providing State shall give prior notice to the receiving State of the nature of the information to be provided and of the conditions to be imposed. The receiving State shall be bound by those conditions if it agrees to them.

Article 27

Relation to other instruments

1. Nothing in this Agreement shall prevent any State from requesting assistance or providing assistance in accordance with other applicable international agreements, or pursuant to its laws that may be applicable.

2. Nothing in this Agreement shall prevent a Member State and Japan from concluding international agreements confirming, supplementing, extending or amplifying the provisions thereof.

Article 28

Consultations

1. The Central Authorities of the Member States and Japan shall, if necessary, hold consultations for the purpose of resolving any difficulties with regard to the execution of a request, and facilitating speedy and effective assistance under this Agreement, and may decide on such measures as may be necessary for this purpose.

2. The Contracting Parties shall, as appropriate, hold consultations on any matter that may arise in the interpretation or application of this Agreement.

Article 29

Territorial application

1. This Agreement shall apply to the territory of Japan and, in relation to the European Union, to:

(a) the territories of the Member States; and

(b) territories for whose external relations a Member State has responsibility, or countries that are not Member States for whom a Member State has other duties with respect to external relations, where agreed upon by an exchange of diplomatic notes between the Contracting Parties, duly confirmed by the relevant Member State.

2. The application of this Agreement to any territory or country in respect of which extension has been made in accordance with paragraph 1(b) may be terminated by either Contracting Party giving six months' written notice to the other Contracting Party through the diplomatic channel, where duly confirmed between the relevant Member State and Japan.

Article 30

Status of annexes

Annexes to this Agreement form an integral part of this Agreement. Annexes I, II and III may be modified by mutual consent in writing of the Contracting Parties without amendment of this Agreement.

Article 31

Entry into force and termination

1. This Agreement shall enter into force on the 30th day after the date on which the Contracting Parties exchange diplomatic notes informing each other that their respective internal procedures necessary to give effect to this Agreement have been completed.

2. This Agreement shall apply to any request for assistance presented on or after the date upon which this Agreement enters into force, whether the acts relevant to the request were committed before, on or after that date.

3. Either Contracting Party may terminate this Agreement at any time by giving written notice to the other Contracting Party, and such termination shall be effective six months after the date of such notice.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Agreement.

DONE in duplicate, in the English and Japanese languages, both texts being equally authentic, and signed at Brussels on the thirtieth day of November 2009, and at Tokyo on the fifteenth day of December 2009. This Agreement shall also be drawn up in the Bulgarian, Czech, Danish, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, and the Contracting Parties shall authenticate those language versions by an exchange of diplomatic notes.

ANNEX I

THE CENTRAL AUTHORITIES

The Central Authorities of the Contracting Parties are the following authorities:

the Kingdom of Belgium: the Federal Public Service Justice, International Criminal Cooperation Department;

the Republic of Bulgaria: the Ministry of Justice;

the Czech Republic:

- before the case is brought before a court (i.e. in pre-trial proceedings): the Supreme Public Prosecutor's Office of the Czech Republic, and

- after the case has been brought before a court (i.e. in trial stage of criminal proceedings): the Ministry of Justice of the Czech Republic;

the Kingdom of Denmark: the Ministry of Justice;

the Federal Republic of Germany: the Federal Office of Justice;

the Republic of Estonia: the Ministry of Justice;

Ireland: the Minister for Justice, Equality and Law Reform or a person designated by the Minister;

the Hellenic Republic: the Ministry of Justice, Transparency and Human Rights;

the Kingdom of Spain: the Ministry of Justice, the Subdirectorate General for international legal cooperation;

the French Republic: the Ministry of Justice, the Office for International Mutual Assistance in Criminal Matters, Directorate for Criminal Matters and Pardons;

the Italian Republic: the Ministry of Justice, Department of Judicial Affairs - Directorate General of Criminal Matters;

the Republic of Cyprus: the Ministry of Justice and Public Order;

the Republic of Latvia:

- during pre-trial investigation until prosecution: State Police,

- during pre-trial investigation until submitting the case to the court: the General Prosecutor's Office, and

- during the trial: the Ministry of Justice;

the Republic of Lithuania:

- the Ministry of Justice of the Republic of Lithuania, and

- the General Prosecutor's Office of the Republic of Lithuania;

the Grand Duchy of Luxembourg: the Prosecutor General;

the Republic of Hungary:

- the Ministry of Justice and Law Enforcement, and

- the Office of the Prosecutor General;

the Republic of Malta: the Office of the Attorney General;

the Kingdom of the Netherlands: the Ministry of Justice in The Hague;

the Republic of Austria: the Ministry of Justice;

the Republic of Poland:

- during pre-trial stage: the National Public Prosecutor's Office,

- during the trial: the Ministry of Justice,

the Portuguese Republic: the Prosecutor General's Office;

Romania: the Ministry of Justice and Civil Liberties, the General Directorate for Cooperation, Directorate for International Law and Treaties, Division for International Judicial Cooperation in Criminal Matters;

the Republic of Slovenia: the Ministry of Justice, the Directorate for international cooperation and international legal assistance;

the Slovak Republic:

- in pre-trial proceedings: the General Prosecutor's Office,

- in trial stage: the Ministry of Justice, and,

- for receiving: the Ministry of Justice,

the Republic of Finland: the Ministry of Justice;

the Kingdom of Sweden: the Ministry of Justice;

the United Kingdom of Great Britain and Northern Ireland:the Home Office (United Kingdom Central Authority), Her Majesty's Revenue and Customs, Crown Office and Procurator Fiscal Service;

Japan: the Minister of Justice and the National Public Safety Commission or persons designated by them.

ANNEX II

With regard to Article 6 of this Agreement, the authorities which are competent under the laws of the States to originate requests for assistance pursuant to this Agreement are set out below:

the Kingdom of Belgium: the judicial authorities: to be understood as meaning members of the judiciary responsible for administering the law, examining magistrates and members of the Department of Public Prosecution;

the Republic of Bulgaria: the Supreme Cassation Prosecutor's Office of the Republic of Bulgaria for pre-trial cases of criminal proceedings and the courts of the Republic of Bulgaria for pending cases in trial phase of criminal proceedings;

the Czech Republic: public prosecutors and courts of the Czech Republic;

the Kingdom of Denmark:

- the District Courts, the High Courts and the Supreme Court,

- the Department of Public Prosecutions, which includes:

- the Ministry of Justice,

- the director of Public Prosecutions,

- the Prosecutor, and

- the Police Commissioners;

the Federal Republic of Germany:

- the Federal Ministry of Justice;

- Federal Court of Justice, Karlsruhe;

- the Public Prosecutor General of the Federal Court of Justice, Karlsruhe;

- the Federal Office of Justice;

- the Ministry of Justice of Baden-Württemberg, Stuttgart;

- the Bavarian State Ministry of Justice and Consumer Protection, Munich;

- the Senate Department for Justice, Berlin;

- the Ministry of Justice of Land Brandenburg, Potsdam;

- the Senator for Justice and Constitution of the Free Hanseatic City of Bremen, Bremen;

- the Justice Authority of the Free and Hanseatic City of Hamburg, Hamburg;

- the Hessian Ministry of Justice, Integration and Europe, Wiesbaden;

- the Ministry of Justice of Mecklenburg-Vorpommern, Schwerin;

- the Ministry of Justice of Lower-Saxony, Hanover;

- the Ministry of Justice of Land North-Rhine/Westphalia, Düsseldorf;

- the Ministry of Justice of Land Rhineland-Palatinate, Mainz;

- the Ministry of Justice of the Saarland, Saarbrücken;

- the Saxonian State Ministry of Justice, Dresden;

- the Ministry of Justice of Land Saxony-Anhalt, Magdeburg;

- the Ministry of Justice, Equality and Integration of Schleswig-Holstein, Kiel;

- the Thuringian Ministry of Justice, Erfurt;

- the Higher Regional Courts;

- the Regional Courts;

- the Local Courts;

- the Chief Public Prosecutor at the Higher Regional Courts;

- the Directors of Public Prosecutions at the Regional Courts;

- the Central Office of the Land Judicial Administrations for the Investigation of National Socialist Crimes, Ludwigsburg;

- the Federal Criminal Police Office;

- the Central Office of the German Customs Investigations Service;

the Republic of Estonia: judges and prosecutors;

Ireland: the Director for Public Prosecutions;

the Hellenic Republic: the Public Prosecutor's Office at the Court of Appeal;

the Kingdom of Spain: criminal court magistrates and judges, and public prosecutors;

the French Republic:

- first presidents, presidents, judges and magistrates at criminal courts,

- examining magistrates at such courts,

- members of the public prosecution service at such courts, namely:

- principal public prosecutors,

- deputy principal public prosecutors,

- assistant principal public prosecutors,

- public prosecutors and assistant public prosecutors,

- representatives of police court public prosecutors, and

- military court public prosecutors;

the Italian Republic

Prosecutors:

- Director of Public Prosecution

- Assistant Public Prosecutor

- Director of Military Public Prosecution

- Assistant Military Public Prosecutor

- General Public Prosecutor

- Assistant General Public Prosecutor

- General Military Public Prosecutor

- Assistant General Military Public Prosecutor

Judges:

- Judge of Peace

- Investigation Judge

- Preliminary hearing Judge

- Ordinary Court

- Military Court

- Court of Assizes

- Court of Appeal

- Court of Assizes of Appeal

- Military Court of Appeal

- Court of Cassation;

the Republic of Cyprus:

- the Attorney General of the Republic,

- the Chief of Police,

- the Director of Customs & Excise,

- members of the Unit for Combating Money Laundering (MOKAS), and,

- any other authority or person who is entitled to make inquiries and prosecutions in the Republic of Cyprus,

the Republic of Latvia: investigators, prosecutors and judges;

the Republic of Lithuania: judges and prosecutors;

the Grand Duchy of Luxembourg: the judicial authorities: to be understood as meaning members of the judiciary responsible for administering the law, examining magistrates and members of the Department of Public Prosecution;

the Republic of Hungary: prosecutor's offices and courts;

the Republic of Malta:

- the Magistrates Court,

- the Juvenile Court,

- the Criminal Court and the Court of Criminal Appeal,

- the Attorney General,

- the Deputy Attorney General,

- the Legal Officers within the Attorney General's office; and

- the Magistrates;

the Kingdom of the Netherlands: members of the judiciary responsible for administering the law, examining magistrates and members of the Department of Public Prosecutions;

the Republic of Austria: courts and prosecutors;

the Republic of Poland: prosecutors and courts;

the Portuguese Republic: prosecution services in the investigation phase, investigation judges and trial judges;

Romania: courts and the prosecutor's offices of the courts;

the Republic of Slovenia:

- local court judges,

- investigative judges,

- district court judges,

- higher court judges,

- supreme court judges,

- constitutional court judges,

- district state prosecutors,

- higher state prosecutors,

- supreme state prosecutors;

the Slovak Republic: judges and prosecutors;

the Republic of Finland:

- the Ministry of Justice,

- the Courts of First Instance, the Courts of Appeal, and the Supreme Court,

- the public prosecutors,

- the police authorities, the custom authorities, and the frontier guard officers in their capacity of preliminary criminal investigations authorities in criminal proceedings under the Preliminary Criminal Investigations Act,

the Kingdom of Sweden: courts and prosecutors;

the United Kingdom of Great Britain and Northern Ireland: courts and prosecutors;

Japan: Courts, Presiding Judges, Judges, Public Prosecutors, Public Prosecutor's Assistant Officers, and Judicial Police Officials.

ANNEX III

With regard to Article 9 of this Agreement, the Member States and Japan accept the following languages:

the Kingdom of Belgium: Dutch, French and German in all cases and English in urgent cases;

the Republic of Bulgaria: Bulgarian in all cases and English in urgent cases;

the Czech Republic: Czech in all cases and English in urgent cases;

the Kingdom of Denmark: Danish in all cases and English in urgent cases;

the Federal Republic of Germany: German in all cases and English in urgent cases;

the Republic of Estonia: Estonian and English in all cases;

Ireland: English and Irish in all cases;

the Hellenic Republic: Greek in all cases and English in urgent cases;

the Kingdom of Spain: Spanish in all cases;

the French Republic: French in all cases;

the Italian Republic: Italian in all cases and English in urgent cases;

the Republic of Cyprus: Greek and English in all cases;

the Republic of Latvia: Latvian in all cases and English in urgent cases;

the Republic of Lithuania: Lithuanian in all cases and English in urgent cases;

the Grand Duchy of Luxembourg: French and German in all cases and English in urgent cases;

the Republic of Hungary: Hungarian in all cases and English in urgent cases;

the Republic of Malta: Maltese in all cases;

the Kingdom of the Netherlands: Dutch in all cases and English in urgent cases;

the Republic of Austria: German in all cases and English in urgent cases;

the Republic of Poland: Polish in all cases;

the Portuguese Republic: Portuguese in all cases and English or French in urgent cases;

Romania: Romanian, English or French in all cases. With regard to longer documents, Romania reserves the right, in any specific case, to require a Romanian translation or to have one made at the expense of the requesting State;

the Republic of Slovenia: Slovenian and English in all cases;

the Slovak Republic: Slovak in all cases;

the Republic of Finland: Finnish, Swedish and English in all cases;

the Kingdom of Sweden: Swedish, Danish or Norwegian in all cases, unless the authority dealing with the application otherwise allows in the individual case;

the United Kingdom of Great Britain and Northern Ireland: English in all cases;

Japan: Japanese in all cases and English in urgent cases. However, Japan reserves the right, in any specific urgent case, to require translation into Japanese with regard to the request from the requesting State which does not accept translation into English under this Annex.

ANNEX IV

With regard to paragraph 1(b) of Article 11 of this Agreement, "one Member State" referred to in this paragraph is the Portuguese Republic.

With regard to paragraph 2 of Article 11 of this Agreement, "two Member States" referred to in this paragraph are the Republic of Austria and the Republic of Hungary.**]**

Annotations

Amendments

F167 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2015), s. 31(a) and sch. 1, S.I. No. 11 of 2016.

SCHEDULE 4

Text of Articles 49 and 51 of Schengen Convention

Article 49

Mutual assistance shall also be afforded:

(a) in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of one of the two Contracting Parties, or of both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

(b) in proceedings for claims for damages arising from wrongful prosecution or conviction;

(c) in clemency proceedings;

(d) in civil actions joined to criminal proceedings, as long as the criminal court has not yet taken a final decision in the criminal proceedings;

(e) in the service of judicial documents relating to the enforcement of a sentence or a preventive measure, the imposition of a fine or the payment of costs for proceedings;

(f) in respect of measures relating to the deferral of delivery or suspension of enforcement of a sentence or a preventive measure, to conditional release

or to a stay or interruption of enforcement of a sentence or a preventive measure.

Article 51

The Contracting Parties may not make the admissibility of letters rogatory for search or seizure dependent on conditions other than the following:

(a) the act giving rise to the letters rogatory is punishable under the law of both Contracting Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of at least six months, or is punishable under the law of one of the two Contracting Parties by an equivalent penalty and under the law of the other Contracting Party by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

(b) execution of the letters rogatory is consistent with the law of the requested Contracting Party.

SCHEDULE 5

Text of Framework Decision

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a) and Article 34(2)(b) thereof,

Having regard to the initiative by the Republic of France, the Kingdom of Sweden and the Kingdom of Belgium,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The European Council, meeting in Tampere on 15 and 16 October 1999, endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.

(2) The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent judicial authorities quickly to secure evidence and to seize property which are easily movable.

(3) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition in criminal matters, giving first priority (measures 6 and 7) to the adoption of an instrument applying the principle of mutual recognition to the freezing of evidence and property.

(4) Cooperation between Member States, based on the principle of mutual recognition and immediate execution of judicial decisions, presupposes confidence that the decisions to be recognised and enforced will always be taken in compliance with the principles of legality, subsidiarity and proportionality.

(5) Rights granted to the parties or bona fide interested third parties should be preserved.

(6) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to freeze property for which a freezing order has been issued when there are reasons to believe, on the basis of objective elements, that the freezing order is issued for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media,

HAS ADOPTED THIS FRAMEWORK DECISION:

TITLE I

SCOPE

Article 1

Objective

The purpose of the Framework Decision is to establish the rules under which a Member State shall recognise and execute in its territory a freezing order issued by a judicial authority of another Member State in the framework of criminal proceedings. It shall not have the effect of amending the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

Article 2

Definitions

For the purposes of this Framework Decision:

(a) "issuing State" shall mean the Member State in which a judicial authority, as defined in the national law of the issuing State, has made, validated or in any way confirmed a freezing order in the framework of criminal proceedings;

(b) "executing State" shall mean the Member State in whose territory the property or evidence is located;

(c) "freezing order" property that could be subject to confiscation or evidence;

(d) "property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which the competent judicial authority in the issuing State considers:

— is the proceeds of an offence referred to in Article 3, or equivalent to either the full value or part of the value of such proceeds, or

— constitutes the instrumentalities or the objects of such an offence;

(e) "evidence" shall mean objects, documents or data which could be produced as evidence in criminal proceedings concerning an offence referred to in Article 3.

Article 3

Offences

1. This Framework Decision applies to freezing orders issued for purposes of:

(a) securing evidence, or

(b) subsequent confiscation of property.

2. The following offences, as they are defined by the law of the issuing State, and if they are punishable in the issuing State by a custodial sentence of a maximum period of at least three years shall not be subject to verification of the double criminality of the act:

— participation in a criminal organisation,

— terrorism,

— trafficking in human beings,

— sexual exploitation of children and child pornography,

—illicit trafficking in narcotic drugs and psychotropic substances,

— illicit trafficking in weapons, munitions and explosives,

— corruption,

— fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the Protection of the European Communities' Financial Interests,

— laundering of the proceeds of crime,

— counterfeiting currency, including of the euro,

— computer-related crime,

—environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,

— facilitation of unauthorised entry and residence,

— murder, grievous bodily injury,

— illicit trade in human organs and tissue,

— kidnapping, illegal restraint and hostage-taking,

— racism and xenophobia,

— organised or armed robbery,

— illicit trafficking in cultural goods, including antiques and works of art,

— swindling,

— racketeering and extortion,

— counterfeiting and piracy of products,

— forgery of administrative documents and trafficking therein,

— forgery of means of payment,

— illicit trafficking in hormonal substances and other growth promoters,

— illicit trafficking in nuclear or radioactive materials,

— trafficking in stolen vehicles,

— rape,

— arson,

— crimes within the jurisdiction of the International Criminal Tribunal,

— unlawful seizure of aircraft/ships,

— sabotage.

3. The Council may decide, at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty, to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 14 of this Framework Decision, whether the list should be extended or amended.

4. For cases not covered by paragraph 2, the executing State may subject the recognition and enforcement of a freezing order made for purposes referred to in paragraph 1(a) to the condition that the acts for which the order was issued constitute an offence under the laws of that State, whatever the constituent elements or however described under the law of the issuing State.

For cases not covered by paragraph 2, the executing State may subject the recognition and enforcement of a freezing order made for purposes referred to in paragraph 1(b) to the condition that the acts for which the order was issued constitute an offence which, under the laws of that State, allows for such freezing, whatever the constituent elements or however described under the law of the issuing State.

TITLE II

PROCEDURE FOR EXECUTING FREEZING ORDERS

Article 4

Transmission of freezing orders

1. A freezing order within the meaning of this Framework Decision, together with the certificate provided for in Article 9, shall be transmitted by the judicial authority which issued it directly to the competent judicial authority for execution by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.

2. The United Kingdom and Ireland, respectively, may, before the date referred to in Article 14(1), state in a declaration that the freezing order together with the certificate must be sent via a central authority or authorities specified by it in the declaration. Any such declaration may be modified by a further declaration or withdrawn any time. Any declaration or withdrawal shall be deposited with the General Secretariat of the Council and notified to the Commission. These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 1. They shall do so when the provisions on mutual assistance of the Convention implementing the Schengen Agreement are put into effect for them.

3. If the competent judicial authority for execution is unknown, the judicial authority in the issuing State shall make all necessary inquiries, including via the contact points of the European Judicial Network, in order to obtain the information from the executing State.

4. When the judicial authority in the executing State which receives a freezing order has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, *ex officio*, transmit the freezing order to the competent judicial authority for

execution and shall so inform the judicial authority in the issuing State which issued it.

Article 5

Recognition and immediate execution

1. The competent judicial authorities of the executing State shall recognise a freezing order, transmitted in accordance with Article 4, without any further formality being required and shall forthwith take the necessary measures for its immediate execution in the same way as for a freezing order made by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7 or one of the grounds for postponement provided for in Article 8.

Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order.

A report on the execution of the freezing order shall be made forthwith to the competent authority in the issuing State by any means capable of producing a written record.

2. Any additional coercive measures rendered necessary by the freezing order shall be taken in accordance with the applicable procedural rules of the executing State.

3. The competent judicial authorities of the executing State shall decide and communicate the decision on a freezing order as soon as possible and, whenever practicable, within 24 hours of receipt of the freezing order.

Article 6

Duration of the freezing

1. The property shall remain frozen in the executing State until that State has responded definitively to any request made under Article 10(1)(a) or (b).

2. However, after consulting the issuing State, the executing State may in accordance with its national law and practices lay down appropriate conditions in the light of the circumstances of the case in order to limit the period for which the property will be frozen. If, in accordance with those conditions, it envisages lifting the measure, it shall inform the issuing State, which shall be given the opportunity to submit its comments.

3. The judicial authorities of the issuing State shall forthwith notify the judicial authorities of the executing State that the freezing order has been lifted. In these circumstances it shall be the responsibility of the executing State to lift the measure as soon as possible.

Article 7

Grounds for non-recognition or non-execution

1. The competent judicial authorities of the executing State may refuse to recognise or execute the freezing order only if:

(a) the certificate provided for in Article 9 is not produced, is incomplete or manifestly does not correspond to the freezing order;

(b) there is an immunity or privilege under the law of the executing State which makes it impossible to execute the freezing order;

(c) it is instantly clear from the information provided in the certificate that rendering judicial assistance pursuant to Article 10 for the offence in respect of which the freezing order has been made, would infringe the *ne bis in idem* principle;

(d) if, in one of the cases referred to in Article 3(4), the act on which the freezing order is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of the freezing order may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

2. In case of paragraph 1(a), the competent judicial authority may:

(a) specify a deadline for its presentation, completion or correction; or

(b) accept an equivalent document; or

(c) exempt the issuing judicial authority from the requirement if it considers that the information provided is sufficient.

3. Any decision to refuse recognition or execution shall be taken and notified forthwith to the competent judicial authorities of the issuing State by any means capable of producing a written record.

4. In case it is in practice impossible to execute the freezing order for the reason that the property or evidence have disappeared, have been destroyed, cannot be found in the location indicated in the certificate or the location of the property or evidence has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the competent judicial authorities of the issuing State shall likewise be notified forthwith.

Article 8

Grounds for postponement of execution

1. The competent judicial authority of the executing State may postpone the execution of a freezing order transmitted in accordance with Article 4:

(a) where its execution might damage an ongoing criminal investigation, until such time as it deems reasonable;

(b) where the property or evidence concerned have already been subjected to a freezing order in criminal proceedings, and until that freezing order is lifted;

(c) where, in the case of an order freezing property in criminal proceedings with a view to its subsequent confiscation, that property is already subject to an order made in the course of other proceedings in the executing State and until that order is lifted. However, this point shall only apply where such an order would have priority over subsequent national freezing orders in criminal proceedings under national law.

2. A report on the postponement of the execution of the freezing order, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be made forthwith to the competent authority in the issuing State by any means capable of producing a written record.

3. As soon as the ground for postponement has ceased to exist, the competent judicial authority of the executing State shall forthwith take the necessary measures for the execution of the freezing order and inform the competent authority in the issuing State thereof by any means capable of producing a written record.

4. The competent judicial authority of the executing State shall inform the competent authority of the issuing State about any other restraint measure to which the property concerned may be subjected.

Article 9

Certificate

1. The certificate, the standard form for which is given in the Annex, shall be signed, and its contents certified as accurate, by the competent judicial authority in the issuing State that ordered the measure.

2. The certificate must be translated into the official language or one of the official languages of the executing State.

3. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the institutions of the European Communities.

Article 10

Subsequent treatment of the frozen property

1. The transmission referred to in Article 4:

(a) shall be accompanied by a request for the evidence to be transferred to the issuing State; or

(b) shall be accompanied by a request for confiscation requiring either enforcement of a confiscation order that has been issued in the issuing State or confiscation in the executing State and subsequent enforcement of any such order; or

(c) shall contain an instruction in the certificate that the property shall remain in the executing State pending a request referred to in (a) or (b). The issuing State shall indicate in the certificate the (estimated) date for submission of this request. Article 6(2) shall apply.

2. Requests referred to in paragraph 1(a) and (b) shall be submitted by the issuing State and processed by the executing State in accordance with the rules applicable to mutual assistance in criminal matters and the rules applicable to international cooperation relating to confiscation.

3. However, by way of derogation from the rules on mutual assistance referred to in paragraph 2, the executing State may not refuse requests referred to under paragraph 1(a) on grounds of absence of double criminality, where the requests concern the offences referred to in Article 3(2) and those offences are punishable in the issuing State by a prison sentence of at least three years.

Article 11

Legal remedies

1. Member States shall put in place the necessary arrangements to ensure that any interested party, including bona fide third parties, have legal remedies without suspensive effect against a freezing order executed pursuant to Article 5, in order to preserve their legitimate interests; the action shall be brought before a court in the issuing State or in the executing State in accordance with the national law of each.

2. The substantive reasons for issuing the freezing order can be challenged only in an action brought before a court in the issuing State.

3. If the action is brought in the executing State, the judicial authority of the issuing State shall be informed thereof and of the grounds of the action, so that it can submit the arguments that it deems necessary. It shall be informed of the outcome of the action.

4. The issuing and executing States shall take the necessary measures to facilitate the exercise of the right to bring an action mentioned in paragraph 1, in particular by providing adequate information to interested parties.

5. The issuing State shall ensure that any time limits for bringing an action mentioned in paragraph 1 are applied in a way that guarantees the possibility of an effective legal remedy for the interested parties.

Article 12

Reimbursement

1. Without prejudice to Article 11(2), where the executing State under its law is responsible for injury caused to one of the parties mentioned in Article 11 by the execution of a freezing order transmitted to it pursuant to Article 4, the issuing State shall reimburse to the executing State any sums paid in damages by virtue of that responsibility to the said party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State.

2. Paragraph 1 is without prejudice to the national law of the Member States on claims by natural or legal persons for compensation of damage.

TITLE III

FINAL PROVISIONS

Article 13

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 14

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision before 2 August 2005.

2. By the same date Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established using this information and a written report by the Commission, the Council shall, before 2 August 2006, assess the extent to which Member States have complied with the provisions of this Framework Decision.

3. The General Secretariat of the Council shall notify Member States and the Commission of the declarations made pursuant to Article 9(3).

Article 15

Entry into force

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 22 July 2003.

For the Council

The President

G. ALEMANNO

ANNEX - **CERTIFICATE PROVIDED FOR IN ARTICLE 9**

(a) The judicial authority which issued the freezing order:

Official name:

.

Name of its representative:

Post held (title/grade):

File reference:

Address:

.

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

Languages in which it is possible to communicate with the issuing judicial authority

.

Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence (if applicable):

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.

(b) The authority competent for the enforcement of the freezing order in the issuing State

Official name:

.

Name of representative:

Post held (title/grade):

File reference:

Address:

.

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

Languages in which it is possible to communicate with the authority competent for the enforcement

.

Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence (if applicable):

.

(c) In the case where points (a) and (b) have been filled, this point must be filled in order to indicate which/or both of these two authorities must be contacted:

□ Authority mentioned under point (a)

□ Authority mentioned under point (b)

(d) Where a central authority has been made responsible for the transmission and administrative reception of freezing orders (only applicable for Ireland and the United Kingdom):

Name of the central authority:

.

Contact person, if applicable (title/grade and name):

.

Address:

.

File reference:

Tel: (country code) (area/city code)

Fax: (country code) (area/city code)

E-mail:

(e) The freezing order:

1. Date and if applicable reference number

2. State the purpose of the order

2.1. Subsequent confiscation

2.2. Securing evidence

3. Description of formalities and procedures to be observed when executing a freezing order concerning evidence (if applicable)

(f) Information regarding the property or evidence in the executing State covered by the freezing order:

Description of the property or evidence and location:

1. (a) Precise description of the property and, where applicable, the maximum amount for which recovery is sought (if such maximum amount is indicated in the order concerning the value of proceeds)

(b) Precise description of the evidence

2. Exact location of the property or evidence (if not known, the last known location)

3. Party having custody of the property or evidence or known beneficial owner of the property or evidence, if different from the person suspected of the offence or convicted (if applicable under the national law of the issuing State)

.

.

(g) Information regarding the identity of the (1) natural or (2) legal person(s), suspected of the offence or convicted (if applicable under the national law of the issuing State) or/and the person(s) to whom the freezing order relates (if available):

1. Natural persons

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address if not known state the last known address:

.

Language(s) which the person understands (if known):

.

2. Legal persons

Name:

Form of legal person:

Registration number:

Registered seat:

.

(h) Action to be taken by the executing State after executing the freezing order

Confiscation

1.1. The property is to be kept in the executing State for the purpose of subsequent confiscation of the property

1.1.1. Find enclosed request regarding enforcement of a confiscation order issued in the issuing State on .....(date)

1.1.2. Find enclosed request regarding confiscation in the executing State and subsequent enforcement of that order

1.1.3. Estimated date for submission of a request referred to in 1.1.1 or 1.1.2

or

Securing of evidence

2.1. The property is to be transferred to the issuing State to serve as evidence

2.1.1. Find enclosed a request for the transfer

or

2.2. The property is to be kept in the executing State for the purpose of subsequent use as evidence in the issuing State

2.2.2. Estimated date for submission of a request referred to in 2.1.1.

(i) Offences:

Description of the relevant grounds for the freezing order and a summary of facts as known to the judicial authority issuing the freezing order and certificate:

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Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the freezing order was made:

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1. If applicable, tick one or more of the following offences to which the offence(s) identified above relate(s), if the offence(s) are punishable in the issuing State by a custodial sentence of a maximum of at least three years:

□ participation in a criminal organisation;

□ terrorism;

□ trafficking in human beings;

□ sexual exploitation of children and child pornography;

□ illicit trafficking in narcotic drugs and psychotropic substances;

□ illicit trafficking in weapons, munitions and explosives;

□ corruption;

□ fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the Protection of the European Communities' Financial Interests;

□ laundering of the proceeds of crime;

□ counterfeiting currency, including of the euro;

□ computer-related crime;

□ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;

□ facilitation of unauthorised entry and residence;

□ murder, grievous bodily injury;

□ illicit trade in human organs and tissue;

□ kidnapping, illegal restraint and hostage-taking;

□ racism and xenophobia;

□ organised or armed robbery;

□ illicit trafficking in cultural goods, including antiques and works of art;

□ swindling;

□ racketeering and extortion;

□ counterfeiting and piracy of products;

□ forgery of administrative documents and trafficking therein;

□ forgery of means of payment;

□ illicit trafficking in hormonal substances and other growth promoters;

□ illicit trafficking in nuclear or radioactive materials;

□ trafficking in stolen vehicles;

□ rape;

□ arson;

□ crimes within the jurisdiction of the International Criminal Court;

□ unlawful seizure of aircraft/ships;

□ sabotage.

2. Full description of offence(s) not covered by section 1 above:

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.

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(j) Legal remedies against the freezing order for interested parties, including bona fide third parties, available in the issuing State:

Description of the legal remedies available including necessary steps to take

Court before which the action may be taken

Information as to those for whom the action is available

Time limit for submission of the action

Authority in the issuing State who can supply further information on procedures for submitting appeals in the issuing State and on whether legal assistance and translation is available:

Name

Contact person (if applicable):

Address:

Tel: (country code)(area/city code)

Fax: (country code)(area/city code)

E-mail:

(k) Other circumstances relevant to the case (optional information):

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(l) The text of the freezing order is attached to the certificate.

Signature of the issuing judicial authority and/or its representative certifying the content of the certificate as accurate:

.

Name:

Post held (title/grade):

Date:

Official stamp (if available)

F168[SCHEDULE 5A

TEXT OF 2005 FRAMEWORK DECISION

COUNCIL FRAMEWORK DECISION 2005/214/JHA

of 24 February 2005

on the application of the principle of mutual recognition to financial penalties

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(a) and 34(2)(b) thereof,

Having regard to the initiative of the United Kingdom of Great Britain and Northern Ireland, the French Republic and the Kingdom of Sweden[1],

Having regard to the opinion of the European Parliament[2],

Whereas:

(1) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.

(2) The principle of mutual recognition should apply to financial penalties imposed by judicial or administrative authorities for the purpose of facilitating the enforcement of such penalties in a Member State other than the State in which the penalties are imposed.

(3) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters[3], giving priority to the adoption of an instrument applying the principle of mutual recognition to financial penalties (measure 18).

(4) This Framework Decision should also cover financial penalties imposed in respect of road traffic offences.

(5) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union[4], in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to execute a decision when there are reasons to believe, on the basis of objective elements, that the financial

[1] OJ C 278, 2.10.2001, p. 4.
[2] OJ C 271 E, 7.11.2002, p. 423.
[3] OJ C 12, 15.1.2001, p. 10.
[4] OJ C 364, 18.12.2000, p. 1.

penalty has the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

(6) This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision:

(a) "decision" shall mean a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:

(i) a court of the issuing State in respect of a criminal offence under the law of the issuing State;

(ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;

(iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;

(iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii) ;

(b) "financial penalty" shall mean the obligation to pay:

(i) a sum of money on conviction of an offence imposed in a decision;

(ii) compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in the exercise of its criminal jurisdiction;

(iii) a sum of money in respect of the costs of court or administrative proceedings leading to the decision;

(iv) a sum of money to a public fund or a victim support organisation, imposed in the same decision.

A financial penalty shall not include:

— orders for the confiscation of instrumentalities or proceeds of crime,

— orders that have a civil nature and arise out of a claim for damages and restitution and which are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[5];

[5] OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 2245/2004 (OJ L 381, 28.12.2004, p. 10).

(c) "issuing State" shall mean the Member State in which a decision within the meaning of this Framework Decision was delivered;

(d) "executing State" shall mean the Member State to which a decision has been transmitted for the purpose of enforcement.

Article 2

Determination of the competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent according to this Framework Decision, when that Member State is the issuing State or the executing State.

2. Notwithstanding Article 4, each Member State may designate, if it is necessary as a result of the organisation of its internal system, one or more central authorities responsible for the administrative transmission and reception of the decisions and to assist the competent authorities.

3. The General Secretariat of the Council shall make the information received available to all Member States and the Commission.

Article 3

Fundamental rights

This Framework Decision shall not have the effect of amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

Article 4

Transmission of decisions and recourse to the central authority

1. A decision, together with a certificate as provided for in this Article, may be transmitted to the competent authorities of a Member State in which the natural or legal person against whom a decision has been passed has property or income, is normally resident or, in the case of a legal person, has its registered seat.

2. The certificate, the standard form for which is given in the Annex, must be signed, and its contents certified as accurate, by the competent authority in the issuing State.

3. The decision or a certified copy of it, together with the certificate, shall be transmitted by the competent authority in the issuing State directly to the competent authority in the executing State by any means which leaves a written record under conditions allowing the executing State to establish its authenticity. The original of the decision, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.

4. The issuing State shall only transmit a decision to one executing State at any one time.

5. If the competent authority in the executing State is not known to the competent authority in the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network[6] in order to obtain the information from the executing State.

6. When an authority in the executing State which receives a decision has no jurisdiction to recognise it and take the necessary measures for its execution, it shall,

[6] Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

ex officio, transmit the decision to the competent authority and shall inform the competent authority in the issuing State accordingly.

7. The United Kingdom and Ireland, respectively, may state in a declaration that the decision together with the certificate must be sent via its central authority or authorities specified by it in the declaration. These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 3. They shall do so when the provisions on mutual assistance of the Schengen Implementation Convention are put into effect for them. Any declaration shall be deposited with the General Secretariat of the Council and notified to the Commission.

Article 5

Scope

1. The following offences, if they are punishable in the issuing State and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition and enforcement of decisions:

— participation in a criminal organisation,
— terrorism,
— trafficking in human beings,
— sexual exploitation of children and child pornography,
— illicit trafficking in narcotic drugs and psychotropic substances,
— illicit trafficking in weapons, munitions and explosives,
— corruption,
— fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
— laundering of the proceeds of crime,
— counterfeiting currency, including of the euro,
— computer-related crime,
— environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
— facilitation of unauthorised entry and residence,
— murder, grievous bodily injury,
— illicit trade in human organs and tissue,
— kidnapping, illegal restraint and hostage-taking,
— racism and xenophobia,
— organised or armed robbery,
— illicit trafficking in cultural goods, including antiques and works of art,
— swindling,
— racketeering and extortion,
— counterfeiting and piracy of products,
— forgery of administrative documents and trafficking therein,
— forgery of means of payment,
— illicit trafficking in hormonal substances and other growth promoters,
— illicit trafficking in nuclear or radioactive materials,
— trafficking in stolen vehicles,
— rape,
— arson,
— crimes within the jurisdiction of the International Criminal Court,
— unlawful seizure of aircraft/ships,
— sabotage,
— conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods,
— smuggling of goods,
— infringements of intellectual property rights,
— threats and acts of violence against persons, including violence during sport events,

— criminal damage,
— theft,
— offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

2. The Council may decide to add other categories of offences to the lists in paragraph 1 at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the EU Treaty.

The Council shall consider, in the light of the report submitted to it pursuant to Article 20(5), whether the list should be extended or amended. The Council shall consider the issue further at a later stage on the basis of a report on the practical application of the Framework Decision established by the Commission within 5 years after the date mentioned in Article 20(1).

3. For offences other than those covered by paragraph 1, the executing State may make the recognition and execution of a decision subject to the condition that the decision is related to conduct which would constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.

Article 6

Recognition and execution of decisions

The competent authorities in the executing State shall recognise a decision which has been transmitted in accordance with Article 4 without any further formality being required and shall forthwith take all the necessary measures for its execution, unless the competent authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7.

Article 7

Grounds for non-recognition and non-execution

1. The competent authorities in the executing State may refuse to recognise and execute the decision if the certificate provided for in Article 4 is not produced, is incomplete or manifestly does not correspond to the decision.

2. The competent authority in the executing State may also refuse to recognise and execute the decision if it is established that:

(a) decision against the sentenced person in respect of the same acts has been delivered in the executing State or in any State other than the issuing or the executing State, and, in the latter case, that decision has been executed;

(b) in one of the cases referred to in Article 5(3), the decision relates to acts which would not constitute an offence under the law of the executing State;

(c) the execution of the decision is statute-barred according to the law of the executing State and the decision relates to acts which fall within the jurisdiction of that State under its own law.

(d) the decision relates to acts which:

(i) are regarded by the law of the executing State as having been committed in whole or in part in the territory of the executing State or in a place treated as such, or

(ii) have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory;

(e) there is immunity under the law of the executing State, which makes it impossible to execute the decision;

(f) the decision has been imposed on a natural person who under the law of the executing State due to his or her age could not yet have been held criminally liable for the acts in respect of which the decision was passed;

(g) according to the certificate provided for in Article 4, the person concerned

(i) in case of a written procedure was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his right to contest the case and of time limits of such a legal remedy, or

(ii) did not appear personally, unless the certificate states:

— that the person was informed personally, or via a representative, competent according to national law, of the proceedings in accordance with the law of the issuing State, or

— that the person has indicated that he or she does not contest the case;

(h) the financial penalty is below EUR 70 or the equivalent to that amount.

3. In cases referred to in paragraphs 1 and 2(c) and (g), before deciding not to recognise and to execute a decision, either totally or in part, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.

Article 8

Determination of the amount to be paid

1. Where it is established that the decision is related to acts which were not carried out within the territory of the issuing State, the executing State may decide to reduce the amount of the penalty enforced to the maximum amount provided for acts of the same kind under the national law of the executing State, when the acts fall within the jurisdiction of that State.

2. The competent authority of the executing State shall, if necessary, convert the penalty into the currency of the executing State at the rate of exchange obtaining at the time when the penalty was imposed.

Article 9

Law governing enforcement

1. Without prejudice to paragraph 3 of this Article, and to Article 10, the enforcement of the decision shall be governed by the law of the executing State in the same way as a financial penalty of the executing State. The authorities of the executing State alone shall be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for termination of enforcement.

2. In the case where the sentenced person is able to furnish proof of a payment, totally or in part, in any State, the competent authority of the executing State shall consult the competent authority of the Issuing State in the way provided for in Article 7(3). Any part of the penalty recovered in whatever manner in any State shall be deducted in full from the amount, which is to be enforced in the executing State.

3. A financial penalty imposed on a legal person shall be enforced even if the executing State does not recognise the principle of criminal liability of legal persons.

Article 10

Imprisonment or other alternative sanction by way of substitution for non-recovery of the financial penalty

Where it is not possible to enforce a decision, either totally or in part, alternative sanctions, including custodial sanctions, may be applied by the executing State if its laws so provide in such cases and the issuing State has allowed for the application of such alternative sanctions in the certificate referred to in Article 4. The severity of the alternative sanction shall be determined in accordance with the law of the executing State, but shall not exceed any maximum level stated in the certificate transmitted by the issuing State.

Article 11

Amnesty, pardon, review of sentence

1. Amnesty and pardon may be granted by the issuing State and also by the executing State.

2. Without prejudice to the Article 10, only the issuing State may determine any application for review of the decision.

Article 12

Termination of enforcement

1. The competent authority of the issuing State shall forthwith inform the competent authority of the executing State of any decision or measure as a result of which the decision ceases to be enforceable or is withdrawn from the executing State for any other reason.

2. The executing State shall terminate enforcement of the decision as soon as it is informed by the competent authority of the issuing State of that decision or measure.

Article 13

Accrual of monies obtained from enforcement of decisions

Monies obtained from the enforcement of decisions shall accrue to the executing State unless otherwise agreed between the issuing and the executing State, in particular in the cases referred to in Article 1(b)(ii).

Article 14

Information from the executing State

The competent authority of the executing State shall without delay inform the competent authority of the issuing State by any means which leaves a written record:

(a) of the transmission of the decision to the competent authority, according to Article 4(6) ;

(b) of any decision not to recognise and execute a decision, according to Articles 7 or 20(3), together with the reasons for the decision;

(c) of the total or partial non-execution of the decision for the reasons referred to in Article 8, Article 9(1) and (2), and Article 11(1);

(d) of the execution of the decision as soon as the execution has been completed;

(e) of the application of alternative sanction, according to Article 10.

Article 15

Consequences of transmission of a decision

1. Subject to paragraph 2, the issuing State may not proceed with the execution of a decision transmitted pursuant to Article 4.

2. The right of execution of the decision shall revert to the issuing State:

(a) upon it being informed by the executing State of the total or partial non-execution or the non-recognition or the non-enforcement of the decision in the case of Article 7, with the exception of Article 7(2) (a), in the case of Article 11(1), and in the case of Article 20(3); or

(b) when the executing State has been informed by the issuing State that the decision has been withdrawn from the executing State pursuant to Article 12.

3. If, after transmission of a decision in accordance with Article 4, an authority of the issuing State receives any sum of money which the sentenced person has paid voluntarily in respect of the decision, that authority shall inform the competent authority in the executing State without delay. Article 9(2) shall apply.

Article 16

Languages

1. The certificate, the standard form for which is given in the Annex, must be translated into the official language or one of the official languages of the executing State. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the Union.

2. The execution of the decision may be suspended for the time necessary to obtain its translation at the expense of the executing State.

Article 17

Costs

Member States shall not claim from each other the refund of costs resulting from application of this Framework Decision.

Article 18

Relationship with other agreements and arrangements

This Framework Decision shall not preclude the application of bilateral or multilateral agreements or arrangements between Member States in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be exceeded and help to simplify or facilitate further the procedures for the enforcement of financial penalties.

Article 19

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 20

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 22 March 2007.

2. Each Member State may for a period of up to five years from the date of entry into force of this Framework Decision limit its application to:

(a) decisions mentioned in Article 1(a) (i) and (iv) ; and/or

(b) with regard to legal persons, decisions related to conduct for which a European instrument provides for the application of the principle of liability of legal persons.

Any Member State that wants to make use of this paragraph, shall notify a declaration to that effect to the Secretary General of the Council upon the adoption of this Framework Decision. The declaration shall be published in the Official Journal of the European Union.

3. Each Member State may, where the certificate referred to in Article 4 gives rise to an issue that fundamental rights or fundamental legal principles as enshrined in Article 6 of the Treaty may have been infringed, oppose the recognition and the execution of decisions. The procedure referred to in Article 7(3) shall apply.

4. Any Member State may apply the principle of reciprocity in relation to any Member State making use of paragraph 2.

5. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established on the basis of this information by the Commission, the Council shall, no later than 22 March 2008, assess the extent to which Member States have complied with this Framework Decision.

6. The General Secretariat of the Council shall notify the Member States and the Commission of the declarations made pursuant to Articles 4(7) and 16.

7. Without prejudice to Article 35(7) of the Treaty, a Member State which has experienced repeated difficulties or lack of activity by another Member State in the mutual recognition and execution of decisions, which have not been solved through bilateral consultations, may inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

8. Any Member State which during a calendar year has applied paragraph 3, shall in the beginning of the following calendar year inform the Council and the Commission of cases in which the grounds referred to in that provision for non-recognition or non-execution of a decision have been applied.

9. Within seven years after the entry into force of this Framework Decision, the Commission shall establish a report on the basis of the information received, accompanied by any initiatives it may deem appropriate. The Council shall on the basis of the report review this Article with a view to considering whether paragraph 3 shall be retained or replaced by a more specific provision.

Article 21

Entry into force

This Framework Decision shall enter into force on the day of its publication in the Official Journal of the European Union.

Done at Brussels, 24 February 2005.

For the Council

The President

N. SCHMIT

ANNEX

CERTIFICATE

referred to in Article 4 of Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties

(a)

* Issuing State .....

* Executing State .....

(b) The authority which issued the decision imposing the financial penalty:

Official name: .....

Address: .....

.....

File reference (. . .) .....

Tel No: (country code) (area/city code) .....

Fax No (country code) (area/city code) .....

E-mail (when available) .....

Languages in which it is possible to communicate with the issuing authority .....

.....

Contact details for person(s) to contact to obtain additional information for the purpose of the enforcement of the decision or, where applicable, for the purpose of the transfer to the issuing State of monies obtained from the enforcement (name, title/grade, tel. No., fax No., and, when available, E-mail) .....

.....

.....

(c) The authority competent for the enforcement of the decision imposing the financial penalty in the issuing State (if the authority is different from the authority under point (b):

Official name: .....

Address: .....

.....

Tel No: (country code) (area/city code) .....

Fax No. (country code) (area/city code) .....

E-mail (when available) .....

Languages in which it is possible to communicate with the authority competent for the enforcement .....

Contact details for person(s) to contact to obtain additional information for the purpose of the enforcement of the decision or, where applicable, for the purpose of the transfer to the issuing State of monies obtained from the enforcement (name, title/

grade, tel. No., fax No., and, when available, E-mail): .....

.....

(d) Where a central authority has been made responsible for the administrative transmission of decisions imposing financial penalties in the issuing State:

Name of the central authority: .....

.....

Contact person, if applicable (title/grade and name): .....

Address: .....

.....

.....

File reference: .....

Tel No: (country code) (area/city code) .....

Fax No: (country code) (area/city code) .....

E-mail (when available): .....

(e) The authority or authorities which may be contacted (in the case where point (c) and/or (d) has been filled):

□ Authority mentioned under point (b)

Can be contacted for questions concerning: .....

□ Authority mentioned under point (c)

Can be contacted for questions concerning: .....

□ Authority mentioned under point (d)

Can be contacted for questions concerning: .....

(f) Information regarding the natural or legal person on which the financial penalty has been imposed:

1. In case of a natural person

Name: .....

Forename(s): .....

Maiden name, where applicable: .....

Aliases, where applicable: .....

Sex: .....

Nationality: .....

Identity number or social security number (when available): .....

Date of birth: .....

Place of birth: .....

Last known address: .....

Language(s) which the person understands (if known): .....

.....

(a) If the decision is transmitted to the executing State because the person against whom the decision has been passed is normally resident, add the following information:

Normal residence in the executing State: .....

.....

.....

(b) If the decision is transmitted to the executing State because the person against whom the decision has been passed has property in the executing State, add the following information: .....

Description of the property of the person: .....

Location of the property of the person: .....

(c) If the decision is transmitted to the executing State because the person against whom the decision has been passed has income in the executing State, add the following information: .....

Description of the source(s) of income of the person: .....

Location of the source(s) of income of the person: .....

.....

2. In case of a legal person:

Name: .....

Form of legal person: .....

Registration number (if available)[7]: .....

Registered seat (if available) [7]: .....

Address of the legal person: .....

(a) If the decision is transmitted to the executing State because the legal person against whom the decision has been passed has property in the executing State, add the following information:

Description of the property of the legal person: .....

Location of the property of the legal person: .....

(b) If the decision is transmitted to the executing State because the legal person

7 Where a decision is transmitted to the executing State because the legal person against whom the decision has been passed has its registered seat in that State, Registration number and Registered seat must be completed.

against whom the decision has been passed has income in the executing State, add the following information:

Description of the source(s) of income of the legal person: .....

Location of the source(s) of income of the legal person: .....
.....

(g) The decision imposing a financial penalty:

1. The nature of the decision imposing the financial penalty (tick the relevant box):

□ (i) Decision of a court of the issuing State in respect of a criminal offence under the law of the issuing State

□ (ii) Decision of an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.

□ (iii) Decision of an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.

□ (iv) Decision of a court having jurisdiction in particular in criminal matters regarding a decision as referred to in point iii.

The decision was made on (date) .....
The decision became final on (date) .....
Reference number of the decision (if available): .....

The financial penalty constitutes an obligation to pay (tick the relevant box(es) and indicate the amount(s) with indication of currency):

□ (i) A sum of money on conviction of an offence imposed in a decision.
Amount: .....

□ (ii) Compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in its exercise of its criminal jurisdiction.
Amount: .....

□ (iii) A sum of money in respect of the costs of court or administrative proceedings leading to the decision.
Amount: .....

□ (iv) A sum of money to a public fund or a victim support organisation, imposed in the same decision.
Amount: .....

The total amount of the financial penalty with indication of currency: .....
.....

2. A summary of facts and a description of the circumstances in which the offence(s) has(have) been committed, including time and place: .....

.....

.....

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the decision was made: .....

.....

.....

3. To the extent that the offence(s) identified under point 2 above constitute(s) one or more of the following offences, confirm that by ticking the relevant box(es):

- ☐ participation in a criminal organisation;
- ☐ terrorism;
- ☐ trafficking in human beings;
- ☐ sexual exploitation of children and child pornography;
- ☐ illicit trafficking in narcotic drugs and psychotropic substances;
- ☐ illicit trafficking in weapons, munitions and explosives;
- ☐ corruption;
- ☐ fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- ☐ laundering of the proceeds of crime;
- ☐ counterfeiting currency, including of the euro;
- ☐ computer-related crime;
- ☐ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- ☐ facilitation of unauthorised entry and residence;
- ☐ murder, grievous bodily injury;
- ☐ illicit trade in human organs and tissue;
- ☐ kidnapping, illegal restraint and hostage-taking;
- ☐ racism and xenophobia;
- ☐ organised or armed robbery;
- ☐ illicit trafficking in cultural goods, including antiques and works of art;
- ☐ swindling;
- ☐ racketeering and extortion;
- ☐ counterfeiting and piracy of products;
- ☐ forgery of administrative documents and trafficking therein;

- ☐ forgery of means of payment;
- ☐ illicit trafficking in hormonal substances and other growth promoters;
- ☐ illicit trafficking in nuclear or radioactive materials;
- ☐ trafficking in stolen vehicles;
- ☐ rape;
- ☐ arson;
- ☐ crimes within the jurisdiction of the International Criminal Court;
- ☐ unlawful seizure of aircraft/ships;
- ☐ sabotage;
- ☐ conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods;
- ☐ smuggling of goods;
- ☐ infringements of intellectual property rights;
- ☐ threats and acts of violence against persons, including violence during sport events;
- ☐ criminal damage;
- ☐ theft;
- ☐ offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

If this Box is ticked, indicate the exact provisions of the instrument adopted on the basis of the EC Treaty or the EU Treaty that the offence relates to. .....

.....

.....

4. To the extent that the offence(s) identified under point 2 above are not covered by point 3, give a full description of the offence(s) concerned: .....

.....

.....

(h) Status of the decision imposing the financial penalty:

1. Confirm that (tick the boxes):

☐ (a) the decision is a final decision

☐ (b) to the knowledge of the authority issuing the Certificate, a decision against the same person in respect of the same acts has not been delivered in the executing State and that no such decision delivered in any State other than the issuing State or the executing State has been executed.

2. Indicate if the case been subject to a written procedure:

☐ (a) No, it has not.

]

Annotations

Amendments

F168 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 33(b) and sch. 2, S.I. No. 11 of 2016.

F169[SCHEDULE 5B

TEXT OF 2006 FRAMEWORK DECISION

COUNCIL FRAMEWORK DECISION 2006/783/JHA of 6 October 2006

on the application of the principle of mutual recognition to confiscation orders

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(1)(a) and 34(2)(b) thereof,

Having regard to the initiative of the Kingdom of Denmark[1],

Having regard to the opinion of the European Parliament[2],

Whereas:

(1) The European Council, meeting in Tampere on 15 and 16 October 1999, stressed that the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.

(2) According to paragraph 51 of the conclusions of the Tampere European Council, money laundering is at the very heart of organised crime, and should be rooted out wherever it occurs; the European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds of crime. In that connection, in paragraph 55 of the conclusions, the European Council calls for the approximation of criminal law and procedures on money laundering (e.g. tracing, freezing and confiscating funds).

(3) All Member States have ratified the Council of Europe Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the 1990 Convention). The Convention obliges signatories to recognise and enforce a confiscation order made by another party, or to submit a request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it. The Parties may refuse requests for confiscation inter alia if the offence to which the request relates would not be an offence under the law of the requested Party, or if under the law of the requested Party confiscation is not provided for in respect of the type of offence to which the request relates.

(4) On 30 November 2000 the Council adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters, giving first priority (measures 6 and 7) to the adoption of an instrument applying the principle of mutual recognition to the freezing of evidence and property. Moreover, pursuant

[1] OJ C 184, 2.8.2002, p. 8.
[2] Opinion delivered on 20 November 2002 (OJ C 25 E, 29.1.2004, p. 205).

to paragraph 3.3 of the programme, the aim is to improve, in accordance with the principle of mutual recognition, execution in one Member State of a confiscation order issued in another Member State, inter alia for the purpose of restitution to a victim of a criminal offence, taking into account the existence of the 1990 Convention. With a view to achieving this aim, this Framework Decision, within its field of application, reduces the grounds for refusal of enforcement and suppresses, among Member States, any system of conversion of the confiscation order into a national one.

(5) Council Framework Decision 2001/500/JHA[3] lays down provisions on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime. Under that Framework Decision, Member States are also obliged not to make or uphold reservations in respect of Article 2 of the 1990 Convention, in so far as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year.

(6) Finally, on 22 July 2003 the Council adopted Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence[4].

(7) The main motive for organised crime is financial gain. In order to be effective, therefore, any attempt to prevent and combat such crime must focus on tracing, freezing, seizing and confiscating the proceeds from crime. It is not enough merely to ensure mutual recognition within the European Union of temporary legal measures such as freezing and seizure; effective control of economic crime also requires the mutual recognition of orders to confiscate the proceeds from crime.

(8) The purpose of this Framework Decision is to facilitate cooperation between Member States as regards the mutual recognition and execution of orders to confiscate property so as to oblige a Member State to recognise and execute in its territory confiscation orders issued by a court competent in criminal matters of another Member State. This Framework Decision is linked to Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property[5]. The purpose of that Framework Decision is to ensure that all Member States have effective rules governing the confiscation of proceeds from crime, inter alia in relation to the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.

(9) Cooperation between Member States, based on the principle of mutual recognition and immediate execution of judicial decisions, presupposes confidence that the decisions to be recognised and executed will always be taken in compliance with the principles of legality, subsidiarity and proportionality. It also presupposes that the rights granted to the parties or bona fide interested third parties will be preserved. In this context, due consideration should be given to preventing successful dishonest claims by legal or natural persons.

(10) The proper practical operation of this Framework Decision presupposes close liaison between the competent national authorities involved, in particular in cases of simultaneous execution of a confiscation order in more than one Member State.

(11) The terms "proceeds" and "instrumentalities" used in this Framework Decision are sufficiently broadly defined to include objects of offences whenever necessary.

(12) Where there are doubts with regard to the location of property which is the subject of a confiscation order, Member States should use all available means in order to identify the correct location of that property, including the use of all available information systems.

[3] OJ L 182, 5.7.2001, p. 1.
[4] OJ L 196, 2.8.2003, p. 45.
[5] OJ L 68, 15.3.2005, p. 49.

(13) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to confiscate property for which a confiscation order has been issued when objective grounds exist for believing that the confiscation order was issued for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

(14) This Framework Decision does not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

(15) This Framework Decision does not address the restitution of property to its rightful owner.

(16) This Framework Decision does not prejudice the end to which the Member States apply the amounts obtained as a consequence of its application.

(17) This Framework Decision does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security in accordance with Article 33 of the Treaty on European Union,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Objective

1. The purpose of this Framework Decision is to establish the rules under which a Member State shall recognise and execute in its territory a confiscation order issued by a court competent in criminal matters of another Member State.

2. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.

Article 2

Definitions

For the purpose of this Framework Decision,

(a) "issuing State" shall mean the Member State in which a court has issued a confiscation order within the framework of criminal proceedings;

(b) "executing State" shall mean the Member State to which a confiscation order has been transmitted for the purpose of execution;

(c) "confiscation order" shall mean a final penalty or measure imposed by a court following proceedings in relation to a criminal offence or offences, resulting in the definitive deprivation of property;

(d) "property" shall mean property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which the court in the issuing State has decided:

(i) is the proceeds of an offence, or equivalent to either the full value or part of the value of such proceeds,

or

(ii) constitutes the instrumentalities of such an offence,

or

(iii) is liable to confiscation resulting from the application in the issuing State of any of the extended powers of confiscation specified in Article 3(1) and (2) of Framework Decision 2005/212/JHA,

or

(iv) is liable to confiscation under any other provisions relating to extended powers of confiscation under the law of the issuing State;

(e) "proceeds" shall mean any economic advantage derived from criminal offences. It may consist of any form of property;

(f) "instrumentalities" shall mean any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;

(g) "cultural objects forming part of the national cultural heritage" shall be defined in accordance with Article 1(1) of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State[6];

(h) where the criminal proceedings leading to a confiscation order involve a predicate offence as well as money laundering, a "criminal offence" mentioned in Article 8(2) (f) shall mean a predicate offence.

Article 3

Determination of the competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its law, are competent according to this Framework Decision when that Member State is:

— the issuing State,

or

— the executing State.

2. Notwithstanding Articles 4(1) and (2), each Member State may designate, if it is necessary as a result of the organisation of its internal system, one or more central authorities responsible for the administrative transmission and reception of the confiscation orders and to assist the competent authorities.

3. The General Secretariat of the Council shall make the information received available to all Member States and the Commission.

Article 4

Transmission of confiscation orders

1. A confiscation order, together with the certificate provided for in paragraph 2, the standard form for which is given in the Annex, may, in the case of a confiscation order concerning an amount of money, be transmitted to the competent authority of a Member State in which the competent authority of the issuing State has

[6] OJ L 74, 27.3.1993, p. 74. Directive as last amended by Directive 2001/38/EC of the European Parliament and of the Council (OJ L 187, 10.7.2001, p. 43).

reasonable grounds to believe that the natural or legal person against whom the confiscation order has been issued has property or income.

In the case of a confiscation order concerning specific items of property, the confiscation order and the certificate may be transmitted to the competent authority of a Member State in which the competent authority of the issuing State has reasonable grounds to believe that property covered by the confiscation order is located.

If there are no reasonable grounds which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted, the confiscation order may be transmitted to the competent authority of the Member State where the natural or legal person against whom the confiscation order has been issued is normally resident or has its registered seat respectively.

2. The confiscation order or a certified copy thereof, together with the certificate, shall be transmitted by the competent authority of the issuing State directly to the authority of the executing State which is competent to execute it, by any means capable of producing a written record, under conditions allowing the executing State to establish authenticity. The original of the confiscation order, or a certified copy thereof, and the original of the certificate shall be transmitted to the executing State if it so requires. All official communications shall be made directly between the said competent authorities.

3. The certificate, shall be signed, and its contents certified as accurate, by the competent authority of the issuing State.

4. If the authority competent to execute the confiscation order is not known to the competent authority of the issuing State, the latter shall make all necessary enquiries, including via the contact points of the European judicial network, in order to obtain information from the executing State.

5. Where the authority of the executing State which receives a confiscation order has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, ex officio, transmit the order to the authority competent to execute it, and shall inform the competent authority of the issuing State accordingly.

Article 5

Transmission of a confiscation order to one or more executing States

1. Subject to paragraphs 2 and 3, a confiscation order may only be transmitted pursuant to Article 4 to one executing State at any one time.

2. A confiscation order concerning specific items of property may be transmitted to more than one executing State at the same time in cases where:

— the competent authority of the issuing State has reasonable grounds to believe that different items of property covered by the confiscation order are located in different executing States,

— the confiscation of a specific item of property covered by the confiscation order involves action in more than one executing State,

or

— the competent authority of the issuing State has reasonable grounds to believe that a specific item of property covered by the confiscation order is located in one of two or more specified executing States.

3. A confiscation order concerning an amount of money may be transmitted to more than one executing State at the same time, where the competent authority of the issuing State deems there is a specific need to do so, for example where:

— the property concerned has not been frozen under Council Framework Decision 2003/577/JHA of,

or

— the value of the property which may be confiscated in the issuing State and any one executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.

Article 6

Offences

1. If the acts giving rise to the confiscation order constitute one or more of the following offences, as defined by the law of the issuing State, and are punishable in the issuing State by a custodial sentence of a maximum of at least three years, the confiscation order shall give rise to execution without verification of the double criminality of the acts:

— participation in a criminal organisation,
— terrorism,
— trafficking in human beings,
— sexual exploitation of children and child pornography,
— illicit trafficking in narcotic drugs and psychotropic substances,
— illicit trafficking in weapons, munitions and explosives,
— corruption,
— fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
— laundering of the proceeds of crime,
— counterfeiting currency, including of the euro,
— computer-related crime,
— environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
— facilitation of unauthorised entry and residence,
— murder, grievous bodily injury,
— illicit trade in human organs and tissue,
— kidnapping, illegal restraint and hostage-taking,
— racism and xenophobia,
— organised or armed robbery,
— illicit trafficking in cultural goods, including antiques and works of art,
— swindling,
— racketeering and extortion,
— counterfeiting and piracy of products,
— forgery of administrative documents and trafficking therein,
— forgery of means of payment,
— illicit trafficking in hormonal substances and other growth promoters,
— illicit trafficking in nuclear or radioactive materials,
— trafficking in stolen vehicles,
— rape,
— arson,
— crimes within the jurisdiction of the International Criminal Court,
— unlawful seizure of aircraft/ships,
— sabotage.

2. The Council may decide to add other categories of offences to the list contained in paragraph 1 at any time, acting unanimously after consultation of the European

Parliament under the conditions laid down in Article 39(1) of the TEU. The Council shall consider, in the light of the report submitted by the Commission pursuant to Article 22, whether the list should be extended or amended.

3. For offences other than those covered by paragraph 1, the executing State may make the recognition and execution of a confiscation order subject to the condition that the acts giving rise to the confiscation order constitute an offence which permits confiscation under the law of the executing State, whatever its constituent elements or however it is described under the law of the issuing State.

Article 7

Recognition and execution

1. The competent authorities in the executing State shall without further formality recognise a confiscation order which has been transmitted in accordance with Articles 4 and 5, and shall forthwith take all the necessary measures for its execution, unless the competent authorities decide to invoke one of the grounds for non-recognition or non-execution provided for in Article 8, or one of the grounds for postponement of execution provided for in Article 10.

2. If a request for confiscation concerns a specific item of property, the competent authorities of the issuing and the executing States may, if provided for under the law of those States, agree that confiscation in the executing State may take the form of a requirement to pay a sum of money corresponding to the value of the property.

3. If a confiscation order concerns an amount of money, the competent authorities of the executing State shall, if payment is not obtained, execute the confiscation order in accordance with paragraph 1 on any item of property available for that purpose.

4. If a confiscation order concerns an amount of money, the competent authorities of the executing State shall, if necessary, convert the amount to be confiscated into the currency of the executing State at the rate of exchange obtaining at the time when the confiscation order was issued.

5. Each Member State may state in a declaration deposited with the General Secretariat of the Council that its competent authorities will not recognise and execute confiscation orders under circumstances where confiscation of the property was ordered under the extended powers of confiscation referred to in Article 2(d) (iv). Any such declaration may be withdrawn at any time.

Article 8

Reasons for non-recognition or non-execution

1. The competent authority of the executing State may refuse to recognise and execute the confiscation order if the certificate provided for in Article 4 is not produced, is incomplete, or manifestly does not correspond to the order.

2. The competent judicial authority of the executing State, as defined in the law of that State, may also refuse to recognise and execute the confiscation order if it is established that:

(a) execution of the confiscation order would be contrary to the principle of ne bis in idem;

(b) in one of the cases referred to in Article 6(3), the confiscation order relates to acts which do not constitute an offence which permits confiscation under the law of the executing State; however, in relation to taxes, duties, customs duties and exchange activities, execution of a confiscation order may not be refused on the ground that the law of the executing State does not impose

the same kind of tax or duty or does not contain the same types of rules concerning taxes, duties, customs duties and exchange activities as the law of the issuing State;

(c) there is immunity or privilege under the law of the executing State which would prevent the execution of a domestic confiscation order on the property concerned;

(d) the rights of any interested party, including bona fide third parties, under the law of the executing State make it impossible to execute the confiscation order, including where this is a consequence of the application of legal remedies in accordance with Article 9;

(e) according to the certificate provided for in Article 4(2), the person concerned did not appear personally and was not represented by a legal counsellor in the proceedings resulting in the confiscation order, unless the certificate states that the person was informed personally, or via his representative competent according to national law, of the proceedings in accordance with the law of the issuing State, or that the person has indicated that he or she does not contest the confiscation order;

(f) the confiscation order is based on criminal proceedings in respect of criminal offences which:

— under the law of the executing State, are regarded as having been committed wholly or partly within its territory, or in a place equivalent to its territory,

or

— were committed outside the territory of the issuing State, and the law of the executing State does not permit legal proceedings to be taken in respect of such offences where they are committed outside that State's territory;

(g) the confiscation order, in the view of that authority, was issued in circumstances where confiscation of the property was ordered under the extended powers of confiscation referred to in Article 2(d) (iv) ;

(h) the execution of a confiscation order is barred by statutory time limitations in the executing State, provided that the acts fall within the jurisdiction of that State under its own criminal law.

3. If it appears to the competent authority of the executing State that:

— the confiscation order was issued in circumstances where confiscation of the property was ordered under the extended powers of confiscation referred to in Article 2(d) (iii),

and

— the confiscation order falls outside the scope of the option adopted by the executing State under Article 3(2) of Framework Decision 2005/212/JHA,

it shall execute the confiscation order at least to the extent provided for in similar domestic cases under national law.

4. The competent authorities of the executing State shall give specific consideration to consulting, by any appropriate means, the competent authorities of the issuing State before deciding not to recognise and execute a confiscation order pursuant to paragraph 2, or to limit the execution thereof pursuant to paragraph 3. Consultation is obligatory where the decision is likely to be based on:

— paragraph 1,

— paragraph 2(a), (e), (f) or (g),

— paragraph 2(d) and information is not being provided under Article 9(3),

or

— paragraph 3.

5. Where it is impossible to execute the confiscation order for the reason that the property to be confiscated has already been confiscated, has disappeared, has been destroyed, cannot be found in the location indicated in the certificate or the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the competent authority of the issuing State shall be notified forthwith.

Article 9

Legal remedies in the executing State against recognition and execution

1. Each Member State shall put in place the necessary arrangements to ensure that any interested party, including bona fide third parties, has legal remedies against the recognition and execution of a confiscation order pursuant to Article 7, in order to preserve his or her rights. The action shall be brought before a court in the executing State in accordance with the law of that State. The action may have suspensive effect under the law of the executing State.

2. The substantial reasons for issuing the confiscation order cannot be challenged before a court in the executing State.

3. If action is brought before a court in the executing State, the competent authority of the issuing State shall be informed thereof.

Article 10

Postponement of execution

1. The competent authority of the executing State may postpone the execution of a confiscation order transmitted in accordance with Articles 4 and 5:

(a) if, in the case of a confiscation order concerning an amount of money, it considers that there is a risk that the total value derived from its execution may exceed the amount specified in the confiscation order because of simultaneous execution of the confiscation order in more than one Member State;

(b) in the cases of legal remedies referred to in Article 9;

(c) where the execution of the confiscation order might damage an ongoing criminal investigation or proceedings, until such time as it deems reasonable;

(d) where it is considered necessary to have the confiscation order or parts thereof translated at the expense of the executing State, for the time necessary to obtain its translation,

or

(e) where the property is already the subject of confiscation proceedings in the executing State.

2. The competent authority of the executing State shall, for the duration of postponement, take all the measures it would take in a similar domestic case to

prevent the property from no longer being available for the purpose of execution of the confiscation order.

3. In the case of postponement pursuant to paragraph 1(a), the competent authority of the executing State shall inform the competent authority of the issuing State thereof immediately by any means capable of producing a written record, and the competent authority of the issuing State shall comply with the obligations referred to in Article 14(3).

4. In the cases referred to in paragraph 1(b), (c), (d) and (e), a report on the postponement, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be made forthwith by the competent authority of the executing State to the competent authority of the issuing State by any means capable of producing a written record.

As soon as the ground for postponement has ceased to exist, the competent authority of the executing State shall forthwith take the necessary measures for the execution of the confiscation order and inform the competent authority of the issuing State thereof by any means capable of producing a written record.

Article 11

Multiple confiscation orders

If the competent authorities of the executing State are processing:

— two or more confiscation orders concerning an amount of money, which have been issued against the same natural or legal person, and the person concerned does not have sufficient means in the executing State to enable all the orders to be executed,

or

— two or more confiscation orders concerning the same specific item of property,

the decision on which of the confiscation orders is or are to be executed shall be taken by the competent authority of the executing State according to the law of the executing State, with due consideration of all the circumstances, which may include the involvement of frozen assets, the relative seriousness and the place of the offence, the dates of the respective orders and the dates of transmission of the respective orders.

Article 12

Law governing execution

1. Without prejudice to paragraph 3, the execution of the confiscation order shall be governed by the law of the executing State and its authorities alone shall be competent to decide on the procedures for execution and to determine all the measures relating thereto.

2. In the case where the person concerned is able to furnish proof of confiscation, totally or in part, in any State, the competent authority of the executing State shall consult the competent authority of the issuing State by any appropriate means. Any part of the amount, in the case of confiscation of proceeds, that is recovered pursuant to the confiscation order in any State other than the executing State shall be deducted in full from the amount to be confiscated in the executing State.

3. A confiscation order issued against a legal person shall be executed even if the executing State does not recognise the principle of criminal liability of legal persons.

4. The executing State may not impose measures as an alternative to the confiscation order, including custodial sanctions or any other measure limiting a person's freedom,

as a result of a transmission pursuant to Articles 4 and 5, unless the issuing State has given its consent.

Article 13

Amnesty, pardon, review of confiscation order

1. Amnesty and pardon may be granted by the issuing State and also by the executing State.

2. Only the issuing State may determine any application for review of the confiscation order.

Article 14

Consequences of transmission of confiscation orders

1. The transmission of a confiscation order to one or more executing States in accordance with Articles 4 and 5 does not restrict the right of the issuing State to execute the confiscation order itself.

2. In the case of transmission of a confiscation order concerning an amount of money to one or more executing States, the total value derived from its execution may not exceed the maximum amount specified in the confiscation order.

3. The competent authority of the issuing State shall immediately inform the competent authority of any executing State concerned by any means capable of producing a written record:

(a) if it considers that there is a risk that execution beyond the maximum amount may occur, for example on the basis of information notified to it by an executing State pursuant to Article 10(3). In the event of the application of Article 10(1) (a), the competent authority of the issuing State shall as soon as possible inform the competent authority of the executing State whether the risk referred to has ceased to exist;

(b) if all or a part of the confiscation order has been executed in the issuing State or in another executing State. The amount for which the confiscation order has not yet been executed shall be specified;

(c) if, after transmission of a confiscation order in accordance with Articles 4 and 5, an authority of the issuing State receives any sum of money which the person concerned has paid voluntarily in respect of the confiscation order. Article 12(2) shall apply.

Article 15

Termination of execution

The competent authority of the issuing State shall forthwith inform the competent authority of the executing State by any means capable of reducing a written record of any decision or measure as a result of which the order ceases to be enforceable or shall be withdrawn from the executing State for any other reason. The executing State shall terminate execution of the order as soon as it is informed by the competent authority of the issuing State of that decision or measure.

Article 16

Disposal of confiscated property

1. Money which has been obtained from the execution of the confiscation order shall be disposed of by the executing State as follows:

(a) if the amount obtained from the execution of the confiscation order is below EUR 10 000, or the equivalent to that amount, the amount shall accrue to the executing State;

(b) in all other cases, 50 % of the amount which has been obtained from the execution of the confiscation order shall be transferred by the executing State to the issuing State.

2. Property other than money, which has been obtained from the execution of the confiscation order, shall be disposed of in one of the following ways, to be decided by the executing State:

(a) the property may be sold. In that case, the proceeds of the sale shall be disposed of in accordance with paragraph 1;

(b) the property may be transferred to the issuing State. If the confiscation order covers an amount of money, the property may only be transferred to the issuing State when that State has given its consent;

(c) when it is not possible to apply (a) or (b), the property may be disposed of in another way in accordance with the law of the executing State.

3. Notwithstanding paragraph 2, the executing State shall not be required to sell or return specific items covered by the confiscation order which constitute cultural objects forming part of the national heritage of that State.

4. Paragraphs 1, 2 and 3 apply unless otherwise agreed between the issuing State and the executing State.

Article 17

Information on the result of the execution

The competent authority of the executing State shall without delay inform the competent authority of the issuing State by any means capable of producing a written record:

(a) of the transmission of the confiscation order to the competent authority, according to Article 4(5) ;

(b) of any decision not to recognise the confiscation order, together with the reasons for the decision;

(c) of the total or partial non-execution of the order for the reasons referred to in Article 11, Article 12(1) and (2) or Article 13(1) ;

(d) as soon as the execution of the order has been completed;

(e) of the application of alternative measures, according to Article 12(4).

Article 18

Reimbursement

1. Without prejudice to Article 9(2), where the executing State under its law is responsible for injury caused to one of the interested parties mentioned in Article 9 by the execution of a confiscation order transmitted to it pursuant to Articles 4 and 5, the issuing State shall reimburse to the executing State any sums paid in damages by virtue of that responsibility to the said party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State.

2. Paragraph 1 is without prejudice to the law of the Member States on claims by natural or legal persons for compensation of damage.

Article 19

Languages

1. The certificate shall be translated into the official language or one of the official languages of the executing State.

2. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

Article 20

Costs

1. Without prejudice to Article 16, Member States may not claim from each other the refund of costs resulting from application of this Framework Decision.

2. Where the executing State has had costs which it considers large or exceptional, it may propose to the issuing State that the costs be shared. The issuing State shall take into account any such proposal on the basis of detailed specifications given by the executing State.

Article 21

Relationship with other agreements and arrangements

This Framework Decision shall not affect the application of bilateral or multilateral agreements or arrangements between Member States in so far as such agreements or arrangements help to further simplify or facilitate the procedures for the execution of confiscation orders.

Article 22

Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision by 24 November 2008.

2. Member States shall communicate to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations resulting from this Framework Decision. On the basis of a report established on the basis of this information by the Commission, the Council shall, by 24 November 2009, assess the extent to which Member States have taken the necessary measures to comply with this Framework Decision.

3. The General Secretariat of the Council shall notify the Member States and the Commission of the declarations made pursuant to Articles 7(5) and 19(2).

4. A Member State which has experienced repeated difficulties or lack of activity by another Member State in the mutual recognition and execution of confiscation orders, which have not been resolved through bilateral consultations, may inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

5. The Member States, acting as executing States, shall inform the Council and the Commission, at the beginning of the calendar year, of the number of cases in which Article 17(b) has been applied and a summary of reasons for this.

By 24 November 2013, the Commission shall establish a report on the basis of the information received, accompanied by any initiatives it may deem appropriate.

Article 23

Entry into force

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 6 October 2006.

For the Council

The President

K. RAJAMÄKI

ANNEX

CERTIFICATE

referred to in Article 4 of Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders

(a) Issuing and executing States:

Issuing State: .....

Executing State: .....

(b) Court which issued the confiscation order:

Official name: .....

Address: .....

.....

File reference: .....

Tel. (country code) (area/city code): .....

Fax (country code) (area/city code): .....

E mail (when available): .....

Languages in which it is possible to communicate with the Court: .....

.....

Contact details for person(s) to contact in order to obtain additional information for the purpose of the execution of the confiscation order, or, where applicable, for the purpose of coordination of the execution of a confirmation order transmitted to two or more executing States, or for the purpose of the transfer to the issuing State of monies or properties obtained from the execution (name, title/grade, tel., fax, and, when available, e mail): .....

.....

.....

.....

(c) Authority competent for the execution of the confiscation order in the issuing State (if the authority is different from the Court under point (b)):

Official name: .....

.....

Address: .....

.....

Tel. (country code) (area/city code): .....

Fax. (country code) (area/city code): .....

E mail (when available): .....

.....

.....

Languages in which it is possible to communicate with the authority competent for the execution: .....

.....

.....

Contact details for person(s) to contact in order to obtain additional information for the purpose of the execution of the confiscation order or, where applicable, for the purpose of coordination of the execution of a confiscation order transmitted to two or more executing States, or for the purpose of the transfer to the issuing State of monies or properties obtained from the execution, (name, title/grade, tel., fax, and, when available, e mail): .....

.....

.....

(d) Where a central authority has been made responsible for the administrative transmission and reception of confiscation orders in the issuing State:

Name of the central authority: .....

.....

.....

Contact person, if applicable (title/grade and name): .....

.....

Address: .....

.....

File reference: .....

Tel. (country code) (area/city code): .....

Fax. (country code) (area/city code): .....

E mail (when available): .....

(e) Authority or authorities which may be contacted (if point (c) and/or (d) has(have) been completed):

- ☐ Authority mentioned under point (b)

  Can be contacted for questions concerning: .....
- ☐ Authority mentioned under point (c)

  Can be contacted for questions concerning: .....
- ☐ Authority mentioned under point (d)

  Can be contacted for questions concerning: .....

(f) Where the confiscation order is a follow up to a freezing order transmitted to the executing State pursuant to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence[1], provide relevant information to identify the freezing order (the dates of issue and transmission of the freezing order, the authority to which it was transmitted, reference number, if available): .....

.....

.....

(g) Where the confiscation order has been transmitted to more than one executing State, provide the following information:

1. The confiscation order has been transmitted to the following other executing State(s) (country and authority): .....

   .....

   .....

2. The confiscation order has been transmitted to more than one executing State for the following reason (tick the relevant box):

2.1. Where the confiscation order concerns one or more specific items of property:

- ☐ Different specific items of property covered by the confiscation order are believed to be located in different executing States.
- ☐ The confiscation of a specific item of property involves action in more than one executing State.
- ☐ A specific item of property covered by the confiscation order is believed to be located in one of two or more specified executing States.

2.2. Where the confiscation order concerns an amount of money:

- ☐ The property concerned has not been frozen under Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

(1) OJ L 196, 2.8.2003, p. 45.

- ☐ The value of the property which may be confiscated in the issuing State and any one executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.
- ☐ Other reason(s) (to be specified): .....

.....

.....

(h) Information regarding the natural or legal person against whom the confiscation order has been issued:

1. **In the case of a natural person:**

Name: .....

Forename(s): .....

Maiden name, (where applicable): .....

Aliases, (where applicable): .....

Sex: .....

Nationality: .....

Identity number or social security number (when possible): .....

Date of birth: .....

Place of birth: .....

Last known address: .....

.....

Language(s) which the person understands (if known): .....

.....

1.1. If the confiscation order concerns an amount of money:

The confiscation order is transmitted to the executing State because (tick the relevant box):

☐ (a) the issuing State has reasonable grounds to believe that the person against whom the confiscation order has been issued has property or income in the executing State. Add the following information:

Grounds for believing that the person has property/income: .....

.....

Description of the property of the person/source of income: .....

.....

Location of the property of the person/source of income (if not known, the last known location): .....

.....

☐ (b) there are no reasonable grounds, as referred to under (a), which would allow the issuing State to determine the Member State to which the confiscation order may be sent, but the person against whom the confiscation order has been issued is normally resident in the

executing State. Add the following information:

Normal residence in the executing State: .....

.....

.....

1.2. If the confiscation order concerns specific item(s) of property:

The confiscation order is transmitted to the executing State because (tick the relevant box):

□ (a) the specific item(s) of property is (are) located in the executing State. (See point (i))

□ (b) the issuing State has reasonable grounds to believe that all or part of the specific item(s) of property covered by the confiscation order is (are) located in the executing State. Add the following information:

Grounds for believing that the specific item(s) of property is located in the executing State: .....

.....

□ (c) there are no reasonable grounds, as referred to in (b), which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted, but the person against whom the confiscation order has been issued is normally resident in the executing State. Add the following information:

Normal residence in the executing State: .....

.....

.....

2. **In the case of a legal person:**

Name: .....

Form of legal person: .....

Registration number (if available)[1]: .....

Registration seat (if available)[1]: .....

Address of the legal person: .....

2.1. If the confiscation order concerns an amount of money:

The confiscation order is transmitted to the executing State because (tick the relevant box):

□ (a) the issuing State has reasonable grounds to believe that the legal person against whom the confiscation order has been issued has property or income in the executing State. Add the following information:

Grounds for believing that the person has property/income: .....

.....

Description of the property of the person/source of income: .....

(1) Where a confiscation order is transmitted to the executing State because the legal person against whom the confiscation order has been issued has its registered seat in that State, Registration number and Registered seat must be completed.

.....

Location of the property of the person/source of income (if not known, the last known location): .....

.....

☐ (b) there are no reasonable grounds, as referred to in (a), which would allow the issuing State to determine the Member State to which the confiscation order may be sent but the legal person against whom the confiscation order has been issued has its registered seat in the executing State. Add the following information:

Registered Seat in the executing State: .....

.....

.....

2.2. If the confiscation order concerns specific item(s) of property:

The confiscation order is transmitted to the executing State because (tick the relevant box):

☐ (a) the specific item(s) of property is (are) located in the executing State. (See point (i)).

☐ (b) the issuing State has reasonable grounds to believe that all or part of the specific item(s) of property covered by the confiscation order is (are) located in the executing State. Add the following information:

Grounds for believing that the specific item(s) of property is (are) located in the executing State: .....

.....

.....

☐ (c) there are no reasonable grounds, as referred to in (b), which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted but the legal person against whom the confiscation order has been issued has its registered seat in the executing State. Add the following information:

Registered seat in the executing State: .....

.....

.....

(i) The confiscation order

The confiscation order was issued on (date): .....

.....

The confiscation order became final on (date):.....

Reference number of the confiscation order (if available): .....

1. Information on the nature of the confiscation order

1.1. Indicate (by ticking in the relevant box(es)) if the confiscation order concerns:

☐ an amount of money

The amount for execution in the executing State with indication of currency (in figures and words): .....

.....

The total amount covered by the confiscation order with indication of currency (in figures and words): .....

.....

□ specific item(s) of property

Description of the specific item(s) of property: .....

.....

Location of the specific item(s) of property (if not known, the last known location): .....

.....

.....

Where the confiscation of the specific item(s) of property involves action in more than one executing State, description of the action to be taken: .....

.....

1.2 The Court has decided that the property (tick the relevant box(es)):

□ (i) is proceeds of an offence, or is equivalent to either the full value or part of the value of such proceeds,

□ (ii) constitutes the instrumentalities of such an offence,

□ (iii) is liable to confiscation resulting from the application in the issuing State of extended powers of confiscation as specified in (a), (b) and (c). The basis for the decision is that the Court, based on specific facts, is fully convinced that the property in question has been derived from:

□ (a) criminal activities of the convicted person during a period prior to conviction for the offence concerned which is deemed to be reasonable by the Court in the circumstances of the particular case,

□ (b) similar criminal activities of the convicted person during a period prior to conviction for the offence concerned which is deemed to be reasonable by the Court in the circumstances of the particular case, or

□ (c) the criminal activity of the convicted person, and it has been established that the value of the property is disproportionate to the lawful income of that person.

□ (iv) is liable to confiscation under any other provision relating to extended powers of confiscation under the law of the issuing State.

If two or more categories of confiscation are involved, provide details on which property is confiscated in relation to which category: .....

.....

2. Information on the offence(s) resulting in the confiscation order

2.1. A summary of facts and a description of the circumstances in which the

offence(s) resulting in the confiscation order has(have) been committed, including time and place:

.....

.....

.....

.....

.....

2.2. Nature and legal classification of the offence(s) resulting in the confiscation order and the applicable statutory provision/code on basis of which the decision was made:

.....

.....

.....

.....

.....

.....

2.3. If applicable, indicate one or more of the following offences to which the offence(s) identified under point 2.2 relate(s), if the offence(s) are punishable in the issuing State by a custodial sentence of a maximum of at least 3 years (tick the relevant box(es)):

- ☐ participation in a criminal organisation;
- ☐ terrorism;
- ☐ trafficking in human beings;
- ☐ sexual exploitation of children and child pornography;
- ☐ illicit trafficking in narcotic drugs and psychotropic substances;
- ☐ illicit trafficking in weapons, munitions and explosives;
- ☐ corruption;
- ☐ fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- ☐ laundering of the proceeds of crime;
- ☐ counterfeiting currency, including of the euro;
- ☐ computer related crime;
- ☐ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- ☐ facilitation of unauthorised entry and residence;
- ☐ murder, grievous bodily injury;
- ☐ illicit trade in human organs and tissue;
- ☐ kidnapping, illegal restraint and hostage taking;
- ☐ racism and xenophobia;

- ☐ organised or armed robbery;
- ☐ illicit trafficking in cultural goods, including antiques and works of art;
- ☐ swindling;
- ☐ racketeering and extortion;
- ☐ counterfeiting and piracy of products;
- ☐ forgery of administrative documents and trafficking therein;
- ☐ forgery of means of payment;
- ☐ illicit trafficking in hormonal substances and other growth promoters;
- ☐ illicit trafficking in nuclear or radioactive materials;
- ☐ trafficking in stolen vehicles;
- ☐ rape;
- ☐ arson;
- ☐ crimes within the jurisdiction of the International Criminal Court;
- ☐ unlawful seizure of aircraft/ships;
- ☐ sabotage.

2.4. To the extent that the offence(s) resulting in the confiscation order identified under point 2.2 is (are) not covered by point 2.3, give a full description of the offence(s) concerned (this should cover the actual criminal activity involved as opposed for instance to legal classifications): .....

.....

.....

.....

.....

.....

.....

(j) Proceedings resulting in the confiscation order

Indicate the following concerning the proceedings resulting in the confiscation order (tick the relevant box(es)):

- ☐ (a) The person concerned appeared personally in the proceedings.
- ☐ (b) The person concerned did not appear personally in the proceedings, but was represented by a legal counsellor.
- ☐ (c) The person concerned did not appear in the proceedings and was not represented by a legal counsellor. It is confirmed that:
  - ☐ the person was informed personally, or via a representative competent according to national law, of the proceedings in accordance with the law of the issuing State, or
  - ☐ the person has indicated that he or she does not contest the confiscation order.

(k) Conversion and transfer of property

1. If the confiscation order concerns a specific item of property, state whether the issuing State allows for the confiscation in the executing State to take the form of a requirement to pay a sum of money corresponding to the value of the property.

   ☐ yes

   ☐ no

2. If the confiscation order concerns an amount of money, state whether property, other than money obtained from the execution of the confiscation order, may be transferred to the issuing State:

   ☐ yes

   ☐ no

(l) Alternative measures, including custodial sanctions

1. State whether the issuing State allows for the application by the executing State of alternative measures where it is not possible to execute the confiscation order, either totally or in part:

   ☐ yes

   ☐ no

2. If yes, state which sanctions may be applied (nature and maximum level of the sanctions):

   ☐ Custody (maximum period): .....

   ☐ Community service (or equivalent) (maximum period): .....

   ☐ Other sanctions (description): .....

   .....

(m) Other circumstances relevant to the case (optional information): .....

.....

.....

(n) The confiscation order is attached to the certificate.

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate: .....

.....

Name: .....

Post held (title/grade): .....

Date: .....

Official stamp (if available):

]

Annotations

Amendments

F169 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 33(c) and sch. 3, S.I. No. 11 of 2016.

SCHEDULE 6

Text of Title III of EC/Swiss Confederation Agreement

TITLE III

MUTUAL LEGAL ASSISTANCE

ARTICLE 25

Relationship with other Agreements

1. The provisions of this Title are intended to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990, and to facilitate their implementation between the Contracting Parties.

2. More favourable provisions of bilateral or multilateral Agreements between the Contracting Parties are not affected.

ARTICLE 26

Procedures in which mutual legal assistance shall also be afforded

1. Mutual legal assistance shall also be afforded:

(a) in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of one of the two Contracting Parties, or of both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

(b) in civil actions joined to criminal proceedings, as long as the criminal court has not yet taken a final decision in the criminal proceedings;

(c) for offences or infringements for which a legal person of the requesting Contracting Party may be liable.

2. Assistance shall also be given for the purposes of investigations and proceedings for the seizure and confiscation of the instruments and products of these illegal activities.

ARTICLE 27

Transmission of requests

1. Requests under this Title shall be presented by the authority of the requesting Contracting Party either via a relevant central authority of the requested Contracting Party, or direct to the Contracting Party's authority which is empowered to execute the requesting Contracting Party's request. The authority of the requesting Contracting

Party and, where appropriate, the authority of the Contracting Party requested shall send a copy of the request to its central authority for information.

2. All documents relating to requests or the execution thereof may be sent by the same channels. They, or at least a copy, must be sent directly to the authority of the requesting Contracting Party.

3. If the authority of the Contracting Party receiving a request has no power to authorise assistance, it shall forthwith forward it to the competent authority.

4. Defective or incomplete requests shall be applied if they contain the information needed to satisfy them, without prejudice to subsequent regularisation by the authority of the requesting Contracting Party. The authority of the Contracting Party requested shall inform the authority of the requesting Contracting Party of the defects and allow it time to regularise them.

The authority of the Contracting Party requested shall without delay send the authority of the requesting Contracting Party all other indications that may help it to complete its request or extend it to include other measures.

5. The Contracting Parties, when making the notification provided for by Article 44(2), shall announce which are the competent central authorities for the purposes of this Article.

ARTICLE 28

Service by post

1. As a rule the Contracting Parties shall, in proceedings for illegal activities covered by this Agreement, send procedural documents intended for persons who are in the territory of the other Contracting Party directly by post.

2. If the authority of the Contracting Party that issued the documents knows or has reason to believe that the addressee understands only some other language, the documents, or at least the most important passages thereof, shall be accompanied by a translation into that other language.

3. The authority of the serving Contracting Party shall advise the addressee that no measure of restraint or punishment may be enforced directly by that authority in the territory of the other Contracting Party.

4. All procedural documents shall be accompanied by a report indicating that the addressee may obtain information from the authority identified in the report regarding his or her rights and obligations concerning the documents.

ARTICLE 29

Provisional measures

1. Within the limits of its domestic law and its respective powers and at the request of the authority of the requesting Contracting Party, the competent authority of the requested Contracting Party shall order the necessary provisional measures for the purpose of maintaining an existing situation, protecting endangered legal interests or preserving evidence, if the request for mutual assistance does not appear manifestly inadmissible.

2. Preventive freezing and seizure of instrumentalities and proceeds of offences shall be ordered in cases where assistance is requested. If the proceeds of an offence no longer exist in whole or in part, the same measures shall be ordered in relation to assets located within the territory of the requested Contracting Party corresponding in value to the proceeds in question.

ARTICLE 30

Presence of the authorities of the requesting Contracting Party

1. The requested Contracting Party shall, at the request of the requesting Contracting Party, authorise the representatives of the latter Party's authorities to attend the execution of the request for mutual legal assistance. Their presence shall not require the consent of the person concerned by the measure.

Conditions may be attached to the authorisation.

2. The persons present shall have access to the same premises and the same documents as the representatives of the requested Contracting Party, through them and for the sole purposes of execution of the request for mutual legal assistance. In particular they may be authorised to put or propose questions and suggest measures of investigation.

3. Their presence shall not result in facts being divulged to persons other than those authorised by virtue of the preceding paragraphs in breach of judicial confidentiality or the rights of the person concerned. The information brought to the knowledge of the authority of the requesting Contracting Party may not be used as evidence until the decision on transmission of the documents relating to execution has acquired the force of *res judicata*.

ARTICLE 31

Searches and seizures

1. The Contracting Parties may not make the admissibility of letters rogatory for search or seizure dependent on conditions other than the following:

(a) the act giving rise to the letters rogatory is punishable under the law of both Contracting Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of at least six months, or is punishable under the law of one of the two Contracting Parties by an equivalent penalty and under the law of the other Contracting Party by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

(b) execution of the letters rogatory is consistent with the law of the requested Contracting Party.

2. Letters rogatory for purposes of search and seizure for laundering offences within the scope of this Agreement shall also be admissible provided that the activities making up the precursor offence are punishable under the law of the two Contracting Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of more than six months.

ARTICLE 32

Requests for banking and financial information

1. Where the conditions of Article 31 are met, the requested Contracting Party shall execute requests for assistance in obtaining and transmitting banking and financial information, including:

(a) the identification of, and information concerning, bank accounts opened at banks established in its territory and where persons under investigation are the account holders, authorised signatories or in effective control;

(b) the identification of, and all information concerning, banking transactions and operations conducted from, to or via one or more bank accounts or by specified persons during a specified period.

2. To the extent authorised by virtue of its law governing criminal proceedings for similar domestic cases, the requested Contracting Party may order surveillance of banking operations conducted from, to or via one or more bank accounts or by specified persons during a specified period, and transmission of the results to the requesting Contracting Party. The decision to monitor transactions and transmit the results shall be taken in each individual case by the competent authorities of the requested Contracting Party and shall comply with that Contracting Party's national law. The practical details regarding the monitoring shall be determined by agreement between the competent authorities of the requesting and requested Contracting Parties.

3. Each Contracting Party shall take the necessary measures to ensure the financial institutions do not disclose to the customer concerned or to other third persons that measures are being executed at the request of the requesting Contracting Party or that an investigation is under way, for such time as is necessary to avoid compromising the results.

4. The authority of the Contracting Party issuing the request shall:

(a) state why it considers that the requested information is likely to be of substantial value for the purpose of the investigation into the offence;

(b) state on what grounds it presumes that banks in the requested Contracting Party hold the account and, to the extent available, which banks may be involved;

(c) include all information available which may facilitate the execution of the request.

5. A Contracting Party shall not invoke banking secrecy as grounds for rejecting all cooperation on a request for mutual assistance from another Contracting Party.

ARTICLE 33

Controlled deliveries

1. The competent authority in the requested Contracting Party shall undertake to ensure that, at the request of the authority of the requesting Contracting Party, controlled deliveries may be permitted in its territory within the framework of criminal investigations into extraditable offences.

2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Contracting Party, with due regard for its national law.

3. Controlled deliveries shall take place in accordance with the procedures provided for in the law of the requested Contracting Party. The right to act and to direct and control operations shall lie with the competent authorities of that Contracting Party.

ARTICLE 34

Handing-over for confiscation or return

1. At the request of the requesting Contracting Party, all objects, documents, funds or other items of value that have been seized on a precautionary basis may be handed over for confiscation or for return to the rightful owner.

2. The requested Contracting Party may not refuse to return funds on the sole ground that they correspond to a tax or customs debt.

3. Rights asserted by a third party in good faith shall remain reserved.

ARTICLE 35

Speeding up assistance

1. The authority of the requested Contracting Party shall execute the request for mutual legal assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the authority of the requesting Contracting Party. The requesting Contracting Party shall explain the reasons for the deadline.

2. If the request cannot, or cannot fully, be executed in accordance with the requirements set by the authority of the requesting Contracting Party, the authority of the requested Contracting Party shall promptly inform the authority of the requesting Contracting Party and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting and the requested Contracting Parties may subsequently agree on further action to be taken concerning the request, where necessary by making such action subject to the fulfilment of those conditions.

If it is foreseeable that the deadline set by the authority of the requesting Contracting Party for executing its request cannot be met and if the reasons referred to in the second sentence of paragraph 1, indicate explicitly that any delay will lead to substantial impairment of the proceedings being conducted by that authority, the authority of the requested Contracting Party shall promptly indicate the estimated time needed for execution of the request. The authority of the requesting Contracting Party shall promptly indicate whether the request is to be upheld nonetheless. The authorities of the requesting and requested Contracting Parties may subsequently agree on further action to be taken concerning the request.

ARTICLE 36

Use of information and evidence

Information and evidence transmitted in the course of the assistance procedure may be used for the following purposes in addition to the purposes of the assistance procedure for which it was supplied:

(a) in criminal proceedings in the requesting Contracting Party against other persons who participated in the commission of the offence for which assistance was given;

(b) where the infringements on which the request is based constitute another offence for which assistance ought also to be given;

(c) in proceedings for the confiscation of the instrumentalities and proceeds of offences for which assistance ought to be given and in proceedings for damages in respect of infringements for which assistance had been given.

ARTICLE 37

Spontaneous transmission

1. Within the limits of their national law and their powers, the judicial authorities of a Contracting Party may spontaneously transmit information or evidence to the judicial authorities of another Contracting Party, when they consider that such information or evidence might assist the receiving Contracting Party's authority in initiating or carrying out investigations or proceedings, or might lead to a request for mutual legal assistance by the receiving authority.

2. The authority of the Contracting Party transmitting the information may, pursuant to its national law, impose conditions on the use of such information by the authority of the receiving Contracting Party.

3. All the authorities of the Contracting Parties shall be bound by such conditions.

ARTICLE 38

Procedures in the requested Contracting Party

The request for assistance shall be without prejudice to such rights as the requesting Contracting Party may enjoy as a result of its status as "partie civile" in domestic judicial criminal proceedings commenced before the authorities of the requested Contracting Party.

SCHEDULE 7

Text of 2005 Council Decision

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 30(1), 31 and 34(2)(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Whereas:

(1) At its extraordinary meeting on 21 September 2001, the European Council stated that terrorism was a real challenge to the world and to Europe and that the fight against terrorism would be a priority objective of the European Union.

(2) On 19 October 2001 the European Council stated that it was determined to combat terrorism in every form throughout the world and that it would continue its efforts to strengthen the coalition of the international community to combat terrorism in every shape and form, for example by increased cooperation between the operational services responsible for combating terrorism: Europol, Eurojust, the intelligence services, police forces and judicial authorities.

(3) It is essential in the fight against terrorism for the relevant services to have the fullest and most up-to-date information possible in their respective fields. The Member States' specialised national services, the judicial authorities and relevant bodies of the European Union such as Europol and Eurojust absolutely need information if they are to perform their tasks.

(4) Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP is a major step forward. The persistence of the terrorist threat and the complexity of the phenomenon raise the need for ever greater exchanges of information. The scope of information exchanges must be extended to all stages of criminal proceedings, including convictions, and to all persons, groups or entities investigated, prosecuted or convicted for terrorist offences.

(5) Since the objectives of this decision cannot be sufficiently achieved by the Member States acting alone and can therefore, given the need for reciprocity, be better achieved at Community level, the Community may adopt measures, act in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary to achieve those objectives.

(6) In the execution of the exchange of information, this Decision is without prejudice to essential national security interests, and it should not jeopardise the safety of individuals or the success of a current investigation or specific intelligence activities in the field of State security.

(7) This Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS DECIDED AS FOLLOWS:

Article 1

Definitions

For the purposes of this Decision, the following definitions shall apply:

(a) "terrorist offences": the offences specified in Articles 1, 2 and 3 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism;

(b) "Europol Convention": the Convention of 26 July 1995 on the establishment of a European Police Office;

(c) "Eurojust Decision": Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime;

(d) "group or entity": "terrorist groups" within the meaning of Article 2 of Council Framework Decision 2002/475/JHA and the groups and entities listed in the Annex to Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism.

Article 2

Provision of information concerning terrorist offences to Eurojust, Europol and the Member States

1. Each Member State shall designate a specialised service within its police services or other law enforcement authorities, which, in accordance with national law, will have access to and collect all relevant information concerning and resulting from criminal investigations conducted by its law enforcement authorities with respect to terrorist offences and send it to Europol in accordance with paragraphs 3 and 4.

2. Each Member State shall designate one, or where its legal system so provides more than one authority, as Eurojust national correspondent for terrorism matters or an appropriate judicial or other competent authority which, in accordance with national law, shall have access to and can collect all relevant information concerning prosecutions and convictions for terrorist offences and send it to Eurojust in accordance with paragraph 5.

3. Each Member State shall take the necessary measures to ensure that at least the information referred to in paragraph 4 concerning criminal investigations and the information referred to in paragraph 5 concerning prosecutions and convictions for terrorist offences which affect or may affect two or more Member States, gathered by the relevant authority, is transmitted to:

(a) Europol, in accordance with national law and with the provisions of the Europol Convention, for processing; and

(b) Eurojust, in accordance with national law and where the provisions of the Eurojust Decision so allow.

4. The information to be transmitted in accordance with paragraph 3 to Europol shall be the following:

(a) data which identify the person, group or entity;

(b) acts under investigation and their specific circumstances;

(c) the offence concerned;

(d) links with other relevant cases;

(e) the use of communication technologies;

(f) the threat posed by the possession of weapons of mass destruction.

5. The information to be transmitted in accordance with paragraph 3 to Eurojust shall be the following:

(a) data which identify the person, group or entity that is the object of a criminal investigation or prosecution;

(b) the offence concerned and its specific circumstances;

(c) information about final convictions for terrorist offences and the specific circumstances surrounding those offences;

(d) links with other relevant cases;

(e) requests for judicial assistance, including letters rogatory, addressed to or by another Member State and the response.

6. Each Member State shall take the necessary measures to ensure that any relevant information included in documents, files, items of information, objects or other means of evidence, seized or confiscated in the course of criminal investigations or criminal proceedings in connection with terrorist offences can be made accessible as soon as possible, taking account of the need not to jeopardise current investigations, to the authorities of other interested Member States in accordance with national law and relevant international legal instruments where investigations are being carried out or might be initiated or where prosecutions are in progress in connection with terrorist offences.

Article 3

Joint investigation teams

In appropriate cases Member States shall take the necessary measures to set up joint investigation teams to conduct criminal investigations into terrorist offences.

Article 4

Requests for judicial assistance and enforcement of judgments

Each Member State shall take the necessary measures to ensure that requests from other Member States for mutual legal assistance and recognition and enforcement of judgments in connection with terrorist offences are dealt with as a matter of urgency and are given priority.

Article 5

Repeal of existing provisions

Decision 2003/48/JHA is hereby repealed.

Article 6

Implementation

Member States shall take the necessary measures to comply with the provisions of this Decision at the latest by 30 June 2006.

Article 7

Territorial Application

This Decision shall apply to Gibraltar.

Article 8

Entry into force

This Decision shall take effect on the day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 20 September 2005.

For the Council

The President

M. BECKETT

F170[SCHEDULE 7A

TEXT OF THE 2008 COUNCIL DECISION (SPECIAL INTERVENTION UNITS)

COUNCIL DECISION 2008/617/JHA

of 23 June 2008

on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 30, 32 and 34(2) (c) thereof,

Having regard to the initiative of the Republic of Austria[1],

Having regard to the opinion of the European Parliament[2],

Whereas:

(1) Article 29 of the Treaty states that the Union's objective is to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters.

(2) In their Declaration on Solidarity against Terrorism of 25 March 2004, the Heads of State and Government of the Member States of the European Union declared their firm intention that the Member States mobilise all the instruments at their disposal to assist a Member State or an acceding State in its territory at the request of its political authorities in the event of a terrorist attack.

[1] OJ C 321, 29.12.2006, p. 45.
[2] Opinion of 31 January 2008 (not yet published in the Official Journal).

(3) Following the attacks of 11 September 2001, the special intervention units of all law enforcement authorities of the Member States have already initiated cooperation activities under the aegis of the Police Chiefs Task Force. Since 2001, their network, called "Atlas", has conducted various seminars, studies, exchanges of materials, and joint exercises.

(4) No single Member State has all the means, resources and expertise at its disposal to deal effectively with all possible kinds of specific or large-scale crisis situations requiring special intervention. It is therefore of crucial importance that each Member State be able to request the assistance of another Member State.

(5) Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime[3] (Prüm Decision), and in particular Article 18 thereof, regulates forms of police assistance between Member States in connection with mass gatherings and similar major events, disasters and serious accidents. This Decision does not cover mass gatherings, natural disasters or serious accidents within the meaning of Article 18 of the Prüm Decision but complements those provisions of the Prüm Decision envisaging forms of police assistance between Member States through special intervention units in other situations, namely in man-made crisis situations presenting a serious direct physical threat to persons, property, infrastructure or institutions, in particular hostage taking, hijacking and similar events.

(6) The availability of this legal framework and of a compilation indicating the competent authorities will allow Member States to react speedily and gain time should such a crisis situation arise. Moreover, with a view to enhancing Member States' ability to prevent and respond to such crisis situations, and in particular terrorist incidents, it is essential for the special intervention units to meet regularly and organise joint trainings, so as to benefit from mutual experiences,

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

This Decision lays down general rules and conditions to allow for special intervention units of one Member State to provide assistance and/or operate on the territory of another Member State (hereinafter referred to as the requesting Member State) in cases where they have been invited by the requesting Member State and have agreed to do so in order to deal with a crisis situation. The practical details and implementing arrangements complementing this Decision shall be agreed directly between the requesting Member State and the requested Member State.

Article 2

Definitions

For the purpose of this Decision:

(a) "special intervention unit" shall mean any law enforcement unit of a Member State which is specialised in the control of a crisis situation;

(b) "crisis situation" shall mean any situation in which the competent authorities of a Member State have reasonable grounds to believe that there is a criminal offence presenting a serious direct physical threat to persons, property, infrastructure or institutions in that Member State, in particular those situations referred to in Article 1(1) of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism[4];

[3] See page 1 of this Official Journal.
[4] OJ L 164, 22.6.2002, p. 3.

(c) "competent authority" shall mean the national authority which may make requests and give authorisations regarding the deployment of the special intervention units.

Article 3

Assistance to another Member State

1. Through a request via the competent authorities, setting out the nature of the assistance requested as well as the operational necessity therefor, a Member State may ask to be assisted by a special intervention unit of another Member State with a view to dealing with a crisis situation. The competent authority of the requested Member State may accept or refuse such a request or may propose a different kind of assistance.

2. Subject to agreement between the Member States concerned, assistance may consist of providing the requesting Member State with equipment and/or expertise and/or of carrying out actions on the territory of that Member State, using weapons if so required.

3. In the case of actions on the territory of the requesting Member State, officers of the assisting special intervention unit shall be authorised to operate in a supporting capacity on the territory of the requesting Member State and take all necessary measures to provide the requested assistance in so far as they:

(a) operate under the responsibility, authority and direction of the requesting Member State and in accordance with the law of the requesting Member State; and

(b) operate within the limits of their powers under their national law.

Article 4

Civil and criminal liability

When officers of a Member State operate within another Member State and/or equipment is used under this Decision, the provisions on civil and criminal liability, set out in Articles 21(4) and (5) and 22 of the Prüm Decision shall apply.

Article 5

Meetings and joint training

The participating Member States shall ensure that their special intervention units hold meetings and organise joint training and exercises, whenever necessary, with a view to exchanging experience, expertise and general, practical and technical information on dealing with a crisis situation. Such meetings, training and exercises may be funded under possibilities offered by the financial programmes of the Union to obtain grants from the budget of the European Union. In this context, the Member State holding the Presidency of the Union shall endeavour to ensure that such meetings, training and exercises take place.

Article 6

Costs

The requesting Member State shall bear the operational costs incurred by the requested Member State's special intervention units in connection with the application of Article 3, including transport and accommodation costs, unless otherwise agreed between the Member States concerned.

Article 7

Relation to other instruments

1. Without prejudice to their commitments under other acts adopted pursuant to Title VI of the Treaty, in particular the Prüm Decision:

(a) Member States may continue to apply bilateral or multilateral agreements or arrangements on cross-border cooperation in force on 23 June 2008 in so far as such agreements or arrangements are not incompatible with the objectives of this Decision;

(b) Member States may conclude or bring into force bilateral or multilateral agreements or arrangements on cross-border cooperation after 23 December 2008 in so far as such agreements or arrangements provide for the objectives of this Decision to be extended or enlarged.

2. The agreements and arrangements referred to in paragraph 1 may not affect relations with Member States which are not parties thereto.

3. Member States shall inform the Council and the Commission of the agreements or arrangements referred to in paragraph 1.

Article 8

Final provisions

The General Secretariat of the Council shall compile and keep up to date the list of the competent authorities of the Member States which may make requests and give authorisations for providing assistance as referred to in Article 3.

The General Secretariat of the Council shall inform the authorities mentioned in paragraph 1 of any change to the list established pursuant to this Article.

Article 9

Entry into force

This Decision shall enter into force on 23 December 2008.

Done at Luxembourg, 23 June 2008.

For the Council

The President

I. JARC**]**

Annotations

Amendments

F170 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 33(d) and sch. 4, S.I. No. 11 of 2016.

F171**[**SCHEDULE 7B

Text of 2009 Council Decision

COUNCIL DECISION 2009/426/JHA

of 16 December 2008

on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime

F172**[**...**]]**

Annotations

Amendments

F171 Inserted (1.02.2016) by *Criminal Justice (Mutual Assistance) (Amendment) Act 2015* (40/2016), s. 33(e) and sch. 5, S.I. No. 11 of 2016.

F172 Deleted (12.12.2019) by *European Union (Eurojust) Regulations 2019* (S.I. No. 637 of 2019), reg. 7(a), in effect as per reg. 1(2).

F173**[**SCHEDULE 7C

Text of 2018 Regulation

REGULATION (EU) 2018/1727 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 November 2018

on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 85 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ([1]),

Whereas:

(1) Eurojust was set up by Council Decision 2002/187/JHA ([2]) as a Union body with legal personality, to stimulate and to improve coordination and cooperation between competent judicial authorities of the Member States, particularly in relation to serious

(1) Position of the European Parliament of 4 October 2018 (not yet published in the Official Journal) and decision of the Council of 6 November 2018.

(2) Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

organised crime. Eurojust's legal framework has been amended by Council Decisions 2003/ 659/JHA ([3]) and 2009/426/JHA ([4]).

(2) Article 85 of the Treaty on the Functioning of the European Union (TFEU) provides for Eurojust to be governed by a regulation, adopted in accordance with the ordinary legislative procedure. It also requires determining arrangements for involving the European Parliament and national parliaments in the evaluation of Eurojust's activities.

(3) Article 85 TFEU also provides that Eurojust's mission is to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by the European Union Agency for Law Enforcement Cooperation (Europol).

(4) This Regulation aims to amend and expand the provisions of Decision 2002/187/JHA. Since the amendments to be made are of substantial number and nature, Decision 2002/187/JHA should in the interests of clarity be replaced in its entirety in relation to the Member States bound by this Regulation.

(5) As the European Public Prosecutor's Office (EPPO) has been established by means of enhanced cooperation, Council Regulation (EU) 2017/1939 ([5])) is binding in its entirety and directly applicable only to Member States that participate in enhanced cooperation. Therefore, for those Member States which do not participate in the EPPO, Eurojust remains fully competent for forms of serious crime listed in Annex I to this Regulation.

(6) Article 4(3) of the Treaty on European Union (TEU) recalls the principle of sincere cooperation by virtue of which the Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the TEU and the TFEU.

(7) In order to facilitate cooperation between Eurojust and the EPPO, Eurojust should address issues of relevance to the EPPO whenever necessary.

(8) In light of the establishment of the EPPO by means of enhanced cooperation, the division of competences between the EPPO and Eurojust with respect to crimes affecting the financial interests of the Union needs to be clearly established. From the date on which the EPPO assumes its tasks, Eurojust should be able to exercise its competence in cases which concern crimes for which the EPPO is competent, where those crimes involve both Member States which participate in enhanced cooperation on the establishment of the EPPO and Member States which do not participate in such enhanced cooperation. In such cases, Eurojust should act at the request of the non-participating Member States or at the request of the EPPO. Eurojust should in any case remain competent for offences affecting the financial interests of the Union whenever the EPPO is not competent or where, although the EPPO is competent, it does not exercise its competence. The Members States which do not participate in enhanced cooperation on the establishment of the EPPO may continue to request Eurojust's support in all cases regarding offences affecting the financial interests of the Union. The EPPO and Eurojust should develop close operational cooperation in line with their respective mandates.

(3) Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 245, 29.9.2003, p. 44).

(4) Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 138, 4.6.2009, p. 14).

(5) Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO") (OJ L 283, 31.10.2017, p. 1).

(9) In order for Eurojust to fulfil its mission and develop its full potential in the fight against serious cross-border crime, its operational functions should be strengthened by reducing the administrative workload of national members, and its European dimension enhanced through the Commission's participation in the Executive Board and the increased involvement of the European Parliament and national parliaments in the evaluation of its activities.

(10) Therefore, this Regulation should determine the arrangements for parliamentary involvement, modernising Eurojust's structure and simplifying its current legal framework, while maintaining those elements that have proven to be efficient in its operation.

(11) The forms of serious crime affecting two or more Member States for which Eurojust is competent should be clearly laid down. In addition, cases which do not involve two or more Member States, but which require a prosecution on common bases, should be defined. Such cases may include investigations and prosecutions affecting only one Member State and a third country where an agreement has been concluded with that third country or where there may be a specific need for Eurojust's involvement. Such prosecution may also refer to cases which affect one Member State and have repercussions at Union level.

(12) When exercising its operational functions in relation to concrete criminal cases, at the request of the competent authorities of Member States or on its own initiative, Eurojust should act either through one or more of the national members or as a College. By acting on its own initiative, Eurojust may take a more proactive role in coordinating cases, such as by supporting the national authorities in their investigations and prosecutions. This may include involving Member States that might not initially have been included in the case and discovering links between cases based on the information it receives from Europol, the European Anti-Fraud Office (OLAF), the EPPO and national authorities. This also allows Eurojust to produce guidelines, policy documents and casework-related analyses as part of its strategic work.

(13) At the request of a Member State's competent authority or of the Commission, it should also be possible for Eurojust to assist with investigations involving only that Member State but which have repercussions at Union level. Examples of such investigations include cases where a member of a Union institution or body is involved. Such investigations also cover cases which involve a significant number of Member States and could potentially require a coordinated European response.

(14) The written opinions of Eurojust are not binding on Member States, but should be responded to in accordance with this Regulation.

(15) To ensure Eurojust can support and coordinate cross-border investigations appropriately, it is necessary that all national members have the necessary operational powers with respect to their Member State and in accordance with the law of that Member State in order to cooperate between themselves and with national authorities in a more coherent and effective way. National members should be granted those powers that allow Eurojust to appropriately achieve its mission. Those powers should include accessing relevant information in national public registers, directly contacting and exchanging information with competent authorities and participating in joint investigation teams. National members may, in accordance with their national law, retain the powers which are derived from their capacity as national authorities. In agreement with the competent national authority or in urgent cases, national members may also order investigative measures and controlled deliveries, and issue and execute requests for mutual legal assistance or mutual recognition. Since those powers are to be exercised in accordance with national law, the courts of Member States should be competent to review those measures, in accordance with the requirements and procedures laid down by national law.

(16) It is necessary to provide Eurojust with an administrative and management structure that allows it to perform its tasks more effectively, complies with the

principles applicable to Union agencies, and fully respects fundamental rights and freedoms, while maintaining Eurojust's special characteristics and safeguarding its independence in the exercise of its operational functions. To that end, the functions of the national members, the College and the Administrative Director should be clarified and an Executive Board established.

(17) Provisions should be laid down to clearly distinguish between the operational and the management functions of the College, thus reducing the administrative burden on national members to a minimum so that the focus is put on Eurojust's operational work. The management tasks of the College should include in particular the adoption of Eurojust's work programmes, budget, annual activity report, and working arrangements with partners. The College should exercise the power of appointing authority with respect to the Administrative Director. The College should also adopt Eurojust's rules of procedure. Since those rules of procedure may have an impact on the judicial activities of the Member States, implementing powers should be conferred on the Council to approve those rules.

(18) To improve Eurojust's governance and streamline procedures, an Executive Board should be established to assist the College in its management functions and to allow for streamlined decision-making on non-operational and strategic issues.

(19) The Commission should be represented in the College when the College exercises its management functions. The Commission's representative in the College should be also its representative on the Executive Board, to ensure non-operational supervision of Eurojust and to provide it with strategic guidance.

(20) In order to ensure the efficient day-to-day administration of Eurojust, the Administrative Director should be its legal representative and manager, accountable to the College. The Administrative Director should prepare and implement the decisions of the College and the Executive Board. The Administrative Director should be appointed on the basis of merit, and of his or her documented administrative and managerial skills, as well as relevant competence and experience.

(21) A President and two Vice-Presidents of Eurojust should be elected by the College from among the national members for a term of office of four years. When a national member is elected President, the Member State concerned should be able to second another suitably qualified person to the national desk and to apply for compensation from Eurojust's budget.

(22) Suitably qualified persons are persons who have the necessary qualifications and experience to perform the tasks required to ensure that the national desk functions effectively. They may have the status of a deputy or Assistant to the national member who has been elected President or they may have a more administrative or technical function. Each Member State should be able to decide on its own requirements in this regard.

(23) Quorum and voting procedures should be regulated in Eurojust's rules of procedure. In exceptional cases, where a national member and his or her deputy are absent, the Assistant of the national member concerned should be entitled to vote in the College if the Assistant has the status of a magistrate, i.e. a prosecutor, judge or representative of a judicial authority.

(24) Since the compensation mechanism has a budgetary impact, this Regulation should confer implementing powers to determine that mechanism on the Council.

(25) The setting up of an on-call coordination mechanism within Eurojust is necessary to make Eurojust more efficient and enable it to be available around the clock to intervene in urgent cases. Each Member State should ensure that their representatives in the on-call coordination mechanism are available to act 24 hours a day, seven days a week.

(26) Eurojust national coordination systems should be set up in the Member States to coordinate the work carried out by the national correspondents for Eurojust, the national correspondent for terrorism matters, any national correspondent for issues relating to the competence of the EPPO, the national correspondent for the European Judicial Network and up to three other contact points, as well as representatives in the network for joint investigation teams and representatives in the networks set up by Council Decisions 2002/494/JHA ([1])), 2007/845/ JHA ([2]) and 2008/852/JHA ([3]). Member States may decide that one or more of those tasks are to be performed by the same national correspondent.

(27) For the purposes of stimulating and strengthening coordination and cooperation between national investigating and prosecuting authorities, it is crucial that Eurojust receive information from national authorities that is necessary for the performance of its tasks. To that end, competent national authorities should inform their national members of the setting up and results of joint investigation teams without undue delay. Competent national authorities should also inform national members without undue delay of cases falling under the competence of Eurojust that directly involve at least three Member States and for which requests or decisions on judicial cooperation have been transmitted to at least two Member States. Under certain circumstances, they should also inform national members of conflicts of jurisdiction, controlled deliveries and repeated difficulties in judicial cooperation.

(28) Directive (EU) 2016/680 of the European Parliament and of the Council ([1]) sets out harmonised rules for the protection and the free movement of personal data processed for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. In order to ensure the same level of protection for natural persons through legally enforceable rights throughout the Union and to prevent divergences hampering the exchange of personal data between Eurojust and competent authorities in Member States, the rules for the protection and the free movement of operational personal data processed by Eurojust should be consistent with Directive (EU) 2016/680.

(29) The general rules of the distinct Chapter of Regulation (EU) 2018/1725 of the European Parliament and of the Council ([2]) on the processing of operational personal data should apply without prejudice to the specific data protection rules of this Regulation. Such specific rules should be regarded as *lex specialis* to the provisions in that Chapter of Regulation (EU) 2018/1725 (*lex specialis derogat legi generali*). In order to reduce legal fragmentation, specific data protection rules in this Regulation should be consistent with the principles underpinning that Chapter of Regulation (EU) 2018/1725, as well as with the provisions of that Regulation relating to independent supervision, remedies, liability and penalties.

(1) Council Decision 2002/494/JHA of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (OJ L 167, 26.6.2002, p. 1).

(2) Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (OJ L 332, 18.12.2007, p. 103).

(3) Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption (OJ L 301, 12.11.2008, p. 38).

(1) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

(2) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002 (see page 39 of this Official Journal).

(30) The protection of the rights and freedoms of data subjects requires a clear attribution of responsibilities for data protection under this Regulation. Member States should be responsible for the accuracy of data they have transmitted to Eurojust and which have been processed unaltered by Eurojust, for keeping such data up to date and for the legality of transmitting those data to Eurojust. Eurojust should be responsible for the accuracy of data provided by other data suppliers or resulting from Eurojust's own analyses or data collection and for keeping such data up to date. Eurojust should ensure that data are processed fairly and lawfully, and are collected and processed for a specific purpose. Eurojust should also ensure that the data are adequate, relevant, not excessive in relation to the purpose for which they are processed, stored no longer than is necessary for that purpose, and processed in a manner that ensures appropriate security of personal data and confidentiality of data processing.

(31) Appropriate safeguards for the storage of operational personal data for archiving purposes in the public interest or statistical purposes should be included in Eurojust's rules of procedure.

(32) A data subject should be able to exercise the right of access referred to in Regulation (EU) 2018/1725 to operational personal data relating to him or her which are processed by Eurojust. The data subject may make such a request at reasonable intervals, free of charge, to Eurojust or to the national supervisory authority in the Member State of the data subject's choice.

(33) The data protection provisions of this Regulation are without prejudice to the applicable rules on the admissibility of personal data as evidence in criminal pre-trial and court proceedings.

(34) All processing of personal data by Eurojust, within the framework of its competence, for the fulfilment of its tasks should be considered as processing of operational personal data.

(35) As Eurojust also processes administrative personal data unrelated to criminal investigations, the processing of such data should be subject to the general rules of Regulation (EU) 2018/1725.

(36) Where operational personal data are transmitted or supplied to Eurojust by the Member State, the competent authority, the national member or the national correspondent for Eurojust should have the right to request rectification or erasure of those operational personal data.

(37) In order to demonstrate compliance with this Regulation, Eurojust or the authorised processor should maintain records regarding all categories of processing activities under its responsibility. Eurojust and each authorised processor should be obliged to cooperate with the European Data Protection Supervisor (the "EDPS") and to make those records available to it on request, so that they might serve for monitoring those processing operations. Eurojust or its authorised processor, when processing personal data in non-automated processing systems, should have in place effective methods of demonstrating the lawfulness of the processing, of enabling self-monitoring and of ensuring data integrity and data security, such as logs or other forms of records.

(38) The Executive Board of Eurojust should designate a Data Protection Officer who should be a member of the existing staff. The person designated as Data Protection Officer of Eurojust should have received specialised training in data protection law and practice for acquiring expert knowledge in that field. The necessary level of expert knowledge should be determined in relation to the data processing carried out and the protection required for the personal data processed by Eurojust.

(39) The EDPS should be responsible for monitoring and ensuring the complete application of the data protection provisions of this Regulation with regard to

processing of operational personal data by Eurojust. The EDPS should be granted powers allowing him or her to fulfil this duty effectively. The EDPS should have the right to consult Eurojust regarding submitted requests, to refer matters to Eurojust for the purpose of addressing concerns that have emerged regarding its processing of operational personal data, to make proposals for improving the protection of the data subjects, and to order Eurojust to carry out specific operations with regard to processing of operational personal data. As a result, the EDPS requires the means to have the orders complied with and executed. He or she should therefore also have the power to warn Eurojust. To warn means to issue an oral or written reminder of Eurojust's obligation to execute the EDPS' orders or to comply with the proposals of the EDPS and a reminder of the measures to be applied upon any non-compliance or refusal by Eurojust.

(40) The duties and powers of the EDPS, including the power to order Eurojust to carry out the rectification, restriction of processing or erasure of operational personal data which have been processed in breach of the data protection provisions contained in this Regulation, should not extend to the personal data contained in national case files.

(41) In order to facilitate cooperation between the EDPS and the national supervisory authorities, but without prejudice to the independence of the EDPS or to his or her responsibility for supervision of Eurojust with regard to data protection, the EDPS and national supervisory authorities should regularly meet within the European Data Protection Board, in line with the rules on coordinated supervision laid down in Regulation (EU) 2018/1725.

(42) As the first recipient on the territory of the Union of data provided by or retrieved from third countries or international organisations, Eurojust should be responsible for the accuracy of such data. Eurojust should take measures to verify as far as possible the accuracy of the data upon receiving the data or when making data available to other authorities.

(43) Eurojust should be subject to the general rules on contractual and non-contractual liability applicable to Union institutions, bodies, offices and agencies.

(44) Eurojust should be able to exchange relevant personal data and maintain cooperative relations with other Union institutions, bodies, offices or agencies to the extent necessary for the fulfilment of its or their tasks.

(45) To guarantee purpose limitation, it is important to ensure that personal data can be transferred by Eurojust to third countries and international organisations only if necessary for preventing and combating crime that falls within Eurojust's tasks. To this end, it is necessary to ensure that, when personal data are transferred, the recipient gives an undertaking that the data will be used by the recipient or transferred onward to a competent authority of a third country solely for the purpose for which they were originally transferred. Further onward transfer of the data should take place in compliance with this Regulation.

(46) All Member States are affiliated to the International Criminal Police Organisation (Interpol). To fulfil its mission, Interpol receives, stores and circulates personal data to assist competent authorities in preventing and combating international crime. It is therefore appropriate to strengthen cooperation between the Union and Interpol by promoting an efficient exchange of personal data while ensuring respect for fundamental rights and freedoms regarding the automatic processing of personal data. Where operational personal data are transferred from Eurojust to Interpol, and to countries which have delegated members to Interpol, this Regulation, in particular the provisions on international transfers, should apply. This Regulation should be

without prejudice to the specific rules laid down in Council Common Position 2005/69/JHA ([1]) and Council Decision 2007/533/JHA ([2]).

(47) When Eurojust transfers operational personal data to an authority of a third country or to an international organisation by virtue of an international agreement concluded pursuant to Article 218 TFEU, adequate safeguards should be provided for with respect to the protection of privacy and fundamental rights and freedoms of individuals to ensure that the applicable data protection rules are complied with.

(48) Eurojust should ensure that a transfer to a third country or to an international organisation takes place only if necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, and that the controller in the third country or international organisation is an authority competent within the meaning of this Regulation. A transfer should be carried out only by Eurojust acting as controller. Such a transfer may take place in cases where the Commission has decided that the third country or international organisation in question ensures an adequate level of protection, where appropriate safeguards have been provided, or where derogations for specific situations apply.

(49) Eurojust should be able to transfer personal data to an authority of a third country or an international organisation on the basis of a Commission decision finding that the country or international organisation in question ensures an adequate level of data protection ("adequacy decision"), or, in the absence of an adequacy decision, an international agreement concluded by the Union pursuant to Article 218 TFEU, or a cooperation agreement allowing for the exchange of personal data concluded between Eurojust and the third country prior to the date of application of this Regulation.

(50) Where the College identifies an operational need for cooperation with a third country or an international organisation, it should be able to suggest that the Council draw the attention of the Commission to the need for an adequacy decision or for a recommendation for the opening of negotiations on an international agreement pursuant to Article 218 TFEU.

(51) Transfers not based on an adequacy decision should be allowed only where appropriate safeguards have been provided in a legally binding instrument which ensures the protection of personal data or where Eurojust has assessed all the circumstances surrounding the data transfer and, on the basis of that assessment, considers that appropriate safeguards with regard to the protection of personal data exist. Such legally binding instruments could, for example, be legally binding bilateral agreements which have been concluded by the Member States and implemented in their legal order and which could be enforced by their data subjects, ensuring compliance with data protection requirements and the rights of the data subjects, including the right to obtain effective administrative or judicial redress. Eurojust should be able to take into account cooperation agreements concluded between Eurojust and third countries which allow for the exchange of personal data when carrying out the assessment of all the circumstances surrounding the data transfer. Eurojust should be able to also take into account the fact that the transfer of personal data will be subject to confidentiality obligations and the principle of specificity, ensuring that the data will not be processed for other purposes than for the purposes of the transfer. In addition, Eurojust should take into account that the personal data will not be used to request, hand down or execute a death penalty or any form of cruel and inhuman treatment. While those conditions could be considered to be appropriate safeguards allowing the transfer of data, Eurojust should be able to require additional safeguards.

(1) Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol (OJ L 27, 29.1.2005, p. 61).

(2) Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).

(52) Where no adequacy decision or appropriate safeguards exist, a transfer or a category of transfers could take place only in specific situations, if necessary to protect the vital interests of the data subject or another person, or to safeguard legitimate interests of the data subject where the law of the Member State transferring the personal data so provides; for the prevention of an immediate and serious threat to the public security of a Member State or a third country; in an individual case for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security; or in an individual case for the establishment, exercise or defence of legal claims. Those derogations should be interpreted restrictively and should not allow frequent, massive and structural transfers of personal data, or large-scale transfers of data, but should be limited to data strictly necessary. Such transfers should be documented and should be made available to the EDPS on request in order to monitor the lawfulness of the transfer.

(53) In exceptional cases, Eurojust should be able to extend the deadlines for the storage of operational personal data in order to achieve its objectives, subject to observance of the purpose limitation principle applicable to processing of personal data in the context of all its activities. Such decisions should be taken following careful consideration of all interests at stake, including those of the data subjects. Any extension of a deadline for processing personal data in cases where prosecution is time-barred in all Member States concerned should be decided only where there is a specific need to provide assistance under this Regulation.

(54) Eurojust should maintain privileged relations with the European Judicial Network based on consultation and complementarity. This Regulation should help clarify the respective roles of Eurojust and the European Judicial Network and their mutual relations, while maintaining the specificity of the European Judicial Network.

(55) Eurojust should maintain cooperative relations with other Union institutions, bodies, offices and agencies, with the EPPO, with the competent authorities of third countries and with international organisations, to the extent required for the fulfilment of its tasks.

(56) To enhance operational cooperation between Eurojust and Europol, and particularly to establish links between data already in the possession of either agency, Eurojust should enable Europol to have access, on the basis of a hit/no-hit system, to data held by Eurojust. Eurojust and Europol should ensure that the necessary arrangements are established to optimise their operational cooperation, taking due account of their respective mandates and any restrictions provided by the Member States. These working arrangements should ensure access to, and the possibility of searching, all information that has been provided to Europol for the purpose of cross-checking in accordance with the specific safeguards and data protection guarantees provided for in this Regulation. Any access by Europol to data held by Eurojust should be limited by technical means to information falling within the respective mandates of those Union agencies.

(57) Eurojust and Europol should keep each other informed of any activity involving the financing of joint investigation teams.

(58) Eurojust should be able to exchange personal data with Union institutions, bodies, offices and agencies to the extent necessary for the fulfilment of its tasks, with full respect for the protection of privacy and other fundamental rights and freedoms.

(59) Eurojust should enhance its cooperation with competent authorities of third countries and international organisations on the basis of a strategy drawn up in consultation with the Commission. For that purpose, provision should be made for Eurojust to post liaison magistrates to third countries in order to achieve objectives

similar to those assigned to liaison magistrates seconded by the Member States on the basis of Council Joint Action 96/277/ JHA ([1]).

(60) Provision should be made for Eurojust to coordinate the execution of requests for judicial cooperation issued by a third country, where those requests require execution in at least two Member States as part of the same investigation. Eurojust should only undertake such coordination with the agreement of the Member States concerned.

(61) To guarantee the full autonomy and independence of Eurojust, it should be granted an autonomous budget sufficient to properly carry out its work, with revenue coming essentially from a contribution from the budget of the Union, except as regards the salaries and emoluments of the national members, deputies and Assistants, which are borne by their Member State. The Union budgetary procedure should be applicable as far as the Union contribution and other subsidies chargeable to the general budget of the Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors and approved by the Committee on Budgetary Control of the European Parliament.

(62) In order to increase the transparency and democratic oversight of Eurojust, it is necessary to provide a mechanism pursuant to Article 85(1) TFEU for the joint evaluation of Eurojust's activities by the European Parliament and national parliaments. The evaluation should take place in the framework of an inter-parliamentary committee meeting in the premises of the European Parliament in Brussels, with the participation of members of the competent committees of the European Parliament and of the national parliaments. The interparliamentary committee meeting should fully respect Eurojust's independence as regards actions to be taken in specific operational cases and as regards the obligation of discretion and confidentiality.

(63) It is appropriate to evaluate the application of this Regulation regularly.

(64) Eurojust's functioning should be transparent in accordance with Article 15(3) TFEU. Specific provisions on how the right of public access to documents is ensured should be adopted by the College. Nothing in this Regulation is intended to restrict the right of public access to documents in so far as it is guaranteed in the Union and in the Member States, in particular under Article 42 of the Charter of Fundamental Rights of the European Union (the "Charter"). The general rules on transparency that apply to Union agencies should also apply to Eurojust in a way that does not jeopardise in any manner the obligation of confidentiality in its operational work. Administrative inquiries conducted by the European Ombudsman should respect the obligation of confidentiality of Eurojust.

(65) In order to increase Eurojust's transparency vis-à-vis Union citizens and its accountability, Eurojust should publish a list of its Executive Board members on its website and, where appropriate, summaries of the outcome of the meetings of the Executive Board, while respecting data protection requirements.

(66) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([1]) should apply to Eurojust.

(1) Council Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union (OJ L 105, 27.4.1996, p. 1).

(1) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/ 2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

(67) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ([2]) should apply to Eurojust.

(68) The necessary provisions regarding accommodation for Eurojust in the Member State in which it has its headquarters, that is to say in the Netherlands, and the specific rules applicable to all Eurojust's staff and members of their families should be laid down in a headquarters agreement. The host Member State should provide the best possible conditions to ensure the functioning of Eurojust, including multilingual, European-oriented schooling and appropriate transport connections, so as to attract high-quality human resources from as wide a geographical area as possible.

(69) Eurojust as established by this Regulation should be the legal successor of Eurojust as established by Decision 2002/ 187/JHA with respect to all its contractual obligations, including employment contracts, liabilities and properties acquired. International agreements concluded by Eurojust as established by that Decision should remain in force.

(70) Since the objective of this Regulation, namely the setting up of an entity responsible for supporting and strengthening coordination and cooperation between judicial authorities of the Member States in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(71) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.

(72) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(73) The EDPS was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ([1]) and delivered an opinion on 5 March 2014.

(74) This Regulation fully respects the fundamental rights and safeguards and observes the principles recognised in particular by the Charter,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

ESTABLISHMENT, OBJECTIVES AND TASKS OF EUROJUST

Article 1

Establishment of the European Union Agency for Criminal Justice Cooperation

(2) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

(1) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

1. The European Union Agency for Criminal Justice Cooperation (Eurojust) is hereby established.

2. Eurojust as established by this Regulation shall replace and succeed Eurojust as established by Decision 2002/187/ JHA.

3. Eurojust shall have legal personality.

Article 2

Tasks

1. Eurojust shall support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime which Eurojust is competent to deal with in accordance with Article 3(1) and (3), where that crime affects two or more Member States, or requires prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities, by Europol, by the EPPO and by OLAF.

2. In carrying out its tasks, Eurojust shall:

(a) take into account any request emanating from a competent authority of a Member State, any information provided by Union authorities, institutions, bodies, offices and agencies competent by virtue of provisions adopted within the framework of the Treaties and any information collected by Eurojust itself;

(b) facilitate the execution of requests for, and decisions on, judicial cooperation, including requests and decisions based on instruments that give effect to the principle of mutual recognition.

3. Eurojust shall carry out its tasks at the request of the competent authorities of the Member States, on its own initiative or at the request of the EPPO within the limits of the EPPO's competence.

Article 3

Competence of Eurojust

1. Eurojust shall be competent with respect to the forms of serious crime listed in Annex I. However, as of the date on which the EPPO assumes its investigative and prosecutorial tasks in accordance with Article 120(2) of Regulation (EU) 2017/1939, Eurojust shall not exercise its competence with regard to crimes for which the EPPO exercises its competence, except in those cases where Member States which do not participate in enhanced cooperation on the establishment of the EPPO are also involved and at the request of those Member States or at the request of the EPPO.

2. Eurojust shall exercise its competence for crimes affecting the financial interests of the Union in cases involving Member States which participate in enhanced cooperation on the establishment of the EPPO but in respect of which the EPPO does not have competence or decides not to exercise its competence.

Eurojust, the EPPO and the Member States concerned shall consult and cooperate with each other to facilitate Eurojust's exercise of competence under this paragraph. The practical details of its exercise of competence under this paragraph shall be governed by a working arrangement as referred to in Article 47(3).

3. As regards forms of crime other than those listed in Annex I, Eurojust may also, in accordance with its tasks, assist with investigations and prosecutions where requested by a competent authority of a Member State.

4. Eurojust's competence shall cover criminal offences related to the criminal offences listed in Annex I. The following categories of offences shall be regarded as related criminal offences:

(a) criminal offences committed in order to procure the means of committing the serious crimes listed in Annex I;

(b) criminal offences committed in order to facilitate or commit the serious crimes listed in Annex I;

(c) criminal offences committed in order to ensure the impunity of those committing the serious crimes listed in Annex I.

5. At the request of a Member State's competent authority, Eurojust may also assist with investigations and prosecutions that only affect that Member State and a third country, provided that a cooperation agreement or arrangement establishing cooperation pursuant to Article 52 has been concluded with that third country or provided that in a specific case there is an essential interest in providing such assistance.

6. At the request of either the competent authority of a Member State or the Commission, Eurojust may assist in investigations and prosecutions that only affect that Member State but which have repercussions at Union level. Before acting at the request of the Commission, Eurojust shall consult the competent authority of the Member State concerned. That competent authority may, within a deadline set by Eurojust, oppose the execution of the request by Eurojust, justifying its position in every case.

Article 4

Operational functions of Eurojust

1. Eurojust shall:

(a) inform the competent authorities of the Member States of investigations and prosecutions of which it has been informed which have repercussions at Union level or which might affect Member States other than those directly concerned;

(b) assist the competent authorities of the Member States in ensuring the best possible coordination of investigations and prosecutions;

(c) assist in improving cooperation between the competent authorities of the Member States, in particular on the basis of Europol's analyses;

(d) cooperate and consult with the European Judicial Network in criminal matters, including by making use of and contributing to the improvement of the documentary database of the European Judicial Network;

(e) cooperate closely with the EPPO on matters relating to its competence;

(f) provide operational, technical and financial support to Member States' cross-border operations and investigations, including to joint investigation teams;

(g) support, and where appropriate participate in, the Union centres of specialised expertise developed by Europol and other Union institutions, bodies, offices and agencies;

(h) cooperate with Union institutions, bodies, offices and agencies, as well as networks established in the area of freedom, security and justice regulated under Title V of the TFEU;

(i) support Member States' action in combating forms of serious crime listed in Annex I.

2. In carrying out its tasks, Eurojust may ask the competent authorities of the Member States concerned, giving its reasons, to:

(a) undertake an investigation or prosecution of specific acts;

(b) accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts;

(c) coordinate between the competent authorities of the Member States concerned;

(d) set up a joint investigation team in accordance with the relevant cooperation instruments;

(e) provide it with any information that is necessary for carrying out its tasks;

(f) take special investigative measures;

(g) take any other measure justified for the investigation or prosecution.

3. Eurojust may also:

(a) provide Europol with opinions based on analyses carried out by Europol;

(b) supply logistical support, including translation, interpretation and the organisation of coordination meetings.

4. Where two or more Member States cannot agree as to which of them should undertake an investigation or prosecution following a request under points (a) or (b) of paragraph 2, Eurojust shall issue a written opinion on the case. Eurojust shall send the opinion to the Member States concerned immediately.

5. At the request of a competent authority, or on its own initiative, Eurojust shall issue a written opinion on recurrent refusals or difficulties concerning the execution of requests for, and decisions on, judicial cooperation, including requests and decisions based on instruments giving effect to the principle of mutual recognition, provided that it is not possible to resolve such cases through mutual agreement between the competent national authorities or through the involvement of the national members concerned. Eurojust shall send the opinion to the Member States concerned immediately.

6. The competent authorities of the Member States concerned shall respond to requests from Eurojust under paragraph 2 and to the written opinions referred to in paragraph 4 or 5 without undue delay. The competent authorities of the Member States may refuse to comply with such requests or to follow the written opinion if doing so would harm essential national security interests, would jeopardise the success of an ongoing investigation or would jeopardise the safety of an individual.

Article 5

Exercise of operational and other functions

1. Eurojust shall act through one or more of the national members concerned when taking any of the actions referred to in Article 4(1) or (2). Without prejudice to paragraph 2 of this Article, the College shall focus on operational issues and any other issues that are directly linked to operational matters. The College shall only be involved in administrative matters to the extent necessary to ensure that its operational functions are fulfilled.

2. Eurojust shall act as a College:

(a) when taking any of the actions referred to in Article 4(1) or (2):

(i) at the request of one or more of the national members concerned by a case dealt with by Eurojust;

(ii) where the case involves investigations or prosecutions which have repercussions at Union level or which might affect Member States other than those directly concerned;

(b) when taking any of the actions referred to in Article 4(3), (4) or (5);

(c) where a general question relating to the achievement of its operational objectives is involved;

(d) when adopting Eurojust's annual budget, in which case the decision shall be taken by a majority of two thirds of its members;

(e) when adopting the programming document referred to in Article 15 or the annual report on Eurojust's activities, in which cases the decision shall be taken by a majority of two thirds of its members;

(f) when electing or dismissing the President and Vice-Presidents under Article 11;

(g) when appointing the Administrative Director or, where relevant, extending his or her term of office or removing him or her from office under Article 17;

(h) when adopting working arrangements under Articles 47(3) and 52;

(i) when adopting rules for the prevention and management of conflicts of interest in respect of its members, including in relation to their declaration of interests;

(j) when adopting reports, policy papers, guidelines for the benefit of national authorities and opinions pertaining to the operational work of Eurojust, whenever those documents are of a strategic nature;

(k) when appointing liaison magistrates in accordance with Article 53;

(l) when taking any decision which is not expressly attributed to the Executive Board by this Regulation or which is not under the responsibility of the Administrative Director in accordance with Article 18;

(m) when otherwise provided for in this Regulation.

3. When it fulfils its tasks, Eurojust shall indicate whether it is acting through one or more of the national members or as a College.

4. The College may assign additional administrative tasks to the Administrative Director and the Executive Board beyond those provided for in Articles 16 and 18, in accordance with its operational needs.

Where exceptional circumstances so require, the College may decide to suspend temporarily the delegation of the appointing authority powers to the Administrative Director and of those powers that have been sub-delegated by the latter, and to exercise them itself or to delegate them to one of its members or to a staff member other than the Administrative Director.

5. The College shall adopt Eurojust's rules of procedure on the basis of a two-thirds majority of its members. In the event that agreement cannot be reached by a two-thirds majority, the decision shall be taken by simple majority. Eurojust's rules of procedure shall be approved by the Council by means of implementing acts.

CHAPTER II

STRUCTURE AND ORGANISATION OF EUROJUST

SECTION I

Structure

Article 6

Structure of Eurojust

Eurojust shall comprise:

(a) the national members;

(b) the College;

(c) the Executive Board;

(d) the Administrative Director.

SECTION II

National members

Article 7

Status of national members

1. Eurojust shall have one national member seconded by each Member State in accordance with its legal system. That national member shall have his or her regular place of work at the seat of Eurojust.

2. Each national member shall be assisted by one deputy and by one Assistant. In principle, the deputy and the Assistant shall have their regular place of work at the seat of Eurojust. Each Member State may decide that the deputy or Assistant or both will have their regular place of work in their Member State. If a Member State takes such a decision, it shall notify the College. If the operational needs of Eurojust so require, the College may request the Member State to assign the deputy or Assistant or both to work at the seat of Eurojust for a specified period. The Member State shall comply with such a request from the College without undue delay.

3. Additional deputies or Assistants may assist the national member and, if necessary and with the agreement of the College, may have their regular place of work at Eurojust. Member States shall notify Eurojust and the Commission of the appointment of national members, deputies and Assistants.

4. National members and deputies shall have the status of a prosecutor, a judge or a representative of a judicial authority with competences equivalent to those of a prosecutor or judge under their national law. The Member States shall grant them at least the powers referred to in this Regulation in order to be able to fulfil their tasks.

5. The terms of office of the national members and their deputies shall be five years, renewable once. In cases where a deputy is unable to act on behalf of a national member or is unable to substitute for a national member, the national member shall remain in office upon expiry of his or her term of office until the renewal of his or her term or his or her replacement, subject to the consent of their Member State.

6. Member States shall appoint national members and deputies on the basis of a proven high level of relevant, practical experience in the field of criminal justice.

7. The deputy shall be able to act on behalf of or to substitute for the national member. An Assistant may also act on behalf of or substitute for the national member if he or she has a status referred to in paragraph 4.

8. Operational information exchange between Eurojust and Member States shall take place through the national members.

9. The salaries and emoluments of the national members, deputies and Assistants shall be borne by their Member State without prejudice to Article 12.

10. Where national members, deputies and Assistants act within the framework of Eurojust's tasks, the relevant expenditure related to those activities shall be regarded as operational expenditure.

Article 8

Powers of national members

1. The national members shall have the power to:

(a) facilitate or otherwise support the issuing or execution of any request for mutual legal assistance or mutual recognition;

(b) directly contact and exchange information with any competent national authority of the Member State or any other competent Union body, office or agency, including the EPPO;

(c) directly contact and exchange information with any competent international authority, in accordance with the international commitments of their Member State;

(d) participate in joint investigation teams including in setting them up.

2. Without prejudice to paragraph 1, Member States may grant additional powers to national members in accordance with their national law. Those Member States shall notify the Commission and the College of these powers.

3. With the agreement of the competent national authority, national members may, in accordance with their national law:

(a) issue or execute any request for mutual legal assistance or mutual recognition;

(b) order, request or execute investigative measures, as provided for in Directive 2014/41/EU of the European Parliament and of the Council ([1]).

4. In urgent cases where it is not possible to identify or to contact the competent national authority in a timely manner, national members shall be competent to take the measures referred to in paragraph 3 in accordance with their national law, provided that they inform the competent national authority as soon as possible.

5. The national member may submit a proposal to the competent national authority to carry out the measures referred to in paragraphs 3 and 4 where the exercise of the powers referred to in paragraphs 3 and 4 by that national member would be in conflict with:

(a) a Member State's constitutional rules; or

(b) fundamental aspects of that Member State's national criminal justice system regarding:

(i) the division of powers between the police, prosecutors and judges;

(1) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

(ii) the functional division of tasks between prosecution authorities; or

(iii) the federal structure of the Member State concerned.

6. Member States shall ensure that, in cases referred to in paragraph 5, the proposal submitted by their national member is handled without undue delay by the competent national authority.

Article 9

Access to national registers

National members shall have access to, or at least be able to obtain the information contained in, the following types of registers of their Member State, in accordance with their national law:

(a) criminal records;

(b) registers of arrested persons;

(c) investigation registers;

(d) DNA registers;

(e) other registers of public authorities of their Member State where such information is necessary to fulfil their tasks.

SECTION III

The College

Article 10

Composition of the College

1. The College shall be composed of:

(a) all the national members; and

(b) one representative of the Commission when the College exercises its management functions.

The representative of the Commission nominated under point (b) of the first subparagraph should be the same person as the Commission's representative on the Executive Board under Article 16(4).

2. The Administrative Director shall attend the management meetings of the College, without the right to vote.

3. The College may invite any person whose opinion may be of interest to attend its meetings as an observer.

4. The members of the College may, subject to the provisions of Eurojust's rules of procedure, be assisted by advisers or experts.

Article 11

The President and Vice-President of Eurojust

1. The College shall elect a President and two Vice-Presidents from among the national members by a two-thirds majority of its members. In the event that a two-thirds majority cannot be reached after the second round of election, the Vice-Presidents shall be elected by a simple majority of the members of the College, while a two-thirds majority shall continue to be necessary for the election of the President.

2. The President shall exercise his or her functions on behalf of the College. The President shall:

(a) represent Eurojust;

(b) call and preside over the meetings of the College and the Executive Board and keep the College informed of any matters that are of interest to it;

(c) direct the work of the College and monitor Eurojust's daily management by the Administrative Director;

(d) exercise any other functions set out in Eurojust's rules of procedure.

3. The Vice-Presidents shall exercise the functions set out in paragraph 2 which the President entrusts to them. They shall replace the President if he or she is prevented from attending to his or her duties. The President and Vice-Presidents shall be assisted in the performance of their specific duties by the administrative staff of Eurojust.

4. The term of office of the President and the Vice-Presidents shall be four years. They may be re-elected once.

5. When a national member is elected President or Vice-President of Eurojust, his or her term of office shall be extended to ensure that he or she can fulfil his or her function as President or Vice-President.

6. If the President or Vice-President no longer fulfils the conditions required for the performance of his or her duties, he or she may be dismissed by the College acting on a proposal from one third of its members. The decision shall be adopted on the basis of a two-thirds majority of the members of the College, excluding the President or Vice-President concerned.

7. When a national member is elected President of Eurojust, the Member State concerned may second another suitably qualified person to reinforce the national desk for the duration of the former's mandate as President.

A Member State which decides to second such a person shall be entitled to apply for compensation in accordance with Article 12.

Article 12

Compensation mechanism for the election to the position of President

1. By 12 December 2019, the Council shall, acting on a proposal by the Commission and by means of implementing acts, determine a mechanism for compensation, for the purpose of Article 11(7), to be made available to Member States whose national member is elected President.

2. The compensation shall be available to any Member State if:

(a) its national member has been elected President; and

(b) it requests compensation from the College and provides justification for the need to reinforce its national desk on grounds of an increased workload.

3. The compensation provided shall equate to 50 % of the national salary of the seconded person. Compensation for living costs and other associated expenses shall be provided on a comparable basis to that provided to Union officials or other servants seconded abroad.

4. The costs of the compensation mechanism shall be borne by Eurojust's budget.

Article 13

Meetings of the College

1. The President shall convene the meetings of the College.

2. The College shall hold at least one meeting per month. In addition, it shall meet on the initiative of the President, at the request of the Commission to discuss the administrative tasks of the College, or at the request of at least one third of its members.

3. Eurojust shall send the EPPO the agenda of College meetings whenever issues are discussed which are of relevance for the exercise of the tasks of the EPPO. Eurojust shall invite the EPPO to participate in such meetings, without the right to vote. When the EPPO is invited to a College meeting, Eurojust shall provide it with the relevant documents supporting the agenda.

Article 14

Voting rules of the College

1. Unless stated otherwise, and where a consensus cannot be reached, the College shall take its decisions by a majority of its members.

2. Each member shall have one vote. In the absence of a voting member, the deputy shall be entitled to exercise the right to vote subject to the conditions set out in Article 7(7). In the absence of the deputy, the Assistant shall also be entitled to exercise the right to vote subject to the conditions set out in Article 7(7).

Article 15

Annual and multi-annual programming

1. By 30 November each year, the College shall adopt a programming document containing annual and multi-annual programming, based on a draft prepared by the Administrative Director, taking into account the opinion of the Commission. The College shall forward the programming document to the European Parliament, the Council, the Commission and the EPPO. The programming document shall become definitive after final adoption of the general budget of the Union and shall be adjusted accordingly, if necessary.

2. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multi-annual work programme referred to in paragraph 4. It shall clearly indicate which tasks have been added, changed or deleted in comparison with the previous financial year.

3. The College shall amend the adopted annual work programme when a new task is given to Eurojust. Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The College may delegate to the Administrative Director the power to make non-substantial amendments to the annual work programme.

4. The multi-annual work programme shall set out overall strategic programming including objectives, the strategy for cooperation with the authorities of third countries and international organisations referred to in Article 52, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff. The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 69.

SECTION IV

The executive board

Article 16

Functioning of the Executive Board

1. The College shall be assisted by an Executive Board. The Executive Board shall be responsible for taking administrative decisions to ensure the proper functioning of Eurojust. It shall oversee the necessary preparatory work of the Administrative Director on other administrative matters for adoption by the College. It shall not be involved in the operational functions of Eurojust referred to in Articles 4 and 5.

2. The Executive Board may consult the College when carrying out its tasks.

3. The Executive Board shall also:

(a) review Eurojust's programming document referred to in Article 15 based on the draft prepared by the Administrative Director and forward it to the College for adoption;

(b) adopt an anti-fraud strategy for Eurojust, proportionate to the fraud risks, taking into account the costs and benefits of the measures to be implemented and based on a draft prepared by the Administrative Director;

(c) adopt appropriate implementing rules giving effect to the Staff Regulations of Officials of the European Union (the "Staff Regulations of Officials") and the Conditions of Employment of Other Servants of the European Union ("Conditions of Employment of Other Servants"), laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ([1]) in accordance with Article 110 of the Staff Regulations of Officials;

(d) ensure adequate follow-up to the findings and recommendations stemming from the internal or external audit reports, evaluations and investigations, including those of the EDPS and OLAF;

(e) take all decisions on the establishment and, where necessary, the modification of Eurojust's internal administrative structures;

(f) without prejudice to the responsibilities of the Administrative Director set out in Article 18, assist and advise him or her on the implementation of the decisions of the College, with a view to reinforcing supervision of administrative and budgetary management;

(g) undertake any additional administrative tasks assigned to it by the College under Article 5(4);

(h) adopt the financial rules applicable to Eurojust in accordance with Article 64;

(i) adopt, in accordance with Article 110 of the Staff Regulations of Officials, a decision based on Article 2(1) of the Staff Regulations of Officials and on Article 6 of the Conditions of Employment of Other Servants delegating the relevant appointing authority powers to the Administrative Director and establishing the conditions under which this delegation of powers can be suspended; the Administrative Director shall be authorised to sub-delegate those powers;

(j) review Eurojust's draft annual budget for adoption by the College;

(k) review the draft annual report on Eurojust's activities and forward it to the College for adoption;

(1) OJ L 56, 4.3.1968, p. 1.

(l) appoint an accounting officer and a Data Protection Officer who are functionally independent in the performance of their duties.

4. The Executive Board shall be composed of the President and Vice-Presidents of Eurojust, one representative of the Commission and two other members of the College designated on a two-year rotation system in accordance with Eurojust's rules of procedure. The Administrative Director shall attend the meetings of the Executive Board without the right to vote.

5. The President of Eurojust shall be the chairperson of the Executive Board. The Executive Board shall take its decisions by a majority of its members. Each member shall have one vote. In the event of a tied vote, the President of Eurojust shall have a casting vote.

6. The term of office of members of the Executive Board shall end when their term as national members, President or Vice-President ends.

7. The Executive Board shall meet at least once a month. In addition, it shall meet on the initiative of its chairperson or at the request of the Commission or of at least two of its other members.

8. Eurojust shall send to the EPPO the agenda of the Executive Board meetings and consult with the EPPO on the need to participate in those meetings. Eurojust shall invite the EPPO to participate, without the right to vote, whenever issues are discussed which are of relevance for the functioning of the EPPO.

When the EPPO is invited to an Executive Board meeting, Eurojust shall provide it with the relevant documents supporting the agenda.

SECTION V

The Administrative Director

Article 17

Status of the Administrative Director

1. The Administrative Director shall be engaged as a temporary agent of Eurojust under point (a) of Article 2 of the Conditions of Employment of Other Servants.

2. The Administrative Director shall be appointed by the College from a list of candidates proposed by the Executive Board, following an open and transparent selection procedure in accordance with Eurojust's rules of procedure. For the purpose of concluding the employment contract with the Administrative Director, Eurojust shall be represented by the President of Eurojust.

3. The term of office of the Administrative Director shall be four years. By the end of that period, the Executive Board shall undertake an assessment that takes into account an evaluation of the performance of the Administrative Director.

4. The College, acting on a proposal from the Executive Board that takes into account the assessment referred to in paragraph 3, may extend the term of office of the Administrative Director once and for no more than four years.

5. An Administrative Director whose term of office has been extended shall not participate in another selection procedure for the same post at the end of the overall period.

6. The Administrative Director shall be accountable to the College.

7. The Administrative Director may be removed from the office only pursuant to a decision of the College acting on a proposal from the Executive Board.

Article 18

Responsibilities of the Administrative Director

1. For administrative purposes, Eurojust shall be managed by its Administrative Director.

2. Without prejudice to the powers of the College or the Executive Board, the Administrative Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government or any other body.

3. The Administrative Director shall be the legal representative of Eurojust.

4. The Administrative Director shall be responsible for the implementation of the administrative tasks assigned to Eurojust, in particular:

(a) the day-to-day administration of Eurojust and staff management;

(b) implementing the decisions adopted by the College and the Executive Board;

(c) preparing the programming document referred to in Article 15 and submitting it to the Executive Board for review;

(d) implementing the programming document referred to in Article 15 and reporting to the Executive Board and College on its implementation;

(e) preparing the annual report on Eurojust's activities and presenting it to the Executive Board for review and to the College for adoption;

(f) preparing an action plan following up on conclusions of internal or external audit reports, evaluations and investigations, including those of the EDPS and OLAF and reporting on progress twice a year to the College, to the Executive Board, to the Commission and to the EDPS;

(g) preparing an anti-fraud strategy for Eurojust and presenting it to the Executive Board for adoption;

(h) preparing draft financial rules applicable to Eurojust;

(i) preparing Eurojust's draft statement of estimates of revenue and expenditure and implementing its budget;

(j) exercising, with respect to the staff of Eurojust, the powers conferred by the Staff Regulations of Officials on the appointing authority and by the Conditions of Employment of Other Servants on the authority empowered to conclude contracts of employment of other servants ("the appointing authority powers");

(k) ensuring that the necessary administrative support is provided to facilitate the operational work of Eurojust;

(l) ensuring that support is provided to the President and Vice-Presidents as they carry out their duties;

(m) preparing a draft proposal for Eurojust's annual budget, which shall be reviewed by the Executive Board before adoption by the College.

CHAPTER III

OPERATIONAL MATTERS

Article 19

On-call coordination mechanism

1. In order to fulfil its tasks in urgent cases, Eurojust shall operate an on-call coordination mechanism ("OCC") able to receive and process at all times the requests referred to it. The OCC shall be contactable 24 hours a day, seven days a week.

2. The OCC shall rely on one OCC representative per Member State who may be either the national member, his or her deputy, an Assistant entitled to replace the national member, or a seconded national expert. The OCC representative shall be available to act 24 hours a day, seven days a week.

3. The OCC representatives shall act efficiently and without delay in relation to the execution of a request in their Member State.

Article 20

Eurojust national coordination system

1. Each Member State shall appoint one or more national correspondents for Eurojust.

2. All national correspondents appointed by the Member States under paragraph 1 shall have the skills and experience necessary for them to carry out their duties.

3. Each Member State shall set up a Eurojust national coordination system to ensure coordination of the work carried out by:

(a) the national correspondents for Eurojust;

(b) any national correspondents for issues relating to the competence of the EPPO;

(c) the national correspondent for Eurojust for terrorism matters;

(d) the national correspondent for the European Judicial Network in criminal matters and up to three other contact points of the European Judicial Network;

(e) national members or contact points of the Network for joint investigation teams, and national members or contact points of the networks set up by Decisions 2002/494/JHA, 2007/845/JHA and 2008/852/JHA;

(f) where applicable, any other relevant judicial authority.

4. The persons referred to in paragraphs 1 and 3 shall retain their position and status under national law, without this having a significant impact on the performance of their duties under this Regulation.

5. The national correspondents for Eurojust shall be responsible for the functioning of their Eurojust national coordination system. Where several correspondents for Eurojust are appointed, one of them shall be responsible for the functioning of their Eurojust national coordination system.

6. The national members shall be informed of all meetings of their Eurojust national coordination system where casework-related matters are discussed. The national members may attend such meetings as necessary.

7. Each Eurojust national coordination system shall facilitate the carrying out of Eurojust's tasks within the Member State concerned, in particular by:

(a) ensuring that the case management system referred to in Article 23 receives information related to the Member State concerned in an efficient and reliable manner;

(b) assisting in determining whether a request should be handled with the assistance of Eurojust or of the European Judicial Network;

(c) assisting the national member in identifying relevant authorities for the execution of requests for, and decisions on, judicial cooperation, including requests and decisions based on instruments giving effect to the principle of mutual recognition;

(d) maintaining close relations with the Europol national unit, other contact points of the European Judicial Network and other relevant competent national authorities.

8. In order to meet the objectives referred to in paragraph 7, the persons referred to in paragraph 1 and in points (a), (b) and (c) of paragraph 3 shall, and the persons or authorities referred to in points (d) and (e) of paragraph 3 may be connected to the case management system in accordance with this Article and with Articles 23, 24, 25 and 34. The cost of connection to the case management system shall be borne by the general budget of the Union.

9. The setting up of the Eurojust national coordination system and the appointment of national correspondents shall not prevent direct contacts between the national member and the competent authorities of his or her Member State.

Article 21

Exchanges of information with the Member States and between national members

1. The competent authorities of the Member States shall exchange with Eurojust all information necessary for the performance of its tasks under Articles 2 and 4 in accordance with the applicable data protection rules. This shall at least include the information referred to in paragraphs 4, 5 and 6 of this Article.

2. The transmission of information to Eurojust shall only be interpreted as a request for the assistance of Eurojust in the case concerned if so specified by a competent authority.

3. The national members shall exchange all information necessary for the performance of Eurojust's tasks among themselves or with their competent national authorities, without prior authorisation. In particular, the competent national authorities shall promptly inform their national members of a case which concerns them.

4. The competent national authorities shall inform their national members of the setting up of joint investigation teams and of the results of the work of such teams.

5. The competent national authorities shall inform their national members without undue delay of any case affecting at least three Member States for which requests for or decisions on judicial cooperation, including requests and decisions based on instruments giving effect to the principle of mutual recognition, have been transmitted to at least two Member States, where one or more of the following apply:

(a) the offence involved is punishable in the requesting or issuing Member State by a custodial sentence or a detention order, the maximum period of which is at least five or six years, to be decided by the Member State concerned, and is included in the following list:

(i) trafficking in human beings;

(ii) sexual abuse or sexual exploitation including child pornography and solicitation of children for sexual purposes;

(iii) drug trafficking;

(iv) illicit trafficking in firearms, their parts or components or ammunition or explosives;

(v) corruption;

(vi) crime against the financial interests of the Union;

(vii) forgery of money or means of payment;

(viii) money laundering activities;

(ix) computer crime;

(b) there are factual indications that a criminal organisation is involved;

(c) there are indications that the case may have a serious cross-border dimension or may have repercussions at Union level, or that it may affect Member States other than those directly involved.

6. The competent national authorities shall inform their national members of:

(a) cases in which conflicts of jurisdiction have arisen or are likely to arise;

(b) controlled deliveries affecting at least three countries, at least two of which are Member States;

(c) repeated difficulties or refusals regarding the execution of requests for, or decisions on, judicial cooperation, including requests and decisions based on instruments giving effect to the principle of mutual recognition.

7. The competent national authorities shall not be obliged to supply information in a particular case if doing so would harm essential national security interests or jeopardise the safety of individuals.

8. This Article is without prejudice to conditions set out in bilateral or multilateral agreements or arrangements between Member States and third countries, including any conditions set by third countries concerning the use of information once supplied.

9. This Article is without prejudice to other obligations regarding the transmission of information to Eurojust, including Council Decision 2005/671/JHA ([1]).

10. Information referred to in this Article shall be provided in a structured way determined by Eurojust. The competent national authority shall not be obliged to provide such information where it has already been transmitted to Eurojust in accordance with other provisions of this Regulation.

Article 22

Information provided by Eurojust to competent national authorities

1. Eurojust shall provide competent national authorities with information on the results of the processing of information, including the existence of links with cases already stored in the case management system, without undue delay. That information may include personal data.

2. Where a competent national authority requests that Eurojust provide it with information within a certain timeframe, Eurojust shall transmit that information within that timeframe.

Article 23

(1) Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).

Case management system, index and temporary work files

1. Eurojust shall establish a case management system composed of temporary work files and of an index which contain the personal data referred to in Annex II and non-personal data.

2. The purpose of the case management system shall be to:

(a) support the management and coordination of investigations and prosecutions for which Eurojust is providing assistance, in particular by cross-referencing information;

(b) facilitate access to information on on-going investigations and prosecutions;

(c) facilitate the monitoring of the lawfulness of Eurojust's processing of personal data and its compliance with the applicable data protection rules.

3. The case management system may be linked to the secure telecommunications connection referred to in Article 9 of Council Decision 2008/976/JHA ([2]).

4. The index shall contain references to temporary work files processed within the framework of Eurojust and may not contain any personal data other than those referred to in points (1)(a) to (i), (k) and (m) and (2) of Annex II.

5. In the performance of their duties, national members may process data on the individual cases on which they are working in a temporary work file. They shall allow the Data Protection Officer to have access to the temporary work file. The Data Protection Officer shall be informed by the national member concerned of the opening of each new temporary work file that contains personal data.

6. For the processing of operational personal data, Eurojust may not establish any automated data file other than the case management system. The national member may, however, temporarily store and analyse personal data for the purpose of determining whether such data are relevant to Eurojust's tasks and can be included in the case management system. That data may be held for up to three months.

Article 24

Functioning of temporary work files and the index

1. A temporary work file shall be opened by the national member concerned for every case with respect to which information is transmitted to him or her in so far as that transmission is in accordance with this Regulation or other applicable legal instruments. The national member shall be responsible for the management of the temporary work files opened by that national member.

2. The national member who has opened a temporary work file shall decide, on a case-by-case basis, whether to keep the temporary work file restricted or to give access to it or to parts of it to other national members, to authorised Eurojust staff or to any other person working on behalf of Eurojust who has received the necessary authorisation from the Administrative Director.

3. The national member who has opened a temporary work file shall decide which information related to that temporary work file shall be introduced in the index in accordance with Article 23(4).

Article 25

Access to the case management system at national level

(2) Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

1. In so far as they are connected to the case management system, persons referred to in Article 20(3) shall only have access to:

(a) the index, unless the national member who has decided to introduce the data in the index expressly denied such access;

(b) temporary work files opened by the national member of their Member State;

(c) temporary work files opened by national members of other Member States and to which the national member of their Member States has received access, unless the national member who opened the temporary work file expressly denied such access.

2. The national member shall, within the limitations provided for in paragraph 1 of this Article, decide on the extent of access to the temporary work files which is granted in his or her Member State to the persons referred to in Article 20(3) in so far as they are connected to the case management system.

3. Each Member State shall decide, after consultation with its national member, on the extent of access to the index which is granted in that Member State to the persons referred to in Article 20(3) in so far as they are connected to the case management system. Member States shall notify Eurojust and the Commission of their decision regarding the implementation of this paragraph. The Commission shall inform the other Member States thereof.

4. Persons who have been granted access in accordance with paragraph 2 shall at least have access to the index to the extent necessary to access the temporary work files to which they have been granted access.

CHAPTER IV

PROCESSING OF INFORMATION

Article 26

Processing of personal data by Eurojust

1. This Regulation and Article 3 and Chapter IX of Regulation (EU) 2018/1725 shall apply to the processing of operational personal data by Eurojust. Regulation (EU) 2018/1725 shall apply to the processing of administrative personal data by Eurojust, with the exception of Chapter IX of that Regulation.

2. References to "applicable data protection rules" in this Regulation shall be understood as references to the provisions on data protection set out in this Regulation and in Regulation (EU) 2018/1725.

3. The data protection rules on processing of operational personal data contained in this Regulation shall be considered as specific data protection rules to the general rules laid down in Article 3 and Chapter IX of Regulation (EU) 2018/1725.

4. Eurojust shall determine the time limits for the storage of administrative personal data in the data protection provisions of its rules of procedure.

Article 27

Processing of operational personal data

1. In so far as it is necessary to perform its tasks, Eurojust may, within the framework of its competence and in order to carry out its operational functions, process by automated means or in structured manual files in accordance with this Regulation only the operational personal data listed in point 1 of Annex II of persons who, under the national law of the Member States concerned, are persons with regard to whom there are serious grounds for believing that they have committed or are about to

commit a criminal offence in respect of which Eurojust is competent or who have been convicted of such an offence.

2. Eurojust may process only the operational personal data listed in point 2 of Annex II of persons who, under the national law of the Member States concerned, are regarded as victims or other parties to a criminal offence, such as persons who might be called to testify in a criminal investigation or prosecution regarding one or more of the types of crime and the criminal offences referred to in Article 3, persons who are able to provide information on criminal offences, or contacts or associates of a person referred to in paragraph 1. The processing of such operational personal data may only take place if it is necessary for the fulfilment of the tasks of Eurojust, within the framework of its competence and in order to carry out its operational functions.

3. In exceptional cases, for a limited period of time which shall not exceed the time needed for the conclusion of the case in relation to which the data are processed, Eurojust may also process operational personal data other than the personal data referred to in Annex II relating to the circumstances of an offence, where such data are immediately relevant to and are included in ongoing investigations which Eurojust is coordinating or helping to coordinate and when their processing is necessary for the purposes specified in paragraph 1. The Data Protection Officer referred to in Article 36 shall be informed immediately when such operational personal data are processed, and shall be informed of the specific circumstances which justify the necessity of the processing of those operational personal data. Where such other data refer to witnesses or victims within the meaning of paragraph 2 of this Article, the decision to process them shall be taken jointly by the national members concerned.

4. Eurojust may process special categories of operational personal data in accordance with Article 76 of Regulation (EU) 2018/1725. Such data may not be processed in the index referred to in Article 23(4) of this Regulation. Where such other data refer to witnesses or victims within the meaning of paragraph 2 of this Article, the decision to process them shall be taken by the national members concerned.

Article 28

Processing under the authority of Eurojust or processor

The processor and any person acting under the authority of Eurojust or of the processor who has access to operational personal data shall not process those data except on instructions from Eurojust, unless required to do so by Union law or Member State law.

Article 29

Time limits for the storage of operational personal data

1. Operational personal data processed by Eurojust shall be stored by Eurojust for only as long as is necessary for the performance of its tasks. In particular, without prejudice to paragraph 3 of this Article, the operational personal data referred to in Article 27 may not be stored beyond the first applicable date among the following dates:

(a) the date on which prosecution is barred under the statute of limitations of all the Member States concerned by the investigation and prosecutions;

(b) the date on which Eurojust is informed that the person has been acquitted and the judicial decision became final, in which case the Member State concerned shall inform Eurojust without delay;

(c) three years after the date on which the judicial decision of the last of the Member States concerned by the investigation or prosecution became final;

(d) the date on which Eurojust and the Member States concerned mutually established or agreed that it was no longer necessary for Eurojust to coordinate the investigation and prosecutions, unless there is an obligation to provide Eurojust with this information in accordance with Article 21(5) or (6);

(e) three years after the date on which operational personal data were transmitted in accordance with Article 21(5) or (6).

2. Observance of the storage deadlines referred to in paragraph 1 of this Article shall be reviewed constantly by appropriate automated processing conducted by Eurojust, particularly from the moment in which the case is closed by Eurojust. A review of the need to store the data shall also be carried out every three years after they were entered; the results of such reviews shall apply to the case as a whole. If operational personal data referred to in Article 27(4) are stored for a period exceeding five years, the EDPS shall be informed.

3. Before one of the storage deadlines referred to in paragraph 1 expires, Eurojust shall review the need for the continued storage of the operational personal data where and as long as this is necessary to perform its tasks. It may decide by way of derogation to store those data until the following review. The reasons for the continued storage shall be justified and recorded. If no decision is taken on the continued storage of operational personal data at the time of the review, those data shall be deleted automatically.

4. Where, in accordance with paragraph 3, operational personal data have been stored beyond the storage deadlines referred to in paragraph 1, the EDPS shall also carry out a review of the need to store those data every three years.

5. Once the deadline for the storage of the last item of automated data from the file has expired, all documents in the file shall be destroyed with the exception of any original documents which Eurojust has received from national authorities and which need to be returned to their provider.

6. Where Eurojust has coordinated an investigation or prosecutions, the national members concerned shall inform each other whenever they receive information that the case has been dismissed or that all judicial decisions related to the case have become final.

7. Paragraph 5 shall not apply where:

(a) this would damage the interests of a data subject who requires protection; in such cases, the operational personal data shall be used only with the express and written consent of the data subject;

(b) the accuracy of the operational personal data is contested by the data subject; in such cases paragraph 5 shall not apply for a period enabling Member States or Eurojust, as appropriate, to verify the accuracy of such data;

(c) the operational personal data are to be maintained for purposes of proof or for the establishment, exercise or defence of legal claims;

(d) the data subject opposes the erasure of the operational personal data and requests the restriction of their use instead; or

(e) the operational personal data are further needed for archiving purposes in the public interest or statistical purposes.

Article 30

Security of operational personal data

Eurojust and Member States shall define mechanisms to ensure that the security measures referred to in Article 91 of Regulation (EU) 2018/1725 are addressed across information system boundaries.

Article 31

Right of access by the data subject

1. Any data subject who wishes to exercise the right of access referred to in Article 80 of Regulation (EU) 2018/1725 to operational personal data that relate to the data subject and which have been processed by Eurojust may make a request to Eurojust or to the national supervisory authority in the Member State of the data subject's choice. That authority shall refer the request to Eurojust without delay, and in any case within one month of its receipt.

2. The request shall be answered by Eurojust without undue delay and in any case within three months of its receipt by Eurojust.

3. The competent authorities of the Member States concerned shall be consulted by Eurojust on the decision to be taken in response to a request. The decision on access to data shall only be taken by Eurojust in close cooperation with the Member States directly concerned by the communication of such data. Where a Member State objects to Eurojust's proposed decision, it shall notify Eurojust of the reasons for its objection. Eurojust shall comply with any such objection. The national members concerned shall subsequently notify the competent authorities of the content of Eurojust's decision.

4. The national members concerned shall deal with the request and reach a decision on Eurojust's behalf. Where the national members concerned are not in agreement, they shall refer the matter to the College, which shall take its decision on the request by a two-thirds majority.

Article 32

Limitations to the right of access

In the cases referred to in Article 81 of Regulation (EU) 2018/1725, Eurojust shall inform the data subject after consulting the competent authorities of the Member States concerned in accordance with Article 31(3) of this Regulation.

Article 33

Right to restriction of processing

Without prejudice to the exceptions set out in Article 29(7) of this Regulation, where the processing of operational personal data has been restricted under Article 82(3) of Regulation (EU) 2018/1725, such operational personal data shall only be processed for the protection of the rights of the data subject or another natural or legal person who is a party to the proceedings to which Eurojust is a party, or for the purposes laid down in Article 82(3) of Regulation (EU) 2018/1725.

Article 34

Authorised access to operational personal data within Eurojust

Only national members, their deputies, their Assistants and authorised seconded national experts, the persons referred to in Article 20(3) in so far as those persons are connected to the case management system and authorised Eurojust staff may, for the purpose of achieving Eurojust's tasks, have access to operational personal data processed by Eurojust within the limits provided for in Articles 23, 24 and 25.

Article 35

Records of categories of processing activities

1. Eurojust shall maintain a record of all categories of processing activities under its responsibility. That record shall contain all of the following information:

(a) Eurojust's contact details and the name and the contact details of its Data Protection Officer;

(b) the purposes of the processing;

(c) the description of the categories of data subjects and of the categories of operational personal data;

(d) the categories of recipients to whom the operational personal data have been or will be disclosed including recipients in third countries or international organisations;

(e) where applicable, transfers of operational personal data to a third country or an international organisation, including the identification of that third country or international organisation;

(f) where possible, the envisaged time limits for erasure of the different categories of data;

(g) where possible, a general description of the technical and organisational security measures referred to in Article 91 of Regulation (EU) 2018/1725.

2. The records referred to in paragraph 1 shall be in writing, including in electronic form.

3. Eurojust shall make the record available to the EDPS on request.

Article 36

Designation of the Data Protection Officer

1. The Executive Board shall designate a Data Protection Officer. The Data Protection Officer shall be a member of staff specifically appointed for this purpose. In the performance of his or her duties, the Data Protection Officer shall act independently and may not receive any instructions.

2. The Data Protection Officer shall be selected on the basis of his or her professional qualities and, in particular, expert knowledge of data protection law and practice, and ability to fulfil his or her tasks under this Regulation, in particular those referred to in Article 38.

3. The selection of the Data Protection Officer shall not be liable to result in a conflict of interests between his or her duty as Data Protection Officer and any other official duties he or she may have, in particular in relation to the application of this Regulation.

4. The Data Protection Officer shall be appointed for a term of four years and shall be eligible for reappointment up to a maximum total term of eight years. The Data Protection Officer may be dismissed from his or her post by the Executive Board only with the agreement of the EDPS, if he or she no longer fulfils the conditions required for the performance of his or her duties.

5. Eurojust shall publish the contact details of the Data Protection Officer and communicate them to the EDPS.

Article 37

Position of the Data Protection Officer

1. Eurojust shall ensure that the Data Protection Officer is involved properly and in a timely manner in all issues which relate to the protection of personal data.

2. Eurojust shall support the Data Protection Officer in performing the tasks referred to in Article 38 by providing the resources and staff necessary to carry out those tasks and by providing access to personal data and processing operations, and to maintain his or her expert knowledge.

3. Eurojust shall ensure that the Data Protection Officer does not receive any instructions regarding the carrying out of his or her tasks. The Data Protection Officer shall not be dismissed or penalised by the Executive Board for performing his or her tasks. The Data Protection Officer shall report directly to the College in relation to operational personal data and report to the Executive Board in relation to administrative personal data.

4. Data subjects may contact the Data Protection Officer with regard to all issues related to processing of their personal data and to the exercise of their rights under this Regulation and under Regulation (EU) 2018/1725.

5. The Executive Board shall adopt implementing rules concerning the Data Protection Officer. Those implementing rules shall in particular concern the selection procedure for the position of the Data Protection Officer, his or her dismissal, tasks, duties and powers, and safeguards for the independence of the Data Protection Officer.

6. The Data Protection Officer and his or her staff shall be bound by the obligation of confidentiality in accordance with Article 72.

7. The Data Protection Officer may be consulted by the controller and the processor, by the staff committee concerned and by any individual on any matter concerning the interpretation or application of this Regulation and Regulation (EU) 2018/1725 without them going through the official channels. No one shall suffer prejudice on account of a matter brought to the attention of the Data Protection Officer alleging that a breach of this Regulation or Regulation (EU) 2018/1725 has taken place.

8. After his or her designation the Data Protection Officer shall be registered with the EDPS by Eurojust.

Article 38

Tasks of the Data Protection Officer

1. The Data Protection Officer shall in particular have the following tasks regarding the processing of personal data:

(a) ensuring in an independent manner the compliance of Eurojust with the data protection provisions of this Regulation and Regulation (EU) 2018/1725 and with the relevant data protection provisions in Eurojust's rules of procedure; this includes monitoring compliance with this Regulation, with Regulation (EU) 2018/1725, with other Union or national data protection provisions and with the policies of Eurojust in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and related audits;

(b) informing and advising Eurojust and staff who process personal data of their obligations pursuant to this Regulation, to Regulation (EU) 2018/1725 and to other Union or national data protection provisions;

(c) providing advice where requested as regards the data protection impact assessment and monitoring its performance pursuant to Article 89 of Regulation (EU) 2018/1725;

(d) ensuring that a record of the transfer and receipt of personal data is kept in accordance with the provisions to be laid down in Eurojust's rules of procedure;

(e) cooperating with the staff of Eurojust who are responsible for procedures, training and advice concerning data processing;

(f) cooperating with the EDPS;

(g) ensuring that data subjects are informed of their rights under this Regulation and Regulation (EU) 2018/1725;

(h) acting as the contact point for the EDPS on issues relating to processing, including the prior consultation referred to in Article 90 of Regulation (EU) 2018/1725, and consulting where appropriate, with regard to any other matter;

(i) providing advice where requested as regards the necessity of a notification or communication of a personal data breach pursuant to Articles 92 and 93 of Regulation (EU) 2018/1725;

(j) preparing an annual report and communicating that report to the Executive Board, to the College and to the EDPS.

2. The Data Protection Officer shall carry out the functions provided for in Regulation (EU) 2018/1725 with regard to administrative personal data.

3. The Data Protection Officer and the staff members of Eurojust assisting the Data Protection Officer in the performance of his or her duties shall have access to the personal data processed by Eurojust and to its premises, to the extent necessary for the performance of their tasks.

4. If the Data Protection Officer considers that the provisions of Regulation (EU) 2018/1725 related to the processing of administrative personal data or that the provisions of this Regulation or of Article 3 and of Chapter IX of Regulation (EU) 2018/1725 related to the processing of operational personal data have not been complied with, he or she shall inform the Executive Board, requesting that it resolve the non-compliance within a specified time. If the Executive Board does not resolve the non-compliance within the specified time, the Data Protection Officer shall refer the matter to the EDPS.

Article 39

Notification of a personal data breach to the authorities concerned

1. In the event of a personal data breach, Eurojust shall without undue delay notify the competent authorities of the Member States concerned of that breach.

2. The notification referred to in paragraph 1 shall, as a minimum:

(a) describe the nature of the personal data breach including, where possible and appropriate, the categories and number of data subjects concerned and the categories and number of data records concerned;

(b) describe the likely consequences of the personal data breach;

(c) describe the measures proposed or taken by Eurojust to address the personal data breach; and

(d) where appropriate, recommend measures to mitigate the possible adverse effects of the personal data breach.

Article 40

Supervision by the EDPS

1. The EDPS shall be responsible for monitoring and ensuring the application of the provisions of this Regulation and Regulation (EU) 2018/1725 relating to the protection of fundamental rights and freedoms of natural persons with regard to processing of operational personal data by Eurojust, and for advising Eurojust and data subjects on all matters concerning the processing of operational personal data. To that end, the EDPS shall fulfil the duties set out in paragraph 2 of this Article, shall exercise the powers granted in paragraph 3 of this Article and shall cooperate with the national supervisory authorities in accordance with Article 42.

2. The EDPS shall have the following duties under this Regulation and Regulation (EU) 2018/1725:

(a) hearing and investigating complaints, and informing the data subject of the outcome within a reasonable period;

(b) conducting inquiries either on his or her own initiative or on the basis of a complaint, and informing the data subjects of the outcome within a reasonable period;

(c) monitoring and ensuring the application of the provisions of this Regulation and Regulation (EU) 2018/1725 relating to the protection of natural persons with regard to the processing of operational personal data by Eurojust;

(d) advising Eurojust, either on his or her own initiative or in response to a consultation, on all matters concerning the processing of operational personal data, in particular before Eurojust draws up internal rules relating to the protection of fundamental rights and freedoms with regard to the processing of operational personal data.

3. The EDPS may under this Regulation and Regulation (EU) 2018/1725, taking into account the implications for investigations and prosecutions in the Member States:

(a) give advice to data subjects on the exercise of their rights;

(b) refer a matter to Eurojust in the event of an alleged breach of the provisions governing the processing of operational personal data, and, where appropriate, make proposals for remedying that breach and for improving the protection of the data subjects;

(c) consult Eurojust where requests to exercise certain rights in relation to operational personal data have been refused in breach of Article 31, 32 or 33 of this Regulation or Articles 77 to 82 or Article 84 of Regulation (EU) 2018/1725;

(d) warn Eurojust;

(e) order Eurojust to carry out the rectification, restriction or erasure of operational personal data which have been processed by Eurojust in breach of the provisions governing the processing of operational personal data and to notify such actions to third parties to whom such data have been disclosed, provided that this does not interfere with the tasks of Eurojust set out in Article 2;

(f) refer the matter to the Court of Justice of the European Union (the "Court") under the conditions set out in the TFEU;

(g) intervene in actions brought before the Court.

4. The EDPS shall have access to the operational personal data processed by Eurojust and to its premises to the extent necessary for the performance of his or her tasks.

5. The EDPS shall draw up an annual report on his or her supervisory activities in relation to Eurojust. That report shall be part of the annual report of the EDPS referred to in Article 60 of Regulation (EU) 2018/1725. The national supervisory authorities shall be invited to make observations on this report before it becomes part of the annual report of the EDPS referred to in Article 60 of Regulation (EU) 2018/1725. The EDPS shall take utmost account of the observations made by national supervisory authorities and, in any case, shall refer to them in the annual report.

6. Eurojust shall cooperate with the EDPS in the performance of his or her tasks at his or her request.

Article 41

Professional secrecy of the EDPS

1. The EDPS and his or her staff shall, both during and after their term of office, be subject to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of their performance of official duties.

2. The EDPS shall, in the exercise of his or her supervision powers, take into utmost account the secrecy of judicial inquiries and criminal proceedings, in accordance with Union or Member State law.

Article 42

Cooperation between the EDPS and national supervisory authorities

1. The EDPS shall act in close cooperation with national supervisory authorities with respect to specific issues requiring national involvement, in particular if the EDPS or a national supervisory authority finds major discrepancies between practices of the Member States or potentially unlawful transfers using Eurojust's communication channels, or in the context of questions raised by one or more national supervisory authorities on the implementation and interpretation of this Regulation.

2. In the cases referred to in paragraph 1, coordinated supervision shall be ensured in accordance with Article 62 of Regulation (EU) 2018/1725.

3. The EDPS shall keep national supervisory authorities fully informed of all issues that directly affect them or are otherwise relevant to them. Upon a request from one or more national supervisory authorities, the EDPS shall inform them on specific issues.

4. In cases relating to data originating from one or several Member States, including cases referred to in Article 43(3), the EDPS shall consult the national supervisory authorities concerned. The EDPS shall not decide on further action to be taken before those national supervisory authorities have informed the EDPS of their position, within a deadline specified by the EDPS. That deadline shall not be shorter than one month or longer than three months. The EDPS shall take utmost account of the position of the national supervisory authorities concerned. In cases where the EDPS intends not to follow their position, he or she shall inform them, provide a justification, and submit the matter to the European Data Protection Board.

In cases which the EDPS considers to be extremely urgent, he or she may decide to take immediate action. In such cases, the EDPS shall immediately inform the national supervisory authorities concerned and substantiate the urgent nature of the situation and justify the action he or she has taken.

5. National supervisory authorities shall keep the EDPS informed of any actions they take with respect to the transfer, retrieval, or any other communication of operational personal data under this Regulation by the Member States.

Article 43

Right to lodge a complaint with the EDPS with respect to operational personal data

1. Any data subject shall have the right to lodge a complaint with the EDPS, if he or she considers that the processing by Eurojust of operational personal data relating to him or her does not comply with this Regulation or Regulation (EU) 2018/ 1725.

2. Where a complaint relates to a decision referred to in Article 31, 32 or 33 of this Regulation or Article 80, 81 or 82 of Regulation (EU) 2018/1725, the EDPS shall consult the national supervisory authorities or the competent judicial body of the Member State that provided the data or the Member State directly concerned. In adopting his or her decision, which may extend to a refusal to communicate any information, the EDPS shall take into account the opinion of the national supervisory authority or of the competent judicial body.

3. Where a complaint relates to the processing of data provided by a Member State to Eurojust, the EDPS and the national supervisory authority of the Member State that provided the data, each acting within the scope of their respective competences shall ensure that the necessary checks on the lawfulness of the processing of the data have been carried out correctly.

4. Where a complaint relates to the processing of data provided to Eurojust by Union bodies, offices or agencies, by third countries or by international organisations or to the processing of data retrieved by Eurojust from publicly available sources, the EDPS shall ensure that Eurojust has correctly carried out the necessary checks on the lawfulness of the processing of the data.

5. The EDPS shall inform the data subject of the progress and outcome of the complaint, as well as the possibility of a judicial remedy pursuant to Article 44.

Article 44

Right to judicial review against the EDPS

Actions against the decisions of the EDPS concerning operational personal data shall be brought before the Court.

Article 45

Responsibility in data protection matters

1. Eurojust shall process operational personal data in such a way that it can be established which authority provided the data or from where the data were retrieved.

2. Responsibility for the accuracy of operational personal data shall lie with:

(a) Eurojust for operational personal data provided by a Member State, or by a Union institution, body, office or agency where the data provided has been altered in the course of processing by Eurojust;

(b) the Member State or the Union institution, office, body or agency which provided the data to Eurojust, where the data provided has not been altered in the course of processing by Eurojust;

(c) Eurojust for operational personal data provided by third countries or by international organisations, as well for operational personal data retrieved by Eurojust from publicly available sources.

3. Responsibility for compliance with Regulation (EU) 2018/1725 in relation to administrative personal data and for compliance with this Regulation and with Article

3 and Chapter IX of Regulation (EU) 2018/1725 in relation to operational personal data shall lie with Eurojust.

Responsibility for the legality of a transfer of operational personal data shall lie:

(a) where a Member State has provided the operational personal data concerned to Eurojust, with that Member State;

(b) with Eurojust, where it has provided the operational personal data concerned to Member States, to Union institutions, bodies, offices or agencies, to third countries or to international organisations.

4. Subject to other provisions of this Regulation, Eurojust shall be responsible for all data processed by it.

Article 46

Liability for unauthorised or incorrect processing of data

1. Eurojust shall be liable, in accordance with Article 340 TFEU, for any damage caused to an individual which results from the unauthorised or incorrect processing of data carried out by it.

2. Complaints against Eurojust on grounds of the liability referred to in paragraph 1 of this Article shall be heard by the Court in accordance with Article 268 TFEU.

3. Each Member State shall be liable, in accordance with its national law, for any damage caused to an individual which results from the unauthorised or incorrect processing carried out by it of data which were communicated to Eurojust.

CHAPTER V

RELATIONS WITH PARTNERS

SECTION I

Common provisions

Article 47

Common provisions

1. In so far as necessary for the performance of its tasks, Eurojust may establish and maintain cooperative relations with Union institutions, bodies, offices and agencies in accordance with their respective objectives, and with the competent authorities of third countries and international organisations in accordance with the cooperation strategy referred to in Article 52.

2. In so far as relevant to the performance of its tasks and subject to any restrictions pursuant to Article 21(8) and Article 76, Eurojust may exchange any information with the entities referred to in paragraph 1 of this Article directly, with the exception of personal data.

3. For the purposes set out in paragraphs 1 and 2, Eurojust may conclude working arrangements with the entities referred to in paragraph 1. Such working arrangements shall not form the basis for allowing the exchange of personal data and shall not bind the Union or its Member States.

4. Eurojust may receive and process personal data received from the entities referred to in paragraph 1 in so far as necessary for the performance of its tasks, subject to the applicable data protection rules.

5. Personal data shall only be transferred by Eurojust to Union institutions, bodies, offices or agencies, to third countries or to international organisations if this is necessary for the performance of its tasks and is in accordance with Articles 55 and 56. If the data to be transferred have been provided by a Member State, Eurojust shall obtain the consent of the relevant competent authority in that Member State, unless the Member State has granted its prior authorisation to such onward transfer, either in general terms or subject to specific conditions. Such consent may be withdrawn at any time.

6. Where Member States, Union institutions, bodies, offices or agencies, third countries or international organisations have received personal data from Eurojust, onward transfers of such data to third parties shall be prohibited unless all of the following conditions have been met:

(a) Eurojust has obtained prior consent from the Member State that provided the data;

(b) Eurojust has given its explicit consent after considering the circumstances of the case at hand;

(c) the onward transfer is only for a specific purpose that is not incompatible with the purpose for which the data were transmitted.

SECTION II

Relations with partners within the Union

Article 48

Cooperation with the European Judicial Network and other Union networks involved in judicial cooperation in criminal matters

1. Eurojust and the European Judicial Network in criminal matters shall maintain privileged relations with each other, based on consultation and complementarity, especially between the national member, contact points of the European Judicial Network in the same Member State as the national member, and the national correspondents for Eurojust and the European Judicial Network. In order to ensure efficient cooperation, the following measures shall be taken:

(a) on a case-by-case basis national members shall inform the contact points of the European Judicial Network of all cases which they consider the Network to be in a better position to deal with;

(b) the Secretariat of the European Judicial Network shall form part of the staff of Eurojust; it shall function as a separate unit; it may draw on the administrative resources of Eurojust which are necessary for the performance of the European Judicial Network's tasks, including for covering the costs of the plenary meetings of the Network;

(c) contact points of the European Judicial Network may be invited on a case-by-case basis to attend Eurojust meetings;

(d) Eurojust and the European Judicial Network may make use of the Eurojust national coordination system when determining under point (b) of Article 20(7) whether a request should be handled with the assistance of Eurojust or the European Judicial Network.

2. The Secretariat of the Network for joint investigation teams and the Secretariat of the Network set up by Decision 2002/494/JHA shall form part of the staff of Eurojust. Those secretariats shall function as separate units. They may draw on the administrative resources of Eurojust which are necessary for the performance of their tasks. The coordination of the secretariats shall be ensured by Eurojust. This paragraph

applies to the secretariat of any relevant network involved in judicial cooperation in criminal matters for which Eurojust is to provide support in the form of a secretariat. Eurojust may support relevant European networks and bodies involved in judicial cooperation in criminal matters, including where appropriate by means of a secretariat hosted at Eurojust.

3. The network set up by Decision 2008/852/JHA may request that Eurojust provide a secretariat of the network. If such request is made, paragraph 2 shall apply.

Article 49

Relations with Europol

1. Eurojust shall take all appropriate measures to enable Europol, within Europol's mandate, to have indirect access, on the basis of a hit/no-hit system, to information provided to Eurojust, without prejudice to any restrictions indicated by the Member State, Union body, office or agency, third country or international organisation that provided the information in question. In the case of a hit, Eurojust shall initiate the procedure by which the information that generated the hit may be shared in accordance with the decision of the Member State, Union body, office or agency, third country or international organisation that provided the information to Eurojust.

2. Searches of information in accordance with paragraph 1 shall be carried out only for the purpose of identifying whether information available at Europol matches with information processed at Eurojust.

3. Eurojust shall allow searches in accordance with paragraph 1 only after obtaining from Europol information on which Europol staff members have been designated as authorised to perform such searches.

4. If during Eurojust's information processing activities in respect of an individual investigation, Eurojust or a Member State identifies the need for coordination, cooperation or support in accordance with Europol's mandate, Eurojust shall notify Europol thereof and shall initiate the procedure for sharing the information, in accordance with the decision of the Member State that provided the information. In such cases Eurojust shall consult with Europol.

5. Eurojust shall establish and maintain close cooperation with Europol to the extent relevant to performing the tasks of the two agencies and to achieving their objectives, taking account of the need to avoid duplication of effort.

To that end, the Executive Director of Europol and the President of Eurojust shall meet on a regular basis to discuss issues of common concern.

6. Europol shall respect any restriction of access or use, whether in general or specific terms, that has been indicated by a Member State, Union body, office or agency, third country or international organisation, in relation to information that it has provided.

Article 50

Relations with the EPPO

1. Eurojust shall establish and maintain a close relationship with the EPPO based on mutual cooperation within their respective mandates and competences and on the development of operational, administrative and management links between them as defined in this Article. To that end, the President of Eurojust and the European Chief Prosecutor shall meet on a regular basis to discuss issues of common interest. They shall meet at the request of the President of Eurojust or of the European Chief Prosecutor.

2. Eurojust shall treat requests for support from the EPPO without undue delay, and, where appropriate, shall treat such requests as if they had been received from a national authority competent for judicial cooperation.

3. Whenever necessary to support the cooperation established in accordance with paragraph 1 of this Article, Eurojust shall make use of the Eurojust national coordination system set up in accordance with Article 20, as well as the relations it has established with third countries, including its liaison magistrates

4. In operational matters relevant to the EPPO's competences, Eurojust shall inform the EPPO of and, where appropriate, associate it with its activities concerning cross-border cases, including by:

(a) sharing information on its cases, including personal data, in accordance with the relevant provisions in this Regulation;

(b) requesting the EPPO to provide support.

5. Eurojust shall have indirect access to information in the EPPO's case management system on the basis of a hit/no-hit system. Whenever a match is found between data entered into the case management system by the EPPO and data held by Eurojust, the fact that there is a match shall be communicated to both Eurojust and to the EPPO, as well as to the Member State which provided the data to Eurojust. Eurojust shall take appropriate measures to enable the EPPO to have indirect access to information in its case management system on the basis of a hit/no-hit system.

6. The EPPO may rely on the support and resources of the administration of Eurojust. To that end, Eurojust may provide services of common interest to the EPPO. The details shall be regulated by an arrangement.

Article 51

Relations with other Union bodies, offices and agencies

1. Eurojust shall establish and maintain cooperative relations with the European Judicial Training Network.

2. OLAF shall contribute to Eurojust's coordination work regarding the protection of the financial interests of the Union, in accordance with its mandate under Regulation (EU, Euratom) No 883/2013.

3. The European Border and Coast Guard Agency shall contribute to Eurojust's work including by transmitting relevant information processed in accordance with its mandate and tasks under point (m) of Article 8(1) of Regulation (EU) 2016/ 1624 of the European Parliament and of the Council ([1]). The European Border and Coast Guard Agency's processing of any personal data in connection therewith shall be regulated by Regulation (EU) 2018/1725.

4. For the purposes of receiving and transmitting information between Eurojust and OLAF, without prejudice to Article 8 of this Regulation, Member States shall ensure that the national members of Eurojust are regarded as competent authorities of the Member States solely for the purposes of Regulation (EU, Euratom) No 883/2013. The exchange of information between OLAF and national members shall be without prejudice to obligations to provide the information to other competent authorities under those Regulations.

SECTION III

(1) Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/ 267/EC (OJ L 251, 16.9.2016, p. 1).

International cooperation

Article 52

Relations with the authorities of third countries and international organizations

1. Eurojust may establish and maintain cooperation with authorities of third countries and international organisations. To that end, Eurojust shall prepare a cooperation strategy every four years in consultation with the Commission, which specifies the third countries and international organisations with which there is an operational need for cooperation.

2. Eurojust may conclude working arrangements with the entities referred to in Article 47(1).

3. Eurojust may designate contact points in third countries in agreement with the competent authorities concerned, in order to facilitate cooperation in accordance with the operational needs of Eurojust.

Article 53

Liaison magistrates posted to third countries

1. For the purpose of facilitating judicial cooperation with third countries in cases in which Eurojust is providing assistance in accordance with this Regulation, the College may post liaison magistrates to a third country subject to the existence of a working arrangement as referred to in Article 47(3) with the competent authorities of that third country.

2. The tasks of the liaison magistrates shall include any activity designed to encourage and accelerate any form of judicial cooperation in criminal matters, in particular by establishing direct links with the competent authorities of the third country concerned. In the performance of their tasks, the liaison magistrates may exchange operational personal data with the competent authorities of the third country concerned in accordance with Article 56.

3. The liaison magistrate referred to in paragraph 1 shall have experience of working with Eurojust and adequate knowledge of judicial cooperation and how Eurojust operates. The posting of a liaison magistrate on behalf of Eurojust shall be subject to the prior consent of the magistrate and of his or her Member State.

4. Where the liaison magistrate posted by Eurojust is selected among national members, deputies or Assistants:

(a) the Member State concerned shall replace him or her in his or her function as a national member, deputy or Assistant;

(b) he or she shall cease to be entitled to exercise the powers granted to him or her under Article 8.

5. Without prejudice to Article 110 of the Staff Regulations of Officials, the College shall draw up the terms and conditions for the posting of liaison magistrates, including their level of remuneration. The College shall adopt the necessary implementing arrangements in this respect in consultation with the Commission.

6. The activities of liaison magistrates posted by Eurojust shall be subject to the supervision of the EDPS. The liaison magistrates shall report to the College, which shall inform the European Parliament and the Council in the annual report and in an appropriate manner of their activities. The liaison magistrates shall inform national members and competent national authorities of all cases concerning their Member State.

7. The competent authorities of the Member States and liaison magistrates referred to in paragraph 1 may contact each other directly. In such cases, the liaison magistrate shall inform the national member concerned of such contacts.

8. The liaison magistrates referred to in paragraph 1 shall be connected to the case management system.

Article 54

Requests for judicial cooperation to and from third countries

1. Eurojust may, with the agreement of the Member States concerned, coordinate the execution of requests for judicial cooperation issued by a third country where such requests require execution in at least two Member States as part of the same investigation. Such requests may also be transmitted to Eurojust by a competent national authority.

2. In urgent cases and in accordance with Article 19, the OCC may receive and transmit the requests referred to in paragraph 1 of this Article if they have been issued by a third country which has concluded a cooperation agreement or working arrangement with Eurojust.

3. Without prejudice to Article 3(5), where requests for judicial cooperation which relate to the same investigation and which require execution in a third country are made by the Member State concerned, Eurojust shall facilitate judicial cooperation with that third country.

SECTION IV

Transfers of personal data

Article 55

Transmission of operational personal data to Union institutions, bodies, offices and agencies

1. Subject to any further restrictions pursuant to this Regulation, in particular pursuant to Articles 21(8), 47(5) and 76, Eurojust shall only transmit operational personal data to another Union institution, body, office or agency if the data are necessary for the legitimate performance of tasks covered by the competence of the other Union institution, body, office or agency.

2. Where the operational personal data are transmitted following a request from another Union institution, body, office or agency, both the controller and the recipient shall bear the responsibility for the legitimacy of that transfer.

Eurojust shall be required to verify the competence of the other Union institution, body, office or agency and to make a provisional evaluation of the necessity of the transmission of the operational personal data. If doubts arise as to this necessity, Eurojust shall seek further information from the recipient.

The other Union institution, body, office or agency shall ensure that the necessity of the transmission of the operational personal data can be subsequently verified.

3. The other Union institution, body, office or agency shall process the operational personal data only for the purposes for which they were transmitted.

Article 56

General principles for transfers of operational personal data to third countries and international organisations

1. Eurojust may transfer operational personal data to a third country or international organisation, subject to compliance with the applicable data protection rules and the other provisions of this Regulation, and only where the following conditions are met:

(a) the transfer is necessary for the performance of Eurojust's tasks;

(b) the authority of the third country or the international organisation to which the operational personal data are transferred is competent in law enforcement and criminal matters;

(c) where the operational personal data to be transferred in accordance with this Article have been transmitted or made available to Eurojust by a Member State, Eurojust shall obtain prior authorisation for the transfer from the relevant competent authority of that Member State in compliance with its national law, unless that Member State has authorised such transfers in general terms or subject to specific conditions;

(d) in the case of an onward transfer to another third country or international organisation by a third country or international organisation, Eurojust shall require the transferring third country or international organisation to obtain the prior authorisation of Eurojust for that onward transfer.

Eurojust shall only provide authorisation under point (d) with the prior authorisation of the Member State from which the data originate after taking due account of all relevant factors, including the seriousness of the criminal offence, the purpose for which the operational personal data were originally transferred and the level of personal data protection in the third country or international organisation to which the operational personal data are to be transferred onward.

2. Subject to the conditions set out in paragraph 1 of this Article, Eurojust may transfer operational personal data to a third country or to an international organisation only where one of the following applies:

(a) the Commission has decided pursuant to Article 57 that the third country or international organisation in question ensures an adequate level of protection, or in the absence of such an adequacy decision, appropriate safeguards have been provided for or exist in accordance with Article 58(1), or in the absence of both an adequacy decision and of such appropriate safeguards, a derogation for specific situations applies pursuant to Article 59(1);

(b) a cooperation agreement allowing for the exchange of operational personal data has been concluded before 12 December 2019 between Eurojust and that third country or international organisation, in accordance with Article 26a of Decision 2002/187/JHA; or

(c) an international agreement has been concluded between the Union and the third country or international organisation pursuant to Article 218 TFEU that provides for adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals.

3. The working arrangements referred to in Article 47(3) may be used to set out modalities to implement the agreements or adequacy decisions referred to in paragraph 2 of this Article.

4. Eurojust may in urgent cases transfer operational personal data without prior authorisation from a Member State in accordance with point (c) of paragraph 1. Eurojust shall only do so if the transfer of the operational personal data is necessary for the prevention of an immediate and serious threat to the public security of a Member State or of a third country or to the essential interests of a Member State, and where the prior authorisation cannot be obtained in good time. The authority responsible for giving prior authorisation shall be informed without delay.

5. Member States and Union institutions, bodies, offices and agencies shall not transfer operational personal data they have received from Eurojust onward to a third country or an international organisation,. As an exception, they may make such a transfer in cases where Eurojust has authorised it after taking into due account all relevant factors, including the seriousness of the criminal offence, the purpose for which the operational personal data were originally transmitted and the level of personal data protection in the third country or international organisation to which the operational personal data are transferred onward.

6. Articles 57, 58 and 59 shall apply in order to ensure that the level of protection of natural persons ensured by this Regulation and by Union law is not undermined.

Article 57

Transfers on the basis of an adequacy decision

Eurojust may transfer operational personal data to a third country or to an international organisation where the Commission has decided in accordance with Article 36 of Directive (EU) 2016/680 that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection.

Article 58

Transfers subject to appropriate safeguards

1. In the absence of an adequacy decision, Eurojust may transfer operational personal data to a third country or an international organisation where:

(a) appropriate safeguards with regard to the protection of operational personal data are provided for in a legally binding instrument; or

(b) Eurojust has assessed all the circumstances surrounding the transfer of operational personal data and has concluded that appropriate safeguards exist with regard to the protection of operational personal data.

2. Eurojust shall inform the EDPS about categories of transfers under point (b) of paragraph 1.

3. When a transfer is based on point (b) of paragraph 1, such a transfer shall be documented and the documentation shall be made available to the EDPS on request. The documentation shall include a record of the date and time of the transfer and information about the receiving competent authority, about the justification for the transfer and about the operational personal data transferred.

Article 59

Derogations for specific situations

1. In the absence of an adequacy decision, or of appropriate safeguards pursuant to Article 58, Eurojust may transfer operational personal data to a third country or an international organisation only on the condition that the transfer is necessary:

(a) in order to protect the vital interests of the data subject or another person;

(b) to safeguard legitimate interests of the data subject;

(c) for the prevention of an immediate and serious threat to public security of a Member State or a third country; or

(d) in individual cases for the performance of the tasks of Eurojust, unless Eurojust determines that the fundamental rights and freedoms of the data subject concerned override the public interest in the transfer.

2. Where a transfer is based on paragraph 1, such a transfer shall be documented and the documentation shall be made available to the EDPS on request. The documentation shall include a record of the date and time of the transfer, and information about the receiving competent authority, about the justification for the transfer and about the operational personal data transferred.

CHAPTER VI

FINANCIAL PROVISIONS

Article 60

Budget

1. Estimates of all the revenue and expenditure of Eurojust shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in Eurojust's budget.

2. Eurojust's budget shall be balanced in terms of revenue and of expenditure.

3. Without prejudice to other resources, Eurojust's revenue shall comprise:

(a) a contribution from the Union entered in the general budget of the Union;

(b) any voluntary financial contribution from the Member States;

(c) charges for publications and any service provided by Eurojust;

(d) ad hoc grants.

4. The expenditure of Eurojust shall include staff remuneration, administrative and infrastructure expenses and operating costs, including funding for joint investigation teams.

Article 61

Establishment of the budget

1. Each year the Administrative Director shall draw up a draft statement of estimates of Eurojust's revenue and expenditure for the following financial year, including the establishment plan, and shall send it to the Executive Board. The European Judicial Network and other Union networks involved in judicial cooperation in criminal matters referred to in Article 48 shall be informed of the parts related to their activities in due time before the estimate is forwarded to the Commission.

2. The Executive Board shall, on the basis of the draft statement of estimates, review the provisional draft estimate of Eurojust's revenue and expenditure for the following financial year, which it shall forward to the College for adoption.

3. The provisional draft estimate of Eurojust's revenue and expenditure shall be sent to the Commission by no later than 31 January each year. Eurojust shall send the final draft estimate, which shall include a draft establishment plan, to the Commission by 31 March of the same year.

4. The Commission shall send the statement of estimates to the European Parliament and to the Council (the "budgetary authority") together with the draft general budget of the Union.

5. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 TFEU.

6. The budgetary authority shall authorise the appropriations for the contribution from the Union to Eurojust.

7. The budgetary authority shall adopt Eurojust's establishment plan. Eurojust's budget shall be adopted by the College. It shall become final following the final adoption of the general budget of the Union. Where necessary, Eurojust's budget shall be adjusted by the College accordingly.

8. Article 88 of Commission Delegated Regulation (EU) No 1271/2013 ([1]) shall apply to any building project likely to have significant implications for Eurojust's budget.

Article 62

Implementation of the budget

The Administrative Director shall act as the authorising officer of Eurojust and shall implement Eurojust's budget under his or her own responsibility, within the limits authorised in the budget.

Article 63

Presentation of accounts and discharge

1. Eurojust's accounting officer shall send the provisional accounts for the financial year (year N) to the Commission's Accounting Officer and to the Court of Auditors by 1 March of the following financial year (year N + 1).

2. Eurojust shall send the report on the budgetary and financial management for year N to the European Parliament, the Council and the Court of Auditors by 31 March of year N + 1.

3. The Commission's Accounting Officer shall send Eurojust's provisional accounts for year N, consolidated with the Commission's accounts, to the Court of Auditors by 31 March of year N + 1.

4. In accordance with Article 246(1) of Regulation (EU, Euratom) 2018/1046, the Court of Auditors shall make its observations on Eurojust's provisional accounts by 1 June of year N + 1.

5. On receipt of the Court of Auditors' observations on Eurojust's provisional accounts pursuant to Article 246 of Regulation (EU, Euratom) 2018/1046, the Administrative Director shall draw up Eurojust's final accounts under his or her own responsibility and shall submit them to the Executive Board for an opinion.

6. The Executive Board shall deliver an opinion on Eurojust's final accounts.

7. The Administrative Director shall, by 1 July of year N + 1, send the final accounts for year N to the European Parliament, to the Council, to the Commission and to the Court of Auditors, together with the Executive Board's opinion.

8. The final accounts for year N shall be published in the *Official Journal of the European Union* by 15 November of year N + 1.

9. The Administrative Director shall send the Court of Auditors a reply to its observations by 30 September of year N + 1. The Administrative Director shall also send this reply to the Executive Board and to the Commission.

10. At the European Parliament's request, the Administrative Director shall submit to it any information required for the smooth application of the discharge procedure

(1) Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

for the financial year in question in accordance with Article 261(3) of Regulation (EU, Euratom) 2018/1046.

11. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of year N + 2, grant a discharge to the Administrative Director in respect of the implementation of the budget for year N.

12. The discharge of Eurojust's budget shall be granted by the European Parliament on a recommendation of the Council following a procedure comparable to that provided for in Article 319 TFEU and Articles 260, 261 and 262 of Regulation (EU, Euratom) 2018/1046, and based on the audit report of the Court of Auditors.

If the European Parliament refuses to grant the discharge by 15 May of year N + 2, the Administrative Director shall be invited to explain his or her position to the College, which shall take its final decision on the position of the Administrative Director in light of the circumstances.

Article 64

Financial rules

1. The financial rules applicable to Eurojust shall be adopted by the Executive Board in accordance with Delegated Regulation (EU) No 1271/2013 after consultation with the Commission. Those financial rules shall not depart from Delegated Regulation (EU) No 1271/2013 unless such departure is specifically required for Eurojust's operation and the Commission has given its prior consent.

In respect of the financial support to be given to joint investigation teams' activities, Eurojust and Europol shall jointly establish the rules and conditions upon which applications for such support are to be processed.

2. Eurojust may award grants related to the fulfilment of its tasks under Article 4(1). Grants provided for tasks relating to point (f) of Article 4(1) may be awarded to the Member States without a call for proposals.

CHAPTER VII

STAFF PROVISIONS

Article 65

General provisions

1. The Staff Regulations of Officials and the Conditions of Employment of Other Servants, as well as the rules adopted by agreement between the institutions of the Union for giving effect to the Staff Regulations of Officials and the Conditions of Employment of Other Servants shall apply to the staff of Eurojust.

2. Eurojust staff shall consist of staff recruited according to the rules and regulations applicable to officials and other servants of the Union, taking into account all the criteria referred to in Article 27 of the Staff Regulations of Officials, including their geographical distribution.

Article 66

Seconded national experts and other staff

1. In addition to its own staff, Eurojust may make use of seconded national experts or other staff not employed by Eurojust.

2. The College shall adopt a decision laying down rules on the secondment of national experts to Eurojust and on the use of other staff, in particular to avoid potential conflicts of interest.

3. Eurojust shall take appropriate administrative measures, inter alia, through training and prevention strategies, to avoid conflicts of interest, including conflicts of interests relating to post-employment issues.

CHAPTER VIII

EVALUATION AND REPORTING

Article 67

Involvement of the Union institutions and national parliaments

1. Eurojust shall transmit its annual report to the European Parliament, to the Council and to national parliaments, which may present observations and conclusions.

2. Upon his or her election, the newly elected President of Eurojust shall make a statement before the competent committee or committees of the European Parliament and answer questions put by its members. Discussions shall not refer directly or indirectly to concrete actions taken in relation to specific operational cases.

3. The President of Eurojust shall appear once a year for the joint evaluation of the activities of Eurojust by the European Parliament and national parliaments within the framework of an interparliamentary committee meeting, to discuss Eurojust's current activities and to present its annual report or other key documents of Eurojust.

Discussions shall not refer directly or indirectly to concrete actions taken in relation to specific operational cases.

4. In addition to the other obligations of information and consultation set out in this Regulation, Eurojust shall transmit to the European Parliament and to national parliaments in their respective official languages for their information:

(a) the results of studies and strategic projects elaborated or commissioned by Eurojust;

(b) the programming document referred to in Article 15;

(c) working arrangements concluded with third parties.

Article 68

Opinions on proposed legislative acts

The Commission and the Member States exercising their rights on the basis of point (b) of Article 76 TFEU may request Eurojust's opinion on all proposed legislative acts referred to in Article 76 TFEU.

Article 69

Evaluation and review

1. By 13 December 2024, and every 5 years thereafter, the Commission shall commission an evaluation of the implementation and impact of this Regulation, and the effectiveness and efficiency of Eurojust and its working practices. The College shall be heard in the evaluation. The evaluation may, in particular, address the possible need to modify the mandate of Eurojust, and the financial implications of any such modification.

2. The Commission shall forward the evaluation report together with its conclusions to the European Parliament, to national parliaments, to the Council and to the College. The findings of the evaluation shall be made public.

CHAPTER IX

GENERAL AND FINAL PROVISIONS

Article 70

Privileges and immunities

Protocol No 7 on the privileges and immunities of the European Union, annexed to the TEU and to the TFEU, shall apply to Eurojust and its staff.

Article 71

Language arrangements

1. Council Regulation No 1 ([1]) shall apply to Eurojust.

2. The College shall decide Eurojust's internal language arrangements by a two-thirds majority of its members.

3. The translation services required for the functioning of Eurojust shall be provided by the Translation Centre for the bodies of the European Union, as established by Council Regulation (EC) No 2965/94 ([2]), unless the unavailability of the Translation Centre requires another solution to be found.

Article 72

Confidentiality

1. The national members and their deputies and Assistants referred to in Article 7, Eurojust staff, national correspondents, seconded national experts, liaison magistrates, the Data Protection Officer, and the members and staff of the EDPS shall be bound by an obligation of confidentiality with respect to any information which has come to their knowledge in the course of the performance of their tasks.

2. The obligation of confidentiality shall apply to all persons and to all bodies that work with Eurojust.

3. The obligation of confidentiality shall also apply after leaving office or employment and after the termination of the activities of the persons referred to in paragraphs 1 and 2.

4. The obligation of confidentiality shall apply to all information received or exchanged by Eurojust, unless that information has already lawfully been made public or is accessible to the public.

Article 73

Conditions of confidentiality of national proceedings

1. Without prejudice to Article 21(3), where information is received or exchanged via Eurojust, the authority of the Member State which provided the information may stipulate conditions, pursuant to its national law, on the use by the receiving authority of that information in national proceedings.

2. The authority of the Member State which receives the information referred to in paragraph 1 shall be bound by those conditions.

Article 74

(1) Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

(2) Council Regulation (EC) No 2965/94 of 28 November 1994 setting up a Translation Centre for bodies of the European Union (OJ L 314, 7.12.1994, p. 1).

Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and the Council ([1]) shall apply to documents held by Eurojust.

2. The Executive Board shall, within six months of the date of its first meeting, prepare the detailed rules for applying Regulation (EC) No 1049/2001 for adoption by the College.

3. Decisions taken by Eurojust under Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the European Ombudsman or of an action before the Court, under the conditions laid down in Articles 228 and 263 TFEU respectively.

4. Eurojust shall publish on its website a list of the Executive Board members and summaries of the outcome of the meetings of the Executive Board. The publication of those summaries shall be temporarily or permanently omitted or restricted if such publication would risk jeopardising the performance of Eurojust's tasks, taking into account its obligations of discretion and confidentiality and the operational character of Eurojust.

Article 75

OLAF and the Court of Auditors

1. In order to facilitate the combating of fraud, corruption and other unlawful activities under Regulation (EU, Euratom) No 883/2013, within six months from the entry into force of this Regulation, Eurojust shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) ([2]). Eurojust shall adopt appropriate provisions that apply to all national members, their deputies and Assistants, all seconded national experts and all Eurojust staff, using the template set out in the Annex to that Agreement.

2. The Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from Eurojust.

3. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/ 96 ([1]), with a view to establishing whether there have been any irregularities affecting the financial interests of the Union in connection with expenditure funded by Eurojust.

4. Without prejudice to paragraphs 1, 2 and 3, working arrangements with third countries or international organisations, the contracts, grant agreements and grant decisions of Eurojust shall contain provisions expressly empowering the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

5. The staff of Eurojust, the Administrative Director and the members of the College and Executive Board shall, without delay and without their responsibility being called into question as a result, notify OLAF and the EPPO of any suspicion of irregular or

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

(2) OJ L 136, 31.5.1999, p. 15.

(1) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

illegal activity within their respective mandate, which has come to their attention in the fulfilment of their duties.

Article 76

Rules on the protection of sensitive non-classified information and classified information

1. Eurojust shall establish internal rules on the handling and confidentiality of information and on the protection of sensitive non-classified information, including the creation and processing of such information at Eurojust.

2. Eurojust shall establish internal rules on the protection of EU classified information which shall be consistent with Council Decision 2013/488/EU ([2]) in order to ensure an equivalent level of protection for such information.

Article 77

Administrative inquiries

The administrative activities of Eurojust shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 TFEU.

Article 78

Liability other than liability for unauthorised or incorrect processing of data

1. Eurojust's contractual liability shall be governed by the law applicable to the contract in question.

2. The Court shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by Eurojust.

3. In the case of non-contractual liability, Eurojust shall, in accordance with the general principles common to the laws of the Member States and independently of any liability under Article 46, make good any damage caused by Eurojust or its staff in the performance of their duties.

4. Paragraph 3 shall also apply to damage caused through the fault of a national member, a deputy or an Assistant in the performance of their duties. However, when he or she is acting on the basis of the powers granted to him or her pursuant to Article 8, his or her Member State shall reimburse Eurojust the sums which Eurojust has paid to make good such damage.

5. The Court shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.

6. The national courts of the Member States competent to deal with disputes involving Eurojust's liability as referred to in this Article shall be determined by reference to Regulation (EU) No 1215/2012 of the European Parliament and of the Council ([1]).

7. The personal liability of Eurojust's staff towards Eurojust shall be governed by the applicable provisions laid down in the Staff Regulations of Officials and Conditions of Employment of Other Servants.

Article 79

(2) Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

(1) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

Headquarters agreement and operating conditions

1. The seat of Eurojust shall be The Hague, the Netherlands.

2. The necessary arrangements concerning the accommodation to be provided for Eurojust in the Netherlands and the facilities to be made available by the Netherlands together with the specific rules applicable in the Netherlands to the Administrative Director, members of the College, Eurojust staff and members of their families shall be laid down in a headquarters agreement between Eurojust and the Netherlands concluded once the College's approval is obtained.

Article 80

Transitional arrangements

1. Eurojust as established by this Regulation shall be the general legal successor in respect of all contracts concluded by, liabilities incumbent upon, and properties acquired by Eurojust as established by Decision 2002/187/JHA.

2. The national members of Eurojust as established by Decision 2002/187/JHA who have been seconded by each Member State under that Decision shall take the role of national members of Eurojust under Section II of Chapter II of this Regulation. Their terms of office may be extended once under Article 7(5) of this Regulation after the entry into force of this Regulation, irrespective of a previous extension.

3. The President and Vice-Presidents of Eurojust as established by Decision 2002/187/JHA at the time of the entry into force of this Regulation shall take the role of the President and Vice-Presidents of Eurojust under Article 11 of this Regulation, until the expiry of their terms of office in accordance with that Decision. They may be re-elected once after the entry into force of this Regulation under Article 11(4) of this Regulation, irrespective of a previous re-election.

4. The Administrative Director who was last appointed under Article 29 of Decision 2002/187/JHA shall take the role of the Administrative Director under Article 17 of this Regulation until the expiry of his or her term of office as decided under that Decision. The term of office of that Administrative Director may be extended once after the entry into force of this Regulation.

5. This Regulation shall not affect the validity of agreements concluded by Eurojust as established by Decision 2002/ 187/JHA. In particular, all international agreements concluded by Eurojust before 12 December 2019 shall remain valid.

6. The discharge procedure in respect of the budgets approved on the basis of Article 35 of Decision 2002/187/JHA shall be carried out in accordance with the rules established by Article 36 thereof.

7. This Regulation shall not affect employment contracts which have been concluded under Decision 2002/187/JHA prior to the entry into force of this Regulation. The Data Protection Officer who was last appointed under Article 17 of that Decision shall take the role of the Data Protection Officer under Article 36 of this Regulation.

Article 81

Replacement and repeal

1. Decision 2002/187/JHA is hereby replaced for the Member States bound by this Regulation with effect from 12 December 2019.

Therefore, Decision 2002/187/JHA is repealed with effect from 12 December 2019.

2. With regard to the Member States bound by this Regulation, references to the Decision referred to in paragraph 1 shall be construed as references to this Regulation.

Article 82

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from 12 December 2019.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 14 November 2018.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	K. EDTSTADLER

ANNEX I

List of forms of serious crime with which Eurojust is competent to deal in accordance with Article 3(1):

— terrorism,

— organised crime,

— drug trafficking,

— money-laundering activities,

— crime connected with nuclear and radioactive substances,

— immigrant smuggling,

— trafficking in human beings,

— motor vehicle crime,

— murder and grievous bodily injury,

— illicit trade in human organs and tissue,

— kidnapping, illegal restraint and hostage taking,

— racism and xenophobia,

— robbery and aggravated theft,

— illicit trafficking in cultural goods, including antiquities and works of art,

— swindling and fraud,

— crime against the financial interests of the Union,

— insider dealing and financial market manipulation,

— racketeering and extortion,

— counterfeiting and product piracy,

— forgery of administrative documents and trafficking therein,

— forgery of money and means of payment,

— computer crime,

— corruption,

— illicit trafficking in arms, ammunition and explosives,

— illicit trafficking in endangered animal species,

— illicit trafficking in endangered plant species and varieties,

— environmental crime, including ship source pollution,

— illicit trafficking in hormonal substances and other growth promoters,

— sexual abuse and sexual exploitation, including child abuse material and solicitation of children for sexual purposes,

— genocide, crimes against humanity and war crimes.

ANNEX II

CATEGORIES OF PERSONAL DATA REFERRED TO IN ARTICLE 27

1. (a) surname, maiden name, given names and any alias or assumed names;

(b) date and place of birth;

(c) nationality;

(d) sex;

(e) place of residence, profession and whereabouts of the person concerned;

(f) social security number or other official numbers used in the Member State to identify individuals, driving licences, identification documents and passport data, customs and Tax Identification Numbers;

(g) information concerning legal persons if it includes information relating to identified or identifiable individuals who are the subject of a judicial investigation or prosecution;

(h) details of accounts held with banks or other financial institutions;

(i) description and nature of the alleged offences, the date on which they were committed, the criminal category of the offences and the progress of the investigations;

(j) the facts pointing to an international extension of the case;

(k) details relating to alleged membership of a criminal organisation;

(l) telephone numbers, email addresses, traffic data and location data, as well as any related data necessary to identify the subscriber or user;

(m) vehicle registration data;

(n) DNA profiles established from the non-coding part of DNA, photographs and fingerprints.

2. (a) surname, maiden name, given names and any alias or assumed names;

(b) date and place of birth;

(c) nationality;

(d) sex;

(e) place of residence, profession and whereabouts of the person concerned;

(f) the description and nature of the offences involving the person concerned, the date on which the offences were committed, the criminal category of the offences and the progress of the investigations;

(g) social security number or other official numbers used by the Member States to identify individuals, driving licences, identification documents and passport data, customs and Tax Identification Numbers;

(h) details of accounts held with banks and other financial institutions;

(i) telephone numbers, email addresses, traffic data and location data, as well as any related data necessary to identify the subscriber or user;

(j) vehicle registration data.**]**

Annotations

Amendments

F173 Inserted (12.12.2019) by *European Union (Eurojust) Regulations 2019* (S.I. No. 637 of 2019), reg. 7(b) and sch., in effect as per reg. 1(2).

F174**[**SCHEDULE 7D

Text of Titles VIII and XI of Part Three of the Trade and Cooperation Agreement

TITLE VIII

MUTUAL ASSISTANCE

Article 633

Objective

1. The objective of this Title is to supplement the provisions, and facilitate the application between Member States, on the one side, and the United Kingdom, on the other side, of:

(a) the European Convention on Mutual Assistance in Criminal Matters, done at Strasbourg on 20 April 1959 (the "European Mutual Assistance Convention");

(b) the Additional Protocol to the European Mutual Assistance Convention, done at Strasbourg on 17 March 1978; and

(c) the Second Additional Protocol to the European Mutual Assistance Convention, done at Strasbourg on 8 November 2001.

2. This Title is without prejudice to the provisions of Title IX, which takes precedence over this Title.

Article 634

Definition of competent authority

For the purposes of this Title, "competent authority" means any authority which is competent to send or receive requests for mutual assistance in accordance with the provisions of the European Mutual Assistance Convention and its Protocols and as defined by States in their respective declarations addressed to the Secretary General of the Council of Europe. "Competent authority" also includes Union bodies notified in accordance with point (d) of Article 690; with regard to such Union bodies, the provisions of this Title apply accordingly.

Article 635

Form for a request for mutual assistance

1. The Specialised Committee on Law Enforcement and Judicial Cooperation shall undertake to establish a standard form for requests for mutual assistance by adopting an annex to this Agreement.

2. If the Specialised Committee on Law Enforcement and Judicial Cooperation has adopted a decision in accordance with paragraph 1, requests for mutual assistance shall be made using the standard form.

3. The Specialised Committee on Law Enforcement and Judicial Cooperation may amend the standard form for requests for mutual assistance as may be necessary.

Article 636

Conditions for a request for mutual assistance

1. The competent authority of the requesting State may only make a request for mutual assistance if it is satisfied that the following conditions are met:

(a) the request is necessary and proportionate for the purpose of the proceedings, taking into account the rights of the suspected or accused person; and

(b) the investigative measure or investigative measures indicated in the request could have been ordered under the same conditions in a similar domestic case.

2. The requested State may consult the requesting State if the competent authority of the requested State is of the view that the conditions in paragraph 1 are not met. After the consultation, the competent authority of the requesting State may decide to withdraw the request for mutual assistance.

Article 637

Recourse to a different type of investigative measure

1. Wherever possible, the competent authority of the requested State shall consider recourse to an investigative measure other than the measure indicated in the request for mutual assistance if:

(a) the investigative measure indicated in the request does not exist under the law of the requested State; or

(b) the investigative measure indicated in the request would not be available in a similar domestic case.

2. Without prejudice to the grounds for refusal available under the European Mutual Assistance Convention and its Protocols and under Article 639, paragraph 1 of this Article does not apply to the following investigative measures, which shall always be available under the law of the requested State:

(a) the obtaining of information contained in databases held by police or judicial authorities that is directly accessible by the competent authority of the requested State in the framework of criminal proceedings;

(b) the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the requested State;

(c) any non-coercive investigative measure as defined under the law of the requested State; and

(d) the identification of persons holding a subscription to a specified phone number or IP address.

3. The competent authority of the requested State may also have recourse to an investigative measure other than the measure indicated in the request for mutual assistance if the investigative measure selected by the competent authority of the requested State would achieve the same result by less intrusive means than the investigative measure indicated in the request.

4. If the competent authority of the requested State decides to have recourse to a measure other than that indicated in the request for mutual assistance as referred to in paragraph 1 or 3, it shall first inform the competent authority of the requesting State, which may decide to withdraw or supplement the request.

5. If the investigative measure indicated in the request does not exist under the law of the requested State or would not be available in a similar domestic case, and there is no other investigative measure which would have the same result as the investigative measure requested, the competent authority of the requested State shall inform the competent authority of the requesting State that it is not possible to provide the assistance requested.

Article 638

Obligation to inform

The competent authority of the requested State shall inform the competent authority of the requesting State by any means and without undue delay if:

(a) it is impossible to execute the request for mutual assistance due to the fact that the request is incomplete or manifestly incorrect; or

(b) the competent authority of the requested State, in the course of the execution of the request for mutual assistance, considers without further enquiries that it may be appropriate to carry out investigative measures not initially foreseen, or which could not be specified when the request for mutual assistance was made, in order to enable the competent authority of the requesting State to take further action in the specific case.

Article 639

Ne bis in idem

Mutual assistance may be refused, in addition to the grounds for refusal provided for under the European Mutual Assistance Convention and its Protocols, on the ground that the person in respect of whom the assistance is requested and who is subject to criminal investigations, prosecutions or other proceedings, including judicial proceedings, in the requesting State, has been finally judged by another State in respect of the same acts, provided that, if a penalty has been imposed, it has been enforced, is in the process of being enforced or can no longer be enforced under the law of the sentencing State.

Article 640

Time limits

1. The requested State shall decide whether to execute the request for mutual assistance as soon as possible and in any event no later than 45 days after the receipt of the request and shall inform the requesting State of its decision.

2. A request for mutual assistance shall be executed as soon as possible and in any event no later than 90 days after the decision referred to in paragraph 1 of this Article or after the consultation referred to in Article 636(2) has taken place.

3. If it is indicated in the request for mutual assistance that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter time limit than that provided for in paragraph 1 or 2 is necessary, or if it is indicated in the request that a measure for mutual assistance is to be carried out on a specific date, the requested State shall take as full account as possible of that requirement.

4. If a request for mutual assistance is made to take provisional measures pursuant to Article 24 of the Second Additional Protocol to the European Mutual Assistance Convention, the competent authority of the requested State shall decide on the provisional measure, and shall communicate that decision to the competent authority of the requesting State, as soon as possible after the receipt of the request. Before lifting any provisional measure taken pursuant to this Article, the competent authority of the requested State, wherever possible, shall give the competent authority of the requesting State an opportunity to present its reasons in favour of continuing the measure.

5. If in a specific case, the time limit provided for in paragraph 1 or 2, or the time limit or specific date referred to in paragraph 3 cannot be met, or the decision on taking provisional measures in accordance with paragraph 4 is delayed, the competent authority of the requested State shall, without delay, inform the competent authority of the requesting State by any means, giving the reasons for the delay, and shall consult with the competent authority of the requesting State on the appropriate timing to execute the request for mutual assistance.

6. The time limits referred to in this Article do not apply if the request for mutual assistance is made in relation to any of the following offences and infringements that fall within scope of the European Mutual Assistance Convention and its Protocols, as defined in the law of the requesting State:

(a) speeding, if no injury or death was caused to another person and if the excess speed was not significant;

(b) failure to wear a seatbelt;

(c) failure to stop at a red light or other mandatory stop signal;

(d) failure to wear a safety helmet; or

(e) using a forbidden lane (such as the forbidden use of an emergency lane, a lane reserved for public transport, or a lane closed down for road works).

7. The Specialised Committee on Law Enforcement and Judicial Cooperation shall keep the operation of paragraph 6 under review. It shall undertake to set time limits for the requests to which paragraph 6 applies within three years of the entry into force of this Agreement, taking into account the volume of requests. It may also decide that paragraph 6 shall no longer apply.

Article 641

Transmission of requests for mutual assistance

1. In addition to the channels of communication provided for under the European Mutual Assistance Convention and its Protocols, if direct transmission is provided for under their respective provisions, requests for mutual assistance may also be transmitted directly by public prosecutors in the United Kingdom to competent authorities of the Member States.

2. In addition to the channels of communication provided for under the European Mutual Assistance Convention and its Protocols, in urgent cases, any request for mutual assistance, as well as spontaneous information, may be transmitted via Europol or Eurojust, in line with the provisions in the respective Titles of this Agreement.

Article 642

Joint Investigation Teams

If the competent authorities of States set up a Joint Investigation Team, the relationship between Member States within the Joint Investigation Team shall be governed by Union law, notwithstanding the legal basis referred to in the Agreement on the setting up of the Joint Investigation Team.

TITLE XI

FREEZING AND CONFISCATION

Article 656

Objective and principles of cooperation

1. The objective of this Title is to provide for cooperation between the United Kingdom, on the one side, and the Member States, on the other side, to the widest extent possible for the purposes of investigations and proceedings aimed at the freezing of property with a view to subsequent confiscation thereof and investigations and proceedings aimed at the confiscation of property within the framework of proceedings in criminal matters. This does not preclude other cooperation pursuant to Article 665(5) and (6). This Title also provides for cooperation with Union bodies designated by the Union for the purposes of this Title.

2. Each State shall comply, under the conditions provided for in this Title, with requests from another State:

(a) for the confiscation of specific items of property, as well as for the confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;

(b) for investigative assistance and provisional measures with a view to either form of confiscation referred to in point (a).

3. Investigative assistance and provisional measures sought under point (b) of paragraph 2 shall be carried out as permitted by and in accordance with the domestic law of the requested State. Where the request concerning one of these measures specifies formalities or procedures which are necessary under the domestic law of the requesting State, even if unfamiliar to the requested State, the latter shall comply with such requests to the extent that the action sought is not contrary to the fundamental principles of its domestic law.

4. The requested State shall ensure that the requests coming from another State to identify, trace, freeze or seize the proceeds and instrumentalities, receive the same priority as those made in the framework of domestic procedures.

5. When requesting confiscation, investigative assistance and provisional measures for the purposes of confiscation, the requesting State shall ensure that the principles of necessity and proportionality are respected.

6. The provisions of this Title apply in place of the "international cooperation" Chapters of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, done at Warsaw on 16 May 2005 (the "2005 Convention") and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg on 8 November 1990 (the "1990 Convention"). Article 657 of this Agreement replaces the corresponding definitions in Article 1 of the 2005 Convention and Article 1 of the 1990 Convention. The provisions of this Title do not affect the States' obligations under the other provisions of the 2005 Convention and the 1990 Convention.

Article 657

Definitions

For the purposes of this Title, the following definitions apply:

(a) "confiscation" means a penalty or a measure ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of property;

(b) "freezing" or "seizure" means temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(c) "instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;

(d) "judicial authority" means an authority that is, under domestic law, a judge, a court or a public prosecutor; a public prosecutor is considered a judicial authority only to the extent that domestic law so provides;

(e) "proceeds" means any economic benefit, derived from or obtained, directly or indirectly, from criminal offences, or an amount of money equivalent to that economic benefit; it may consist of any property as defined in this Article;

(f) "property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property, which the requesting State considers to be:

(i) the proceeds of a criminal offence, or its equivalent, whether the full amount of the value of such proceeds or only part of the value of such proceeds;

(ii) the instrumentalities of a criminal offence, or the value of such instrumentalities;

(iii) subject to confiscation under any other provisions relating to powers of confiscation under the law of the requesting State, following proceedings in relation to a criminal offence, including third party confiscation, extended confiscation and confiscation without final conviction.

Article 658

Obligation to assist

The States shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of those instrumentalities, proceeds or other property.

Article 659

Requests for information on bank accounts and safe deposit boxes

1. The requested State shall, under the conditions set out in this Article, take the measures necessary to determine, in answer to a request sent by another State, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the details of the identified accounts. These details shall in particular include the name of the customer account holder and the IBAN number, and, in the case of safe deposit boxes, the name of the lessee or a unique identification number.

2. The obligation set out in paragraph 1 applies only to the extent that the information is in the possession of the bank keeping the account.

3. In addition to the requirements of Article 680, the requesting State shall, in the request:

(a) indicate why it considers that the requested information is likely to be of substantial value for the purposes of the criminal investigation into the offence;

(b) state on what grounds it presumes that banks in the requested State hold the account and specify, to the widest extent possible, which banks and accounts may be involved; and

(c) include any additional information available which may facilitate the execution of the request.

4. The United Kingdom and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that this Article will be extended to accounts held in non-bank financial institutions. Such notifications may be made subject to the principle of reciprocity.

Article 660

Requests for information on banking transactions

1. On request by another State, the requested State shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.

2. The obligation set out in paragraph 1 applies only to the extent that the information is in the possession of the bank keeping the account.

3. In addition to the requirements of Article 680, the requesting State shall indicate in its request why it considers the requested information relevant for the purposes of the criminal investigation into the offence.

4. The requested State may make the execution of such a request dependent on the same conditions as it applies in respect of requests for search and seizure.

5. The United Kingdom and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that this Article will be extended to accounts held in non-bank financial institutions. Such notifications may be made subject to the principle of reciprocity.

Article 661

Requests for the monitoring of banking transactions

1. The requested State shall ensure that, at the request of another State, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and to communicate the results of the monitoring to the requesting State.

2. In addition to the requirements of Article 680, the requesting State shall indicate in its request why it considers the requested information relevant for the purposes of the criminal investigation into the offence.

3. The decision to monitor shall be taken in each individual case by the competent authorities of the requested State, in accordance with its domestic law.

4. The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested States.

5. The United Kingdom and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that this Article will be extended to accounts held in non-bank financial institutions. Such notifications may be made subject to the principle of reciprocity.

Article 662

Spontaneous information

Without prejudice to its own investigations or proceedings, a State may without prior request forward to another State information on instrumentalities, proceeds and other property liable to confiscation, where it considers that the disclosure of such information might assist the receiving State in initiating or carrying out investigations or proceedings or might lead to a request by that State under this Title.

Article 663

Obligation to take provisional measures

1. At the request of another State which has instituted a criminal investigation or proceedings, or an investigation or proceedings for the purposes of confiscation, the requested State shall take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might satisfy the request.

2. A State which has received a request for confiscation pursuant to Article 665 shall, if so requested, take the measures referred to in paragraph 1 of this Article in respect of any property which is the subject of the request or which might satisfy the request.

3. Where a request is received under this Article, the requested State shall take all necessary measures to comply with the request without delay and with the same speed and priority as for a similar domestic case and send confirmation without delay and by any means of producing a written record to the requesting State.

4. Where the requesting State states that immediate freezing is necessary since there are legitimate grounds to believe that the property in question will immediately be removed or destroyed, the requested State shall take all necessary measures to comply with the request within 96 hours of receiving the request and send confirmation to the requesting State by any means of producing a written record and without delay.

5. Where the requested State is unable to comply with the time limits under paragraph 4, the requested State shall immediately inform the requesting State, and consult with the requesting State on the appropriate next steps.

6. Any expiration of the time limits under paragraph 4 does not extinguish the requirements placed on the requested State by this Article.

Article 664

Execution of provisional measures

1. After the execution of the provisional measures requested in conformity with Article 663(1), the requesting State shall provide spontaneously and as soon as possible to the requested State all information which may question or modify the extent of those measures. The requesting State shall also provide without delay all complementary information required by the requested State and which is necessary for the implementation of and the follow-up to the provisional measures.

2. Before lifting any provisional measure taken pursuant to Article 663, the requested State shall, wherever possible, give the requesting State an opportunity to present its reasons in favour of continuing the measure.

Article 665

Obligation to confiscate

1. The State which has received a request for confiscation of property situated in its territory shall:

(a) enforce a confiscation order made by a court of the requesting State in relation to such property; or

(b) submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, enforce it.

2. For the purposes of point (b) of paragraph 1, the States shall, whenever necessary, have competence to institute confiscation proceedings under their own domestic law.

3. Paragraph 1 also applies to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property against which the confiscation can be enforced is located in the requested State. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested State shall, if payment is not obtained, realise the claim on any property available for that purpose.

4. If a request for confiscation concerns a specific item of property, the requesting State and requested State may agree that the requested State may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.

5. A State shall cooperate to the widest extent possible under its domestic law with a State requesting the execution of measures equivalent to confiscation of property, where the request has not been issued in the framework of proceedings in criminal matters, in so far as such measures are ordered by a judicial authority of the requesting State in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or:

(a) other property into which the proceeds have been transformed or converted;

(b) property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds; or

(c) income or other benefit derived from the proceeds, from property into which proceeds of crime have been transformed or converted or from property with which the proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds.

6. The measures referred to in paragraph 5 include measures which allow the seizure, detention and forfeiture of property and assets by means of applications to civil courts.

7. The requested State shall take the decision on the execution of the confiscation order without delay, and, without prejudice to paragraph 8 of this Article, no later than 45 days after receiving the request. The requested State shall send confirmation to the requesting State by any means of producing a written record and without delay. Unless grounds for postponement under Article 672 exist, the requested State shall take the concrete measures necessary to execute the confiscation order without delay and, at least, with the same speed and priority as for a similar domestic case.

8. Where the requested State is unable to comply with the time limit under paragraph 7, the requested State shall immediately inform the requesting State, and consult with the requesting State on the appropriate next steps.

9. Any expiration of the time limit under paragraph 7 does not extinguish the requirements placed on the requested State by this Article.

Article 666

Execution of confiscation

1. The procedures for obtaining and enforcing the confiscation under Article 665 shall be governed by the domestic law of the requested State.

2. The requested State shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision issued by a court of the requesting State or in so far as such conviction or judicial decision is implicitly based on them.

3. If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested State shall convert the amount thereof into the currency of that State at the rate of exchange applicable at the time when the decision to enforce the confiscation is taken.

Article 667

Confiscated property

1. Subject to paragraphs 2 and 3 of this Article, property confiscated pursuant to Articles 665 and 666 shall be disposed of by the requested State in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State pursuant to Article 665, the requested State shall, to the extent permitted by its domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting State so that it can give compensation to the victims of the crime or return such property to their legitimate owners.

3. Where acting on the request made by another State in accordance with Article 665, and after having taken into account the right of a victim to restitution or compensation of property pursuant to paragraph 2 of this Article, the requested State shall dispose of the money obtained as a result of the execution of a confiscation order as follows:

(a) if the amount is equal to or less than EUR 10 000, the amount shall accrue to the requested State; or

(b) if the amount is greater than EUR 10 000, the requested State shall transfer 50 % of the amount recovered to the requesting State.

4. Notwithstanding paragraph 3, the requesting State and requested State may, on a case-by-case basis, give special consideration to concluding other such agreements or arrangements on disposal of property as they deem appropriate.

Article 668

Right of enforcement and maximum amount of confiscation

1. A request for confiscation made under Article 665 does not affect the right of the requesting State to enforce the confiscation order itself.

2. Nothing in this Title shall be interpreted as permitting the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a State finds that this might occur, the States concerned shall enter into consultations to avoid such an effect.

Article 669

Imprisonment in default

The requested State shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 665 without the consent of the requesting State.

Article 670

Grounds for refusal

1. Cooperation under this Title may be refused if:

(a) the requested State considers that executing the request would be contrary to the principle of ne bis in idem; or

(b) the offence to which the request relates does not constitute an offence under the domestic law of the requested State if committed within its jurisdiction; however, this ground for refusal applies to cooperation under Articles 658 to 662 only in so far as the assistance sought involves coercive action.

2. The United Kingdom and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that, on the basis of reciprocity, the condition of double criminality referred to in point (b) of paragraph 1 of this Article will not be applied provided that the offence giving rise to the request is:

(a) one of the offences listed in Article 599(5), as defined by the law of the requesting State; and

(b) punishable by the requesting State by a custodial sentence or a detention order for a maximum period of at least three years.

3. Cooperation under Articles 658 to 662, in so far as the assistance sought involves coercive action, and under Articles 663 and 664 may also be refused if the measures sought could not be taken under the domestic law of the requested State for the purposes of investigations or proceedings in a similar domestic case.

4. Where the domestic law of the requested State so requires, cooperation under Articles 658 to 662, in so far as the assistance sought involves coercive action, and under Articles 663 and 664 may also be refused if the measures sought or any other measures having similar effects would not be permitted under the domestic law of the requesting State, or, as regards the competent authorities of the requesting State, if the request is not authorised by a judicial authority acting in relation to criminal offences.

5. Cooperation under Articles 665 to 669 may also be refused if:

(a) under the domestic law of the requested State, confiscation is not provided for in respect of the type of offence to which the request relates;

(b) without prejudice to the obligation pursuant to Article 665(3), it would be contrary to the principles of the domestic law of the requested State concerning the limits of confiscation in respect of the relationship between an offence and:

(i) an economic advantage that might be qualified as its proceeds; or

(ii) property that might be qualified as its instrumentalities;

(c) under the domestic law of the requested State, confiscation may no longer be imposed or enforced because of the lapse of time;

(d) without prejudice to Article 665(5) and (6), the request does not relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed, on the basis of which the confiscation has been ordered or is sought;

(e) confiscation is either not enforceable in the requesting State, or it is still subject to ordinary means of appeal; or

(f) the request relates to a confiscation order resulting from a decision rendered in absentia of the person against whom the order was issued and, in the opinion of the requested State, the proceedings conducted by the requesting State leading to such decision did not satisfy the minimum rights of defence recognised as due to everyone against whom a criminal charge is made.

6. For the purposes of point (f) of paragraph 5 a decision is not considered to have been rendered in absentia if:

(a) it has been confirmed or pronounced after opposition by the person concerned; or

(b) it has been rendered on appeal, provided that the appeal was lodged by the person concerned.

7. When considering, for the purposes of point (f) of paragraph 5, whether the minimum rights of defence have been satisfied, the requested State shall take into account the fact that the person concerned has deliberately sought to evade justice or the fact that that person, having had the possibility of lodging a legal remedy against the decision made in absentia, elected not to do so. The same applies where the person concerned, having been duly served with the summons to appear, elected not to do so nor to ask for adjournment.

8. The States shall not invoke bank secrecy as a ground to refuse any cooperation under this Title. Where its domestic law so requires, a requested State may require that a request for cooperation which would involve the lifting of bank secrecy be authorised by a judicial authority acting in relation to criminal offences.

9. The requested State shall not invoke the fact that:

(a) the person under investigation or subject to a confiscation order by the authorities of the requesting State is a legal person as an obstacle to affording any cooperation under this Title;

(b) the natural person against whom an order of confiscation of proceeds has been issued has died or a legal person against whom an order of confiscation of proceeds has been issued has subsequently been dissolved as an obstacle to affording assistance in accordance with point (a) of Article 665(1); or

(c) the person under investigation or subject to a confiscation order by the authorities of the requesting State is mentioned in the request both as the

author of the underlying criminal offence and of the offence of money laundering as an obstacle to affording any cooperation under this Title.

Article 671

Consultation and information

Where there are substantial grounds for believing that the execution of a freezing or confiscation order would entail a real risk for the protection of fundamental rights, the requested State shall, before it decides on the execution of the freezing or confiscation order, consult the requesting State and may require any necessary information to be provided.

Article 672

Postponement

The requested State may postpone action on a request if such action would prejudice investigations or proceedings by its authorities.

Article 673

Partial or conditional granting of a request

Before refusing or postponing cooperation under this Title, the requested State shall, where appropriate after having consulted the requesting State, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

Article 674

Notification of documents

1. The States shall afford each other the widest measure of mutual assistance in the serving of judicial documents to persons affected by provisional measures and confiscation.

2. Nothing in this Article is intended to interfere with:

(a) the possibility of sending judicial documents, by postal channels, directly to persons abroad; and

(b) the possibility for judicial officers, officials or other competent authorities of the State of origin to effect service of judicial documents directly through the consular authorities of that State or through the judicial authorities, including judicial officers and officials, or other competent authorities of the State of destination.

3. When serving judicial documents to persons abroad affected by provisional measures or confiscation orders issued in the sending State, that State shall indicate what legal remedies are available under its domestic law to such persons.

Article 675

Recognition of foreign decisions

1. When dealing with a request for cooperation under Articles 663 to 669 the requested State shall recognise any decision issued by a judicial authority taken in the requesting State regarding rights claimed by third parties.

2. Recognition may be refused if:

(a) third parties did not have adequate opportunity to assert their rights;

(b) the decision is incompatible with a decision already taken in the requested State on the same matter;

(c) it is incompatible with the ordre public of the requested State; or

(d) the decision was taken contrary to provisions on exclusive jurisdiction provided for by the domestic law of the requested State.

Article 676

Authorities

1. Each State shall designate a central authority to be responsible for sending and answering requests made under this Title, the execution of such requests or their transmission to the authorities competent for their execution.

2. The Union may designate a Union body which may, in addition to the competent authorities of the Member States, make and, if appropriate, execute requests under this Title. Any such request is to be treated for the purposes of this Title as a request by a Member State. The Union may also designate that Union body as the central authority responsible for the purpose of sending and answering requests made under this Title by, or to, that body.

Article 677

Direct communication

1. The central authorities shall communicate directly with one another.

2. In urgent cases, requests or communications under this Title may be sent directly by the judicial authorities of the requesting State to judicial authorities of the requested State. In such cases, a copy shall be sent at the same time to the central authority of the requested State through the central authority of the requesting State.

3. Where a request is made pursuant to paragraph 2 and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and shall directly inform the requesting State that it has done so.

4. Requests or communications under Articles 658 to 662, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting State to the competent authorities of the requested State.

5. Draft requests or communications under this Title may be sent directly by the judicial authorities of the requesting State to the judicial authorities of the requested State prior to a formal request to ensure that the formal request can be dealt with efficiently upon receipt and that it contains sufficient information and supporting documentation for it to meet the requirements of the law of the requested State.

Article 678

Form of request and languages

1. All requests under this Title shall be made in writing. They may be transmitted electronically, or by any other means of telecommunication, provided that the requesting State is prepared, upon request, to produce a written record of such communication and the original at any time.

2. Requests under paragraph 1 shall be made in one of the official languages of the requested State or in any other language notified by or on behalf of the requested State in accordance with paragraph 3.

3. The United Kingdom and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial

Cooperation of the language or languages which, in addition to the official language or languages of that State, may be used for making requests under this Title.

4. Requests under Article 663 for provisional measures shall be made using the prescribed form at Annex 46. 5. Requests under Article 665 for confiscation shall be made using the prescribed form at Annex 46.

6. The Specialised Committee on Law Enforcement and Judicial Cooperation may amend the forms referred to in paragraphs 4 and 5 as may be necessary.

7. The United Kingdom and the Union, acting on behalf of any of its Member States may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that it requires the translation of any supporting documents into one of the official languages of the requested State or any other language indicated in accordance with paragraph 3 of this Article. In the case of requests pursuant to Article 663(4), such translation of supporting documents may be provided to the requested State within 48 hours after transmitting the request, without prejudice to the time limits provided for in Article 663(4).

Article 679

Legalisation

Documents transmitted in application of this Title shall be exempt from all legalisation formalities.

Article 680

Content of request

1. Any request for cooperation under this Title shall specify:

(a) the authority making the request and the authority carrying out the investigations or proceedings;

(b) the object of and the reason for the request;

(c) the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;

(d) insofar as the cooperation involves coercive action:

(i) the text of the statutory provisions or, where that is not possible, a statement of the relevant applicable law; and

(ii) an indication that the measure sought or any other measures having similar effects could be taken in the territory of the requesting State under its own domestic law;

(e) where necessary and in so far as possible:

(i) details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and

(ii) the property in relation to which cooperation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any available information about other persons, interests in the property; and

(f) any particular procedure the requesting State wishes to be followed.

2. A request for provisional measures under Article 663 in relation to seizure of property on which a confiscation order consisting of the requirement to pay a sum of money may be realised shall also indicate a maximum amount for which recovery is sought in that property.

3. In addition to the information referred to in paragraph 1 of this Article, any request under Article 665 shall contain:

(a) in the case of point (a) of Article 665(1):

(i) a certified true copy of the confiscation order made by the court in the requesting State and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;

(ii) an attestation by the competent authority of the requesting State that the confiscation order is enforceable and not subject to ordinary means of appeal;

(iii) information as to the extent to which the enforcement of the order is requested; and

(iv) information as to the necessity of taking any provisional measures;

(b) in the case of point (b) of Article 665(1), a statement of the facts relied upon by the requesting State sufficient to enable the requested State to seek the order under its domestic law;

(c) where third parties have had the opportunity to claim rights, documents demonstrating that this has been the case.

Article 682

Plurality of requests

1. Where the requested State receives more than one request under Article 663 or Article 665 in respect of the same person or property, the plurality of requests shall not prevent that State from dealing with the requests involving the taking of provisional measures.

2. In the case of a plurality of requests under Article 665, the requested State shall consider consulting the requesting States.

Article 683

Obligation to give reasons

The requested State shall give reasons for any decision to refuse, postpone or make conditional any cooperation under this Title.

Article 684

Information

1. The requested State shall promptly inform the requesting State of:

(a) the action initiated on the basis of a request under this Title;

(b) the final result of the action carried out on the basis of a request under this Title;

(c) a decision to refuse, postpone or make conditional, in whole or in part, any cooperation under this Title;

(d) any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly; and

(e) in the event of provisional measures taken pursuant to a request under Articles 658 to Article 663, such provisions of its domestic law as would automatically lead to the lifting of the provisional measure.

2. The requesting State shall promptly inform the requested State of:

(a) any review, decision or any other fact by reason of which the confiscation order ceases to be wholly or partially enforceable; and

(b) any development, factual or legal, by reason of which any action under this Title is no longer justified.

3. Where a State, on the basis of the same confiscation order, requests confiscation in more than one State, it shall inform all States which are affected by the enforcement of the order about the request.

Article 685

Restriction of use

1. The requested State may make the execution of a request dependent on the condition that the information or evidence obtained is not, without its prior consent, to be used or transmitted by the authorities of the requesting State for investigations or proceedings other than those specified in the request.

2. Without the prior consent of the requested State, information or evidence provided by it under this Title shall not be used or transmitted by the authorities of the requesting State in investigations or proceedings other than those specified in the request.

3. Personal data communicated under this Title may be used by the State to which they have been transferred:

(a) for the purposes of proceedings to which this Title applies;

(b) for other judicial and administrative proceedings directly related to proceedings referred to in point (a);

(c) for preventing an immediate and serious threat to public security; or

(d) for any other purpose, only with the prior consent of the communicating State, unless the State concerned has obtained the consent of the data subject.

4. This Article shall also apply to personal data not communicated but obtained otherwise under this Title.

5. This Article does not apply to personal data obtained by the United Kingdom or a Member State under this Title and originating from that State.

Article 686

Confidentiality

1. The requesting State may require that the requested State keep confidential the facts and substance of the request, except to the extent necessary to execute the request. If the requested State cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State.

2. The requesting State shall, if not contrary to basic principles of its domestic law and if so requested, keep confidential any evidence and information provided by the

requested State, except to the extent that its disclosure is necessary for the investigations or proceedings described in the request.

3. Subject to the provisions of its domestic law, a State which has received spontaneous information under Article 662 shall comply with any requirement of confidentiality as required by the State which supplies the information. If the receiving State cannot comply with such a requirement, it shall promptly inform the transmitting State.

Article 687

Costs

The ordinary costs of complying with a request shall be borne by the requested State. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the requesting and requested States shall consult in order to agree the conditions on which the request is to be executed and how the costs will be borne.

Article 688

Damages

1. Where legal action on liability for damages resulting from an act or omission in relation to cooperation under this Title has been initiated by a person, the States concerned shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.

2. A State which has become the subject of litigation for damages shall endeavour to inform the other State of such litigation if that State might have an interest in the case.

Article 689

Legal remedies

1. Each State shall ensure that persons affected by measures under Articles 663 to 666 have effective legal remedies in order to preserve their rights.

2. The substantive reasons for requested measures under Articles 663 to 666 shall not be challenged before a court in the requested State.**]**

Annotations

Amendments

F174 Inserted (31.01.2021) by *European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022* (S.I. No. 38 of 2022), reg. 12, in effect as per reg. 1(2).

SCHEDULE 8

PART 1

Text of 1959 Convention

Preamble

The governments signatory hereto, being members of the Council of Europe, Considering that the aim of the Council of Europe is to achieve greater unity among its members;

Believing that the adoption of common rules in the field of mutual assistance in criminal matters will contribute to the attainment of this aim;

Considering that such mutual assistance is related to the question of extradition, which has already formed the subject of a Convention signed on 13th December 1957,

Have agreed as follows:

Chapter I — General provisions

Article 1

1. The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

2. This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

Article 2

Assistance may be refused:

a) if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;

b) if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of its country.

Chapter II — Letters rogatory

Article 3

1. The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

2. If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.

3. The requested Party may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in which case the requested Party shall make every effort to comply with the request.

Article 4

On the express request of the requesting Party the requested Party shall state the date and place of execution of the letters rogatory. Officials and interested persons may be present if the requested Party consents.

Article 5

1. Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, reserve the right to make the execution of letters rogatory for search or seizure of property dependent on one or more of the following conditions:

a) that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party;

b) that the offence motivating the letters rogatory is an extraditable offence in the requested country;

c) that execution of the letters rogatory is consistent with the law of the requested Party.

2. Where a Contracting Party makes a declaration in accordance with paragraph 1 of this article, any other Party may apply reciprocity.

Article 6

1. The requested Party may delay the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings.

2. Any property, as well as original records or documents, handed over in execution of letters rogatory shall be returned by the requesting Party to the requested Party as soon as possible unless the latter Party waives the return thereof.

Chapter III — Service of writs and records of judicial verdicts —

Appearance of witnesses, experts and prosecuted persons

Article 7

1. The requested Party shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting Party.

Service may be effected by simple transmission of the writ or record to the person to be served. If the requesting Party expressly so requests, service shall be effected by the requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

2. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested Party that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the requesting Party. The requested Party shall, if the requesting Party so requests, state whether service has been effected in accordance with the law of the requested Party. If service cannot be effected, the reasons shall be communicated immediately by the requested Party to the requesting Party.

3. Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, request that service of a summons on an accused person

who is in its territory be transmitted to its authorities by a certain time before the date set for appearance. This time shall be specified in the aforesaid declaration and shall not exceed 50 days.

This time shall be taken into account when the date of appearance is being fixed and when the summons is being transmitted.

Article 8

A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting Party and is there again duly summoned.

Article 9

The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by the requesting Party shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place.

Article 10

1. If the requesting Party considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the requested Party shall invite the witness or expert to appear.

The requested Party shall inform the requesting Party of the reply of the witness or expert.

2. In the case provided for under paragraph 1 of this article the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.

3. If a specific request is made, the requested Party may grant the witness or expert an advance. The amount of the advance shall be endorsed on the summons and shall be refunded by the requesting Party.

Article 11

1. A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting Party shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 in so far as these are applicable.

Transfer may be refused:

a) if the person in custody does not consent,

b) if his presence is necessary at criminal proceedings pending in the territory of the requested Party,

c) if transfer is liable to prolong his detention, or

d) if there are other overriding grounds for not transferring him to the territory of the requesting Party.

2. Subject to the provisions of Article 2, in a case coming within the immediately preceding paragraph, transit of the person in custody through the territory of a third State, Party to this Convention, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested.

A Contracting Party may refuse to grant transit to its own nationals.

3. The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his release.

Article 12

1. A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.

2. A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.

3. The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

Chapter IV — Judicial records

Article 13

1. A requested Party shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a Contracting Party and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case.

2. In any case other than that provided for in paragraph 1 of this article the request shall be complied with in accordance with the conditions provided for by the law, regulations or practice of the requested Party.

Chapter V — Procedure

Article 14

1. Requests for mutual assistance shall indicate as follows:

a) the authority making the request,

b) the object of and the reason for the request,

c) where possible, the identity and the nationality of the person concerned, and

d) where necessary, the name and address of the person to be served.

2. Letters rogatory referred to in Articles 3, 4 and 5 shall, in addition, state the offence and contain a summary of the facts.

Article 15

1. Letters rogatory referred to in Articles 3, 4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.

2. In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this article.

3. Requests provided for in paragraph 1 of Article 13 may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.

4. Requests for mutual assistance, other than those provided for in paragraphs 1 and 3 of this article and, in particular, requests for investigation preliminary to prosecution, may be communicated directly between the judicial authorities.

5. In cases where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).

6. A Contracting Party may, when signing this Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, give notice that some or all requests for assistance shall be sent to it through channels other than those provided for in this article, or require that, in a case provided for in paragraph 2 of this article, a copy of the letters rogatory shall be transmitted at the same time to its Ministry of Justice.

7. The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Contracting Parties which provide for the direct transmission of requests for assistance between their respective authorities.

Article 16

1. Subject to paragraph 2 of this article, translations of requests and annexed documents shall not be required.

2. Each Contracting Party may, when signing or depositing its instrument of ratification or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, reserve the right to stipulate that requests and annexed documents shall be addressed to it accompanied by a translation into its own language or into either of the official languages of the Council of Europe or into one of the latter languages, specified by it. The other Contracting Parties may apply reciprocity.

3. This article is without prejudice to the provisions concerning the translation of requests or annexed documents contained in the agreements or arrangements in force or to be made between two or more Contracting Parties.

Article 17

Evidence or documents transmitted pursuant to this Convention shall not require any form of authentication.

Article 18

Where the authority which receives a request for mutual assistance has no jurisdiction to comply therewith, it shall, *ex officio*, transmit the request to the competent authority of its country and shall so inform the requesting Party through the direct channels, if the request has been addressed through such channels.

Article 19

Reasons shall be given for any refusal of mutual assistance.

Article 20

Subject to the provisions of Article 10, paragraph 3, execution of requests for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested Party or the transfer of a person in custody carried out under Article 11.

Chapter VI — Laying of information in connection with proceedings

Article 21

1. Information laid by one Contracting Party with a view to proceedings in the courts of another Party shall be transmitted between the Ministries of Justice concerned unless a Contracting Party avails itself of the option provided for in paragraph 6 of Article 15.

2. The requested Party shall notify the requesting Party of any action taken on such information and shall forward a copy of the record of any verdict pronounced.

3. The provisions of Article 16 shall apply to information laid under paragraph 1 of this article.

Chapter VII — Exchange of information from judicial records

Article 22

Each Contracting Party shall inform any other Party of all criminal convictions and subsequent measures in respect of nationals of the latter Party, entered in the judicial records. Ministries of Justice shall communicate such information to one another at least once a year. Where the person concerned is considered a national of two or more other Contracting Parties, the information shall be given to each of these Parties, unless the person is a national of the Party in the territory of which he was convicted.

Chapter VIII — Final provisions

Article 23

1. Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.

2. Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary General of the Council of Europe.

3. A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

Article 24

A Contracting Party may, when signing the Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities.

Article 25

1. This Convention shall apply to the metropolitan territories of the Contracting Parties.

2. In respect of France, it shall also apply to Algeria and to the overseas Departments, and, in respect of Italy, it shall also apply to the territory of Somaliland under Italian administration.

3. The Federal Republic of Germany may extend the application of this Convention to the Land of Berlin by notice addressed to the Secretary General of the Council of Europe.

4. In respect of the Kingdom of the Netherlands, the Convention shall apply to its European territory. The Netherlands may extend the application of this Convention to the Netherlands Antilles, Surinam and Netherlands New Guinea by notice addressed to the Secretary General of the Council of Europe.

5. By direct arrangement between two or more Contracting Parties and subject to the conditions laid down in the arrangement, the application of this Convention may be extended to any territory, other than the territories mentioned in paragraphs 1, 2, 3 and 4 of this article, of one of these Parties, for the international relations of which any such Party is responsible.

Article 26

1. Subject to the provisions of Article 15, paragraph 7, and Article 16, paragraph 3, this Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties.

2. This Convention shall not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given field.

3. The Contracting Parties may conclude between themselves bilateral or multilateral agreements on mutual assistance in criminal matters only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.

4. Where, as between two or more Contracting Parties, mutual assistance in criminal matters is practised on the basis of uniform legislation or of a special system providing for the reciprocal application in their respective territories of measures of mutual assistance, these Parties shall, notwithstanding the provisions of this Convention, be

free to regulate their mutual relations in this field exclusively in accordance with such legislation or system. Contracting Parties which, in accordance with this paragraph, exclude as between themselves the application of this Convention shall notify the Secretary General of the Council of Europe accordingly.

Article 27

1. This Convention shall be open to signature by the members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary General of the Council.

2. The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.

3. As regards any signatory ratifying subsequently the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

Article 28

1. The Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, provided that the resolution containing such invitation obtains the unanimous agreement of the members of the Council who have ratified the Convention.

2. Accession shall be by deposit with the Secretary General of the Council of an instrument of accession which shall take effect 90 days after the date of its deposit.

Article 29

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice to the Secretary General of the Council of Europe. Denunciation shall take effect six months after the date when the Secretary General of the Council received such notification.

Article 30

The Secretary General of the Council of Europe shall notify the members of the Council and the government of any State which has acceded to this Convention of:

a) the names of the signatories and the deposit of any instrument of ratification or accession;

b) the date of entry into force of this Convention;

c) any notification received in accordance with the provisions of Article 5 — paragraph 1, Article 7 — paragraph 3, Article 15 — paragraph 6, Article 16 — paragraph 2, Article 24, Article 25 — paragraphs 3 and 4, Article 26 — paragraph 4;

d) any reservation made in accordance with Article 23, paragraph 1;

e) the withdrawal of any reservation in accordance with Article 23, paragraph 2;

f) any notification of denunciation received in accordance with the provisions of Article 29 and the date on which such denunciation will take effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 20th day of April 1959, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to the signatory and acceding governments.

PART 2

Text of First Additional Protocol to 1959 Convention

The member States of the Council of Europe, signatory to this Protocol,

Desirous of facilitating the application of the European Convention on Mutual Assistance in Criminal Matters opened for signature in Strasbourg on 20th April 1959 (hereinafter referred to as "the Convention") in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain other respects,

Have agreed as follows:

Chapter I

Article 1

The Contracting Parties shall not exercise the right provided for in Article 2.a of the Convention to refuse assistance solely on the ground that the request concerns an offence which the requested Party considers a fiscal offence.

Article 2

1. In the case where a Contracting Party has made the execution of letters rogatory for search or seizure of property dependent on the condition that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party, this condition shall be fulfilled, as regards fiscal offences, if the offence is punishable under the law of the requesting Party and corresponds to an offence of the same nature under the law of the requested Party.

2. The request may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the requesting Party.

Chapter II

Article 3

The Convention shall also apply to:

a) the service of documents concerning the enforcement of a sentence, the recovery of a fine or the payment of costs of proceedings;

b) measures relating to the suspension of pronouncement of a sentence or of its enforcement, to conditional release, to deferment of the commencement of the enforcement of a sentence or to the interruption of such enforcement.

Chapter III

Article 4

Article 22 of the Convention shall be supplemented by the following text, the original Article 22 of the Convention becoming paragraph 1 and the below-mentioned provisions becoming paragraph 2:

"2 Furthermore, any Contracting Party which has supplied the above-mentioned information shall communicate to the Party concerned, on the latter's request in individual cases, a copy of the convictions and measures in question as well as any other information relevant thereto in order to enable it to consider whether they necessitate any measures at national level. This communication shall take place between the Ministries of Justice concerned."

Chapter IV

Article 5

1. This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.

3. In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.

4. A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

Article 6

1. Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.

2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

Article 7

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2. Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of the notification.

Article 8

1. Reservations made by a Contracting Party to a provision of the Convention shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to the declarations made by virtue of Article 24 of the Convention.

2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:

a) not to accept Chapter I, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article I, or not to comply with letters rogatory for search or seizure of property in respect of fiscal offences;

b) not to accept Chapter II;

c) not to accept Chapter III.

3. Any Contracting Party may withdraw a declaration it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

4. A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting Party; it may, however, if its reservation is partial or conditional claim the application of that provision in so far as it has itself accepted it.

5. No other reservation may be made to the provisions of this Protocol.

Article 9

The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Contracting Parties in application of Article 26, paragraph 3, of the Convention.

Article 10

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 11

1. Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

3. Denunciation of the Convention entails automatically denunciation of this Protocol.

Article 12

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

a) any signature of this Protocol;

b) any deposit of an instrument of ratification, acceptance, approval or accession;

c) any date of entry into force of this Protocol in accordance with Articles 5 and 6;

d) any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 7;

e) any declaration received in pursuance of the provisions of paragraph 1 of Article 8;

f) any reservation made in pursuance of the provisions of paragraph 2 of Article 8;

g) the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 8;

h) any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 17th day of March 1978, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

SCHEDULE 9

Text of Second Additional Protocol to 1959 Convention

The member States of the Council of Europe, signatory to this Protocol,

Having regard to their undertakings under the Statute of the Council of Europe;

Desirous of further contributing to safeguard human rights, uphold the rule of law and support the democratic fabric of society;

Considering it desirable to that effect to strengthen their individual and collective ability to respond to crime;

Decided to improve on and supplement in certain aspects the European Convention on Mutual Assistance in Criminal Matters done at Strasbourg on 20 April 1959 (hereinafter referred to as "the Convention"), as well as the Additional Protocol thereto, done at Strasbourg on 17 March 1978;

Taking into consideration the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981,

Have agreed as follows:

Chapter I

Article 1 — Scope

Article 1 of the Convention shall be replaced by the following provisions:

"1 The Parties undertake promptly to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

2 This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

3 Mutual assistance may also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Party by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

4 Mutual assistance shall not be refused solely on the grounds that it relates to acts for which a legal person may be held liable in the requesting Party."

Article 2 — Presence of officials of the requesting Party

Article 4 of the Convention shall be supplemented by the following text, the original Article 4 of the Convention becoming paragraph 1 and the provisions below becoming paragraph 2:

"2 Requests for the presence of such officials or interested persons should not be refused where that presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting Party and, therefore, likely to avoid the need for supplementary requests for assistance."

Article 3 — Temporary transfer of detained persons to the territory of the requesting Party

Article 11 of the Convention shall be replaced by the following provisions:

"1 A person in custody whose personal appearance for evidentiary purposes other than for standing trial is applied for by the requesting Party shall be temporarily transferred to its territory, provided that he or she shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 of this Convention, in so far as these are applicable.

Transfer may be refused if:

a the person in custody does not consent;

b his or her presence is necessary at criminal proceedings pending in the territory of the requested Party;

c transfer is liable to prolong his or her detention, or

d there are other overriding grounds for not transferring him or her to the territory of the requesting Party.

2 Subject to the provisions of Article 2 of this Convention, in a case coming within paragraph 1, transit of the person in custody through the territory of a third Party, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested. A Party may refuse to grant transit to its own nationals.

3 The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his or her release."

Article 4 — Channels of communication

Article 15 of the Convention shall be replaced by the following provisions:

"1 Requests for mutual assistance, as well as spontaneous information, shall be addressed in writing by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels. However, they may be forwarded directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party and returned through the same channels.

2 Applications as referred to in Article 11 of this Convention and Article 13 of the Second Additional Protocol to this Convention shall in all cases be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.

3 Requests for mutual assistance concerning proceedings as mentioned in paragraph 3 of Article 1 of this Convention may also be forwarded directly by the administrative or judicial authorities of the requesting Party to the administrative or judicial authorities of the requested Party, as the case may be, and returned through the same channels.

4 Requests for mutual assistance made under Articles 18 and 19 of the Second Additional Protocol to this Convention may also be forwarded directly by the competent authorities of the requesting Party to the competent authorities of the requested Party.

5 Requests provided for in paragraph 1 of Article 13 of this Convention may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 of this Convention shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.

6 Requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the Convention may be made directly to the competent authorities. Any Contracting State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of this paragraph, deem competent authorities.

7 In urgent cases, where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).

8 Any Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to make the execution of requests, or specified requests, for mutual assistance dependent on one or more of the following conditions:

a that a copy of the request be forwarded to the central authority designated in that declaration;

b that requests, except urgent requests, be forwarded to the central authority designated in that declaration;

c that, in case of direct transmission for reasons of urgency, a copy shall be transmitted at the same time to its Ministry of Justice;

d that some or all requests for assistance shall be sent to it through channels other than those provided for in this article.

9 Requests for mutual assistance and any other communications under this Convention or its Protocols may be forwarded through any electronic or other means of telecommunication provided that the requesting Party is prepared, upon request, to produce at any time a written record of it and the original. However, any Contracting State, may by a declaration addressed at any time to the Secretary General of the Council of Europe, establish the conditions under which it shall be willing to accept and execute requests received by electronic or other means of telecommunication.

10 The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Parties which provide for the direct transmission of requests for assistance between their respective authorities."

Article 5 — Costs

Article 20 of the Convention shall be replaced by the following provisions:

"1 Parties shall not claim from each other the refund of any costs resulting from the application of this Convention or its Protocols, except:

a costs incurred by the attendance of experts in the territory of the requested Party;

b costs incurred by the transfer of a person in custody carried out under Articles 13 or 14 of the Second Additional Protocol to this Convention, or Article 11 of this Convention;

c costs of a substantial or extraordinary nature.

2 However, the cost of establishing a video or telephone link, costs related to the servicing of a video or telephone link in the requested Party, the remuneration of interpreters provided by it and allowances to witnesses and their travelling expenses in the requested Party shall be refunded by the requesting Party to the requested Party, unless the Parties agree otherwise.

3 Parties shall consult with each other with a view to making arrangements for the payment of costs claimable under paragraph 1.c above.

4 The provisions of this article shall apply without prejudice to the provisions of Article 10, paragraph 3, of this Convention."

Article 6 — Judicial authorities

Article 24 of the Convention shall be replaced by the following provisions:

"Any State shall at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities. It subsequently may, at any time and in the same manner, change the terms of its declaration."

Chapter II

Article 7 — Postponed execution of requests

1 The requested Party may postpone action on a request if such action would prejudice investigations, prosecutions or related proceedings by its authorities.

2 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

3 If the request is postponed, reasons shall be given for the postponement. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

Article 8 — Procedure

Notwithstanding the provisions of Article 3 of the Convention, where requests specify formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to fundamental principles of its law, unless otherwise provided for in this Protocol.

Article 9 — Hearing by video conference

1 If a person is in one Party's territory and has to be heard as a witness or expert by the judicial authorities of another Party, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs 2 to 7.

2 The requested Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting Party by mutual agreement.

3 Requests for a hearing by video conference shall contain, in addition to the information referred to in Article 14 of the Convention, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

4 The judicial authority of the requested Party shall summon the person concerned to appear in accordance with the forms laid down by its law.

5 With reference to hearing by video conference, the following rules shall apply:

a a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;

b measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;

c the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party in accordance with its own laws;

d at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;

e the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Party.

6 Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Party to the competent authority of the requesting Party.

7 Each Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.

8 Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Parties concerned, in accordance with their national law and relevant international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.

9 Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to hearings by video conference involving the accused person or the suspect.

Article 10 — Hearing by telephone conference

1 If a person is in one Party's territory and has to be heard as a witness or expert by judicial authorities of another Party, the latter may, where its national law so provides, request the assistance of the former Party to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 6.

2 A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.

3 The requested Party shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.

4 A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the Convention, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.

5 The practical arrangements regarding the hearing shall be agreed between the Parties concerned. When agreeing such arrangements, the requested Party shall undertake to:

a notify the witness or expert concerned of the time and the venue of the hearing;

b ensure the identification of the witness or expert;

c verify that the witness or expert agrees to the hearing by telephone conference.

6 The requested Party may make its agreement subject, fully or in part, to the relevant provisions of Article 9, paragraphs 5 and 7.

Article 11 — Spontaneous information

1 Without prejudice to their own investigations or proceedings, the competent authorities of a Party may, without prior request, forward to the competent authorities of another Party information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under the Convention or its Protocols.

2 The providing Party may, pursuant to its national law, impose conditions on the use of such information by the receiving Party.

3 The receiving Party shall be bound by those conditions.

4 However, any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to be bound by the conditions imposed by the providing Party under paragraph 2 above, unless it receives prior notice of the nature of the information to be provided and agrees to its transmission.

Article 12 — Restitution

1 At the request of the requesting Party and without prejudice to the rights of bona fide third parties, the requested Party may place articles obtained by criminal means at the disposal of the requesting Party with a view to their return to their rightful owners.

2 In applying Articles 3 and 6 of the Convention, the requested Party may waive the return of articles either before or after handing them over to the requesting Party if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of bona fide third parties shall not be affected.

3 In the event of a waiver before handing over the articles to the requesting Party, the requested Party shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles.

4 A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Party to collect taxes or duties from the rightful owner.

Article 13 — Temporary transfer of detained persons to the requested Party

1 Where there is agreement between the competent authorities of the Parties concerned, a Party which has requested an investigation for which the presence of a person held in custody on its own territory is required may temporarily transfer that person to the territory of the Party in which the investigation is to take place.

2 The agreement shall cover the arrangements for the temporary transfer of the person and the date by which the person must be returned to the territory of the requesting Party.

3 Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Party.

4 The transferred person shall remain in custody in the territory of the requested Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from which the person was transferred applies for his or her release.

5 The period of custody in the territory of the requested Party shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Party.

6 The provisions of Article 11, paragraph 2, and Article 12 of the Convention shall apply *mutatis mutandis*.

7 Any Contracting State may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that before an agreement is reached under paragraph 1 of this article, the consent referred to in paragraph 3 of this article will be required, or will be required under certain conditions indicated in the declaration.

Article 14 — Personal appearance of transferred sentenced persons

The provisions of Articles 11 and 12 of the Convention shall apply *mutatis mutandis* also to persons who are in custody in the requested Party, pursuant to having been transferred in order to serve a sentence passed in the requesting Party, where their personal appearance for purposes of review of the judgement is applied for by the requesting Party.

Article 15 — Language of procedural documents and judicial decisions to be served

1 The provisions of this article shall apply to any request for service under Article 7 of the Convention or Article 3 of the Additional Protocol thereto.

2 Procedural documents and judicial decisions shall in all cases be transmitted in the language, or the languages, in which they were issued.

3 Notwithstanding the provisions of Article 16 of the Convention, if the authority that issued the papers knows or has reasons to believe that the addressee understands only some other language, the papers, or at least the most important passages thereof, shall be accompanied by a translation into that other language.

4 Notwithstanding the provisions of Article 16 of the Convention, procedural documents and judicial decisions shall, for the benefit of the authorities of the requested Party, be accompanied by a short summary of their contents translated into the language, or one of the languages, of that Party.

Article 16 — Service by post

1 The competent judicial authorities of any Party may directly address, by post, procedural documents and judicial decisions, to persons who are in the territory of any other Party.

2 Procedural documents and judicial decisions shall be accompanied by a report stating that the addressee may obtain information from the authority identified in the report, regarding his or her rights and obligations concerning the service of the papers. The provisions of paragraph 3 of Article 15 above shall apply to that report.

3 The provisions of Articles 8, 9 and 12 of the Convention shall apply *mutatis mutandis* to service by post.

4 The provisions of paragraphs 1, 2 and 3 of Article 15 above shall also apply to service by post.

Article 17 — Cross-border observations

1 Police officers of one of the Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, shall be authorised to continue their observation in the territory of another Party where the latter has authorised cross-border observation in response

to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

On request, the observation will be entrusted to officers of the Party in whose territory it is carried out.

The request for assistance referred to in the first sub-paragraph must be sent to an authority designated by each Party and having jurisdiction to grant or to forward the requested authorisation.

2 Where, for particularly urgent reasons, prior authorisation of the other Party cannot be requested, the officers conducting the observation within the framework of a criminal investigation shall be authorised to continue beyond the border the observation of a person presumed to have committed offences listed in paragraph 6, provided that the following conditions are met:

a the authorities of the Party designated under paragraph 4, in whose territory the observation is to be continued, must be notified immediately, during the observation, that the border has been crossed;

b a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay.

Observation shall cease as soon as the Party in whose territory it is taking place so requests, following the notification referred to in a. or the request referred to in b. or where authorisation has not been obtained within five hours of the border being crossed.

3 The observation referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:

a The officers conducting the observation must comply with the provisions of this article and with the law of the Party in whose territory they are operating; they must obey the instructions of the local responsible authorities.

b Except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorisation has been granted.

c The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity.

d The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by the requested Party; their use shall be prohibited save in cases of legitimate self-defence.

e Entry into private homes and places not accessible to the public shall be prohibited.

f The officers conducting the observation may neither stop and question, nor arrest, the person under observation.

g All operations shall be the subject of a report to the authorities of the Party in whose territory they took place; the officers conducting the observation may be required to appear in person.

h The authorities of the Party from which the observing officers have come shall, when requested by the authorities of the Party in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate both the officers and authorities that they designate for the purposes of paragraphs 1 and 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

5 The Parties may, at bilateral level, extend the scope of this article and adopt additional measures in implementation thereof.

6 The observation referred to in paragraph 2 may take place only for one of the following criminal offences:

— assassination;
— murder;
— rape;
— arson;
— counterfeiting;
— armed robbery and receiving of stolen goods;
— extortion;
— kidnapping and hostage taking;
— traffic in human beings;
— illicit traffic in narcotic drugs and psychotropic substances;
— breach of the laws on arms and explosives;
— use of explosives;
— illicit carriage of toxic and dangerous waste;
— smuggling of aliens;
— sexual abuse of children.

Article 18 — Controlled delivery

1 Each Party undertakes to ensure that, at the request of another Party, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.

2 The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Party, with due regard to the national law of that Party.

3 Controlled deliveries shall take place in accordance with the procedures of the requested Party. Competence to act, direct and control operations shall lie with the competent authorities of that Party.

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Article 19 — Covert investigations

1 The requesting and the requested Parties may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).

2 The decision on the request is taken in each individual case by the competent authorities of the requested Party with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Parties with due regard to their national law and procedures.

3 Covert investigations shall take place in accordance with the national law and procedures of the Party on the territory of which the covert investigation takes place. The Parties involved shall co-operate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of paragraph 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Article 20 — Joint investigation teams

1 By mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

a a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties;

b a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved.

A request for the setting up of a joint investigation team may be made by any of the Parties concerned. The team shall be set up in one of the Parties in which the investigations are expected to be carried out.

2 In addition to the information referred to in the relevant provisions of Article 14 of the Convention, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3 A joint investigation team shall operate in the territory of the Parties setting up the team under the following general conditions:

a the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;

b the team shall carry out its operations in accordance with the law of the Party in which it operates. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in sub-paragraph a, taking into account the conditions set by their own authorities in the agreement on setting up the team;

c the Party in which the team operates shall make the necessary organisational arrangements for it to do so.

4 In this article, members of the joint investigation team from the Party in which the team operates are referred to as "members", while members from Parties other than the Party in which the team operates are referred to as "seconded members".

5 Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Party where the team operates, decide otherwise.

6 Seconded members of the joint investigation team may, in accordance with the law of the Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Party of operation and the seconding Party.

7 Where the joint investigation team needs investigative measures to be taken in one of the Parties setting up the team, members seconded to the team by that Party may request their own competent authorities to take those measures. Those measures shall be considered in that Party under the conditions which would apply if they were requested in a national investigation.

8 Where the joint investigation team needs assistance from a Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.

9 A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.

10 Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Parties concerned may be used for the following purposes:

a for the purposes for which the team has been set up;

b subject to the prior consent of the Party where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Party concerned or in respect of which that Party could refuse mutual assistance;

c for preventing an immediate and serious threat to public security, and without prejudice to sub-paragraph b. if subsequently a criminal investigation is opened;

d for other purposes to the extent that this is agreed between Parties setting up the team.

11 This article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

12 To the extent that the laws of the Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members or seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise.

Article 21 — Criminal liability regarding officials

During the operations referred to in Articles 17, 18, 19 or 20, unless otherwise agreed upon by the Parties concerned, officials from a Party other than the Party of operation shall be regarded as officials of the Party of operation with respect to offences committed against them or by them.

Article 22 — Civil liability regarding officials

1 Where, in accordance with Articles 17, 18, 19 or 20, officials of a Party are operating in another Party, the first Party shall be liable for any damage caused by them during their operations, in accordance with the law of the Party in whose territory they are operating.

2 The Party in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.

3 The Party whose officials have caused damage to any person in the territory of another Party shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.

4 Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Party shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Party.

5 The provisions of this article shall apply subject to the proviso that the Parties did not agree otherwise.

Article 23 — Protection of witnesses

Where a Party requests assistance under the Convention or one of its Protocols in respect of a witness at risk of intimidation or in need of protection, the competent authorities of the requesting and requested Parties shall endeavour to agree on measures for the protection of the person concerned, in accordance with their national law.

Article 24 — Provisional measures

1 At the request of the requesting Party, the requested Party, in accordance with its national law, may take provisional measures for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests.

2 The requested Party may grant the request partially or subject to conditions, in particular time limitation.

Article 25 — Confidentiality

The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

Article 26 — Data protection

1 Personal data transferred from one Party to another as a result of the execution of a request made under the Convention or any of its Protocols, may be used by the Party to which such data have been transferred, only:

a for the purpose of proceedings to which the Convention or any of its Protocols apply;

b for other judicial and administrative proceedings directly related to the proceedings mentioned under (a);

c for preventing an immediate and serious threat to public security.

2 Such data may however be used for any other purpose if prior consent to that effect is given by either the Party from which the data had been transferred, or the data subject.

3 Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols where

— such data is protected under its national legislation, and

— the Party to which the data should be transferred is not bound by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, unless the latter Party undertakes to afford such protection to the data as is required by the former Party.

4 Any Party that transfers personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols may require the Party to which the data have been transferred to give information on the use made with such data.

5 Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, require that, within the framework of procedures for which it could have refused or limited the transmission or the use of personal data in accordance with the provisions of the Convention or one of its Protocols, personal data transmitted to another Party not be used by the latter for the purposes of paragraph 1 unless with its previous consent.

Article 27 — Administrative authorities

Parties may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities they will deem administrative authorities for the purposes of Article 1, paragraph 3, of the Convention.

Article 28 — Relations with other treaties

The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Parties in application of Article 26, paragraph 3, of the Convention.

Article 29 — Friendly settlement

The European Committee on Crime Problems shall be kept informed regarding the interpretation and application of the Convention and its Protocols, and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of their application.

Chapter III

Article 30 — Signature and entry into force

1 This Protocol shall be open for signature by the member States of the Council of Europe which are a Party to or have signed the Convention. It shall be subject to ratification, acceptance or approval. A signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.

3 In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit.

Article 31 — Accession

1 Any non-member State, which has acceded to the Convention, may accede to this Protocol after it has entered into force.

2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession.

3 In respect of any acceding State, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession.

Article 32 — Territorial application

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2 Any State may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date or receipt of such notification by the Secretary General.

Article 33 — Reservations

1 Reservations made by a Party to any provision of the Convention or its Protocol shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to any declaration made in respect or by virtue of any provision of the Convention or its Protocol.

2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the right not to accept wholly or in part any one or more of Articles 16, 17, 18, 19 and 20. No other reservation may be made.

3 Any State may wholly or partially withdraw a reservation it has made in accordance with the foregoing paragraphs, by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

4 Any Party which has made a reservation in respect of any of the articles of this Protocol mentioned in paragraph 2 above, may not claim the application of that article by another Party. It may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article 34 — Denunciation

1 Any Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

3 Denunciation of the Convention entails automatically denunciation of this Protocol.

Article 35 — Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Protocol of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this Protocol in accordance with Articles 30 and 31;

d any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 8th day of November 2001, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the non-member States which have acceded to the Convention.

SCHEDULE 10

Text of Chapter IV of 2005 Convention

Chapter IV — International co-operation

Section 1 — Principles of international co-operation

Article 15 — General principles and measures for international co-operation

1 The Parties shall mutually co-operate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.

2 Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:

a for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;

b for investigative assistance and provisional measures with a view to either form of confiscation referred to under a above.

3 Investigative assistance and provisional measures sought in paragraph 2.b shall be carried out as permitted by and in accordance with the internal law of the requested Party. Where the request concerning one of these measures specifies formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to the fundamental principles of its law.

4 Each Party shall adopt such legislative or other measures as may be necessary to ensure that the requests coming from other Parties in order to identify, trace, freeze or seize the proceeds and instrumentalities, receive the same priority as those made in the framework of internal procedures.

Section 2 — Investigative assistance

Article 16 — Obligation to assist

The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property.

Article 17 — Requests for information on bank accounts

1 Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the particulars of the identified accounts.

2 The obligation set out in this article shall apply only to the extent that the information is in the possession of the bank keeping the account.

3 In addition to the requirements of Article 37, the requesting party shall, in the request:

a state why it considers that the requested information is likely to be of substantial value for the purpose of the criminal investigation into the offence;

b state on what grounds it presumes that banks in the requested Party hold the account and specify, to the widest extent possible, which banks and/or accounts may be involved; and

c include any additional information available which may facilitate the execution of the request.

4 The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.

5 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that this article applies only to the categories of offences specified in the list contained in the appendix to this Convention.

6 Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

Article 18 — Requests for information on banking transactions

1 On request by another Party, the requested Party shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.

2 The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.

3 In addition to the requirements of Article 37, the requesting Party shall in its request indicate why it considers the requested information relevant for the purpose of the criminal investigation into the offence.

4 The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.

5 Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

Article 19 — Requests for the monitoring of banking transactions

1 Each Party shall ensure that, at the request of another Party, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party.

2 In addition to the requirements of Article 37, the requesting Party shall in its request indicate why it considers the requested information relevant for the purpose of the criminal investigation into the offence.

3 The decision to monitor shall be taken in each individual case by the competent authorities of the requested Party, with due regard for the national law of that Party.

4 The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested Parties.

5 Parties may extend this provision to accounts held in non-bank financial institutions.

Article 20 — Spontaneous information

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on instrumentalities and proceeds, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings or might lead to a request by that Party under this chapter.

Section 3 — Provisional measures

Article 21 — Obligation to take provisional measures

1 At the request of another Party which has instituted criminal proceedings or proceedings for the purpose of confiscation, a Party shall take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.

2 A Party which has received a request for confiscation pursuant to Article 23 shall, if so requested, take the measures mentioned in paragraph 1 of this article in respect of any property which is the subject of the request or which might be such as to satisfy the request.

Article 22 — Execution of provisional measures

1 After the execution of the provisional measures requested in conformity with paragraph 1 of Article 21, the requesting Party shall provide spontaneously and as soon as possible to the requested Party all information which may question or modify the extent of these measures. The requesting Party shall also provide without delays all complementary information requested by the requested Party and which is necessary for the implementation of and the follow up to the provisional measures.

2 Before lifting any provisional measure taken pursuant to this article, the requested Party shall, wherever possible, give the requesting Party an opportunity to present its reasons in favour of continuing the measure.

Section 4 — Confiscation

Article 23 — Obligation to confiscate

1 A Party, which has received a request made by another Party for confiscation concerning instrumentalities or proceeds, situated in its territory, shall:

a enforce a confiscation order made by a court of a requesting Party in relation to such instrumentalities or proceeds; or

b submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.

2 For the purposes of applying paragraph 1.b of this article, any Party shall whenever necessary have competence to institute confiscation proceedings under its own law.

3 The provisions of paragraph 1 of this article shall also apply to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property on which the confiscation can be enforced is located in the requested Party. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested Party shall, if payment is not obtained, realise the claim on any property available for that purpose.

4 If a request for confiscation concerns a specific item of property, the Parties may agree that the requested Party may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.

5 The Parties shall co-operate to the widest extent possible under their domestic law with those Parties which request the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention.

Article 24 — Execution of confiscation

1 The procedures for obtaining and enforcing the confiscation under Article 23 shall be governed by the law of the requested Party.

2 The requested Party shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision of the requesting Party or in so far as such conviction or judicial decision is implicitly based on them.

3 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 2 of this article applies only subject to its constitutional principles and the basic concepts of its legal system.

4 If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested Party shall convert the amount thereof into the currency of that Party at the rate of exchange ruling at the time when the decision to enforce the confiscation is taken.

5 In the case of Article 23, paragraph 1.a, the requesting Party alone shall have the right to decide on any application for review of the confiscation order.

Article 25 — Confiscated property

1 Property confiscated by a Party pursuant to Articles 23 and 24 of this Convention, shall be disposed of by that Party in accordance with its domestic law and administrative procedures.

2 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return such property to their legitimate owners.

3 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such property, in accordance with its domestic law or administrative procedures.

Article 26 — Right of enforcement and maximum amount of confiscation

1 A request for confiscation made under Articles 23 and 24 does not affect the right of the requesting Party to enforce itself the confiscation order.

2 Nothing in this Convention shall be so interpreted as to permit the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a Party finds that this might occur, the Parties concerned shall enter into consultations to avoid such an effect.

Article 27 — Imprisonment in default

The requested Party shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 23, if the requesting Party has so specified in the request.

Section 5 — Refusal and postponement of co-operation

Article 28 — Grounds for refusal

1 Co-operation under this chapter may be refused if:

a the action sought would be contrary to the fundamental principles of the legal system of the requested Party; or

b the execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of the requested Party; or

c in the opinion of the requested Party, the importance of the case to which the request relates does not justify the taking of the action sought; or

d the offence to which the request relates is a fiscal offence, with the exception of the financing of terrorism;

e the offence to which the request relates is a political offence, with the exception of the financing of terrorism; or

f the requested Party considers that compliance with the action sought would be contrary to the principle of "*ne bis in idem*"; or

g the offence to which the request relates would not be an offence under the law of the requested Party if committed within its jurisdiction. However, this ground for refusal applies to co-operation under Section 2 only in so far as the assistance sought involves coercive action. Where dual criminality is required for co-operation under this chapter, that requirement shall be deemed to be satisfied regardless of whether both Parties place the offence within the same category of offences or denominate the offence by the same terminology, provided that both Parties criminalise the conduct underlying the offence.

2. Co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter, may also be refused if the measures sought could not be taken under the domestic law of the requested Party for the purposes of investigations or proceedings, had it been a similar domestic case.

3. Where the law of the requested Party so requires, co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of

this chapter may also be refused if the measures sought or any other measures having similar effects would not be permitted under the law of the requesting Party, or, as regards the competent authorities of the requesting Party, if the request is not authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

4. Co-operation under Section 4 of this chapter may also be refused if:

a under the law of the requested Party confiscation is not provided for in respect of the type of offence to which the request relates; or

b without prejudice to the obligation pursuant to Article 23, paragraph 3, it would be contrary to the principles of the domestic law of the requested Party concerning the limits of confiscation in respect of the relationship between an offence and:

i an economic advantage that might be qualified as its proceeds; or

ii property that might be qualified as its instrumentalities; or

c under the law of the requested Party confiscation may no longer be imposed or enforced because of the lapse of time; or

d without prejudice to Article 23, paragraph 5, the request does not relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed, on the basis of which the confiscation has been ordered or is sought; or

e confiscation is either not enforceable in the requesting Party, or it is still subject to ordinary means of appeal; or

f the request relates to a confiscation order resulting from a decision rendered *in absentia* of the person against whom the order was issued and, in the opinion of the requested Party, the proceedings conducted by the requesting Party leading to such decision did not satisfy the minimum rights of defence recognised as due to everyone against whom a criminal charge is made.

5. For the purpose of paragraph 4.f of this article a decision is not considered to have been rendered *in absentia* if:

a it has been confirmed or pronounced after opposition by the person concerned; or

b it has been rendered on appeal, provided that the appeal was lodged by the person concerned.

6. When considering, for the purposes of paragraph 4.f of this article if the minimum rights of defence have been satisfied, the requested Party shall take into account the fact that the person concerned has deliberately sought to evade justice or the fact that that person, having had the possibility of lodging a legal remedy against the decision made *in absentia*, elected not to do so. The same will apply when the person concerned, having been duly served with the summons to appear, elected not to do so nor to ask for adjournment.

7. A Party shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

8. Without prejudice to the ground for refusal provided for in paragraph 1.a of this article:

a the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is a legal person shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter;

b the fact that the natural person against whom an order of confiscation of proceeds has been issued has died or the fact that a legal person against whom an order of confiscation of proceeds has been issued has subsequently been dissolved shall not be invoked as an obstacle to render assistance in accordance with Article 23, paragraph 1.a;

c the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is mentioned in the request both as the author of the underlying criminal offence and of the offence of money laundering, in accordance with Article 9.2.b of this Convention, shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter.

Article 29 — Postponement

The requested Party may postpone action on a request if such action would prejudice investigations or proceedings by its authorities.

Article 30 — Partial or conditional granting of a request

Before refusing or postponing co-operation under this chapter, the requested Party shall, where appropriate after having consulted the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

Section 6 — Notification and protection of third parties' rights

Article 31 — Notification of documents

1 The Parties shall afford each other the widest measure of mutual assistance in the serving of judicial documents to persons affected by provisional measures and confiscation.

2 Nothing in this article is intended to interfere with:

a the possibility of sending judicial documents, by postal channels, directly to persons abroad;

b the possibility for judicial officers, officials or other competent authorities of the Party of origin to effect service of judicial documents directly through the consular authorities of that Party or through judicial officers, officials or other competent authorities of the Party of destination,

unless the Party of destination makes a declaration to the contrary to the Secretary General of the Council of Europe at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

3 When serving judicial documents to persons abroad affected by provisional measures or confiscation orders issued in the sending Party, this Party shall indicate what legal remedies are available under its law to such persons.

Article 32 — Recognition of foreign decisions

1 When dealing with a request for co-operation under Sections 3 and 4, the requested Party shall recognise any judicial decision taken in the requesting Party regarding rights claimed by third parties.

2 Recognition may be refused if:

a third parties did not have adequate opportunity to assert their rights; or

b the decision is incompatible with a decision already taken in the requested Party on the same matter; or

c it is incompatible with the *ordre public* of the requested Party; or

d the decision was taken contrary to provisions on exclusive jurisdiction provided for by the law of the requested Party.

Section 7 — Procedural and other general rules

Article 33 — Central authority

1 The Parties shall designate a central authority or, if necessary, authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.

2 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

Article 34 — Direct communication

1 The central authorities shall communicate directly with one another.

2 In the event of urgency, requests or communications under this chapter may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.

3 Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).

4 Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

5 Requests or communications under Section 2 of this chapter, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

6 Draft requests or communications under this chapter may be sent directly by the judicial authorities of the requesting Party to such authorities of the requested Party prior to a formal request to ensure that it can be dealt with efficiently upon receipt and contains sufficient information and supporting documentation for it to meet the requirements of the legislation of the requested Party.

Article 35 — Form of request and languages

1 All requests under this chapter shall be made in writing. They may be transmitted electronically, or by any other means of telecommunication, provided that the requesting Party is prepared, upon request, to produce at any time a written record of such communication and the original. However each Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, indicate the conditions in which it is ready to accept and execute requests received electronically or by any other means of communication.

2 Subject to the provisions of paragraph 3 of this article, translations of the requests or supporting documents shall not be required.

3 At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any State or the European Community may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests made to it and documents supporting such requests be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.

Article 36 — Legalisation

Documents transmitted in application of this chapter shall be exempt from all legalisation formalities.

Article 37 — Content of request

1 Any request for co-operation under this chapter shall specify:

a the authority making the request and the authority carrying out the investigations or proceedings;

b the object of and the reason for the request;

c the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;

d insofar as the co-operation involves coercive action:

i the text of the statutory provisions or, where this is not possible, a statement of the relevant law applicable; and

ii an indication that the measure sought or any other measures having similar effects could be taken in the territory of the requesting Party under its own law;

e where necessary and in so far as possible:

i details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and

ii the property in relation to which co-operation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any available information about other persons, interests in the property; and

f any particular procedure the requesting Party wishes to be followed.

2 A request for provisional measures under Section 3 in relation to seizure of property on which a confiscation order consisting in the requirement to pay a sum of money may be realised shall also indicate a maximum amount for which recovery is sought in that property.

3 In addition to the indications mentioned in paragraph 1, any request under Section 4 shall contain:

a in the case of Article 23, paragraph 1.a:

i a certified true copy of the confiscation order made by the court in the requesting Party and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;

ii an attestation by the competent authority of the requesting Party that the confiscation order is enforceable and not subject to ordinary means of appeal;

iii information as to the extent to which the enforcement of the order is requested; and

iv information as to the necessity of taking any provisional measures;

b in the case of Article 23, paragraph 1.b, a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;

c when third parties have had the opportunity to claim rights, documents demonstrating that this has been the case.

Article 38 — Defective requests

1 If a request does not comply with the provisions of this chapter or the information supplied is not sufficient to enable the requested Party to deal with the request, that Party may ask the requesting Party to amend the request or to complete it with additional information.

2 The requested Party may set a time-limit for the receipt of such amendments or information.

3 Pending receipt of the requested amendments or information in relation to a request under Section 4 of this chapter, the requested Party may take any of the measures referred to in Sections 2 or 3 of this chapter.

Article 39 — Plurality of requests

1 Where the requested Party receives more than one request under Sections 3 or 4 of this chapter in respect of the same person or property, the plurality of requests shall not prevent that Party from dealing with the requests involving the taking of provisional measures.

2 In the case of plurality of requests under Section 4 of this chapter, the requested Party shall consider consulting the requesting Parties.

Article 40 — Obligation to give reasons

The requested Party shall give reasons for any decision to refuse, postpone or make conditional any co-operation under this chapter.

Article 41 — Information

1 The requested Party shall promptly inform the requesting Party of:

a the action initiated on a request under this chapter;

b the final result of the action carried out on the basis of the request;

c a decision to refuse, postpone or make conditional, in whole or in part, any co-operation under this chapter;

d any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly; and

e in the event of provisional measures taken pursuant to a request under Sections 2 or 3 of this chapter, such provisions of its domestic law as would automatically lead to the lifting of the provisional measure.

2 The requesting Party shall promptly inform the requested Party of:

a any review, decision or any other fact by reason of which the confiscation order ceases to be wholly or partially enforceable; and

b any development, factual or legal, by reason of which any action under this chapter is no longer justified.

3 Where a Party, on the basis of the same confiscation order, requests confiscation in more than one Party, it shall inform all Parties which are affected by an enforcement of the order about the request.

Article 42 — Restriction of use

1 The requested Party may make the execution of a request dependent on the condition that the information or evidence obtained will not, without its prior consent, be used or transmitted by the authorities of the requesting Party for investigations or proceedings other than those specified in the request.

2 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe, declare that, without its prior consent, information or evidence provided by it under this chapter may not be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.

Article 43 — Confidentiality

1 The requesting Party may require that the requested Party keep confidential the facts and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

2 The requesting Party shall, if not contrary to basic principles of its national law and if so requested, keep confidential any evidence and information provided by the requested Party, except to the extent that its disclosure is necessary for the investigations or proceedings described in the request.

3 Subject to the provisions of its domestic law, a Party which has received spontaneous information under Article 20 shall comply with any requirement of confidentiality as required by the Party which supplies the information. If the other Party cannot comply with such requirement, it shall promptly inform the transmitting Party.

Article 44 — Costs

The ordinary costs of complying with a request shall be borne by the requested Party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the Parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.

Article 45 — Damages

1 When legal action on liability for damages resulting from an act or omission in relation to co-operation under this chapter has been initiated by a person, the Parties concerned shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.

2 A Party which has become subject of a litigation for damages shall endeavour to inform the other Party of such litigation if that Party might have an interest in the case.

F175[Schedule 10A

Text of Istanbul Convention

The member States of the Council of Europe and the other signatories hereto,

Recalling the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007);

Recalling the following recommendations of the Committee of Ministers to member States of the Council of Europe: Recommendation Rec(2002) 5 on the protection of women against violence, Recommendation CM/Rec(2007) 17 on gender equality standards and mechanisms, Recommendation CM/Rec(2010) 10 on the role of women and men in conflict prevention and resolution and in peace building, and other relevant recommendations;

Taking account of the growing body of case law of the European Court of Human Rights which sets important standards in the field of violence against women;

Having regard to the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW", 1979) and its Optional Protocol (1999) as well as General Recommendation No. 19 of the CEDAW Committee on violence against women, the United Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000) and the United Nations Convention on the Rights of Persons with Disabilities (2006);

Having regard to the Rome Statute of the International Criminal Court (2002);

Recalling the basic principles of international humanitarian law, and especially the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949) and the Additional Protocols I and II (1977) thereto;

Condemning all forms of violence against women and domestic violence;

Recognising that the realisation of *de jure* and *de facto* equality between women and men is a key element in the prevention of violence against women;

Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women;

Recognising the structural nature of violence against women as gender-based violence, and that violence against women is one of

the crucial social mechanisms by which women are forced into a subordinate position compared with men;

Recognising, with grave concern, that women and girls are often exposed to serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called "honour" and genital mutilation, which constitute a serious violation of the human rights of women and girls and a major obstacle to the achievement of equality between women and men;

Recognising the ongoing human rights violations during armed conflicts that affect the civilian population, especially women in the form of widespread or systematic rape and sexual violence and the potential for increased gender-based violence both during and after conflicts;

Recognising that women and girls are exposed to a higher risk of gender-based violence than men;

Recognising that domestic violence affects women disproportionately, and that men may also be victims of domestic violence;

Recognising that children are victims of domestic violence, including as witnesses of violence in the family;

Aspiring to create a Europe free from violence against women and domestic violence,

Have agreed as follows:

Chapter I - Purposes, definitions, equality and non-discrimination, general obligations

Article 1 - Purposes of the Convention

1 The purposes of this Convention are to:

a protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;

b contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;

c design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;

d promote international co-operation with a view to eliminating violence against women and domestic violence;

e provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.

2 In order to ensure effective implementation of its provisions by the Parties, this Convention establishes a specific monitoring mechanism.

Article 2 - Scope of the Convention

1 This Convention shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately.

2 Parties are encouraged to apply this Convention to all victims of domestic violence. Parties shall pay particular attention to women victims of gender-based violence in implementing the provisions of this Convention.

3 This Convention shall apply in times of peace and in situations of armed conflict.

Article 3 - Definitions

For the purpose of this Convention:

a "violence against women" is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

b "domestic violence" shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;

c "gender" shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;

d "gender-based violence against women" shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;

e "victim" shall mean any natural person who is subject to the conduct specified in points a and b;

f "women" includes girls under the age of 18.

Article 4 - Fundamental rights, equality and non-discrimination

1 Parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.

2 Parties condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it, in particular by:

- embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realisation of this principle;

- prohibiting discrimination against women, including through the use of sanctions, where appropriate;

- abolishing laws and practices which discriminate against women.

3 The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.

4 Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention.

Article 5 - State obligations and due diligence

1 Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.

2 Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.

Article 6 - Gender-sensitive policies

Parties shall undertake to include a gender perspective in the implementation and evaluation of the impact of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women.

Chapter II - Integrated policies and data collection

Article 7 - Comprehensive and co-ordinated policies

1 Parties shall take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women.

2 Parties shall ensure that policies referred to in paragraph 1 place the rights of the victim at the centre of all measures and are implemented by way of effective co-operation among all relevant agencies, institutions and organisations.

3 Measures taken pursuant to this article shall involve, where appropriate, all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations.

Article 8 - Financial resources

Parties shall allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of this Convention, including those carried out by non-governmental organisations and civil society.

Article 9 - Non-governmental organisations and civil society

Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society active in combating violence against women and establish effective co-operation with these organisations.

Article 10 - Co-ordinating body

1 Parties shall designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by this Convention. These bodies shall co-ordinate the collection of data as referred to in Article 11, analyse and disseminate its results.

2 Parties shall ensure that the bodies designated or established pursuant to this article receive information of a general nature on measures taken pursuant to Chapter VIII.

3 Parties shall ensure that the bodies designated or established pursuant to this article shall have the capacity to communicate directly and foster relations with their counterparts in other Parties.

Article 11 - Data collection and research

1 For the purpose of the implementation of this Convention, Parties shall undertake to:

a collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention;

b support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention.

2 Parties shall endeavour to conduct population-based surveys at regular intervals to assess the prevalence of and trends in all forms of violence covered by the scope of this Convention.

3 Parties shall provide the group of experts, as referred to in Article 66 of this Convention, with the information collected pursuant to this article in order to stimulate international co-operation and enable international benchmarking.

4 Parties shall ensure that the information collected pursuant to this article is available to the public.

Chapter III - Prevention

Article 12 - General obligations

1 Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.

2 Parties shall take the necessary legislative and other measures to prevent all forms of violence covered by the scope of this Convention by any natural or legal person.

3 Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre.

4 Parties shall take the necessary measures to encourage all members of society, especially men and boys, to contribute actively to preventing all forms of violence covered by the scope of this Convention.

5 Parties shall ensure that culture, custom, religion, tradition or so-called "honour" shall not be considered as justification for any acts of violence covered by the scope of this Convention.

6 Parties shall take the necessary measures to promote programmes and activities for the empowerment of women.

Article 13 - Awareness-raising

1 Parties shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women's organisations, where appropriate, to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the scope of this Convention, their consequences on children and the need to prevent such violence.

2 Parties shall ensure the wide dissemination among the general public of information on measures available to prevent acts of violence covered by the scope of this Convention.

Article 14 - Education

1 Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.

2 Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.

Article 15 - Training of professionals

1 Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.

2 Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to

allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.

Article 16 - Preventive intervention and treatment programmes

1 Parties shall take the necessary legislative or other measures to set up or support programmes aimed at teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships with a view to preventing further violence and changing violent behavioural patterns.

2 Parties shall take the necessary legislative or other measures to set up or support treatment programmes aimed at preventing perpetrators, in particular sex offenders, from re-offending.

3 In taking the measures referred to in paragraphs 1 and 2, Parties shall ensure that the safety of, support for and the human rights of victims are of primary concern and that, where appropriate, these programmes are set up and implemented in close co-ordination with specialist support services for victims.

Article 17 - Participation of the private sector and the media

1 Parties shall encourage the private sector, the information and communication technology sector and the media, with due respect for freedom of expression and their independence, to participate in the elaboration and implementation of policies and to set guidelines and self-regulatory standards to prevent violence against women and to enhance respect for their dignity.

2 Parties shall develop and promote, in co-operation with private sector actors, skills among children, parents and educators on how to deal with the information and communications environment that provides access to degrading content of a sexual or violent nature which might be harmful.

Chapter IV - Protection and support

Article 18 - General obligations

1 Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.

2 Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention.

3 Parties shall ensure that measures taken pursuant to this chapter shall:

- be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim;

- be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment;

- aim at avoiding secondary victimisation;

- aim at the empowerment and economic independence of women victims of violence;

- allow, where appropriate, for a range of protection and support services to be located on the same premises;

- address the specific needs of vulnerable persons, including child victims, and be made available to them.

4 The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.

5 Parties shall take the appropriate measures to provide consular and other protection and support to their nationals and other victims entitled to such protection in accordance with their obligations under international law.

Article 19 - Information

Parties shall take the necessary legislative or other measures to ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand.

Article 20 - General support services

1 Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.

2 Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services.

Article 21 - Assistance in individual/collective complaints

Parties shall ensure that victims have information on and access to applicable regional and international individual/collective complaints mechanisms. Parties shall promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints.

Article 22 - Specialist support services

1 Parties shall take the necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution, immediate, short- and long-term specialist support services to any victim subjected to any of the acts of violence covered by the scope of this Convention.

2 Parties shall provide or arrange for specialist women's support services to all women victims of violence and their children.

Article 23 - Shelters

Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.

Article 24 - Telephone helplines

Parties shall take the necessary legislative or other measures to set up state-wide round-the-clock (24/7) telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity, in relation to all forms of violence covered by the scope of this Convention.

Article 25 - Support for victims of sexual violence

Parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims.

Article 26 - Protection and support for child witnesses

1 Parties shall take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of this Convention.

2 Measures taken pursuant to this article shall include age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child.

Article 27 - Reporting

Parties shall take the necessary measures to encourage any person witness to the commission of acts of violence covered by the scope of this Convention or who has reasonable grounds to believe that such an act may be committed, or that further acts of violence are to be expected, to report this to the competent organisations or authorities.

Article 28 - Reporting by professionals

Parties shall take the necessary measures to ensure that the confidentiality rules imposed by internal law on certain professionals do not constitute an obstacle to the possibility, under appropriate conditions, of their reporting to the competent organisations or authorities if they have reasonable grounds to believe that a serious act of violence covered by the scope of this Convention, has been committed and further serious acts of violence are to be expected.

Chapter V - Substantive law

Article 29 - Civil lawsuits and remedies

1 Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrator.

2 Parties shall take the necessary legislative or other measures to provide victims, in accordance with the general principles of international law, with adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.

Article 30 - Compensation

1 Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention.

2 Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety.

3 Measures taken pursuant to paragraph 2 shall ensure the granting of compensation within a reasonable time.

Article 31 - Custody, visitation rights and safety

1 Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.

2 Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.

Article 32 - Civil consequences of forced marriages

Parties shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim.

Article 33 - Psychological violence

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised.

Article 34 - Stalking

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.

Article 35 - Physical violence

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of committing acts of physical violence against another person is criminalised.

Article 36 - Sexual violence, including rape

1 Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

a engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;

b engaging in other non-consensual acts of a sexual nature with a person;

c causing another person to engage in non-consensual acts of a sexual nature with a third person.

2 Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.

3 Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law.

Article 37 - Forced marriage

1 Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.

2 Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.

Article 38 - Female genital mutilation

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

a excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;

b coercing or procuring a woman to undergo any of the acts listed in point a;

c inciting, coercing or procuring a girl to undergo any of the acts listed in point a.

Article 39 - Forced abortion and forced sterilisation

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

a performing an abortion on a woman without her prior and informed consent;

b performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.

Article 40 - Sexual harassment

Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.

Article 41 - Aiding or abetting and attempt

1 Parties shall take the necessary legislative or other measures to establish as an offence, when committed intentionally, aiding or abetting the commission of the offences established in accordance with Articles 33, 34, 35, 36, 37, 38. a and 39 of this Convention.

2 Parties shall take the necessary legislative or other measures to establish as offences, when committed intentionally, attempts to commit the offences established in accordance with Articles 35, 36, 37, 38. a and 39 of this Convention.

Article 42 - Unacceptable justifications for crimes, including crimes committed in the name of so-called "honour"

1 Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called "honour" shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.

2 Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed.

Article 43 - Application of criminal offences

The offences established in accordance with this Convention shall apply irrespective of the nature of the relationship between victim and perpetrator.

Article 44 - Jurisdiction

1 Parties shall take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

a in their territory; or

b on board a ship flying their flag; or

c on board an aircraft registered under their laws; or

d by one of their nationals; or

e by a person who has her or his habitual residence in their territory.

2 Parties shall endeavour to take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention where the offence is committed

against one of their nationals or a person who has her or his habitual residence in their territory.

3 For the prosecution of the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, Parties shall take the necessary legislative or other measures to ensure that their jurisdiction is not subordinated to the condition that the acts are criminalised in the territory where they were committed.

4 For the prosecution of the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, Parties shall take the necessary legislative or other measures to ensure that their jurisdiction as regards points d and e of paragraph 1 is not subordinated to the condition that the prosecution can only be initiated following the reporting by the victim of the offence or the laying of information by the State of the place where the offence was committed.

5 Parties shall take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged perpetrator is present on their territory and they do not extradite her or him to another Party, solely on the basis of her or his nationality.

6 When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult each other with a view to determining the most appropriate jurisdiction for prosecution.

7 Without prejudice to the general rules of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its internal law.

Article 45 - Sanctions and measures

1 Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.

2 Parties may adopt other measures in relation to perpetrators, such as:

- monitoring or supervision of convicted persons;

- withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.

Article 46 - Aggravating circumstances

Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

a the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;

b the offence, or related offences, were committed repeatedly;

c the offence was committed against a person made vulnerable by particular circumstances;

d the offence was committed against or in the presence of a child;

e the offence was committed by two or more people acting together;

f the offence was preceded or accompanied by extreme levels of violence;

g the offence was committed with the use or threat of a weapon;

h the offence resulted in severe physical or psychological harm for the victim;

i the perpetrator had previously been convicted of offences of a similar nature.

Article 47 - Sentences passed by another Party

Parties shall take the necessary legislative or other measures to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with this Convention when determining the sentence.

Article 48 - Prohibition of mandatory alternative dispute resolution processes or sentencing

1 Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention.

2 Parties shall take the necessary legislative or other measures to ensure that if the payment of a fine is ordered, due account shall be taken of the ability of the perpetrator to assume his or her financial obligations towards the victim.

Chapter VI - Investigation, prosecution, procedural law and protective measures

Article 49 - General obligations

1 Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.

2 Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention.

Article 50 - Immediate response, prevention and protection

1 Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.

2 Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

Article 51 - Risk assessment and risk management

1 Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide co-ordinated safety and support.

2 Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.

Article 52 - Emergency barring orders

Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.

Article 53 - Restraining or protection orders

1 Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention.

2 Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are:

- available for immediate protection and without undue financial or administrative burdens placed on the victim;

- issued for a specified period or until modified or discharged;

- where necessary, issued on an ex parte basis which has immediate effect;

- available irrespective of, or in addition to, other legal proceedings;

- allowed to be introduced in subsequent legal proceedings.

3 Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

Article 54 - Investigations and evidence

Parties shall take the necessary legislative or other measures to ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary.

Article 55 - *Ex parte* and *ex officio* proceedings

1 Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.

2 Parties shall take the necessary legislative or other measures to ensure, in accordance with the conditions provided for by their internal law, the possibility for governmental and non-governmental organisations and domestic violence counsellors to assist and/or support victims, at their request, during investigations and judicial proceedings concerning the offences established in accordance with this Convention.

Article 56 - Measures of protection

1 Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:

a providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;

b ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;

c informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;

d enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;

e providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;

f ensuring that measures may be adopted to protect the privacy and the image of the victim;

g ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;

h providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;

i enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.

2 A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.

Article 57 - Legal aid

Parties shall provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law.

Article 58 - Statute of limitation

Parties shall take the necessary legislative and other measures to ensure that the statute of limitation for initiating any legal proceedings with regard to the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, shall continue for a period of time that is sufficient and commensurate with the gravity of the offence in question, to allow for the efficient initiation of proceedings after the victim has reached the age of majority.

Chapter VII - Migration and asylum

Article 59 - Residence status

1 Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.

2 Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit.

3 Parties shall issue a renewable residence permit to victims in one of the two following situations, or in both:

a where the competent authority considers that their stay is necessary owing to their personal situation;

b where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

4 Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.

Article 60 - Gender-based asylum claims

1 Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.

2 Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.

3 Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

Article 61 - Non-refoulement

1 Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.

2 Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

Chapter VIII - International co-operation

Article 62 - General principles

1 Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through the application of relevant international and regional instruments on co-operation in civil and criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

a preventing, combating and prosecuting all forms of violence covered by the scope of this Convention;

b protecting and providing assistance to victims;

c investigations or proceedings concerning the offences established in accordance with this Convention;

d enforcing relevant civil and criminal judgments issued by the judicial authorities of Parties, including protection orders.

2 Parties shall take the necessary legislative or other measures to ensure that victims of an offence established in accordance with this Convention and committed in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence.

3 If a Party that makes mutual legal assistance in criminal matters, extradition or enforcement of civil or criminal judgments imposed by another Party to this Convention conditional on the existence of a treaty receives a request for such legal co-operation from a Party with which it has not concluded such a treaty, it may consider this Convention to be the legal basis for mutual legal assistance in criminal matters, extradition or enforcement of civil or criminal judgments imposed by the other Party in respect of the offences established in accordance with this Convention.

4 Parties shall endeavour to integrate, where appropriate, the prevention and the fight against violence against women and domestic violence in assistance programmes for development provided for the benefit of third States, including by entering into bilateral and multilateral agreements with third States with a view to facilitating the protection of victims in accordance with Article 18, paragraph 5.

Article 63 - Measures relating to persons at risk

When a Party, on the basis of the information at its disposal, has reasonable grounds to believe that a person is at immediate risk of being subjected to any of the acts of violence referred to in Articles 36, 37, 38 and 39 of this Convention on the territory of another Party, the Party that has the information is encouraged to transmit it without delay to the latter for the purpose of ensuring that appropriate protection measures are taken. Where applicable, this information shall include details on existing protection provisions for the benefit of the person at risk.

Article 64 - Information

1 The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

2 A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in preventing criminal offences established in accordance with this Convention or in initiating or carrying out investigations or proceedings concerning such criminal offences or that it might lead to a request for co-operation by that Party under this chapter.

3 A Party receiving any information in accordance with paragraph 2 shall submit such information to its competent authorities in order that proceedings may be taken if they are considered appropriate, or that this information may be taken into account in relevant civil and criminal proceedings.

Article 65 - Data Protection

Personal data shall be stored and used pursuant to the obligations undertaken by the Parties under the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

Chapter IX - Monitoring mechanism

Article 66 - Group of experts on action against violence against women and domestic violence

1 The Group of experts on action against violence against women and domestic violence (hereinafter referred to as "GREVIO") shall monitor the implementation of this Convention by the Parties.

2 GREVIO shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as multidisciplinary expertise. Its members shall be elected by the Committee of the Parties from among candidates nominated by the Parties for a term of office of four years, renewable once, and chosen from among nationals of the Parties.

3 The initial election of 10 members shall be held within a period of one year following the entry into force of this Convention. The election of five additional members shall be held following the 25th ratification or accession.

4 The election of the members of GREVIO shall be based on the following principles:

a they shall be chosen according to a transparent procedure from among persons of high moral character, known for their recognised competence in the fields of human rights, gender equality, violence against women and domestic violence, or assistance to and protection of victims, or having demonstrated professional experience in the areas covered by this Convention;

b no two members of GREVIO may be nationals of the same State;

c they should represent the main legal systems;

d they should represent relevant actors and agencies in the field of violence against women and domestic violence;

e they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions, and shall be available to carry out their duties in an effective manner.

5 The election procedure of the members of GREVIO shall be determined by the Committee of Ministers of the Council of Europe, after consulting with and obtaining the unanimous consent of the Parties, within a period of six months following the entry into force of this Convention.

6 GREVIO shall adopt its own rules of procedure.

7 Members of GREVIO, and other members of delegations carrying out the country visits as set forth in Article 68, paragraphs 9 and 14, shall enjoy the privileges and immunities established in the appendix to this Convention.

Article 67 - Committee of the Parties

1 The Committee of the Parties shall be composed of the representatives of the Parties to the Convention.

2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the members of GREVIO. It shall subsequently meet whenever one third of the Parties, the President of the Committee of the Parties or the Secretary General so requests.

3 The Committee of the Parties shall adopt its own rules of procedure.

Article 68 - Procedure

1 Parties shall submit to the Secretary General of the Council of Europe, based on a questionnaire prepared by GREVIO, a report on legislative and other measures giving effect to the provisions of this Convention, for consideration by GREVIO.

2 GREVIO shall consider the report submitted in accordance with paragraph 1 with the representatives of the Party concerned.

3 Subsequent evaluation procedures shall be divided into rounds, the length of which is determined by GREVIO. At the beginning of each round GREVIO shall select the specific provisions on which the evaluation procedure shall be based and send out a questionnaire.

4 GREVIO shall define the appropriate means to carry out this monitoring procedure. It may in particular adopt a questionnaire for each evaluation round, which shall serve as a basis for the evaluation procedure of the implementation by the Parties. This questionnaire shall be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GREVIO.

5 GREVIO may receive information on the implementation of the Convention from non-governmental organisations and civil society, as well as from national institutions for the protection of human rights.

6 GREVIO shall take due consideration of the existing information available from other regional and international instruments and bodies in areas falling within the scope of this Convention.

7 When adopting a questionnaire for each evaluation round, GREVIO shall take due consideration of the existing data collection and research in the Parties as referred to in Article 11 of this Convention.

8 GREVIO may receive information on the implementation of the Convention from the Council of Europe Commissioner for Human Rights, the Parliamentary Assembly and relevant specialised bodies of the Council of Europe, as well as those established under other international instruments. Complaints presented to these bodies and their outcome will be made available to GREVIO.

9 GREVIO may subsidiarily organise, in co-operation with the national authorities and with the assistance of independent national experts, country visits, if the information gained is insufficient or

in cases provided for in paragraph 14. During these visits, GREVIO may be assisted by specialists in specific fields.

10 GREVIO shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments shall be taken into account by GREVIO when adopting its report.

11 On the basis of all the information received and the comments by the Parties, GREVIO shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of this Convention. This report and the conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GREVIO shall be made public as from their adoption, together with eventual comments by the Party concerned.

12 Without prejudice to the procedure of paragraphs 1 to 8, the Committee of the Parties may adopt, on the basis of the report and conclusions of GREVIO, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GREVIO, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of this Convention.

13 If GREVIO receives reliable information indicating a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention, it may request the urgent submission of a special report concerning measures taken to prevent a serious, massive or persistent pattern of violence against women.

14 Taking into account the information submitted by the Party concerned, as well as any other reliable information available to it, GREVIO may designate one or more of its members to conduct an inquiry and to report urgently to GREVIO. Where warranted and with the consent of the Party, the inquiry may include a visit to its territory.

15 After examining the findings of the inquiry referred to in paragraph 14, GREVIO shall transmit these findings to the Party concerned and, where appropriate, to the Committee of the Parties and the Committee of Ministers of the Council of Europe together with any comments and recommendations.

Article 69 - General recommendations

GREVIO may adopt, where appropriate, general recommendations on the implementation of this Convention.

Article 70 - Parliamentary involvement in monitoring

1 National parliaments shall be invited to participate in the monitoring of the measures taken for the implementation of this Convention.

2 Parties shall submit the reports of GREVIO to their national parliaments.

3 The Parliamentary Assembly of the Council of Europe shall be invited to regularly take stock of the implementation of this Convention.

Chapter X - Relationship with other international instruments

Article 71 - Relationship with other international instruments

1 This Convention shall not affect obligations arising from other international instruments to which Parties to this Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention.

2 The Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

Chapter XI - Amendments to the Convention

Article 72 - Amendments

1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by her or him to the member States of the Council of Europe, any signatory, any Party, the European Union, any State invited to sign this Convention in accordance with the provisions of Article 75, and any State invited to accede to this Convention in accordance with the provisions of Article 76.

2 The Committee of Ministers of the Council of Europe shall consider the proposed amendment and, after having consulted the Parties to this Convention that are not members of the Council of Europe, may adopt the amendment by the majority provided for in Article 20. d of the Statute of the Council of Europe.

3 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 2 shall be forwarded to the Parties for acceptance.

4 Any amendment adopted in accordance with paragraph 2 shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General of their acceptance.

Chapter XII - Final clauses

Article 73 - Effects of this Convention

The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to persons in preventing and combating violence against women and domestic violence.

Article 74 - Dispute settlement

1 The Parties to any dispute which may arise concerning the application or interpretation of the provisions of this Convention shall first seek to resolve it by means of negotiation, conciliation,

arbitration or by any other methods of peaceful settlement accepted by mutual agreement between them.

2 The Committee of Ministers of the Council of Europe may establish procedures of settlement to be available for use by the Parties in dispute if they should so agree.

Article 75 - Signature and entry into force

1 This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Union.

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 signatories, including at least eight member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2.

4 In respect of any State referred to in paragraph 1 or the European Union, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 76 - Accession to the Convention

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20. d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Parties entitled to sit on the Committee of Ministers.

2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 77 - Territorial application

1 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three

months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 78 - Reservations

1 No reservation may be made in respect of any provision of this Convention, with the exceptions provided for in paragraphs 2 and 3.

2 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the provisions laid down in:

- Article 30, paragraph 2;

- Article 44, paragraphs 1. e, 3 and 4;

- Article 55, paragraph 1 in respect of Article 35 regarding minor offences;

- Article 58 in respect of Articles 37, 38 and 39;

- Article 59.

3 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right to provide for non-criminal sanctions, instead of criminal sanctions, for the behaviours referred to in Articles 33 and 34.

4 Any Party may wholly or partly withdraw a reservation by means of a declaration addressed to the Secretary General of the Council of Europe. This declaration shall become effective as from its date of receipt by the Secretary General.

Article 79 - Validity and review of reservations

1 Reservations referred to in Article 78, paragraphs 2 and 3, shall be valid for a period of five years from the day of the entry into force of this Convention in respect of the Party concerned. However, such reservations may be renewed for periods of the same duration.

2 Eighteen months before the date of expiry of the reservation, the Secretariat General of the Council of Europe shall give notice of that expiry to the Party concerned. No later than three months before the expiry, the Party shall notify the Secretary General that it is upholding, amending or withdrawing its reservation. In the absence of a notification by the Party concerned, the Secretariat General shall inform that Party that its reservation is considered

to have been extended automatically for a period of six months. Failure by the Party concerned to notify its intention to uphold or modify its reservation before the expiry of that period shall cause the reservation to lapse.

3 If a Party makes a reservation in conformity with Article 78, paragraphs 2 and 3, it shall provide, before its renewal or upon request, an explanation to GREVIO, on the grounds justifying its continuance.

Article 80 - Denunciation

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 81 - Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in its elaboration, any signatory, any Party, the European Union, and any State invited to accede to this Convention of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this Convention in accordance with Articles 75 and 76;

d any amendment adopted in accordance with Article 72 and the date on which such an amendment enters into force;

e any reservation and withdrawal of reservation made in pursuance of Article 78;

f any denunciation made in pursuance of the provisions of Article 80;

g any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Istanbul, this 11th day of May 2011, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Union and to any State invited to accede to this Convention.**]**

Annotations

Amendments

F175 Inserted (29.04.2019) by *Criminal Law (Extraterritorial Jurisdiction) Act 2019* (6/2019), s. 4(b) and sch., S.I. No. 173 of 2019.

SCHEDULE 11

Text of Articles 13, 14, 18, 19 and 20 of the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000.

Article 13

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, *mut atis mutandis*, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 14

Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Article 18

Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the

speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the

requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 19

Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20

Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

SCHEDULE 12

Text of Articles 46, 49, 50 and 54 to 57 of the United Nations Convention against Corruption, done at New York on 31 October 2003

Article 46

Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential,

even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 49

Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 50

Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

Article 54

Mechanisms for recovery of property through international cooperation in confiscation

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds

for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Article 55

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 46 of this Convention are applicable, *mut atis mutandis*, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of

the actions requested and, where available, a legally admissible copy of an order on which the request is based.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

Article 56

Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

Article 57

Return and disposal of assets

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be

waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

SCHEDULE 13

Text of EU/US Agreement on Mutual Legal Assistance

THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA,

DESIRING further to facilitate cooperation between the European Union Member States and the United States of America,

DESIRING to combat crime in a more effective way as a means of protecting their respective democratic societies and common values,

HAVING DUE REGARD for rights of individuals and the rule of law,

MINDFUL of the guarantees under their respective legal systems which provide an accused person with the right to a fair trial, including the right to adjudication by an impartial tribunal established pursuant to law,

DESIRING to conclude an Agreement relating to mutual legal assistance in criminal matters,

HAVE AGREED AS FOLLOWS:

Article 1

Object and purpose

The Contracting Parties undertake, in accordance with the provisions of this Agreement, to provide for enhancements to cooperation and mutual legal assistance.

Article 2

Definitions

1. "Contracting Parties" shall mean the European Union and the United States of America.

2. "Member State" shall mean a Member State of the European Union.

Article 3

Scope of application of this Agreement in relation to bilateral mutual legal assistance treaties with Member States and in the absence thereof

1. The European Union, pursuant to the Treaty on European Union, and the United States of America shall ensure that the provisions of this Agreement are applied in relation to bilateral mutual legal assistance treaties between the Member States and the United States of America, in force at the time of the entry into force of this Agreement, under the following terms:

(a) Article 4 shall be applied to provide for identification of financial accounts and transactions in addition to any authority already provided under bilateral treaty provisions;

(b) Article 5 shall be applied to authorise the formation and activities of joint investigative teams in addition to any authority already provided under bilateral treaty provisions;

(c) Article 6 shall be applied to authorise the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States in addition to any authority already provided under bilateral treaty provisions;

(d) Article 7 shall be applied to provide for the use of expedited means of communication in addition to any authority already provided under bilateral treaty provisions;

(e) Article 8 shall be applied to authorise the providing of mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under bilateral treaty provisions;

(f) subject to Article 9(4) and (5), Article 9 shall be applied in place of, or in the absence of bilateral treaty provisions governing limitations on use of information or evidence provided to the requesting State, and governing the conditioning or refusal of assistance on data protection grounds;

(g) Article 10 shall be applied in the absence of bilateral treaty provisions pertaining to the circumstances under which a requesting State may seek the confidentiality of its request.

2. (a) The European Union, pursuant to the Treaty on European Union, shall ensure that each Member State acknowledges, in a written instrument between such Member State and the United States of America, the application, in the manner set forth in this Article, of its bilateral mutual legal assistance treaty in force with the United States of America.

(b) The European Union, pursuant to the Treaty on European Union, shall ensure that new Member States acceding to the European Union after the entry into force of this Agreement, and having bilateral mutual legal assistance treaties with the United States of America, take the measures referred to in subparagraph (a).

(c) The Contracting Parties shall endeavour to complete the process described in subparagraph (b) prior to the scheduled accession of a new Member State, or as soon as possible thereafter. The European Union shall notify the United States of America of the date of accession of new Member States.

3. (a) The European Union, pursuant to the Treaty on European Union, and the United States of America shall also ensure that the provisions of this Agreement are applied in the absence of a bilateral mutual legal assistance treaty in force between a Member State and the United States of America.

(b) The European Union, pursuant to the Treaty on European Union, shall ensure that such Member State acknowledges, in a written instrument between such Member State and the United States of America, the application of the provisions of this Agreement.

(c) The European Union, pursuant to the Treaty on European Union, shall ensure that new Member States acceding to the European Union after the entry into force of this Agreement, which do not have bilateral mutual legal assistance treaties with the United States of America, take the measures referred to in subparagraph (b).

4. If the process described in paragraph 2(b) and 3(c) is not completed by the date of accession, the provisions of this Agreement shall apply in the relations between the United States of America and that new Member State as from the date on which they have notified each other and the European Union of the completion of their internal procedures for that purpose.

5. The Contracting Parties agree that this Agreement is intended solely for mutual legal assistance between the States concerned. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request, nor expand or limit rights otherwise available under domestic law.

Article 4

Identification of bank information

1. (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offence is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offence;

(ii) information in the possession of non-bank financial institutions; or

(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions; and

(b) sufficient information to enable the competent authority of the requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offence and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding;

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Requests for assistance under this Article shall be transmitted between:

(a) central authorities responsible for mutual legal assistance in Member States, or national authorities of Member States responsible for investigation or prosecution of criminal offences as designated pursuant to Article 15(2); and

(b) national authorities of the United States responsible for investigation or prosecution of criminal offences, as designated pursuant to Article 15(2).

The Contracting Parties may, following the entry into force of this Agreement, agree by Exchange of Diplomatic Note to modify the channels through which requests under this Article are made.

4. (a) Subject to subparagraph (b), a State may, pursuant to Article 15, limit its obligation to provide assistance under this Article to:

(i) offences punishable under the laws of both the requested and requesting States;

(ii) offences punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State; or

(iii) designated serious offences punishable under the laws of both the requested and requesting States.

(b) A State which limits its obligation pursuant to subparagraph (a)(ii) or (iii) shall, at a minimum, enable identification of accounts associated with terrorist activity and the laundering of proceeds generated from a comprehensive range of serious criminal activities, punishable under the laws of both the requesting and requested States.

5. Assistance may not be refused under this Article on grounds of bank secrecy.

6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article, in accordance with the provisions of the applicable mutual legal assistance treaty in force between the States concerned, or in the absence thereof, in accordance with the requirements of its domestic law.

7. The Contracting Parties shall take measures to avoid the imposition of extraordinary burdens on requested States through application of this Article. Where extraordinary burdens on a requested State nonetheless result, including on banks or by operation of the channels of communications foreseen in this Article, the Contracting Parties shall immediately consult with a view to facilitating the application of this Article, including the taking of such measures as may be required to reduce pending and future burdens.

Article 5

Joint investigative teams

1. The Contracting Parties shall, to the extent they have not already done so, take such measures as may be necessary to enable joint investigative teams to be established and operated in the respective territories of each Member State and the United States of America for the purpose of facilitating criminal investigations or

prosecutions involving one or more Member States and the United States of America where deemed appropriate by the Member State concerned and the United States of America.

2. The procedures under which the team is to operate, such as its composition, duration, location, organisation, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offences, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 6

Video conferencing

1. The Contracting Parties shall take such measures as may be necessary to enable the use of video transmission technology between each Member State and the United States of America for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in a requested State, to the extent such assistance is not currently available. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as provided under the applicable mutual legal assistance treaty in force between the States concerned, or the law of the requested State, as applicable.

2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne in accordance with the applicable provisions of the mutual legal assistance treaty in force between the States concerned, or where there is no such treaty, as agreed upon by the requesting and requested States.

3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

6. This Article is without prejudice to application of provisions of bilateral mutual legal assistance agreements between Member States and the United States of America that require or permit the use of video conferencing technology for purposes other than those described in paragraph 1, including for purposes of identification of persons

or objects, or taking of investigative statements. Where not already provided for under applicable treaty or law, a State may permit the use of video conferencing technology in such instances.

Article 7

Expedited transmission of requests

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication.

Article 8

Mutual legal assistance to administrative authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. (a) Requests for assistance under this Article shall be transmitted between the central authorities designated pursuant to the bilateral mutual legal assistance treaty in force between the States concerned, or between such other authorities as may be agreed by the central authorities.

(b) In the absence of a treaty, requests shall be transmitted between the United States Department of Justice and the Ministry of Justice or, pursuant to Article 15(1), comparable Ministry of the Member State concerned responsible for transmission of mutual legal assistance requests, or between such other authorities as may be agreed by the Department of Justice and such Ministry.

3. The Contracting Parties shall take measures to avoid the imposition of extraordinary burdens on requested States through application of this Article. Where extraordinary burdens on a requested State nonetheless result, the Contracting Parties shall immediately consult with a view to facilitating the application of this Article, including the taking of such measures as may be required to reduce pending and future burdens.

Article 9

Limitations on use to protect personal and other data

1. The requesting State may use any evidence or information obtained from the requested State:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered under Article 8;

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the requested State.

2. (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected.

4. A requested State may apply the use limitation provision of the applicable bilateral mutual legal assistance treaty in lieu of this Article, where doing so will result in less restriction on the use of information and evidence than provided for in this Article.

5. Where a bilateral mutual legal assistance treaty in force between a Member State and the United States of America on the date of signature of this Agreement, permits limitation of the obligation to provide assistance with respect to certain tax offences, the Member State concerned may indicate, in its exchange of written instruments with the United States of America described in Article 3(2), that, with respect to such offences, it will continue to apply the use limitation provision of that treaty.

Article 10

Requesting State's request for confidentiality

The requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the requesting State. If the request cannot be executed without breaching the requested confidentiality, the central authority of the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

Article 11

Consultations

The Contracting Parties shall, as appropriate, consult to enable the most effective use to be made of this Agreement, including to facilitate the resolution of any dispute regarding the interpretation or application of this Agreement.

Article 12

Temporal application

1. This Agreement shall apply to offences committed before as well as after it enters into force.

2. This Agreement shall apply to requests for mutual legal assistance made after its entry into force. Nevertheless, Articles 6 and 7 shall apply to requests pending in a requested State at the time this Agreement enters into force.

Article 13

Non-derogation

Subject to Article 4(5) and Article 9(2)(b), this Agreement is without prejudice to the invocation by the requested State of grounds for refusal of assistance available pursuant to a bilateral mutual legal assistance treaty, or, in the absence of a treaty, its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, order public or other essential interests.

Article 14

Future bilateral mutual legal assistance treaties with Member States

This Agreement shall not preclude the conclusion, after its entry into force, of bilateral Agreements between a Member State and the United States of America consistent with this Agreement.

Article 15

Designations and notifications

1. Where a Ministry other than the Ministry of Justice has been designated under Article 8(2)(b), the European Union shall notify the United States of America of such designation prior to the exchange of written instruments described in Article 3(3) between the Member States and the United States of America.

2. The Contracting Parties, on the basis of consultations between them on which national authorities responsible for the investigation and prosecution of offences to designate pursuant to Article 4(3), shall notify each other of the national authorities so designated prior to the exchange of written instruments described in Article 3(2) and (3) between the Member States and the United States of America. The European Union shall, for Member States having no mutual legal assistance treaty with the United States of America, notify the United States of America prior to such exchange of the identity of the central authorities under Article 4(3).

3. The Contracting Parties shall notify each other of any limitations invoked under Article 4(4) prior to the exchange of written instruments described in Article 3(2) and (3) between the Member States and the United States of America.

Article 16

Territorial application

1. This Agreement shall apply:

(a) to the United States of America;

(b) in relation to the European Union, to:

— Member States,

— territories for whose external relations a Member State has responsibility, or countries that are not Member States for whom a Member State has other duties with respect to external relations, where agreed upon by exchange of diplomatic note between the Contracting Parties, duly confirmed by the relevant Member State.

2. The application of this Agreement to any territory or country in respect of which extension has been made in accordance with subparagraph (b) of paragraph 1 may be terminated by either Contracting Party giving six months' written notice to the other Contracting Party through the diplomatic channel, where duly confirmed between the relevant Member State and the United States of America.

Article 17

Review

The Contracting Parties agree to carry out a common review of this Agreement no later than five years after its entry into force. The review shall address in particular the practical implementation of the Agreement and may also include issues such as the consequences of further development of the European Union relating to the subject matter of this Agreement.

Article 18

Entry into force and termination

1. This Agreement shall enter into force on the first day following the third month after the date on which the Contracting Parties have exchanged instruments indicating that they have completed their internal procedures for this purpose. These instruments shall also indicate that the steps specified in Article 3(2) and (3) have been completed.

2. Either Contracting Party may terminate this Agreement at any time by giving written notice to the other Party, and such termination shall be effective six months after the date of such notice.

In witness whereof the undersigned Plenipotentiaries have signed this Agreement.

Done at Washington D.C. on the twenty-fifth day of June in the year two thousand and three in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

Explanatory Note on the Agreement on Mutual Legal Assistance between the European Union and the United States of America

This note reflects understandings regarding the application of certain provisions of the Agreement on Mutual Legal Assistance between the European Union and the United States of America (hereinafter "the Agreement") agreed between the Contracting Parties.

On Article 8

With respect to the mutual legal assistance to administrative authorities under Article 8(1), the first sentence of Article 8(1) imposes an obligation to afford mutual legal assistance to requesting United States of America federal administrative authorities and to requesting national administrative authorities of Member States. Under the second sentence of that paragraph mutual legal assistance may also be made available to other, that is non-federal or local, administrative authorities. This provision however, is available at the discretion of the requested State.

The Contracting Parties agree that under the first sentence of Article 8(1) mutual legal assistance will be made available to a requesting administrative authority that is, at the time of making the request, conducting investigations or proceedings in contemplation of criminal prosecution or referral of the investigated conduct to the competent prosecuting authorities, within the terms of its statutory mandate, as further described immediately below. The fact that, at the time of making the request referral for criminal prosecution is being contemplated does not exclude that, other sanctions than criminal ones may be pursued by that authority. Thus, mutual legal assistance obtained under Article 8(1) may lead the requesting administrative authority to the conclusion that pursuance of criminal proceedings or criminal referral would not be appropriate. These possible consequences do not affect the obligation upon the Contracting Parties to provide assistance under this Article.

However, the requesting administrative authority may not use Article 8(1) to request assistance where criminal prosecution or referral is not being contemplated, or for matters in which the conduct under investigation is not subject to criminal sanction or referral under the laws of the requesting State.

The European Union recalls that the subject matter of the Agreement for its part falls under the provisions on police and judicial cooperation in criminal matters set out in Title VI of the Treaty on European Union and that the Agreement has been concluded within the scope of these provisions.

On Article 9

Article 9(2)(b) is meant to ensure that refusal of assistance on data protection grounds may be invoked only in exceptional cases. Such a situation could arise if, upon balancing the important interests involved in the particular case (on the one hand, public interests, including the sound administration of justice and, on the other hand, privacy interests), furnishing the specific data sought by the requesting State would raise difficulties so fundamental as to be considered by the requested State to fall within the essential interests grounds for refusal. A broad, categorical, or systematic application of data protection principles by the requested State to refuse cooperation is therefore precluded. Thus, the fact the requesting and requested States have different systems of protecting the privacy of data (such as that the requesting State does not have the equivalent of a specialised data protection authority) or have different means of protecting personal data (such as that the requesting State uses means other than the process of deletion to protect the privacy or the accuracy of the personal data received by law enforcement authorities), may as such not be imposed as additional conditions under Article 9(2a).

On Article 14

Article 14 provides that the Agreement shall not preclude the conclusion, after its entry into force, of bilateral agreements on mutual legal assistance between a Member State and the United States of America consistent with the Agreement.

Should any measures set forth in the Agreement create an operational difficulty for the United States of America and one or more Member States, such difficulty should in the first place be resolved, if possible, through consultations between the Member State or Member States concerned and the United States of America, or, if appropriate, through the consultation procedures set out in the Agreement. Where it is not possible to address such operational difficulty through consultations alone, it would be consistent with the Agreement for future bilateral agreements between a Member State and the United States of America to provide an operationally feasible alternative mechanism that would satisfy the objectives of the specific provision with respect to which the difficulty has arisen.

SCHEDULE 14

Text of Ireland/US Treaty of 18 January 2001, as applied by Instrument of 14 July 2005

Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, as to the application of the Treaty between the Government of Ireland and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters signed 18 January 2001

1. As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and Ireland acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of Ireland and

the Government of the United States of America on Mutual Legal Assistance in Criminal Matters signed 18 January 2001 (hereafter "the 2001 Mutual Legal Assistance Treaty") under the following terms:

(*a*) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 16 *bis* of the Annex to this Instrument shall govern the identification of financial accounts and transactions, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(*b*) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 16 *ter* of the Annex to this Instrument shall govern the formation and activities of joint investigative teams, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(*c*) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Articles 6 and 16 *quater* of the Annex to this Instrument shall govern the taking of testimony of a person located in the requested Party by use of video transmission technology between the Requesting and Requested Parties, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(*d*) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4(1) of the Annex to this Instrument shall govern the use of expedited means of communication, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(*e*) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1(1 *bis*) of the Annex to this Instrument shall govern the providing of mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;

(*f)* Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Instrument shall govern the limitation on use of information or evidence provided to the Requesting Party, and the conditioning or refusal of assistance on data protection grounds.

2. The Annex reflects the integrated text of the provisions of the 2001 Mutual Legal Assistance Treaty and the U.S.-EU Mutual Legal Assistance Agreement that shall apply upon entry into force of this Instrument.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offences committed before as well as after it enters into force.

4. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 4(1), 6 and 16 *quater* of the Annex shall be applicable to requests made prior to such entry into force.

5. (*a*) This Instrument shall be subject to the completion by the United States of America and Ireland of their respective applicable internal procedures for entry into force. The Governments of the United States of America and Ireland shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(*b*) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 2001 Mutual Legal Assistance Treaty shall be applied. The Governments of the United States of America and Ireland nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Instrument.

DONE at Dublin, in duplicate, this 14th day of July, 2005.

FOR THE GOVERNMENT OF IRELAND:	FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

ANNEX

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF IRELAND ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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Article 1

Scope of Assistance

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offences, and in proceedings related to criminal matters.

1 *bis*. (*a*) Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution

authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

(*b*) Requests for assistance under this paragraph shall be transmitted between the Central Authorities designated pursuant to Article 2 of this Treaty, or between such other authorities as may be agreed by the Central Authorities.

2. Assistance shall include:

(*a*) taking the testimony or statements of persons;

(*b*) providing documents, records, and articles of evidence;

(*c*) locating or identifying persons;

(*d*) serving documents;

(*e*) transferring persons in custody for testimony or other purposes;

(*f*) executing requests for searches and seizures;

(*g*) identifying, tracing, freezing, seizing, and forfeiting the proceeds and instrumentalities of crime and assistance in related proceedings;

(*h*) such other assistance as may be agreed between Central Authorities.

3. Except when required by the laws of the Requested Party, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the territory of the Requesting Party would constitute an offence under the laws of the Requested Party.

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2

Central Authorities

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. For the Government of the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Government of Ireland, the Central Authority shall be the Minister for Justice, Equality and Law Reform or a person designated by the Minister.

3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

Article 3

Limitations on Assistance

1. The Central Authority of the Requested Party may deny assistance if:

(*a*) the Requested Party is of the opinion that the request, if granted, would impair its sovereignty, security, or other essential interests, or would be contrary to important public policy;

(*b*) the request relates to an offender who, if proceeded against under the law of the Requested Party for the offence for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction;

(*c*) the request relates to an offence that is regarded by the Central Authority of the Requested Party as:

(i) an offence of a political character; or

(ii) an offence under military law of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party; or

(*d*) the request is not made in conformity with the Treaty.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

Article 4

Form and Contents of Requests

1. (*a*) Requests for mutual legal assistance and communications related thereto may be made and responded to by expedited means of communications, including fax or e-mail, with formal confirmation of requests to follow where required by the Requested Party.

(*b*) In urgent cases, requests for mutual legal assistance may be made orally but shall be confirmed in writing within ten days.

(*c*) The Requested Party may respond by any such expedited means of communication.

(*d*) The request shall be in an official language of the Requested Party unless otherwise agreed.

2. The request shall include the following:

(*a*) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

(*b*) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offences which relate to the matter;

(*c*) a description of the evidence, information, or other assistance sought; and

(*d*) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

(*a*) information on the identity and location of any person from whom evidence is sought;

(*b*) information on the identity and location of a person be served, that person's relationship to the proceedings, and the manner in which service is to be made;

(c) information on the identity and whereabouts of a person to be located;

(*d*) a precise description of the place or person to be searched and of the articles to be seized;

(*e*) a description of the manner in which any testimony or statement is to be taken and recorded;

(*f)* a list of questions to be asked of a witness;

(*g*) a description of any particular procedure to be followed in executing the request;

(*h*) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled; and

(*i*) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.

4. The Requested Party may ask the Requesting Party to provide any further information which appears to the Requested Party to be necessary for the purpose of executing the request.

Article 5

Execution of Requests

1. As empowered by this Treaty or by national law, or in accordance with its national practice, the Central Authority of the Requested Party shall take whatever steps it deems necessary to execute promptly requests received from the Requesting Party. The Courts of the Requested Party shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested Party shall make all necessary arrangements for representation in the territory of the Requested Party of the Requesting Party in any proceedings arising out of a request for assistance.

3. The method of execution specified in the request shall be followed except to the extent that it is incompatible with the laws and practices of the Requested Party.

4. If the Central Authority of the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding under the laws of that Party, or prejudice the safety of any person, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Central Authority of the Requested Party shall, in accordance with its national law and practice, facilitate the presence in the execution of the request of such persons as are specified in the request.

6. The Requested Party shall, upon request, keep confidential any information which might indicate that a request has been made or responded to. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine the extent to which it wishes the request to be executed.

7. The Central Authority of the Requested Party shall respond to reasonable inquiries by the Central Authority of the Requesting Party concerning progress toward execution of the request.

8. The Central Authority of the Requested Party may ask the Central Authority of the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary

under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

9. The Central Authority of the Requesting Party shall promptly inform the Central Authority of the Requested Party of any circumstances which make it inappropriate to proceed with the execution of the request or which require modification of the action requested.

10. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

11. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party of the reasons for the denial.

Article 6

Costs

1. The Requested Party shall pay all costs relating to the execution of the request, including the costs of representation, except for:

(*a*) the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which costs, fees, allowances, and expenses shall be paid by the Requesting Party;

(*b*) the costs associated with establishing and servicing a video transmission, to the extent set forth in Article 16 *quater*.

2. If, during the execution of a request, it becomes apparent that complete execution will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7

Limitations on Use

1. The Requesting Party may use any evidence or information obtained from the Requested Party:

(*a*) for the purpose of its criminal investigations and proceedings;

(*b*) for preventing an immediate and serious threat to its public security;

(*c*) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered under Article 1 (1 *bis*)(a) of this Treaty;

(*d*) for any other purpose, if the evidence or information has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(*e*) for any other purpose only with the prior consent of the Requested Party.

2. (*a*) This Article shall not prejudice the ability of the Requested Party in accordance with this Treaty to impose additional conditions in a particular case where

the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested Party may require the Requesting Party to give information on the use made of the evidence or information.

(*b*) Generic restrictions with respect to the legal standards of the Requesting Party for processing personal data may not be imposed by the Requested Party as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the Requesting Party, the Requested Party becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested Party may consult with the Requesting Party to determine the extent to which the evidence and information can be protected.

Article 8

Testimony or Evidence in the Territory of the Requested Party

1. A person in the territory of the Requested Party from whom testimony or evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence.

2. Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. In accordance with its laws and practice, the Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to ask questions directly of the person whose testimony or evidence is being taken or indirectly through a legal representative qualified to appear before the courts of the Requested Party.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting Party, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting Party for resolution by the authorities of that Party.

5. Evidence produced in the territory of the Requested Party pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Forms A1 or A2, as applicable, appended to this Treaty. The absence or nonexistence of such records may, upon request, be certified through the use of Forms B1 or B2, as applicable, appended to this Treaty. Records authenticated by Forms A1 or A2, or Forms B1 or B2 certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting Party. Documentary information produced pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

Article 9

Records of Government Agencies

1. The Requested Party shall provide the Requesting Party with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the Requested Party.

2. The Requested Party may provide copies of any documents, records, or information which are in the possession of a government department or agency of that Party, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities.

The Requested Party may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Records produced pursuant to this Article shall, upon request, be authenticated under the provisions of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, dated October 5, 1961, or by an official competent to do so through the use of Forms C1 or C2, as applicable, appended to this Treaty. The absence or nonexistence of such records may, upon request, be certified through the use of Forms D1 or D2, as applicable, appended to this Treaty. No further authentication shall be necessary. Records authenticated by Forms C1 or C2, or Forms D1 or D2 certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting Party. Documentary information produced pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

Article 10

Testimony in the Territory of the Requesting Party

1. When the Requesting Party requests the appearance of a person in the territory of that Party, the Requested Party shall invite the person to appear voluntarily before the appropriate authority in the territory of the Requesting Party. The Requesting Party shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the response of the person.

2. The Central Authority of the Requesting Party may, in its discretion, determine that a person appearing in the territory of the Requesting Party pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded that person's departure from the territory of the Requested Party.

3. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting Party has notified the Central Authority of the Requested Party that the person's presence is no longer required, or when the person, having left the territory of the Requesting Party, voluntarily returns. The Central Authority of the Requesting Party may, in its discretion, extend this period for up to fifteen days if it determines that there is good cause to do so.

Article 11

Transfer of Persons in Custody

1. A person in the custody of one Party whose presence in the territory of the other Party is sought for purposes of assistance under this Treaty shall be transferred for those purposes if the person and the Central Authorities of both Parties consent.

2. For purposes of this Article:

(*a*) the receiving Party shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the sending Party;

(*b*) the receiving Party shall return the person transferred to the custody of the sending Party as soon as circumstances permit and in any event no later than the date upon which the person would have been released from custody in the territory of the sending Party, unless otherwise agreed by both Central Authorities and the person transferred;

(*c)* the receiving Party shall not require the sending Party to initiate extradition proceedings for the return of the person transferred; and

(*d)* the person transferred shall receive credit for service of the sentence imposed in the sending Party for time served in the custody of the receiving Party.

Article 12

Location or Identification of Persons or Items

The Requested Party shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

Article 13

Service of Documents

1. The Requested Party shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting Party under the provisions of this Treaty.

2. Service of any document by virtue of paragraph (1) of this Article shall not impose any obligation under the law of the Requested Party to comply with it.

3. The Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting Party a reasonable time before the scheduled appearance.

4. The Requested Party shall return a proof of service in the manner specified in the Request.

Article 14

Search and Seizure

1. The Requested Party shall execute a request for the search, seizure, and delivery of any item to the Requesting Party if the request includes the information justifying such action under the laws of the Requested Party and it is carried out in accordance with the laws of that Party.

2. The Requested Party may refuse a request if it relates to conduct in respect of which powers of search and seizure would not be exercisable in the territory of the Requested Party in similar circumstances.

3. Upon request, every official who has custody of a seized item shall certify, through the use of Forms E1 or E2, as applicable, appended to this Treaty, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting Party. Certification under this Article may also be provided in any other form or manner as may be prescribed from time to time by either Central Authority.

4. The Central Authority of the Requested Party may require that the Requesting Party agree to the terms and conditions deemed to be necessary to protect third party interests in the item to be transferred.

Article 15

Return of Items

The Central Authority of the Requesting Party shall return any items, including documents, records, or articles of evidence furnished to it in execution of a request under this Treaty as soon as possible unless the Central Authority of the Requested Party waives their return.

Article 16

Assistance in Forfeiture Proceedings

1. If the Central Authority of one Party becomes aware of proceeds or instrumentalities of offences which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and the Central Authority shall report to the Central Authority of the other Party on the action taken.

2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offences. This may include action to temporarily freeze the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offences shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

Article 16 *bis*:

Identification of bank information

1. (*a*) Upon request of the Requesting Party, the Requested Party shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offence is the holder of a bank account or accounts. The Requested Party shall promptly communicate the results of its enquiries to the Requesting Party.

(*b*) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offence;

(ii) information in the possession of non-bank financial institutions, or

(iii) financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 shall include:

(*a*) the identity of the natural or legal person relevant to locating such accounts or transactions;

(*b*) sufficient information to enable the competent authority of the Requested Party to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offence and that banks or non-bank financial institutions in the territory of the Requested Party may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(*c*) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic note between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(*a*) for Ireland, its Central Authority set forth in Article 2(2) of this Treaty, and

(*b*) for the United States of America, the attaché responsible for Ireland of the:

(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

(iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. Ireland shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested Parties, and with respect to other criminal activity punishable under the law of Ireland by a maximum sentence of at least five years imprisonment or more serious penalty and which are punishable under applicable United States laws. The United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested Parties.

5. The Requested Party shall respond to a request for production of records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty.

Article 16 *ter*:

Joint investigative teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and Ireland for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union including Ireland, where deemed appropriate by the United States of America and Ireland.

2. The procedures under which the team is to operate, such as its composition, duration, location, organisation, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offences, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 16 *quater*:

Video conferencing

1. The use of video transmission technology shall be available between the United States of America and Ireland for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested Party. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. Unless otherwise agreed by the Requesting and Requested Parties, the Requesting Party shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the Requested Party) shall be borne in accordance with Article 6 of this Treaty.

3. The Requesting and Requested Parties may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the Requesting Party, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested Party in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested Party available under applicable treaty or law.

6. The Requested Party may permit the use of video transmission technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 17

Compatibility with Other Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice which may be applicable.

Article 18

Consultation

The Central Authorities of the Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 19

Termination

Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Treaty.

FORM A1

(for use when Ireland is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, _____ , attest on penalty of criminal punishment

(Name)

for false statement or false attestation that I am employed by

_____

(Name of Business from which documents are sought)

and that my official title is _____

(Official Title)

I further state that each of the records attached hereto is the original or a duplicate of the original records in the custody of

_____

(Name of Business from which documents are sought).

I further state that:

(A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) such records were kept in the course of a regularly conducted business activity;

(C) the business activity made such records as a regular practice;

(D) if such record is not the original, such record is a duplicate of the original.

Signature Date
Sworn to or affirmed before me,_____ , a

_____ this day of, 20.

(notary public, judicial officer, etc.)

FORM A2

(for use when the United States is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, _____ , the undersigned, aged 18 years and older, with the

(Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that I am employed by/associated with the

_____ in the position of _____

(Name of Business from which documents are sought) (Official Title)

and by reason of my position am authorised and qualified to make this declaration.

I further declare that the documents attached hereto are originals or true copies of records in the custody of _____

(Name of Business from which documents are sought)

which:

1. were made at or near the time of the occurrence of the matters set forth therein, by (or from information transmitted by) a person with knowledge of those matters;

2. were kept in the course of regularly conducted business activity;

3. were made by the said business activity as a regular practice; and

4. if not the original records, are duplicates of original records.

All by virtue of the Statutory Declarations Act, 1938.

The originals or duplicates of these records are maintained in the country of .

Date of execution:

Place of execution:

Signature:

Declared before me at , this day of .

Signed

Judge of the

FORM B1

(for use when Ireland is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF ABSENCE OR NON-EXISTENCE OF BUSINESS RECORDS

I, _____ attest on penalty of criminal punishment for

(Name)

false statement or false attestation that I am employed by

_____ and that my official title

(Name of Business from which documents are sought)

is _____ .

(Official Title)

As a result of my employment with the above-named business, I am familiar with the business records it maintains. The business maintains business records that:

(A) are made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) are kept in the course of a regularly-conducted business activity;

(C) are made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or\otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:

_____ .

If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

_____

Signature, Date

Sworn to or affirmed before me, _____ , a

(Name)

this day of , 20.

(Notary public, judicial officer, etc.)

FORM B2

(for use when the United States is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF ABSENCE OR NON-EXISTENCE OF BUSINESS RECORDS

I, _____ , the undersigned, aged 18 years and older, with the

(Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that I am employed by/associated with the

_____ in the position of _____

(Name of Business from which documents are sought) (Official Title)

and by reason of my position am authorised and qualified to make this declaration.

I further declare that as a result of my employment with the above-named business, I am familiar with the business records it maintains. The business maintains business records that:

1. are made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

2. are kept in the course of a regularly-conducted business activity;

3. are made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or\otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:.

If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

All by virtue of the Statutory Declarations Act, 1938.

Date of execution:

Place of execution:

Signature:

Declared before me at _____ , this day of .

Signed

Judge of the

FORM C1

(for use when Ireland is the Requesting Party, pursuant to Article 9)

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC RECORDS

I, _____ , attest on penalty of criminal

(Name)

punishment for false statement or attestation that my position with the Government of

_____ is _____ and that in that

(Country) (Official Title)

position I am duly authorised to attest that the documents attached and described below are true and accurate copies of original official records which are recorded or

filed in _____ , which is a government office or agency of _____ .

(Name of Office or Agency)(Country)

Description of Documents:

_____

(Signature)

_____

(Title)

_____

(Date)

FORM C2

(for use when the United States is the Requesting Party, pursuant to Article 9)

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC RECORDS

I, _____ ,the undersigned, aged 18 years and older, with the

(Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that my position with the Government of

_____ is _____

(Country)(Official Title)

and that by reason of my position I am authorised and qualified to make this declaration.

I further declare that the documents attached and described below are true and accurate copies of original official records which are recorded or filed in _____ ,

(Name of Office or Agency)

which is a government office or agency of .

(Country)

Description of Documents:

All by virtue of the Statutory Declarations Act, 1938.

Date of execution:

Place of execution:

Signature:

Declared before me at , this day of .

Signed

Judge of the

FORM D1

(for use when Ireland is the Requesting Party, pursuant to Article 9)

ATTESTATION REGARDING ABSENCE

OR NON-EXISTENCE OF FOREIGN PUBLIC RECORDS

I, _____ , attest on penalty of criminal punishment

(Name)

for false statement or attestation that my position with the Government of _____

(Country)

is _____, and that in that position I am duly authorised to make

(Official Title)

this attestation.

I do hereby certify that I am the custodian of records of

_____ , and that I have made a diligent

(Name of Public Office or Agency)

search of the said records for the

_____ , and that

(Description of Records for Which a Search was Done)

no such records are found to exist therein. I further certify that the records for which a search was conducted set forth matters which are required by the laws of the Government of (Country) to be recorded or filed and reported, and such matters regularly are recorded or filed and reported by _____ .

(Name of Public Agency or Office)

Signature _____

Date _____

FORM D2

(for use when the United States is the Requesting Party, pursuant to Article 9)

ATTESTATION REGARDING ABSENCE OR NON-EXISTENCE OF FOREIGN PUBLIC RECORDS

I, _____ , the undersigned, aged 18 years and older, with the

(Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that my position with the Government of _____

is _____

(Country) (Official Title)

and that by reason of my position I am authorised and qualified to make this declaration.

I further declare that I am the custodian of records of

_____ , and that I have made a diligent

(Name of Public Office or Agency)

search of the said records for the

_____ , and that

(Description of Records for Which a Search was Done)

no such records are found to exist therein. I further declare that the records for which a search was conducted set forth matters which are required by the laws of the

Government of _____ to be recorded or filed and reported, and

(Country)

such matters regularly are recorded or filed and reported by _____ .

(Name of Public Agency or Office)

All by virtue of the Statutory Declarations Act, 1938.

Date of execution:

Place of execution:

Signature:

Declared before me at , this day of .

Signed

Judge of the

FORM E1

(for use when Ireland is the Requesting Party, pursuant to Article 14)

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____ , attest on penalty of criminal punishment for

(Name)

false statements or attestation that my position with the Government of _____

(Country)

is _____ . I received the articles listed below from _____

(Official Title)

on _____ ,

(Name of Person) (Date)

at _____ in the following condition:

(Place)

Description of Article:

Changes in Condition while in my custody:

Official Seal or Stamp

_____

(Signature)

_____

(Title)

_____

(Date)

FORM E2

(for use when the United States is the Requesting Party, pursuant to Article 14)

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____ , the undersigned, aged 18 years and older, with the

(Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that that my position with the Government of _____

is _____

(Country) (Official Title)

and that by reason of my position am authorised and qualified to make this declaration.

I further declare that I received the articles listed below from _____

on _____ ,

(Name of Person) (Date)

at _____ in the following condition:

(Place)

Description of Article:

Changes in Condition while in my custody:

All by virtue of the Statutory Declarations Act, 1938.

Date of execution:

Place of execution:

Signature: Official Seal or stamp

Declared before me at , this day of .

Signed

Judge of the