



Council of the
European Union

EUROPEAN UNION INSTRUMENTS IN THE FIELD OF CRIMINAL LAW AND RELATED TEXTS

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Council General Secretariat
JAI 2 - Criminal Law Team

EUROPEAN UNION INSTRUMENTS IN THE FIELD OF CRIMINAL LAW AND RELATED TEXTS

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**I. Extracts from the LISBON TREATY
and the CHARTER**

CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION

(extracts)

PREAMBLE

HIS MAJESTY THE KING OF THE BELGIANS, HER MAJESTY THE QUEEN OF DENMARK, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF IRELAND, THE PRESIDENT OF THE HELLENIC REPUBLIC, HIS MAJESTY THE KING OF SPAIN, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF THE ITALIAN REPUBLIC, HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG, HER MAJESTY THE QUEEN OF THE NETHERLANDS, THE PRESIDENT OF THE PORTUGUESE REPUBLIC, HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

RESOLVED to mark a new stage in the process of European integration undertaken with the establishment of the European Communities,

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,

RECALLING the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe,

CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,

CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,

DESIRING to deepen the solidarity between their peoples while respecting their history, their culture and their traditions,

DESIRING to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them,

RESOLVED to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union including, in accordance with the provisions of this Treaty and of the Treaty on the Functioning of the European Union, a single and stable currency,

DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,

RESOLVED to establish a citizenship common to nationals of their countries,

RESOLVED to implement a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence in accordance with the provisions of Article 42, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

RESOLVED to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of this Treaty and of the Treaty on the Functioning of the European Union,

RESOLVED to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity,

IN VIEW of further steps to be taken in order to advance European integration,

HAVE DECIDED to establish a European Union and to this end have designated as their Plenipotentiaries:

(List of plenipotentiaries not reproduced)

WHO, having exchanged their full powers, found in good and due form, have agreed as follows:

TITLE I

COMMON PROVISIONS*Article 1*

(ex Article 1 TEU)

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called 'the Union', on which the Member States confer competences to attain objectives they have in common.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties'). Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3

(ex Article 2 TEU)

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
 2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
 3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.
- It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. The Union shall establish an economic and monetary union whose currency is the euro.

5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

Article 4

1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

Article 5

(ex Article 5 TEC)

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

Article 6

(ex Article 6 TEU)

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article 7

(ex Article 7 TEU)

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

5. The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of this Article are laid down in Article 354 of the Treaty on the Functioning of the European Union.

Article 8

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

TITLE III

PROVISIONS ON THE INSTITUTIONS

Article 16

1. The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties.

2. The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.

3. The Council shall act by a qualified majority except where the Treaties provide otherwise.

4. As from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

The other arrangements governing the qualified majority are laid down in Article 238(2) of the Treaty on the Functioning of the European Union.

5. The transitional provisions relating to the definition of the qualified majority which shall be applicable until 31 October 2014 and those which shall be applicable from 1 November 2014 to 31 March 2017 are laid down in the Protocol on transitional provisions.

6. The Council shall meet in different configurations, the list of which shall be adopted in accordance with Article 236 of the Treaty on the Functioning of the European Union.

The General Affairs Council shall ensure consistency in the work of the different Council configurations. It shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission.

The Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.

7. A Committee of Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council.

8. The Council shall meet in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting shall be divided into two parts, dealing respectively with deliberations on Union legislative acts and non-legislative activities.

9. The Presidency of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation, in accordance with the conditions established in accordance with Article 236 of the Treaty on the Functioning of the European Union.

TITLE IV

PROVISIONS ON ENHANCED COOPERATION

Article 20

(ex Articles 27a to 27e, 40 to 40b and 43 to 45 TEU and ex Articles 11 and 11a TEC)

1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties, subject to the limits and in accordance with the detailed arrangements laid down in this Article and in Articles 326 to 334 of the Treaty on the Functioning of the European Union.

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States, in accordance with Article 328 of the Treaty on the Functioning of the European Union.

2. The decision authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that at least nine Member States participate in it. The Council shall act in accordance with the procedure laid down in Article 329 of the Treaty on the Functioning of the European Union.

3. All members of the Council may participate in its deliberations, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote. The voting rules are set out in Article 330 of the Treaty on the Functioning of the European Union.

4. Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. They shall not be regarded as part of the *acquis* which has to be accepted by candidate States for accession to the Union.

TITLE VI

FINAL PROVISIONS

Article 47

The Union shall have legal personality.

Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

Article 51

The Protocols and Annexes to the Treaties shall form an integral part thereof.

CONSOLIDATED VERSION
OF
THE TREATY ON THE FUNCTIONING OF THE
EUROPEAN UNION

(extracts)

PART THREE
UNION POLICIES AND INTERNAL ACTIONS

TITLE V

AREA OF FREEDOM, SECURITY AND JUSTICE

CHAPTER 1

GENERAL PROVISIONS

Article 67

(ex Article 61 TEC and ex Article 29 TEU)

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.
2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.
3. The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.
4. The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.

Article 68

The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.

Article 69

National Parliaments ensure that the proposals and legislative initiatives submitted under Chapters 4 and 5 comply with the principle of subsidiarity, in accordance with the arrangements laid down by the Protocol on the application of the principles of subsidiarity and proportionality.

Article 70

Without prejudice to Articles 258, 259 and 260, the Council may, on a proposal from the Commission, adopt measures laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Title by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and national Parliaments shall be informed of the content and results of the evaluation.

Article 71

(ex Article 36 TEU)

A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article 240, it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings.

Article 72

(ex Article 64(1) TEC and ex Article 33 TEU)

This Title shall 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.

Article 73

It shall be open to Member States to organise between themselves and under their responsibility such forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security.

Article 74

(ex Article 66 TEC)

The Council shall adopt measures to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Title, as well as between those departments and the Commission. It shall act on a Commission proposal, subject to Article 76, and after consulting the European Parliament.

Article 75

(ex Article 60 TEC)

Where necessary to achieve the objectives set out in Article 67, as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities.

The Council, on a proposal from the Commission, shall adopt measures to implement the framework referred to in the first paragraph.

The acts referred to in this Article shall include necessary provisions on legal safeguards.

Article 76

The acts referred to in Chapters 4 and 5, together with the measures referred to in Article 74 which ensure administrative cooperation in the areas covered by these Chapters, shall be adopted:

- (a) on a proposal from the Commission, or
- (b) on the initiative of a quarter of the Member States.

CHAPTER 2

POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

Article 77

(ex Article 62 TEC)

1. The Union shall develop a policy with a view to:
 - (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;

- (b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
- (c) the gradual introduction of an integrated management system for external borders.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

- (a) the common policy on visas and other short-stay residence permits;
- (b) the checks to which persons crossing external borders are subject;
- (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
- (d) any measure necessary for the gradual establishment of an integrated management system for external borders;
- (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

3. If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 20(2)(a), and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament.

4. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Article 78

(ex Articles 63, points 1 and 2, and 64(2) TEC)

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

- (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
- (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;

- (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
- (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
- (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
- (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

Article 79

(ex Article 63, points 3 and 4, TEC)

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

- (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;
- (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;
- (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
- (d) combating trafficking in persons, in particular women and children.

3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

Article 80

The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

CHAPTER 3

JUDICIAL COOPERATION IN CIVIL MATTERS

Article 81

(ex Article 65 TEC)

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:

- (a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases;
- (b) the cross-border service of judicial and extrajudicial documents;
- (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
- (d) cooperation in the taking of evidence;
- (e) effective access to justice;
- (f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;

- (g) the development of alternative methods of dispute settlement;
- (h) support for the training of the judiciary and judicial staff.

3. Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The Council, on a proposal from the Commission, may adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The proposal referred to in the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision shall not be adopted. In the absence of opposition, the Council may adopt the decision.

CHAPTER 4

JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article 82

(ex Article 31 TEU)

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:

- (a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;
- (b) prevent and settle conflicts of jurisdiction between Member States;
- (c) support the training of the judiciary and judicial staff;
- (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

They shall concern:

- (a) mutual admissibility of evidence between Member States;
- (b) the rights of individuals in criminal procedure;
- (c) the rights of victims of crime;
- (d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.

3. Where a member of the Council considers that a draft directive as referred to in paragraph 2 would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

Article 83

(ex Article 31 TEU)

1. The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76.

3. Where a member of the Council considers that a draft directive as referred to in paragraph 1 or 2 would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

Article 84

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States.

Article 85

(ex Article 31 TEU)

1. Eurojust's mission shall be 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 a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

In this context, the European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Eurojust's structure, operation, field of action and tasks. These tasks may include:

- (a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
- (b) the coordination of investigations and prosecutions referred to in point (a);
- (c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

These regulations shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities.

2. In the prosecutions referred to in paragraph 1, and without prejudice to Article 86, formal acts of judicial procedure shall be carried out by the competent national officials.

Article 86

1. In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.

In the absence of unanimity in the Council, a group of at least nine Member States may request that the draft regulation be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft regulation concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by the regulation provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.

3. The regulations referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.

4. The European Council may, at the same time or subsequently, adopt a decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.

CHAPTER 5 POLICE COOPERATION

Article 87 (ex Article 30 TEU)

1. The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures concerning:

- (a) the collection, storage, processing, analysis and exchange of relevant information;
- (b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;
- (c) common investigative techniques in relation to the detection of serious forms of organised crime.

3. The Council, acting in accordance with a special legislative procedure, may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council shall act unanimously after consulting the European Parliament.

In case of the absence of unanimity in the Council, a group of at least nine Member States may request that the draft measures be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft measures concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

The specific procedure provided for in the second and third subparagraphs shall not apply to acts which constitute a development of the Schengen *acquis*.

Article 88

(ex Article 30 TEU)

1. Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.
2. The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks. These tasks may include:
 - (a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;
 - (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

Article 89

(ex Article 32 TEU)

The Council, acting in accordance with a special legislative procedure, shall lay down the conditions and limitations under which the competent authorities of the Member States referred to in Articles 82 and 87 may operate in the territory of another Member State in liaison and in agreement with the authorities of that State. The Council shall act unanimously after consulting the European Parliament.

PART SIX

INSTITUTIONAL AND FINANCIAL PROVISIONS

TITLE I

INSTITUTIONAL PROVISIONS

CHAPTER 1

THE INSTITUTIONS

SECTION 3

THE COUNCIL

Article 237

(ex Article 204 TEC)

The Council shall meet when convened by its President on his own initiative or at the request of one of its Members or of the Commission.

Article 238

(ex Article 205(1) and (2), TEC)

1. Where it is required to act by a simple majority, the Council shall act by a majority of its component members.
2. By way of derogation from Article 16(4) of the Treaty on European Union, as from 1 November 2014 and subject to the provisions laid down in the Protocol on transitional provisions, where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72 % of the members of the Council, representing Member States comprising at least 65 % of the population of the Union.
3. As from 1 November 2014 and subject to the provisions laid down in the Protocol on transitional provisions, in cases where, under the Treaties, not all the members of the Council participate in voting, a qualified majority shall be defined as follows:
 - (a) A qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained;

- (b) By way of derogation from point (a), where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.
4. Abstentions by Members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

Article 239

(ex Article 206 TEC)

Where a vote is taken, any Member of the Council may also act on behalf of not more than one other member.

Article 240

(ex Article 207 TEC)

1. A committee consisting of the Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the latter. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.
2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General appointed by the Council.

The Council shall decide on the organisation of the General Secretariat by a simple majority.

3. The Council shall act by a simple majority regarding procedural matters and for the adoption of its Rules of Procedure.

Article 241

(ex Article 208 TEC)

The Council, acting by a simple majority, may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals. If the Commission does not submit a proposal, it shall inform the Council of the reasons.

Article 242

(ex Article 209 TEC)

The Council, acting by a simple majority shall, after consulting the Commission, determine the rules governing the committees provided for in the Treaties.

CHAPTER 2

LEGAL ACTS OF THE UNION, ADOPTION PROCEDURES AND OTHER
PROVISIONS

SECTION 1

THE LEGAL ACTS OF THE
UNION*Article 288*

(ex Article 249 TEC)

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force.

Article 289

1. The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Article 294.
2. In the specific cases provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, shall constitute a special legislative procedure.
3. Legal acts adopted by legislative procedure shall constitute legislative acts.
4. In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.

Article 290

1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

(a) the European Parliament or the Council may decide to revoke the delegation;

(b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

3. The adjective ‘delegated’ shall be inserted in the title of delegated acts.

Article 291

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

4. The word ‘implementing’ shall be inserted in the title of implementing acts.

Article 292

The Council shall adopt recommendations. It shall act on a proposal from the Commission in all cases where the Treaties provide that it shall adopt acts on a proposal from the Commission. It shall act unanimously in those areas in which unanimity is required for the adoption of a Union act. The Commission, and the European Central Bank in the specific cases provided for in the Treaties, shall adopt recommendations.

SECTION 2

PROCEDURES FOR THE ADOPTION OF ACTS AND OTHER PROVISIONS

Article 293

(ex Article 250 TEC)

1. Where, pursuant to the Treaties, the Council acts on a proposal from the Commission, it may amend that proposal only by acting unanimously, except in the cases referred to in paragraphs 10 and 13 of Article 294, in Articles 310, 312 and 314 and in the second paragraph of Article 315.
2. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Union act.

Article 294

(ex Article 251 TEC)

1. Where reference is made in the Treaties to the ordinary legislative procedure for the adoption of an act, the following procedure shall apply.
2. The Commission shall submit a proposal to the European Parliament and the Council.

First reading

3. The European Parliament shall adopt its position at first reading and communicate it to the Council.
4. If the Council approves the European Parliament's position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament.
5. If the Council does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.
6. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

Second reading

7. If, within three months of such communication, the European Parliament:
- (a) approves the Council's position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;
 - (b) rejects, by a majority of its component members, the Council's position at first reading, the proposed act shall be deemed not to have been adopted;
 - (c) proposes, by a majority of its component members, amendments to the Council's position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.
8. If, within three months of receiving the European Parliament's amendments, the Council, acting by a qualified majority:
- (a) approves all those amendments, the act in question shall be deemed to have been adopted;
 - (b) does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.
9. The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

Conciliation

10. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within six weeks of its being convened, on the basis of the positions of the European Parliament and the Council at second reading.
11. The Commission shall take part in the Conciliation Committee's proceedings and shall take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.
12. If, within six weeks of its being convened, the Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.

Third reading

13. If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act shall be deemed not to have been adopted.

14. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

Special provisions

15. Where, in the cases provided for in the Treaties, a legislative act is submitted to the ordinary legislative procedure on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court of Justice, paragraph 2, the second sentence of paragraph 6, and paragraph 9 shall not apply.

In such cases, the European Parliament and the Council shall communicate the proposed act to the Commission with their positions at first and second readings. The European Parliament or the Council may request the opinion of the Commission throughout the procedure, which the Commission may also deliver on its own initiative. It may also, if it deems it necessary, take part in the Conciliation Committee in accordance with paragraph 11.

Article 295

The European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the Treaties, conclude interinstitutional agreements which may be of a binding nature.

Article 296

(ex Article 253 TEC)

Where the Treaties do not specify the type of act to be adopted, the institutions shall select it on a case-by-case basis, in compliance with the applicable procedures and with the principle of proportionality.

Legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Treaties.

When considering draft legislative acts, the European Parliament and the Council shall refrain from adopting acts not provided for by the relevant legislative procedure in the area in question.

Article 297

(ex Article 254 TEC)

1. Legislative acts adopted under the ordinary legislative procedure shall be signed by the President of the European Parliament and by the President of the Council.

Legislative acts adopted under a special legislative procedure shall be signed by the President of the institution which adopted them.

Legislative acts shall be published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

2. Non-legislative acts adopted in the form of regulations, directives or decisions, when the latter do not specify to whom they are addressed, shall be signed by the President of the institution which adopted them.

Regulations and directives which are addressed to all Member States, as well as decisions which do not specify to whom they are addressed, shall be published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

Other directives, and decisions which specify to whom they are addressed, shall be notified to those to whom they are addressed and shall take effect upon such notification.

PROTOCOL (No 21)
**ON THE POSITION OF THE UNITED KINGDOM AND
IRELAND IN RESPECT OF THE AREA OF FREEDOM,
SECURITY AND JUSTICE**

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland,

HAVING REGARD to the Protocol on the application of certain aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union:

Article 1

Subject to Article 3, the United Kingdom and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union. The unanimity of the members of the Council, with the exception of the representatives of the governments of the United Kingdom and Ireland, shall be necessary for decisions of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the Treaty on the Functioning of the European Union.

Article 2

In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Union pursuant to that Title, and no decision of the Court of Justice interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to the United Kingdom or Ireland.

Article 3

1. The United Kingdom or Ireland may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, that it wishes to take part in the adoption and application of any such proposed measure, whereupon that State shall be entitled to do so.

The unanimity of the members of the Council, with the exception of a member which has not made such a notification, shall be necessary for decisions of the Council which must be adopted unanimously. A measure adopted under this paragraph shall be binding upon all Member States which took part in its adoption.

Measures adopted pursuant to Article 70 of the Treaty on the Functioning of the European Union shall lay down the conditions for the participation of the United Kingdom and Ireland in the evaluations concerning the areas covered by Title V of Part Three of that Treaty.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the Treaty on the Functioning of the European Union.

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with the United Kingdom or Ireland taking part, the Council may adopt such measure in accordance with Article 1 without the participation of the United Kingdom or Ireland. In that case Article 2 applies.

Article 4

The United Kingdom or Ireland may at any time after the adoption of a measure by the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union notify its intention to the Council and to the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article 331(1) of the Treaty on the Functioning of the European Union shall apply *mutatis mutandis*.

Article 4a

1. The provisions of this Protocol apply for the United Kingdom and Ireland also to measures proposed or adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union amending an existing measure by which they are bound.

2. However, in cases where the Council, acting on a proposal from the Commission, determines that the non-participation of the United Kingdom or Ireland in the amended version of an existing measure makes the application of that measure inoperable for other Member States or the Union, it may urge them to make a notification under Article 3 or 4. For the purposes of Article 3, a further period of two months starts to run as from the date of such determination by the Council.

If at the expiry of that period of two months from the Council's determination the United Kingdom or Ireland has not made a notification under Article 3 or Article 4, the existing measure shall no longer be binding upon or applicable to it, unless the Member State concerned has made a notification under Article 4 before the entry into force of the amending measure. This shall take effect from the date of entry into force of the amending measure or of expiry of the period of two months, whichever is the later.

For the purpose of this paragraph, the Council shall, after a full discussion of the matter, act by a qualified majority of its members representing the Member States participating or having participated in the adoption of the amending measure. A qualified majority of the Council shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

3. The Council, acting by a qualified majority on a proposal from the Commission, may determine that the United Kingdom or Ireland shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in the existing measure.

4. This Article shall be without prejudice to Article 4.

Article 5

A Member State which is not bound by a measure adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union shall bear no financial consequences of that measure other than administrative costs entailed for the institutions, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

Article 6

Where, in cases referred to in this Protocol, the United Kingdom or Ireland is bound by a measure adopted by the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, the relevant provisions of the Treaties shall apply to that State in relation to that measure.

Article 6a

The United Kingdom and Ireland shall not be bound by the rules laid down on the basis of Article 16 of the Treaty on the Functioning of the European Union which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of that Treaty where the United Kingdom and Ireland are not bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down on the basis of Article 16.

Article 7

Articles 3, 4 and 4a shall be without prejudice to the Protocol on the Schengen *acquis* integrated into the framework of the European Union.

Article 8

Ireland may notify the Council in writing that it no longer wishes to be covered by the terms of this Protocol. In that case, the normal treaty provisions will apply to Ireland.

Article 9

With regard to Ireland, this Protocol shall not apply to Article 75 of the Treaty on the Functioning of the European Union.

PROTOCOL (No 22) ON THE POSITION OF DENMARK

THE HIGH CONTRACTING PARTIES,

RECALLING the Decision of the Heads of State or Government, meeting within the European Council at Edinburgh on 12 December 1992, concerning certain problems raised by Denmark on the Treaty on European Union,

HAVING NOTED the position of Denmark with regard to Citizenship, Economic and Monetary Union, Defence Policy and Justice and Home Affairs as laid down in the Edinburgh Decision,

CONSCIOUS of the fact that a continuation under the Treaties of the legal regime originating in the Edinburgh decision will significantly limit Denmark's participation in important areas of cooperation of the Union, and that it would be in the best interest of the Union to ensure the integrity of the *acquis* in the area of freedom, security and justice,

WISHING therefore to establish a legal framework that will provide an option for Denmark to participate in the adoption of measures proposed on the basis of Title V of Part Three of the Treaty on the Functioning of the European Union and welcoming the intention of Denmark to avail itself of this option when possible in accordance with its constitutional requirements,

NOTING that Denmark will not prevent the other Member States from further developing their cooperation with respect to measures not binding on Denmark,

BEARING IN MIND Article 3 of the Protocol on the Schengen *acquis* integrated into the framework of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union:

PART I

Article 1

Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the decisions of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the Treaty on the Functioning of the European Union.

Article 2

None of the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Union pursuant to that Title, and no decision of the Court of Justice of the European Union interpreting any such provision or measure or any measure amended or amendable pursuant to that Title shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to Denmark. In particular, acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon which are amended shall continue to be binding upon and applicable to Denmark unchanged.

Article 2a

Article 2 of this Protocol shall also apply in respect of those rules laid down on the basis of Article 16 of the Treaty on the Functioning of the European Union which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of that Treaty.

Article 3

Denmark shall bear no financial consequences of measures referred to in Article 1, other than administrative costs entailed for the institutions.

Article 4

1. Denmark shall decide within a period of six months after the Council has decided on a proposal or initiative to build upon the Schengen *acquis* covered by this Part, whether it will implement this measure in its national law. If it decides to do so, this measure will create an obligation under international law between Denmark and the other Member States bound by the measure.

2. If Denmark decides not to implement a measure of the Council as referred to in paragraph 1, the Member States bound by that measure and Denmark will consider appropriate measures to be taken.

PART II

Article 5

With regard to measures adopted by the Council pursuant to Article 26(1), Article 42 and Articles 43 to 46 of the Treaty on European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications. Therefore

Denmark shall not participate in their adoption. Denmark will not prevent the other Member States from further developing their cooperation in this area. Denmark shall not be obliged to contribute to the financing of operational expenditure arising from such measures, nor to make military capabilities available to the Union.

The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the Treaty on the Functioning of the European Union.

PART III

Article 6

Articles 1, 2 and 3 shall not apply to measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas.

PART IV

Article 7

At any time Denmark may, in accordance with its constitutional requirements, inform the other Member States that it no longer wishes to avail itself of all or part of this Protocol. In that event, Denmark will apply in full all relevant measures then in force taken within the framework of the European Union.

Article 8

1. At any time and without prejudice to Article 7, Denmark may, in accordance with its constitutional requirements, notify the other Member States that, with effect from the first day of the month following the notification, Part I shall consist of the provisions in the Annex. In that case Articles 5 to 8 shall be renumbered in consequence.

2. Six months after the date on which the notification referred to in paragraph 1 takes effect all Schengen *acquis* and measures adopted to build upon this *acquis*, which until then have been binding on Denmark as obligations under international law, shall be binding upon Denmark as Union law.

ANNEX

Article 1

Subject to Article 3, Denmark shall not take part in the adoption by the Council of measures proposed pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the Treaty on the Functioning of the European Union.

Article 2

Pursuant to Article 1 and subject to Articles 3, 4 and 8, none of the provisions in Title V of Part Three of the Treaty on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreements concluded by the Union pursuant to that Title, no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to Denmark.

Article 3

1. Denmark may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, that it wishes to take part in the adoption and application of any such proposed measure, whereupon Denmark shall be entitled to do so.

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with Denmark taking part, the Council may adopt that measure referred to in paragraph 1 in accordance with Article 1 without the participation of Denmark. In that case Article 2 applies.

Article 4

Denmark may at any time after the adoption of a measure pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union notify its intention to the Council and the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article 331(1) of that Treaty shall apply *mutatis mutandis*.

Article 5

1. The provisions of this Protocol apply for Denmark also to measures proposed or adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union amending an existing measure by which it is bound.

2. However, in cases where the Council, acting on a proposal from the Commission, determines that the non-participation of Denmark in the amended version of an existing measure makes the application of that measure inoperable for other Member States or the Union, it may urge it to make a notification under Article 3 or 4. For the purposes of Article 3 a further period of two months starts to run as from the date of such determination by the Council.

If, at the expiry of that period of two months from the Council's determination, Denmark has not made a notification under Article 3 or Article 4, the existing measure shall no longer be binding upon or applicable to it, unless it has made a notification under Article 4 before the entry into force of the amending measure. This shall take effect from the date of entry into force of the amending measure or of expiry of the period of two months, whichever is the later.

For the purpose of this paragraph, the Council shall, after a full discussion of the matter, act by a qualified majority of its members representing the Member States participating or having participated in the adoption of the amending measure. A qualified majority of the Council shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

3. The Council, acting by a qualified majority on a proposal from the Commission, may determine that Denmark shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in the existing measure.

4. This Article shall be without prejudice to Article 4.

Article 6

1. Notification pursuant to Article 4 shall be submitted no later than six months after the final adoption of a measure if this measure builds upon the Schengen *acquis*.

If Denmark does not submit a notification in accordance with Articles 3 or 4 regarding a measure building upon the Schengen *acquis*, the Member States bound by that measure and Denmark will consider appropriate measures to be taken.

2. A notification pursuant to Article 3 with respect to a measure building upon the Schengen *acquis* shall be deemed irrevocably to be a notification pursuant to Article 3 with respect to any further proposal or initiative aiming to build upon that measure to the extent that such proposal or initiative builds upon the Schengen *acquis*.

Article 7

Denmark shall not be bound by the rules laid down on the basis of Article 16 of the Treaty on the Functioning of the European Union which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of that Treaty where Denmark is not bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down on the basis of Article 16.

Article 8

Where, in cases referred to in this Part, Denmark is bound by a measure adopted by the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, the relevant provisions of the Treaties shall apply to Denmark in relation to that measure.

Article 9

Where Denmark is not bound by a measure adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, it shall bear no financial consequences of that measure other than administrative costs entailed for the institutions unless the Council, with all its Members acting unanimously after consulting the European Parliament, decides otherwise.

PROTOCOL (No 36)
ON TRANSITIONAL PROVISIONS

(...)

TITLE VII

**TRANSITIONAL PROVISIONS CONCERNING ACTS ADOPTED ON THE BASIS OF
TITLES V AND VI OF THE TREATY ON EUROPEAN UNION PRIOR TO THE ENTRY
INTO FORCE OF THE TREATY OF LISBON**

Article 9

The legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted on the basis of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon shall be preserved until those acts are repealed, annulled or amended in implementation of the Treaties. The same shall apply to agreements concluded between Member States on the basis of the Treaty on European Union.

Article 10

1. As a transitional measure, and with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon, the powers of the institutions shall be the following at the date of entry into force of that Treaty: the powers of the Commission under Article 258 of the Treaty on the Functioning of the European Union shall not be applicable and the powers of the Court of Justice of the European Union under Title VI of the Treaty on European Union, in the version in force before the entry into force of the Treaty of Lisbon, shall remain the same, including where they have been accepted under Article 35(2) of the said Treaty on European Union.

2. The amendment of an act referred to in paragraph 1 shall entail the applicability of the powers of the institutions referred to in that paragraph as set out in the Treaties with respect to the amended act for those Member States to which that amended act shall apply.

3. In any case, the transitional measure mentioned in paragraph 1 shall cease to have effect five years after the date of entry into force of the Treaty of Lisbon.

4. At the latest six months before the expiry of the transitional period referred to in paragraph 3, the United Kingdom may notify to the Council that it does not accept, with respect to the acts referred to in paragraph 1, the powers of the institutions referred to in paragraph 1 as set out in the Treaties. In case the United Kingdom has made that notification, all acts referred to in paragraph 1 shall cease to apply to it as from the date of expiry of the transitional period referred to in paragraph 3.

3. This subparagraph shall not apply with respect to the amended acts which are applicable to the United Kingdom as referred to in paragraph 2.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the necessary consequential and transitional arrangements. The United Kingdom shall not participate in the adoption of this decision. A qualified majority of the Council shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

The Council, acting by a qualified majority on a proposal from the Commission, may also adopt a decision determining that the United Kingdom shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in those acts.

5. The United Kingdom may, at any time afterwards, notify the Council of its wish to participate in acts which have ceased to apply to it pursuant to paragraph 4, first subparagraph. In that case, the relevant provisions of the Protocol on the Schengen *acquis* integrated into the framework of the European Union or of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, as the case may be, shall apply. The powers of the institutions with regard to those acts shall be those set out in the Treaties. When acting under the relevant Protocols, the Union institutions and the United Kingdom shall seek to re-establish the widest possible measure of participation of the United Kingdom in the *acquis* of the Union in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while respecting their coherence.

DECLARATIONS

ANNEXED TO THE FINAL ACT OF THE INTERGOVERNMENTAL CONFERENCE WHICH ADOPTED THE TREATY OF LISBON,

signed on 13 December 2007

A. DECLARATIONS CONCERNING PROVISIONS OF THE TREATIES

(selection)

1. Declaration concerning the Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.

The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties.

2. Declaration on Article 6(2) of the Treaty on European Union

The Conference agrees that the Union's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

3. Declaration on Article 8 of the Treaty on European Union

The Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it.

13. Declaration concerning primacy

The Conference recalls that, in accordance with well settled case law of the Court of Justice of the European Union, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case law.

The Conference has also decided to attach as an Annex to this Final Act the Opinion of the Council Legal Service on the primacy of EC law as set out in 11197/07 (JUR 260):

'Opinion of the Council Legal Service

of 22 June 2007

It results from the case-law of the Court of Justice that primacy of EC law is a cornerstone principle of Community law. According to the Court, this principle is inherent to the specific nature of the European Community. At the time of the first judgment of this established case law (Costa/ENEL, 15 July 1964, Case 6/641⁽¹⁾) there was no mention of primacy in the treaty. It is still the case today. The fact that the principle of primacy will not be included in the future treaty shall not in any way change the existence of the principle and the existing case-law of the Court of Justice.

⁽¹⁾ "It follows (...) that the law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question."

14. Declaration in relation to the delimitation of competences

The Conference underlines that, in accordance with the system of division of competences between the Union and the Member States as provided for in the Treaty on European Union and the Treaty on the Functioning of the European Union, competences not conferred upon the Union in the Treaties remain with the Member States.

When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence. The latter situation arises when the relevant EU institutions decide to repeal a legislative act, in particular better to ensure constant respect for the principles of subsidiarity and proportionality. The Council may, at the initiative of one or several of its members (representatives of Member States) and in accordance with Article 241 of the Treaty on the Functioning of the European Union, request the Commission to submit proposals for repealing a legislative act. The Conference welcomes the Commission's declaration that it will devote particular attention to these requests.

Equally, the representatives of the governments of the Member States, meeting in an Intergovernmental Conference, in accordance with the ordinary revision procedure provided for in Article 48(2) to (5) of the Treaty on European Union, may decide to amend the Treaties upon which the Union is founded, including either to increase or to reduce the competences conferred on the Union in the said Treaties.

19. Declaration on Article 8 of the Treaty on the Functioning of the European Union

The Conference agrees that, in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.

20. Declaration on Article 16 of the Treaty on the Functioning of the European Union

The Conference declares that, whenever rules on protection of personal data to be adopted on the basis of Article 16 could have direct implications for national security, due account will have to be taken of the specific characteristics of the matter. It recalls that the legislation presently applicable (see in particular Directive 95/46/EC) includes specific derogations in this regard.

21. Declaration on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation

The Conference acknowledges that specific rules on the protection of personal data and the free movement of such data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 of the Treaty on the Functioning of the European Union may prove necessary because of the specific nature of these fields.

25. Declaration on Articles 75 and 215 of the Treaty on the Functioning of the European Union

The Conference recalls that the respect for fundamental rights and freedoms implies, in particular, that proper attention is given to the protection and observance of the due process rights of the individuals or entities concerned. For this purpose and in order to guarantee a thorough judicial review of decisions subjecting an individual or entity to restrictive measures, such decisions must be based on clear and distinct criteria. These criteria should be tailored to the specifics of each restrictive measure.

26. Declaration on non-participation by a Member State in a measure based on Title V of Part Three of the Treaty on the Functioning of the European Union

The Conference declares that, where a Member State opts not to participate in a measure based on Title V of Part Three of the Treaty on the Functioning of the European Union, the Council will hold a full discussion on the possible implications and effects of that Member State's non-participation in the measure.

In addition, any Member State may ask the Commission to examine the situation on the basis of Article 116 of the Treaty on the Functioning of the European Union.

The above paragraphs are without prejudice to the entitlement of a Member State to refer the matter to the European Council.

27. Declaration on Article 85(1), second subparagraph, of the Treaty on the Functioning of the European Union

The Conference considers that the regulations referred to in the second subparagraph of Article 85(1) of the Treaty on the Functioning of the European Union should take into account national rules and practices relating to the initiation of criminal investigations.

36. Declaration on Article 218 of the Treaty on the Functioning of the European Union concerning the negotiation and conclusion of international agreements by Member States relating to the area of freedom, security and justice

The Conference confirms that Member States may negotiate and conclude agreements with third countries or international organisations in the areas covered by Chapters 3, 4 and 5 of Title V of Part Three in so far as such agreements comply with Union law.

37. Declaration on Article 222 of the Treaty on the Functioning of the European Union

Without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a Member State which is the object of a terrorist attack or the victim of natural or man-made disaster, none of the provisions of Article 222 is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards that Member State.

42. Declaration on Article 352 of the Treaty on the Functioning of the European Union

The Conference underlines that, in accordance with the settled case law of the Court of Justice of the European Union, Article 352 of the Treaty on the Functioning of the European Union, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Union powers beyond the general framework created by the provisions of the Treaties as a whole and, in particular, by those that define the tasks and the activities of the Union. In any event, this Article cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaties without following the procedure which they provide for that purpose.

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union:

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I**DIGNITY***Article 1***Human dignity**

Human dignity is inviolable. It must be respected and protected.

*Article 2***Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

*Article 3***Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - (c) the prohibition on making the human body and its parts as such a source of financial gain;
 - (d) the prohibition of the reproductive cloning of human beings.

*Article 4***Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article 5***Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

*Article 16***Freedom to conduct a business**

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

*Article 17***Right to property**

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

*Article 18***Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

*Article 19***Protection in the event of removal, expulsion or extradition**

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III

EQUALITY

*Article 20***Equality before the law**

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

*Article 26***Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

SOLIDARITY*Article 27***Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

*Article 28***Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

*Article 29***Right of access to placement services**

Everyone has the right of access to a free placement service.

*Article 30***Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

*Article 31***Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

*Article 36***Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

*Article 37***Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

*Article 38***Consumer protection**

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

*Article 39***Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

*Article 40***Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

*Article 41***Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

- (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- (c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article 43

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

*Article 46***Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI

JUSTICE

*Article 47***Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

*Article 48***Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

*Article 49***Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51

Field of application

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

Article 52

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

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The above text adapts the wording of the Charter proclaimed on 7 December 2000, and will replace it as from the date of entry into force of the Treaty of Lisbon.

II. MULTIANNUAL PROGRAMME

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES
AND AGENCIES

EUROPEAN COUNCIL

**Extract from the 26-27 June 2014 European Council Conclusions concerning the area of
Freedom, Security and Justice and some related horizontal issues**

(2014/C 240/05)

(...) The European Council defined the strategic guidelines for legislative and operational planning for the coming years within the area of freedom, security and justice (see below under Chapter I) and also addressed some related horizontal issues. (...)

I. FREEDOM, SECURITY AND JUSTICE

1. One of the key objectives of the Union is to build an area of freedom, security and justice without internal frontiers, and with full respect for fundamental rights. To this end, coherent policy measures need to be taken with respect to asylum, immigration, borders, and police and judicial cooperation, in accordance with the Treaties and their relevant Protocols.
2. All the dimensions of a Europe that protects its citizens and offers effective rights to people inside and outside the Union are interlinked. Success or failure in one field depends on performance in other fields as well as on synergies with related policy areas. The answer to many of the challenges in the area of freedom, security and justice lies in relations with third countries, which calls for improving the link between the EU's internal and external policies. This has to be reflected in the cooperation between the EU's institutions and bodies.
3. Building on the past programmes, the overall priority now is to consistently transpose, effectively implement and consolidate the legal instruments and policy measures in place. Intensifying operational cooperation while using the potential of Information and Communication Technologies' innovations, enhancing the role of the different EU agencies and ensuring the strategic use of EU funds will be key.
4. In further developing the area of freedom, security and justice over the next years, it will be crucial to ensure the protection and promotion of fundamental rights, including data protection, whilst addressing security concerns, also in relations with third countries, and to adopt a strong EU General Data Protection framework by 2015.
5. Faced with challenges such as instability in many parts of the world as well as global and European demographic trends, the Union needs an efficient and well-managed migration, asylum and borders policy, guided by the Treaty principles of solidarity and fair sharing of responsibility, in accordance with Article 80 TFEU and its effective implementation. A comprehensive approach is required, optimising the benefits of legal migration and offering protection to those in need while tackling irregular migration resolutely and managing the EU's external borders efficiently.

6. To remain an attractive destination for talents and skills, Europe must develop strategies to maximise the opportunities of legal migration through coherent and efficient rules, and informed by a dialogue with the business community and social partners. The Union should also support Member States' efforts to pursue active integration policies which foster social cohesion and economic dynamism.
7. The Union's commitment to international protection requires a strong European asylum policy based on solidarity and responsibility. The full transposition and effective implementation of the Common European Asylum System (CEAS) is an absolute priority. This should result in high common standards and stronger cooperation, creating a level playing field where asylum seekers are given the same procedural guarantees and protection throughout the Union. It should go hand in hand with a reinforced role for the European Asylum Support Office (EASO), particularly in promoting the uniform application of the *acquis*. Converging practices will enhance mutual trust and allow to move to future next steps.
8. Addressing the root causes of irregular migration flows is an essential part of EU migration policy. This, together with the prevention and tackling of irregular migration, will help avoid the loss of lives of migrants undertaking hazardous journeys. A sustainable solution can only be found by intensifying cooperation with countries of origin and transit, including through assistance to strengthen their migration and border management capacity. Migration policies must become a much stronger integral part of the Union's external and development policies, applying the 'more for more' principle and building on the Global Approach to Migration and Mobility. The focus should be on the following elements:
 - strengthening and expanding Regional Protection Programmes, in particular close to regions of origin, in close collaboration with UNHCR; increase contributions to global resettlement efforts, notably in view of the current protracted crisis in Syria;
 - addressing smuggling and trafficking in human beings more forcefully, with a focus on priority countries and routes;
 - establishing an effective common return policy and enforcing readmission obligations in agreements with third countries;
 - fully implementing the actions identified by the Task Force Mediterranean.
9. The Schengen area, allowing people to travel without internal border controls, and the increasing numbers of people travelling to the EU require efficient management of the EU's common external borders to ensure strong protection. The Union must mobilise all the tools at its disposal to support the Member States in their task. To this end:
 - Integrated Border Management of the external borders should be modernised in a cost efficient way to ensure smart border management with an entry-exit system and registered travellers programme and supported by the new Agency for Large Scale IT Systems (eu-LISA);
 - Frontex, as an instrument of European solidarity in the area of border management, should reinforce its operational assistance, in particular to support Member States facing strong pressure at the external borders, and increase its reactivity towards rapid evolutions in migration flows, making full use of the new European Border Surveillance System EUROSUR;
 - in the context of the long-term development of Frontex, the possibility of setting up a European system of border guards to enhance the control and surveillance capabilities at our external borders should be studied.

At the same time, the common visa policy needs to be modernised by facilitating legitimate travel and reinforced local Schengen consular cooperation while maintaining a high level of security and implementing the new Schengen governance system.

10. It is essential to guarantee a genuine area of security for European citizens through operational police cooperation and by preventing and combating serious and organised crime, including human trafficking and smuggling, as well as corruption. At the same time, an effective EU counter terrorism policy is needed, whereby all relevant actors work closely together, integrating the internal and external aspects of the fight against terrorism. In this context, the European Council reaffirms the role of the EU Counter Terrorism Coordinator. In its fight against crime and terrorism, the Union should back national authorities by mobilising all instruments of judicial and police cooperation, with a reinforced coordination role for Europol and Eurojust, including through:
- the review and update of the internal security strategy by mid 2015;
 - the improvement of cross-border information exchanges, including on criminal records;
 - the further development of a comprehensive approach to cybersecurity and cybercrime;
 - the prevention of radicalisation and extremism and action to address the phenomenon of foreign fighters, including through the effective use of existing instruments for EU-wide alerts and the development of instruments such as the EU Passenger Name Record system.
11. The smooth functioning of a true European area of justice with respect for the different legal systems and traditions of the Member States is vital for the EU. In this regard, mutual trust in one another's justice systems should be further enhanced. A sound European justice policy will contribute to economic growth by helping businesses and consumers to benefit from a reliable business environment within the internal market. Further action is required to:
- promote the consistency and clarity of EU legislation for citizens and businesses;
 - simplify access to justice; promote effective remedies and use of technological innovations including the use of e-justice;
 - continue efforts to strengthen the rights of accused and suspect persons in criminal proceedings;
 - examine the reinforcement of the rights of persons, notably children, in proceedings to facilitate enforcement of judgements in family law and in civil and commercial matters with cross-border implications;
 - reinforce the protection of victims;
 - enhance mutual recognition of decisions and judgments in civil and criminal matters;
 - reinforce exchanges of information between the authorities of the Member States;
 - fight fraudulent behaviour and damages to the EU budget, including by advancing negotiations on the European Public Prosecutor's Office;
 - facilitate cross-border activities and operational cooperation;
 - enhance training for practitioners;
 - mobilise the expertise of relevant EU agencies such as Eurojust and the Fundamental Rights Agency (FRA).
12. As one of the fundamental freedoms of the European Union, the right of EU citizens to move freely and reside and work in other Member States needs to be protected, including from possible misuse or fraudulent claims.
13. The European Council calls on the EU institutions and the Member States to ensure the appropriate legislative and operational follow-up to these guidelines and will hold a mid-term review in 2017.

III. JUDICIAL COOPERATION IN CRIMINAL MATTERS

(Acts adopted under Title VI of the Treaty on European Union)

JOINT ACTION

of 22 April 1996

adopted by the Council on the basis of Article K.3 of the Treaty on European Union,
concerning a framework for the exchange of liaison magistrates to improve judicial
cooperation between the Member States of the European Union

(96/277/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article K.3 (2) (b) of the Treaty on European Union,

Having regard to the initiative of the Italian Republic,

Whereas the Member States consider that they have a common interest in adopting measures to improve judicial cooperation, in both criminal and civil matters;

Whereas, to that end, the exchange of magistrates or officials to liaise between the Member States which so wish constitutes a useful and desirable measure;

Whereas the exchange of liaison magistrates of officials could increase the speed and effectiveness of judicial cooperation and at the same time facilitate better mutual understanding between Member States' legal and judicial systems;

Whereas more effective judicial cooperation in criminal matters could also help in effectively combating all forms of transnational crime, particularly organized crime and terrorism as well as fraud affecting the financial interests of the Community;

Whereas this joint action does not affect existing rules of procedure for judicial cooperation or exchanges of information between the Member States and the Commission based on other instruments;

Taking a positive view of the initiatives already undertaken by a number of Member States in sending liaison magistrates or officials to or receiving them from authorities competent for judicial cooperation and current initiatives to establish an effective network of judicial contact points to combat international organized crime;

Having considered the need to define a clear and useful judicial framework for initiatives already under way

in order to increase their effectiveness and promote coordination,

HAS ADOPTED THIS JOINT ACTION;

Article 1

Exchange of liaison magistrates

1. This joint action establishes a framework for the posting or the exchange of magistrates of officials with special expertise in judicial cooperation procedures hereafter, referred to as 'liaison magistrates', as between Member States, on the basis of bilateral or multilateral arrangements.
2. The Member States agree that, the guidelines laid down in this joint action will serve as a reference when they decide to send liaison magistrates to another Member State or to exchange liaison magistrates.
3. The main aim of creating a framework for the exchange of liaison magistrates is to increase the speed and effectiveness of judicial cooperation and to promote the pooling of information on the legal and judicial systems of the Member States and to improve their operation.

Article 2

Functions of liaison magistrates

1. The tasks of liaison magistrates shall normally include any activity designed to encourage and accelerate all forms of judicial cooperation in criminal and, where appropriate, civil matters, in particular by establishing direct links with the competent departments and judicial authorities of the host State.

2. Under arrangements agreed between the home Member State and the host Member State, liaison magistrates' tasks may also include any activity connected with handling the exchange of information and statistics designed to promote mutual understanding of the legal systems and legal data bases of the States concerned and to further relations between the legal professions of each of those States.

Article 3

Exchange of information

Member States shall keep each other informed within the Council of initiatives already under way and those taken to implement this joint action. The Member States

concerned shall forward information on their exchanges of liaison magistrates to the General Secretariat of the Council annually.

Article 4

Final provision

This joint action shall be published in the Official Journal and shall enter into force on the date of its publication.

Done at Luxembourg, 22 April 1996.

For the Council

The President

S. AGNELLI

CONVENTION

drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 27 September 1996,

DESIRING to improve judicial cooperation between the Member States in criminal matters, with regard both to prosecution and to the execution of sentences,

RECOGNIZING the importance of extradition in judicial cooperation for the achievement of these objectives,

STRESSING that Member States have an interest in ensuring that extradition procedures operate efficiently and rapidly in so far as their systems of government are based on democratic principles and they comply with the obligations laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950,

EXPRESSING their confidence in the structure and operation of their judicial systems and in the ability of all Member States to ensure a fair trial,

BEARING IN MIND that by Act of 10 March 1995 the Council drew up the Convention on simplified extradition procedure between the Member States of the European Union,

TAKING ACCOUNT of the interest in concluding a Convention between the Member States of the European Union supplementing the European Convention on Extradition of 13 December 1957 and the other Conventions in force on the matter,

CONSIDERING that the provisions of those Conventions remain applicable for all matters not covered by this Convention,

HAVE AGREED AS FOLLOWS:

*Article 1***General provisions**

1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union:

- of the European Convention on Extradition of 13 December 1957 (hereinafter referred to as the 'European Convention on Extradition'),
- the European Convention on the Suppression of Terrorism of 27 January 1977 (hereinafter referred to as the 'European Convention on the Suppression of Terrorism'),
- the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders in

relations between the Member States which are party to that Convention, and

- the first chapter 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 relations between the Member States of the Benelux Economic Union.

2. Paragraph 1 shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States, nor, as provided for in Article 28 (3) of the European Convention on Extradition, shall it affect extradition arrangements agreed on the basis of uniform or reciprocal laws providing for the execution in the territory of a Member State of warrants of arrest issued in the territory of another Member State.

*Article 2***Extraditable offences**

1. Extradition shall be granted in respect of offences which are punishable under the law of the requesting Member State by deprivation of liberty or a detention order for a maximum period of at least 12 months and under the law of the requested Member State by deprivation of liberty or a detention order for a maximum period of at least six months.

2. Extradition may not be refused on the grounds that the law of the requested Member State does not provide for the same type of detention order as the law of the requesting Member State.

3. Article 2 (2) of the European Convention on Extradition and Article 2 (2) of the Benelux Treaty shall also apply where certain offences are punishable by pecuniary penalties.

*Article 3***Conspiracy and association to commit offences**

1. Where the offence for which extradition is requested is classified by the law of the requesting Member State as a conspiracy or an association to commit offences and is punishable by a maximum term of deprivation of liberty or a detention order of at least 12 months, extradition shall not be refused on the ground that the law of the requested Member State does not provide for the same facts to be an offence, provided the conspiracy or the association is to commit:

(a) one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;

or

(b) any other offence punishable by deprivation of liberty or a detention order of a maximum of at least 12 months in the field of drug trafficking and other forms of organized crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons.

2. For the purpose of determining whether the conspiracy or the association is to commit one of the offences indicated under paragraph 1 (a) or (b) of this Article, the requested Member State shall take into consideration the information contained in the warrant of arrest or order having the same legal effect or in the

conviction of the person whose extradition is requested as well as in the statement of the offences envisaged in Article 12 (2) (b) of the European Convention on Extradition or in Article 11 (2) (b) of the Benelux Treaty.

3. When giving the notification referred to in Article 18 (2), any Member State may declare that it reserves the right not to apply paragraph 1 or to apply it under certain specified conditions.

4. Any Member State which has entered a reservation under paragraph 3 shall make extraditable under the terms of Article 2 (1) the behaviour of any person which contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism as in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, drug trafficking and other forms of organized crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons, punishable by deprivation of liberty or a detention order of a maximum of at least 12 months, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution shall be intentional and made having knowledge either of the purpose and the general criminal activity of the group or of the intention of the group to commit the offence or offences concerned.

*Article 4***Order for deprivation of liberty in a place other than a penitentiary institution**

Extradition for the purpose of prosecution shall not be refused on the ground that the request is supported, pursuant to Article 12 (2) (a) of the European Convention on Extradition or Article 11 (2) (a) of the Benelux Treaty, by an order of the judicial authorities of the requesting Member State to deprive the person of his liberty in a place other than a penitentiary institution.

*Article 5***Political offences**

1. For the purposes of applying this Convention, no offence may be regarded by the requested Member State as a political offence, as 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 18 (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;

and

- (b) offences of conspiracy or association — which correspond to the description of behaviour referred to in Article 3 (4) — 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. The provisions of Article 3 (2) of the European Convention on Extradition and of Article 5 of the European Convention on the Suppression of Terrorism remain unaffected.

4. Reservations made pursuant to Article 13 of the European Convention on the Suppression of Terrorism shall not apply to extradition between Member States.

Article 6

Fiscal offences

1. With regard to taxes, duties, customs and exchange, extradition shall also be granted under the terms of this Convention, the European Convention on Extradition and the Benelux Treaty in respect of offences which correspond under the law of the requested Member State to a similar offence.

2. Extradition may not be refused on the ground that the law of the requested Member State does not impose the same type of taxes or duties or does not have the same type of provisions in connection with taxes, duties, customs and exchange as the law of the requesting Member State.

3. When giving the notification referred to in Article 18 (2), any Member State may declare that it will grant extradition in connection with a fiscal offence only for acts or omissions which may constitute an offence in connection with excise, value-added tax or customs.

Article 7

Extradition of nationals

1. Extradition may not be refused on the ground that the person claimed is a national of the requested Member State within the meaning of Article 6 of the European Convention on Extradition.

2. When giving the notification referred to in Article 18 (2), any Member State may declare that it will not grant extradition of its nationals or will authorize it only under certain specified conditions.

3. Reservations referred to in paragraph 2 shall be valid for five years from the first day of application of this Convention by the Member State concerned. However,

such reservations may be renewed for successive periods of the same duration.

Twelve months before the date of expiry of the reservation, the depositary shall give notice of that expiry to the Member State concerned.

No later than three months before the expiry of each five-year period, the Member State shall notify the depositary either that it is upholding its reservation, that it is amending it to ease the conditions for extradition or that it is withdrawing it.

In the absence of the notification referred to in the preceding subparagraph, the depositary shall inform the Member State concerned that its reservation is considered to have been extended automatically for a period of six months, before the expiry of which the Member State must give notification. On expiry of that period, failure to notify shall cause the reservation to lapse.

Article 8

Lapse of time

1. Extradition may not be refused on the ground that the prosecution or punishment of the person would be statute-barred according to the law of the requested Member State.

2. The requested Member State shall have the option of not applying paragraph 1 where the request for extradition is based on offences for which that Member State has jurisdiction under its own criminal law.

Article 9

Amnesty

Extradition shall not be granted in respect of an offence covered by amnesty in the requested Member State where that State was competent to prosecute the offence under its own criminal law.

Article 10

Offences other than those upon which the request for extradition is based

1. A person who has been extradited may, in respect of offences committed before his surrender other than those upon which the request for extradition was based, without it being necessary to obtain the consent of the requested Member State:

- (a) be prosecuted or tried where the offences are not punishable by deprivation of liberty;

(b) be prosecuted or tried in so far as the criminal proceedings do not give rise to the application of a measure restricting his personal liberty;

(c) be subjected to a penalty or a measure not involving the deprivation of liberty, including a financial penalty, or a measure in lieu thereof, even if it may restrict his personal liberty;

(d) be prosecuted, tried, detained with a view to the execution of a sentence or of a detention order or subjected to any other restriction of his personal liberty if after his surrender he has expressly waived the benefit of the rule of speciality with regard to specific offences preceding his surrender.

2. Waiver on the part of the person extradited as referred to in paragraph 1 (d) shall be given before the competent judicial authorities of the requesting Member State and shall be recorded in accordance with that Member State's national law.

3. Each Member State shall adopt the measures necessary to ensure that the waiver referred to in paragraph 1 (d) is established in such a way as to show that the person has given it voluntarily and in full awareness of the consequences. To that end, the person extradited shall have the right to legal counsel.

4. When the requested Member State has made a declaration pursuant to Article 6 (3), paragraph 1 (a), (b) and (c) of this Article shall not apply to fiscal offences except those referred to in Article 6 (3).

Article 11

Presumption of consent of the requested Member State

Each Member State, when giving the notification referred to in Article 18 (2) or at any time, may declare that, in its relations with other Member States that have made the same declaration, consent for the purposes of Article 14 (1) (a) of the European Convention on Extradition and Article 13 (1) (a) of the Benelux Treaty is presumed to have been given, unless it indicates otherwise when granting extradition in a particular case.

Where in a particular case the Member State has indicated that its consent should not be deemed to have been given, Article 10 (1) still applies.

Article 12

Re-extradition to another Member State

1. Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty shall not apply to requests for re-extradition from one Member State to another.

2. When giving the notification referred to in Article 18 (2), a Member State may declare that Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty shall continue to apply except where Article 13 of the Convention on simplified extradition procedure between the Member States of the European Union⁽¹⁾ provides otherwise or where the person concerned consents to be re-extradited to another Member State.

Article 13

Central authority and transmission of documents by facsimile

1. Each Member State shall designate a central authority or, where its constitutional system so requires, central authorities responsible for transmitting and receiving extradition requests and the necessary supporting documents, as well as any other official correspondence relating to extradition requests, unless otherwise provided for in this Convention.

2. When giving the notification referred to in Article 18 (2) each Member State shall indicate the authority or authorities which it has designated pursuant to paragraph 1 of this Article. It shall inform the depositary of any change concerning the designation.

3. The extradition request and the documents referred to in paragraph 1 may be sent by facsimile transmission. Each central authority shall be equipped with a facsimile machine for transmitting and receiving such documents and shall ensure that it is kept in proper working order.

4. In order to ensure the authenticity and confidentiality of the transmission, a cryptographic device fitted to the facsimile machine possessed by the central authority shall be in operation when the equipment is being used to apply this Article.

Member States shall consult each other on the practical arrangements for applying this Article.

⁽¹⁾ OJ No C 78, 30. 3. 1995, p. 1.

5. In order to guarantee the authenticity of extradition documents, the central authority of the requesting Member State shall state in its request that it certifies that the documents transmitted in support of that request correspond to the originals and shall describe the pagination. Where the requested Member State disputes that the documents correspond to the originals, its central authority shall be entitled to require the central authority of the requesting Member State to produce the original documents or a true copy thereof within a reasonable period through either diplomatic channels or any other mutually agreed channel.

Article 14

Supplementary information

When giving the notification referred to in Article 18 (2), or at any other time, any Member State may declare that, in its relations with other Member States which have made the same declaration, the judicial authorities or other competent authorities of those Member States may, where appropriate, make requests directly to its judicial authorities or other competent authorities responsible for criminal proceedings against the person whose extradition is requested for supplementary information in accordance with Article 13 of the European Convention on Extradition or Article 12 of the Benelux Treaty.

In making such a declaration, a Member State shall specify its judicial authorities or other competent authorities authorized to communicate and receive such supplementary information.

Article 15

Authentication

Any document or any copy of documents transmitted for the purposes of extradition shall be exempted from authentication or any other formality unless expressly required by the provisions of this Convention, the European Convention on Extradition or the Benelux Treaty. In the latter case, copies of documents shall be considered to be authenticated when they have been certified true copies by the judicial authorities that issued the original or by the central authority referred to in Article 13.

Article 16

Transit

In the case of transit, under the conditions laid down in Article 21 of the European Convention on Extradition and Article 21 of the Benelux Treaty, through the territory of one Member State to another Member State, the following provisions shall apply:

- (a) any request for transit must contain sufficient information to enable the Member State of transit to assess the request and to take the constraint measures needed for execution of the transit *vis-à-vis* the extradited person.

To that end, the following information shall be sufficient:

- the identity of the person extradited,
- the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment,
- the nature and the legal description of the offence,
- a description of the circumstances in which the offence was committed, including the date and place;

- (b) the request for transit and the information provided for in point (a) may be sent to the Member State of transit by any means leaving a written record. The Member State of transit shall make its decision known by the same method;

- (c) in the case of transport by air without a scheduled stopover, if an unscheduled landing occurs, the requesting Member State shall provide the transit Member State concerned with the information provided for in point (a);

- (d) subject to the provisions of this Convention, in particular Articles 3, 5 and 7, the provisions of Article 21 (1), (2), (5) and (6) of the European Convention on Extradition and Article 21 (1) of the Benelux Treaty shall continue to apply.

Article 17

Reservations

No reservations may be entered in respect of this Convention other than those for which it makes express provision.

Article 18

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 enter into force 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 drawing up this Convention, which is last to complete that formality.

4. Until this Convention enters into force, any Member State may, when giving the notification referred to in paragraph 2, or at any other time, declare that as far as it is concerned this Convention shall apply to its relations with Member States that have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.

5. This Convention shall apply only to requests submitted after the date on which it enters into force or is applied as between the requested Member State and the requesting Member State.

Article 19

Accession of new Member States

1. This Convention shall be open to accession by any State that 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 that 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 90 days.

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 18 (4) shall apply to acceding Member States.

Article 20

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 European Communities* information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

Done 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, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to each of the Member States.

ANNEX

Joint Declaration on the right of asylum

The Member States declare that this Convention is without prejudice either to the right of asylum to the extent to which it is recognized by their respective constitutions or to the application by the Member States of the provisions of the Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the Convention relating to the Status of Stateless Persons of 28 September 1954 and by the Protocol relating to the Status of Refugees of 31 January 1967.

Declaration by Denmark, Finland and Sweden concerning Article 7 of this Convention

Denmark, Finland and Sweden confirm that — as indicated during their negotiations on accession to the Schengen agreements — they will not invoke, in relation to other Member States which ensure equal treatment, their declarations under Article 6 (1) of the European Convention on Extradition as a ground for refusal of extradition of residents from non-Nordic States.

Declaration on the concept of 'nationals'

The Council takes note of the Member States' undertaking to apply the Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons in respect of the nationals of each Member State within the meaning of Article 3 (4) of the said Convention.

The Member States' undertaking mentioned in the first paragraph is without prejudice to the application of Article 7 (2) of this Convention.

Declaration by Greece re Article 5

Greece interprets Article 5 from the standpoint of paragraph 3 thereof. This interpretation ensures compliance with the conditions of the Greek constitution, which:

- expressly prohibits extradition of a foreigner pursued for activities in defence of freedom,
 - and
 - distinguishes between political and so-called mixed offences, for which the rules are not the same as for political offences.
-

Declaration by Portugal on extradition requested for an offence punishable by a life sentence or detention order

Having entered a reservation in respect of the European Convention on Extradition of 1957 to the effect that it will not grant extradition of persons wanted for an offence punishable by a life sentence or detention order, Portugal states that where extradition is sought for an offence punishable by a life sentence or detention order, it will grant extradition, in compliance with the relevant provisions of the Constitution of the Portuguese Republic, as interpreted by its Constitutional Court, only if it regards as sufficient the assurances given by the requesting Member State that it will encourage, in accordance with its law and practice regarding the carrying out of sentences, the application of any measures of clemency to which the person whose extradition is requested might be entitled.

Portugal reaffirms the validity of undertakings entered into in existing international agreements to which it is party, in particular in Article 5 of the Convention on Portuguese accession to the Convention Applying the Schengen Agreement.

Council declaration on the follow up to the Convention

The Council declares:

- (a) that it considers that there should be a periodic review, on the basis of information supplied by the Member States, of:
- the implementation of this Convention,
 - the functioning of this Convention after its entry into force,
 - the possibility for Member States to amend the reservations entered in the framework of this Convention with a view to easing the conditions for extradition or withdrawing its reservations,
 - the general functioning of extradition procedures between the Member States;
- (b) that it will consider, one year after entry into force of this Convention, whether jurisdiction should be given to the Court of Justice of the European Communities.
-

IV

*(Notices)*NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
AGENCIES

COUNCIL

Notice concerning the entry into force of the 1996 Extradition Convention

(2019/C 329/02)

The Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union ⁽¹⁾, signed in Dublin on 27 September 1996, shall enter into force on 5 November 2019, pursuant to its Article 18(3).

⁽¹⁾ OJ C 313, 23.10.1996, p. 12.

(Acts adopted pursuant to Title VI of the Treaty on European Union)

**COUNCIL DECISION 2003/169/JHA
of 27 February 2003**

determining which provisions of the 1995 Convention on simplified extradition procedure between the Member States of the European Union and of the 1996 Convention relating to extradition between the Member States of the European Union constitute developments of the Schengen *acquis* in accordance with the Agreement concerning the Republic of Iceland's and the Kingdom of Norway's association with the implementation, application and development of the Schengen *acquis*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(b) and Article 34(2)(c) thereof,

Having regard to the initiative of the Kingdom of Sweden ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) For the purposes of achieving the objectives of the European Union, the Council established the Convention on simplified extradition procedure between the Member States of the European Union ⁽³⁾ (hereinafter 'the Simplified Extradition Convention') and the Convention relating to extradition between the Member States of the European Union ⁽⁴⁾ (hereinafter 'the Extradition Convention').
- (2) In order to ensure a clear and unambiguous legal situation it is necessary to determine the relationship between the provisions of the above Conventions and those of Chapter 4 of Title III of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders ⁽⁵⁾ (hereinafter 'the Schengen Convention'), which were incorporated into the framework of the European Union when the Treaty of Amsterdam entered into force on 1 May 1999.
- (3) It is also necessary to associate the Republic of Iceland and the Kingdom of Norway with the application of the provisions of the Simplified Extradition Convention and some provisions of the Extradition Convention which constitute a development of the Schengen *acquis* and fall within the scope of Article 1 of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of

Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ⁽⁶⁾.

- (4) The procedures set out in the Agreement concluded by the Council of the European Union with the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽⁷⁾ (hereinafter the 'Association Agreement') have been observed in respect of this Decision.
- (5) When the Republic of Iceland and the Kingdom of Norway are notified of the adoption of this Decision in accordance with Article 8(2)(a) of the Association Agreement, those two States will be requested, when informing the Council and the Commission of the fulfilment of their constitutional requirements, to make the relevant declarations and give the relevant notifications under Article 7(4), Article 9, Article 12(3) and Article 15 of the Simplified Extradition Convention and Article 6(3) and Article 13(2) of the Extradition Convention,

HAS DECIDED AS FOLLOWS:

Article 1

The Simplified Extradition Convention constitutes a development of the provisions of the Schengen *acquis*, and in particular of Article 66 of the Schengen Convention.

Article 2

Articles 2, 6, 8, 9 and 13 of the Extradition Convention and Article 1 thereof, to the extent that that Article is pertinent to those other Articles, constitute a development of the provisions of the Schengen *acquis*, and in particular of Article 61, Article 62(1) and (2), and Articles 63 and 65 of the Schengen Convention.

⁽¹⁾ OJ C 195, 11.7.2001, p. 13.

⁽²⁾ Opinion delivered on 13 November 2001 (not yet published in the Official Journal).

⁽³⁾ OJ C 78, 30.3.1995, p. 2.

⁽⁴⁾ OJ C 313, 23.10.1996, p. 12.

⁽⁵⁾ OJ L 239, 22.9.2000, p. 19.

⁽⁶⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁷⁾ OJ L 176, 10.7.1999, p. 36.

Article 3

1. Without prejudice to Article 8 of the Association Agreement, the provisions of the Simplified Extradition Convention shall enter into force for Iceland and Norway on the same date that that Convention enters into force in accordance with Article 16(2) thereof, or, if that date is before 1 July 2002, on the latter date.

2. Before the Simplified Extradition Convention enters into force for Iceland or Norway, Iceland and Norway may, when notifying the fulfilment of their constitutional requirements in accordance with Article 8(2) of the Association Agreement, declare that those provisions shall apply to their relations with States which have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.

3. Without prejudice to Article 8 of the Association Agreement, Articles 2, 6, 8, 9 and 13 of the Extradition Convention shall enter into force for Iceland and Norway on the date that that Convention enters into force in accordance with Article 18(3) thereof, or, if that date is before 1 July 2002, on the latter date.

4. Before the provisions of the Extradition Convention referred to in paragraph 3 enter into force for Iceland or Norway, Iceland and Norway may, when notifying the fulfilment of their constitutional requirements in accordance with Article 8(2) of the Association Agreement, declare that those provisions shall apply to their relations with States that have made the same declaration. Such declarations shall take effect ninety days after the date of deposit thereof.

Article 4

1. On the same date that the Simplified Extradition Convention enters into force in accordance with Article 16(2) thereof, Article 66 of the Schengen Convention shall be repealed. Nevertheless, that provision shall continue to apply to extradition requests submitted before that date, unless the Member States concerned are already applying the Simplified Extradition Convention between themselves pursuant to declarations made in accordance with Article 16(3) thereof.

2. On the same date that the Extradition Convention enters into force in accordance with Article 18(3) thereof, Article 61, Article 62(1) and (2) and Articles 63 and 65 of the Schengen Convention shall be repealed. Nevertheless, those provisions shall continue to apply to extradition requests submitted before that date, unless the Member States concerned are already applying the Extradition Convention between themselves pursuant to declarations made in accordance with Article 18(4) thereof.

Article 5

This Decision shall take effect on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 27 February 2003.

For the Council

The President

M. CHRISOCHOÏDIS

**CONVENTION
IMPLEMENTING THE SCHENGEN AGREEMENT**

of 14 June 1985

between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders

The KINGDOM OF BELGIUM, the FEDERAL REPUBLIC OF GERMANY, the FRENCH REPUBLIC, the GRAND DUCHY OF LUXEMBOURG and the KINGDOM OF THE NETHERLANDS, hereinafter referred to as 'the Contracting Parties',

TAKING as their basis the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders,

HAVING DECIDED to fulfil the resolve expressed in that Agreement to abolish checks at their common borders on the movement of persons and facilitate the transport and movement of goods at those borders,

WHEREAS the Treaty establishing the European Communities, supplemented by the Single European Act, provides that the internal market shall comprise an area without internal frontiers,

WHEREAS the aim pursued by the Contracting Parties is in keeping with that objective, without prejudice to the measures to be taken to implement the provisions of the Treaty,

WHEREAS the fulfilment of that resolve requires a series of appropriate measures and close cooperation between the Contracting Parties,

HAVE AGREED AS FOLLOWS:

TITLE I

DEFINITIONS

Article 1

For the purposes of this Convention:

internal borders: shall mean the common land borders of the Contracting Parties, their airports for internal flights and their sea ports for regular ferry connections exclusively from or to other ports within the territories of the Contracting Parties and not calling at any ports outside those territories;

external borders: shall mean the Contracting Parties' land and sea borders and their airports and sea ports, provided that they are not internal borders;

internal flight: shall mean any flight exclusively to or from the territories of the Contracting Parties and not landing in the territory of a third State;

third State: shall mean any State other than the Contracting Parties;

alien: shall mean any person other than a national of a Member State of the European Communities;

alien for whom an alert has been issued for the purposes of refusing entry: shall mean an alien for whom an alert has been introduced into the Schengen Information System in accordance with Article 96 with a view to that person being refused entry;

border crossing point: shall mean any crossing point authorised by the competent authorities for crossing external borders;

border check: shall mean a check carried out at a border in response exclusively to an intention to cross that border, regardless of any other consideration;

carrier: shall mean any natural or legal person whose occupation it is to provide passenger transport by air, sea or land;

residence permit: shall mean an authorisation of whatever type issued by a Contracting Party which grants right of residence within its territory. This definition shall not include temporary permission to reside in the territory of a Contracting Party for the purposes of processing an application for asylum or a residence permit;

application for asylum: shall mean any application submitted in writing, orally or otherwise by an alien at an external border or within the territory of a Contracting Party with a view to obtaining recognition as a refugee in accordance with the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol

of 31 January 1967, and as such obtaining the right of residence;

asylum seeker: shall mean any alien who has lodged an application for asylum within the meaning of this Convention and in respect of which a final decision has not yet been taken;

processing applications for asylum: shall mean all the procedures for examining and taking a decision on applications for asylum, including measures taken under a final decision thereon, with the exception of the determination of the Contracting Party responsible for processing applications for asylum pursuant to this Convention.

TITLE II

ABOLITION OF CHECKS AT INTERNAL BORDERS AND MOVEMENT OF PERSONS

CHAPTER 1

CROSSING INTERNAL BORDERS

Article 2

1. Internal borders may be crossed at any point without any checks on persons being carried out.

2. However, where public policy or national security so require a Contracting Party may, after consulting the other Contracting Parties, decide that for a limited period national border checks appropriate to the situation shall be carried out at internal borders. If public policy or national security require immediate action, the Contracting Party concerned shall take the necessary measures and at the earliest opportunity shall inform the other Contracting Parties thereof.

3. The abolition of checks on persons at internal borders shall not affect the provisions laid down in Article 22, or the exercise of police powers throughout a Contracting Party's territory by the competent authorities under that Party's law, or the requirement to hold, carry and produce permits and documents provided for in that Party's law.

4. Checks on goods shall be carried out in accordance with the relevant provisions of this Convention.

CHAPTER 2

CROSSING EXTERNAL BORDERS

Article 3

1. External borders may in principle only be crossed at border crossing points and during the fixed opening hours. More detailed provisions, exceptions and arrangements for local border traffic, and rules governing special categories of maritime traffic such as pleasure boating and coastal fishing, shall be adopted by the Executive Committee.

2. The Contracting Parties undertake to introduce penalties for the unauthorised crossing of external borders at places other than crossing points or at times other than the fixed opening hours.

Article 4

1. The Contracting Parties shall ensure that, as from 1993, passengers on flights from third States who transfer onto internal flights will be subject to an entry check, together with their hand baggage, at the airport at which the external flight arrives. Passengers on internal flights who transfer onto flights bound for third States will be subject to a departure check, together with their hand baggage, at the airport from which the external flight departs.

2. *The Contracting Parties shall take the necessary measures to ensure that checks are carried out in accordance with paragraph 1.*

3. *Neither paragraph 1 nor paragraph 2 shall affect checks on registered baggage; such checks shall be carried out either in the airport of final destination or in the airport of initial departure.*

4. *Until the date laid down in paragraph 1, airports shall, by way of derogation from the definition of internal borders, be considered as external borders for internal flights.*

Article 5

1. For stays not exceeding three months, aliens fulfilling the following conditions may be granted entry into the territories of the Contracting Parties:

- (a) that the aliens possess a valid document or documents, as defined by the Executive Committee, authorising them to cross the border;
- (b) that the aliens are in possession of a valid visa if required;
- (c) that the aliens produce, if necessary, documents justifying the purpose and conditions of the intended stay and that they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted, or are in a position to acquire such means lawfully;
- (d) that the aliens shall not be persons for whom an alert has been issued for the purposes of refusing entry;
- (e) that the aliens shall not be considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties.

2. An alien who does not fulfil all the above conditions must be refused entry into the territories of the Contracting Parties unless a Contracting Party considers it necessary to derogate from that principle on humanitarian grounds, on grounds of national interest or because of international obligations. In such cases authorisation to enter will be restricted to the territory of the Contracting Party concerned, which must inform the other Contracting Parties accordingly.

These rules shall not preclude the application of special provisions concerning the right of asylum or of the provisions laid down in Article 18.

3. Aliens who hold residence permits or re-entry visas issued by one of the Contracting Parties or, where required, both documents, shall be authorised entry for transit purposes, unless their names are on the national list of alerts of the Contracting Party whose external borders they are seeking to cross.

Article 6

1. Cross-border movement at external borders shall be subject to checks by the competent authorities. Checks shall be carried out for the Contracting Parties' territories, in accordance with uniform principles, within the scope of national powers and national law and taking account of the interests of all Contracting Parties.

2. The uniform principles referred to in paragraph 1 shall be as follows:

- (a) Checks on persons shall include not only the verification of travel documents and the other conditions governing entry, residence, work and exit but also checks to detect and prevent threats to the national security and public policy of the Contracting Parties. Such checks shall also be carried out on vehicles and objects in the possession of persons crossing the border. They shall be carried out by each Contracting Party in accordance with its national law, in particular where searches are involved.
- (b) All persons shall undergo at least one such check in order to establish their identities on the basis of the production or presentation of their travel documents.
- (c) On entry, aliens shall be subject to a thorough check, as defined in (a).
- (d) On exit, the checks shall be carried out as required in the interest of all Contracting Parties under the law on aliens in order to detect and prevent threats to the national security and public policy of the Contracting Parties. Such checks shall always be carried out on aliens.
- (e) If in certain circumstances such checks cannot be carried out, priorities must be set. In that case, entry checks shall as a rule take priority over exit checks.

3. The competent authorities shall use mobile units to carry out external border surveillance between crossing points; the same shall apply to border crossing points outside normal opening hours. This surveillance shall be carried out in such a way as to discourage people from circumventing the checks at crossing points. The surveillance procedures shall, where appropriate, be established by the Executive Committee.

4. The Contracting Parties undertake to deploy enough suitably qualified officers to carry out checks and surveillance along external borders.

5. An equal degree of control shall be exercised at external borders.

Article 7

The Contracting Parties shall assist each other and shall maintain constant, close cooperation with a view to the effective implementation of checks and surveillance. They shall, in particular, exchange all relevant, important information, with the exception of personal data, unless otherwise provided for in this Convention. They shall as far as possible harmonise the instructions given to the authorities responsible for checks and shall promote standard basic and further training of officers manning checkpoints. Such cooperation may take the form of an exchange of liaison officers.

Article 8

The Executive Committee shall take the necessary decisions on the practical procedures for carrying out border checks and surveillance.

CHAPTER 3

VISAS

Section 1

Short-stay visas*Article 9*

1. The Contracting Parties undertake to adopt a common policy on the movement of persons and, in particular, on the arrangements for visas. They shall assist each other to that end. The Contracting Parties undertake to pursue through common consent the harmonisation of their policies on visas.

2. The visa arrangements relating to third States whose nationals are subject to visa arrangements common to all the Contracting Parties at the time of signing this Convention or at a later date may be amended only by common consent of all the Contracting Parties. A Contracting Party may in exceptional cases derogate from the common visa arrangements relating to a third State where overriding reasons of national policy require an urgent decision. It shall first consult the other Contracting Parties and, in its decision, take account of their interests and the consequences of that decision.

Article 10

1. A uniform visa valid for the entire territory of the Contracting Parties shall be introduced. This visa, the period of validity of which shall be determined by Article 11, may be issued for visits not exceeding three months.

2. Pending the introduction of such a visa, the Contracting Parties shall recognise their respective national visas, provided that these are issued in accordance with common conditions and criteria determined in the context of the relevant provisions of this Chapter.

3. By way of derogation from paragraphs 1 and 2, each Contracting Party shall reserve the right to restrict the territorial validity of the visa in accordance with common arrangements determined in the context of the relevant provisions of this chapter.

Article 11

1. The visa provided for in Article 10 may be:

- (a) a travel visa valid for one or more entries, provided that neither the length of a continuous visit nor the total length of successive visits exceeds three months in any half-year, from the date of first entry;
- (b) a transit visa authorising its holder to pass through the territories of the Contracting Parties once, twice or exceptionally several times en route to the territory of a third State, provided that no transit shall exceed five days.

2. Paragraph 1 shall not preclude a Contracting Party from issuing a new visa, the validity of which is limited to its own territory, within the half-year in question if necessary.

Article 12

1. The uniform visa provided for in Article 10(1) shall be issued by the diplomatic and consular authorities of the Contracting Parties and, where appropriate, by the authorities of the Contracting Parties designated under Article 17.

2. The Contracting Party responsible for issuing such a visa shall in principle be that of the main destination. If this cannot be determined, the visa shall in principle be issued by the diplomatic or consular post of the Contracting Party of first entry.

3. The Executive Committee shall specify the implementing arrangements and, in particular, the criteria for determining the main destination.

Article 13

1. No visa shall be affixed to a travel document that has expired.

2. The period of validity of a travel document must exceed that of the visa, taking account of the period of use of the visa.

It must enable aliens to return to their country of origin or to enter a third country.

Article 14

1. No visa shall be affixed to a travel document if that travel document is not valid for any of the Contracting Parties. If a travel document is only valid for one Contracting Party or for a number of Contracting Parties, the visa to be affixed shall be limited to the Contracting Party or Parties in question.

2. If a travel document is not recognised as valid by one or more of the Contracting Parties, an authorisation valid as a visa may be issued in place of a visa.

Article 15

In principle the visas referred to in Article 10 may be issued only if an alien fulfils the entry conditions laid down in Article 5(1)(a), (c), (d) and (e).

Article 16

If a Contracting Party considers it necessary to derogate on one of the grounds listed in Article 5(2) from the principle laid down in Article 15, by issuing a visa to an alien who does not fulfil all the entry conditions referred to in Article 5(1), the validity of this visa shall be restricted to the territory of that Contracting Party, which must inform the other Contracting Parties accordingly.

Article 17

1. The Executive Committee shall adopt common rules for the examination of visa applications, shall ensure their correct implementation and shall adapt them to new situations and circumstances.

2. The Executive Committee shall also specify the cases in which the issue of a visa shall be subject to consultation with the central authority of the Contracting Party with which the application is lodged and, where appropriate, the central authorities of other Contracting Parties.

3. The Executive Committee shall also take the necessary decisions on the following:

- (a) the travel documents to which a visa may be affixed;
- (b) the visa-issuing authorities;
- (c) the conditions governing the issue of visas at borders;

(d) the form, content, and period of validity of visas and the fees to be charged for their issue;

(e) the conditions for the extension and refusal of the visas referred to in (c) and (d), in accordance with the interests of all the Contracting Parties;

(f) the procedures for limiting the territorial validity of visas;

(g) the principles governing the drawing up of a common list of aliens for whom an alert has been issued for the purposes of refusing entry, without prejudice to Article 96.

Section 2

Long-stay visas

Article 18

Visas for stays exceeding three months shall be national visas issued by one of the Contracting Parties in accordance with its national law. Such visas shall enable their holders to transit through the territories of the other Contracting Parties in order to reach the territory of the Contracting Party which issued the visa, unless they fail to fulfil the entry conditions referred to in Article 5(1)(a), (d) and (e) or they are on the national list of alerts of the Contracting Party through the territory of which they seek to transit.

CHAPTER 4

CONDITIONS GOVERNING THE MOVEMENT OF ALIENS

Article 19

1. Aliens who hold uniform visas and who have legally entered the territory of a Contracting Party may move freely within the territories of all the Contracting Parties during the period of validity of their visas, provided that they fulfil the entry conditions referred to in Article 5(1)(a), (c), (d) and (e).

2. *Pending the introduction of a uniform visa, aliens who hold visas issued by one of the Contracting Parties and who have legally entered the territory of one Contracting Party may move freely within the territories of all the Contracting Parties during the period of validity of their visas up to a maximum of three months from the date of first entry, provided that they fulfil the entry conditions referred to in Article 5(1)(a), (c), (d) and (e).*

3. Paragraphs 1 and 2 shall not apply to visas whose validity is subject to territorial limitation in accordance with Chapter 3 of this Title.

4. This Article shall apply without prejudice to Article 22.

Article 20

1. Aliens not subject to a visa requirement may move freely within the territories of the Contracting Parties for a maximum period of three months during the six months following the date of first entry, provided that they fulfil the entry conditions referred to in Article 5(1)(a), (c), (d) and (e).

2. Paragraph 1 shall not affect each Contracting Party's right to extend beyond three months an alien's stay in its territory in exceptional circumstances or in accordance with a bilateral agreement concluded before the entry into force of this Convention.

3. This Article shall apply without prejudice to Article 22.

Article 21

1. Aliens who hold valid residence permits issued by one of the Contracting Parties may, on the basis of that permit and a valid travel document, move freely for up to three months within the territories of the other Contracting Parties, provided that they fulfil the entry conditions referred to in Article 5(1)(a), (c) and (e) and are not on the national list of alerts of the Contracting Party concerned.

2. Paragraph 1 shall also apply to aliens who hold provisional residence permits issued by one of the Contracting Parties and travel documents issued by that Contracting Party.

3. The Contracting Parties shall send the Executive Committee a list of the documents that they issue as valid travel documents, residence permits or provisional residence permits within the meaning of this Article.

4. This Article shall apply without prejudice to Article 22.

Article 22

1. Aliens who have legally entered the territory of one of the Contracting Parties shall be obliged to report, in accordance with the conditions laid down by each Contracting Party, to the competent authorities of the Contracting Party

whose territory they enter. Such aliens may report either on entry or within three working days of entry, at the discretion of the Contracting Party whose territory they enter.

2. Aliens resident in the territory of one of the Contracting Parties who enter the territory of another Contracting Party shall be required to report to the authorities, as laid down in paragraph 1.

3. Each Contracting Party shall lay down its exemptions from paragraphs 1 and 2 and shall communicate them to the Executive Committee.

Article 23

1. Aliens who do not fulfil or who no longer fulfil the short-stay conditions applicable within the territory of a Contracting Party shall normally be required to leave the territories of the Contracting Parties immediately.

2. Aliens who hold valid residence permits or provisional residence permits issued by another Contracting Party shall be required to go to the territory of that Contracting Party immediately.

3. Where such aliens have not left voluntarily or where it may be assumed that they will not do so or where their immediate departure is required for reasons of national security or public policy, they must be expelled from the territory of the Contracting Party in which they were apprehended, in accordance with the national law of that Contracting Party. If under that law expulsion is not authorised, the Contracting Party concerned may allow the persons concerned to remain within its territory.

4. Such aliens may be expelled from the territory of that Party to their countries of origin or any other State to which they may be admitted, in particular under the relevant provisions of the readmission agreements concluded by the Contracting Parties.

5. Paragraph 4 shall not preclude the application of national provisions on the right of asylum, the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, paragraph 2 of this Article or Article 33(1) of this Convention.

Article 24

Subject to the Executive Committee's definition of the appropriate criteria and practical arrangements, the Contracting Parties shall compensate each other for any financial imbalances which may result from the obligation to expel as provided for in Article 23 where such expulsion cannot be effected at the alien's expense.

CHAPTER 5

RESIDENCE PERMITS AND ALERTS FOR THE PURPOSES OF REFUSING ENTRY*Article 25*

1. Where a Contracting Party considers issuing a residence permit to an alien for whom an alert has been issued for the purposes of refusing entry, it shall first consult the Contracting Party issuing the alert and shall take account of its interests; the residence permit shall be issued for substantive reasons only, notably on humanitarian grounds or by reason of international commitments.

If a residence permit is issued, the Contracting Party issuing the alert shall withdraw the alert but may put the alien concerned on its national list of alerts.

2. Where it emerges that an alert for the purposes of refusing entry has been issued for an alien who holds a valid residence permit issued by one of the Contracting Parties, the Contracting Party issuing the alert shall consult the Party which issued the residence permit in order to determine whether there are sufficient reasons for withdrawing the residence permit.

If the residence permit is not withdrawn, the Contracting Party issuing the alert shall withdraw the alert but may nevertheless put the alien in question on its national list of alerts.

CHAPTER 6

ACCOMPANYING MEASURES*Article 26*

1. The Contracting Parties undertake, subject to the obligations resulting from their accession to the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, to incorporate the following rules into their national law:

(a) If aliens are refused entry into the territory of one of the Contracting Parties, the carrier which brought them to the external border by air, sea or land shall be obliged immediately to assume responsibility for them again. At the request of the border surveillance authorities the carrier shall be obliged to return the aliens to the third State from which they were transported or to the third State which issued the travel document on which they travelled or to any other third State to which they are certain to be admitted.

(b) The carrier shall be obliged to take all the necessary measures to ensure that an alien carried by air or sea is in possession of the travel documents required for entry into the territories of the Contracting Parties.

2. The Contracting Parties undertake, subject to the obligations resulting from their accession to the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, and in accordance with their constitutional law, to impose penalties on carriers which transport aliens who do not possess the necessary travel documents by air or sea from a Third State to their territories.

3. Paragraphs 1(b) and 2 shall also apply to international carriers transporting groups overland by coach, with the exception of border traffic.

Article 27

1. The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens.

2. If a Contracting Party is informed of actions as referred to in paragraph 1 which are in breach of the law of another Contracting Party, it shall inform the latter accordingly.

3. Any Contracting Party which requests another Contracting Party to prosecute, on the grounds of a breach of its own laws, actions as referred to in paragraph 1 must specify, by means of an official report or a certificate from the competent authorities, the provisions of law that have been breached.

CHAPTER 7

RESPONSIBILITY FOR PROCESSING APPLICATIONS FOR ASYLUM*Article 28*

The Contracting Parties reaffirm their obligations under the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, with no geographic restriction on the scope of those instruments, and their commitment to cooperating with the United Nations High Commissioner for Refugees in the implementation of those instruments.

Article 29

1. The Contracting Parties undertake to process any application for asylum lodged by an alien within any one of their territories.

2. This obligation shall not bind a Contracting Party to authorising all asylum seekers to enter or remain within its territory.

Every Contracting Party shall retain the right to refuse entry or to expel asylum seekers to a third State on the basis of its national provisions and in accordance with its international commitments.

3. Regardless of the Contracting Party with which an alien lodges an application for asylum, only one Contracting Party shall be responsible for processing that application. This shall be determined on the basis of the criteria laid down in Article 30.

4. Notwithstanding paragraph 3, every Contracting Party shall retain the right, for special reasons connected in particular with national law, to process an application for asylum even if, under this Convention, the responsibility for so doing lies with another Contracting Party.

Article 30

1. The Contracting Party responsible for processing an application for asylum shall be determined as follows:

(a) If a Contracting Party has issued an asylum seeker with a visa, of whatever type, or a residence permit, it shall be responsible for processing the application. If the visa was issued on the authorisation of another Contracting Party, the Contracting Party which gave the authorisation shall be responsible.

(b) If two or more Contracting Parties have issued an asylum seeker with a visa, of whatever type, or a residence permit, the Contracting Party responsible shall be the one which issued the visa or the residence permit that will expire last.

(c) As long as the asylum seeker has not left the territories of the Contracting Parties, the responsibility defined in (a) and (b) shall remain even if the period of validity of the visa, of whatever type, or of the residence permit has expired. If the asylum seeker has left the territories of the Contracting Parties after the visa or the residence permit has been issued, these documents shall be the basis for the responsibility as defined in (a) and (b), unless they have expired in the meantime under national provisions.

(d) If the Contracting Parties exempt the asylum seeker from the visa requirement, the Contracting Party across whose external borders the asylum seeker entered the territories of the Contracting Parties shall be responsible.

Until the harmonisation of visa policies is fully achieved, and if the asylum seeker is exempted from the visa requirement by some Contracting Parties only, the Contracting Party across whose external borders the asylum seeker, through exemption from the visa requirement, has entered the territories of the Contracting Parties shall be responsible, subject to (a), (b) and (c).

If the application for asylum is lodged with a Contracting Party which has issued a transit visa to the asylum seeker — whether the asylum seeker has passed through passport control or not — and if the transit visa was issued after the country of transit had ascertained from the consular or diplomatic authorities of the Contracting Party of destination that the asylum seeker fulfilled the entry conditions for the Contracting Party of destination, the Contracting Party of destination shall be responsible for processing the application.

(e) If the asylum seeker has entered the territory of the Contracting Parties without being in possession of one or more documents, to be defined by the Executive Committee, authorising the crossing of the border, the Contracting Party across whose external borders the asylum seeker entered the territories of the Contracting Parties shall be responsible.

(f) If an alien whose application for asylum is already being processed by one of the Contracting Parties lodges a new application, the Contracting Party responsible shall be the one processing the first application.

(g) If an alien on whose previous application for asylum a Contracting Party has already taken a final decision lodges a new application, the Contracting Party responsible shall be the one that processed the previous application unless the asylum seeker has left the territory of the Contracting Parties.

2. If a Contracting Party has undertaken to process an application for asylum in accordance with Article 29(4), the Contracting Party responsible under paragraph 1 of this Article shall be relieved of its obligations.

3. Where no Contracting Party responsible can be determined on the basis of the criteria laid down in paragraphs 1 and 2, the Contracting Party with which the application for asylum was lodged shall be responsible.

Article 31

1. The Contracting Parties shall endeavour to determine as quickly as possible which Party is responsible for processing an application for asylum.

2. If an application for asylum is lodged with a Contracting Party which is not responsible under Article 30 by an alien residing within its territory, that Contracting Party may request the Contracting Party responsible to take charge of the asylum seeker in order to process the application for asylum.

3. The Contracting Party responsible shall be obliged to take charge of the asylum seeker referred to in paragraph 2 if the request

is made within six months of the application for asylum being lodged. If the request is not made within that time, the Contracting Party with whom the application for asylum was lodged shall be responsible for processing the application.

Article 32

The Contracting Party responsible for processing an application for asylum shall process it in accordance with its national law.

Article 33

1. If an asylum seeker is illegally within the territory of another Contracting Party while the asylum procedure is in progress, the Contracting Party responsible shall be obliged to take the asylum seeker back.

2. Paragraph 1 shall not apply where the other Contracting Party has issued an asylum seeker with a residence permit valid for one year or more. In that case, responsibility for processing the application shall be transferred to the other Contracting Party.

Article 34

1. The Contracting Party responsible shall be obliged to take back an alien whose application for asylum has been definitively rejected and who has entered the territory of another Contracting Party without being authorised to reside there.

2. Paragraph 1 shall not, however, apply where the Contracting Party responsible expelled the alien from the territories of the Contracting Parties.

Article 35

1. The Contracting Party which granted an alien the status of refugee and right of residence shall be obliged to take responsibility for processing any application for asylum made by a member of the alien's family provided that the persons concerned agree.

2. For the purposes of paragraph 1, a family member shall be the refugee's spouse or unmarried child who is less than 18 years old or, if the refugee is an unmarried child who is less than 18 years old, the refugee's father or mother.

Article 36

Any Contracting Party responsible for processing an application for asylum may, for humanitarian reasons, based in particular family or cultural grounds, ask another Contracting Party to assume that responsibility provided that the asylum seeker so desires. The Contracting Party to which such a request is made shall consider whether it can be granted.

Article 37

1. The competent authorities of the Contracting Parties shall at the earliest opportunity send each other details of:

(a) any new rules or measures adopted in the field of asylum law or the treatment of asylum seekers no later than their entry into force;

(b) statistical data on the monthly arrivals of asylum seekers, indicating the main countries of origin and decisions on applications for asylum where available;

(c) the emergence of, or significant increases in, certain categories of asylum seekers and any information available on this subject;

(d) any fundamental decisions in the field of asylum law.

2. The Contracting Parties shall also ensure close cooperation in gathering information on the situation in the asylum seekers' countries of origin with a view to a joint assessment.

3. Any instruction given by a Contracting Party concerning the confidential processing of the information that it communicates must be complied with by the other Contracting Parties.

Article 38

1. Every Contracting Party shall send every other Contracting Party at their request any information it has on an asylum seeker which is necessary for the purposes of:

— determining the Contracting Party responsible for processing the application for asylum,

— processing the application for asylum,

— implementing the obligations arising under this chapter.

2. Such information may concern only:

(a) identity (surname and forename, any previous names, nicknames or aliases, date and place of birth, present nationality and any previous nationalities of the asylum seeker and, where appropriate, of the asylum seeker's family members);

(b) identity and travel documents (references, periods of validity, dates of issue, issuing authorities, place of issue, etc.);

(c) any other details needed to establish the asylum seeker's identity;

- (d) places of residence and routes travelled;
- (e) residence permits or visas issued by a Contracting Party;
- (f) the place where the application for asylum was lodged;
- (g) where appropriate, the date any previous application for asylum was lodged, the date on which the present application was lodged, the stage reached in the procedure and the decision taken.

3. In addition, a Contracting Party may ask another Contracting Party to inform it of the grounds invoked by an asylum seeker in support of an application and, where appropriate, the grounds for the decision taken on the asylum seeker. The Contracting Party requested shall consider whether it can comply with such a request. In all events the communication of such information shall be subject to the asylum seeker's consent.

4. Information shall be exchanged at the request of a Contracting Party and may only be exchanged between the authorities designated by each Contracting Party, once the Executive Committee has been informed thereof.

5. The information exchanged may only be used for the purposes laid down in paragraph 1. Such information may only be communicated to the authorities and courts and tribunals responsible for:

- determining the Contracting Party responsible for processing the application for asylum,
- processing the application for asylum,
- implementing obligations arising under this chapter.

6. The Contracting Party that forwards the information shall ensure it is accurate and up-to-date.

If it appears that a Contracting Party has supplied information that is inaccurate or should not have been forwarded, the recipient Contracting Parties shall be informed immediately thereof. They shall be obliged to correct such information or delete it.

7. Asylum seekers shall have the right to receive on request the information exchanged which concerns them as long as it remains available.

If they establish that such information is inaccurate or should not have been forwarded, they shall have the right to demand its correction or deletion. Corrections shall be made in accordance with paragraph 6.

8. Each Contracting Party concerned shall record the forwarding and receipt of information exchanged.

9. Information forwarded shall be held no longer than necessary for the purposes for which it was exchanged. The Contracting Party concerned shall assess in due course whether it is necessary for it to be held.

10. In any case, information thus forwarded shall enjoy at least the same protection as is provided for similar information in the law of the recipient Contracting Party.

11. If information is not processed automatically but is handled in some other form, each Contracting Party shall take the appropriate measures to ensure compliance with this Article by means of effective controls. If a Contracting Party has a body of the type referred to in paragraph 12, it may assign the control task to it.

12. If one or more Contracting Parties wishes to computerise all or part of the information referred to in paragraphs 2 and 3, such computerisation shall only be authorised if the Contracting Parties concerned have adopted laws applicable to such processing which implement the principles of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and if they have entrusted an appropriate national body with the independent monitoring of the processing and use of data forwarded pursuant to this Convention.

TITLE III

POLICE AND SECURITY

CHAPTER 1

POLICE COOPERATION

Article 39

1. The Contracting Parties undertake to ensure that their police authorities shall, in compliance with national law and

within the scope of their powers, assist each other for the purposes of preventing and detecting criminal offences, in so far as national law does not stipulate that the request has to be made and channelled via the judicial authorities and provided that the request or the implementation thereof does not involve the application of measures of constraint by the requested Contracting Party. Where the requested police authorities do not have the power to deal with a request, they shall forward it to the competent authorities.

2. Written information provided by the requested Contracting Party under paragraph 1 may not be used by the

requesting Contracting Party as evidence of the offence charged other than with the consent of the competent judicial authorities of the requested Contracting Party.

3. Requests for assistance referred to in paragraph 1 and the replies to such requests may be exchanged between the central bodies responsible in each Contracting Party for international police cooperation. Where the request cannot be made in good time using the above procedure, the police authorities of the requesting Contracting Party may address it directly to the competent authorities of the requested Party, which may reply directly. In such cases, the requesting police authority shall at the earliest opportunity inform the central body responsible for international police cooperation in the requested Contracting Party of its direct request.

4. In border areas, cooperation may be covered by arrangements between the competent Ministers of the Contracting Parties.

5. The provisions of this Article shall not preclude more detailed present or future bilateral agreements between Contracting Parties with a common border. The Contracting Parties shall inform each other of such agreements.

Article 40

1. Officers of one of the Contracting Parties who, as part of a criminal investigation, are keeping under surveillance in their country a person who is presumed to have participated in an extraditable criminal offence shall be authorised to continue their surveillance in the territory of another Contracting Party where the latter has authorised cross-border surveillance in response to a request for assistance made in advance. Conditions may be attached to the authorisation.

On request, the surveillance will be entrusted to officers of the Contracting Party in whose territory this is carried out.

The request for assistance referred to in the first subparagraph must be sent to an authority designated by each of the Contracting Parties and empowered to grant or to pass on the requested authorisation.

2. Where, for particularly urgent reasons, prior authorisation cannot be requested from the other Contracting Party, the officers carrying out the surveillance shall be authorised to continue beyond the border the surveillance of a person presumed to have committed criminal offences listed in paragraph 7, provided that the following conditions are met:

(a) the authority of the Contracting Party designated under paragraph 5, in whose territory the surveillance is to be continued, must be notified immediately, during the surveillance, 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 immediately.

Surveillance shall cease as soon as the Contracting 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, five hours after the border was crossed.

3. The surveillance referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:

(a) The officers carrying out the surveillance must comply with the provisions of this Article and with the law of the Contracting Party in whose territory they are operating; they must obey the instructions of the competent local authorities.

(b) Except in the situations outlined in paragraph 2, the officers shall, during the surveillance, carry a document certifying that authorisation has been granted.

(c) The officers carrying out the surveillance must at all times be able to prove that they are acting in an official capacity.

(d) The officers carrying out the surveillance may carry their service weapons during the surveillance 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 carrying out the surveillance may neither challenge nor arrest the person under surveillance.

(g) All operations shall be the subject of a report to the authorities of the Contracting Party in whose territory they took place; the officers carrying out the surveillance may be required to appear in person.

(h) The authorities of the Contracting Party from which the surveillance officers have come shall, when requested by the authorities of the Contracting Party in whose territory the surveillance took place, assist the enquiry subsequent to the operation in which they took part, including judicial proceedings.

4. The officers referred to in paragraphs 1 and 2 shall be:

— as regards the Kingdom of Belgium: members of the 'police judiciaire près les Parquets' (Criminal Police attached to the Public Prosecutor's Office), the 'gendarmerie' and the 'police communale' (municipal police), as well as customs officers, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 6, with

respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;

- as regards the Federal Republic of Germany: officers of the 'Polizeien des Bundes und der Länder' (Federal Police and Federal State Police), as well as, with respect only to illicit trafficking in narcotic drugs and psychotropic substances and arms trafficking, officers of the 'Zollfahndungsdienst' (customs investigation service) in their capacity as auxiliary officers of the Public Prosecutor's Office;
 - as regards the French Republic: criminal police officers of the national police and national 'gendarmerie', as well as customs officers, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 6, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;
 - as regards the Grand Duchy of Luxembourg: officers of the 'gendarmerie' and the police, as well as customs officers, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 6, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;
 - as regards the Kingdom of the Netherlands: officers of the 'Rijkspolitie' (national police) and the 'Gemeentepolitie' (municipal police), as well as, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 6, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives and the illicit transportation of toxic and hazardous waste, officers of the tax inspection and investigation authorities responsible for import and excise duties.
5. The authority referred to in paragraphs 1 and 2 shall be:
- as regards the Kingdom of Belgium: the 'Commissariat général de la Police judiciaire' (Criminal Investigation Department),
 - as regards the Federal Republic of Germany: the 'Bundeskriminalamt' (Federal Crime Office),
 - as regards the French Republic: the 'Direction centrale de la Police judiciaire' (Central Headquarters of the Criminal Police),
 - as regards the Grand Duchy of Luxembourg: the 'Procureur général d'Etat' (Principal State Prosecutor),
 - as regards the Kingdom of the Netherlands: the 'Landelijk Officier van Justitie' (National Public Prosecutor) responsible for cross-border surveillance.

6. The Contracting Parties may, at bilateral level, extend the scope of this Article and adopt additional measures in application thereof.

7. The surveillance referred to in paragraph 2 may only be carried out where one of the following criminal offences is involved:

- murder,
- manslaughter,
- rape,
- arson,
- forgery of money,
- aggravated burglary and robbery and receiving stolen goods,
- extortion,
- kidnapping and hostage taking,
- trafficking in human beings,
- illicit trafficking in narcotic drugs and psychotropic substances,
- breach of the laws on arms and explosives,
- wilful damage through the use of explosives,
- illicit transportation of toxic and hazardous waste.

Article 41

1. Officers of one of the Contracting Parties who are pursuing in their country an individual caught in the act of committing or of participating in one of the offences referred to in paragraph 4 shall be authorised to continue pursuit in the territory of another Contracting Party without the latter's prior authorisation where, given the particular urgency of the situation, it is not possible to notify the competent authorities of the other Contracting Party by one of the means provided for in Article 44 prior to entry into that territory or where these authorities are unable to reach the scene in time to take over the pursuit.

The same shall apply where the person being pursued has escaped from provisional custody or while serving a sentence involving deprivation of liberty.

The pursuing officers shall, not later than when they cross the border, contact the competent authorities of the Contracting Party in whose territory the hot pursuit is to take place. The hot pursuit will cease as soon as the Contracting Party in whose territory the pursuit is taking place so requests. At the request of the pursuing officers, the competent local authorities shall challenge the pursued person in order to establish the person's identity or to make an arrest.

2. Hot pursuit shall be carried out in accordance with one of the following procedures, defined by the declaration laid down in paragraph 9:

- (a) The pursuing officers shall not have the right to apprehend the pursued person;
- (b) If no request to cease the hot pursuit is made and if the competent local authorities are unable to intervene quickly enough, the pursuing officers may detain the person pursued until the officers of the Contracting Party in whose territory the pursuit is taking place, who must be informed immediately, are able to establish the person's identity or make an arrest.

3. Hot pursuit shall be carried out in accordance with paragraphs 1 and 2 and in one of the following ways as defined by the declaration provided for in paragraph 9:

- (a) in an area or during a period as from the crossing of the border, to be established in the declaration;
- (b) without limit in space or time.

4. In the declaration referred to in paragraph 9, the Contracting Parties shall define the offences referred to in paragraph 1 in accordance with one of the following procedures:

- (a) The following criminal offences:

- murder,
- manslaughter,
- rape,
- arson,
- forgery of money,
- aggravated burglary and robbery and receiving stolen goods,
- extortion,
- kidnapping and hostage taking,
- trafficking in human beings,
- illicit trafficking in narcotic drugs and psychotropic substances,
- breach of the laws on arms and explosives,
- wilful damage through the use of explosives,

- illicit transportation of toxic and hazardous waste,
- failure to stop and give particulars after an accident which has resulted in death or serious injury.

- (b) Extraditable offences.

5. Hot pursuit shall be carried out only under the following general conditions:

- (a) The pursuing officers must comply with the provisions of this Article and with the law of the Contracting Party in whose territory they are operating; they must obey the instructions issued by the competent local authorities.
- (b) Pursuit shall be solely over land borders.
- (c) Entry into private homes and places not accessible to the public shall be prohibited.
- (d) The pursuing officers shall be easily identifiable, either by their uniform, by means of an armband or by accessories fitted to their vehicles; the use of civilian clothes combined with the use of unmarked vehicles without the aforementioned identification is prohibited; the pursuing officers must at all times be able to prove that they are acting in an official capacity.
- (e) The pursuing officers may carry their service weapons; their use shall be prohibited save in cases of legitimate self-defence.
- (f) Once the pursued person has been apprehended as provided for in paragraph 2(b), for the purpose of being brought before the competent local authorities that person may only be subjected to a security search; handcuffs may be used during the transfer; objects carried by the pursued person may be seized.
- (g) After each operation referred to in paragraphs 1, 2 and 3, the pursuing officers shall appear before the competent local authorities of the Contracting Party in whose territory they were operating and shall report on their mission; at the request of those authorities, they shall remain at their disposal until the circumstances surrounding their action have been sufficiently clarified; this condition shall apply even where the hot pursuit has not resulted in the arrest of the person pursued.
- (h) The authorities of the Contracting Party from which the pursuing officers have come shall, when requested by the authorities of the Contracting Party in whose territory the hot pursuit took place, assist the enquiry subsequent to the operation in which they took part, including judicial proceedings.

6. A person who, following the action provided for in paragraph 2, has been arrested by the competent local authorities may, whatever that person's nationality, be held for questioning. The relevant rules of national law shall apply *mutatis mutandis*.

If the person is not a national of the Contracting Party in whose territory the person was arrested, that person shall be released no later than six hours after the arrest was made, not including the hours between midnight and 9.00 a.m., unless the competent local authorities have previously received a request for that person's provisional arrest for the purposes of extradition in any form whatsoever.

7. The officers referred to in the previous paragraphs shall be:

- as regards the Kingdom of Belgium: members of the 'police judiciaire près les Parquets' (Criminal Police attached to the Public Prosecutor's Office), the 'gendarmerie' and the 'police communale' (municipal police), as well as customs officers, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 10, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;
- as regards the Federal Republic of Germany: officers of the 'Polizeien des Bundes und der Länder' (Federal and Federal State Police), as well as, with respect only to illegal trafficking in narcotic drugs and psychotropic substances and arms trafficking, officers of the 'Zollfahndungsdienst' (customs investigation service) in their capacity as auxiliary officers of the Public Prosecutor's Office;
- as regards the French Republic: criminal police officers of the national police and national 'gendarmerie', as well as customs officers, under the conditions laid down in the appropriate bilateral agreements referred to in paragraph 10, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;
- as regards the Grand Duchy of Luxembourg: officers of the 'gendarmerie' and the police, as well as customs officers, under the conditions laid down in the appropriate bilateral agreements referred to in paragraph 10, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;
- as regards the Kingdom of the Netherlands: officers of the 'Rijkspolitie' (national police) and the 'Gemeentepolitie' (municipal police) as well as, under the conditions laid down in the appropriate bilateral agreements referred to in paragraph 10, with respect to their powers regarding the illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives and the illicit transportation of toxic and hazardous waste, officers of the

tax inspection and investigation authorities responsible for import and excise duties.

8. For the Contracting Parties concerned this Article shall apply without prejudice to Article 27 of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974.

9. At the time of signing this Convention, each Contracting Party shall make a declaration in which it shall define for each of the Contracting Parties with which it has a common border, on the basis of paragraphs 2, 3 and 4, the procedures for carrying out a hot pursuit in its territory.

A Contracting Party may at any time replace its declaration by another declaration provided the latter does not restrict the scope of the former.

Each declaration shall be made after consultation with each of the Contracting Parties concerned and with a view to obtaining equivalent arrangements on both sides of internal borders.

10. The Contracting Parties may, on a bilateral basis, extend the scope of paragraph 1 and adopt additional provisions in implementation of this Article.

Article 42

During the operations referred to in Articles 40 and 41, officers operating in the territory of another Contracting Party shall be regarded as officers of that Party with respect to offences committed against them or by them.

Article 43

1. Where, in accordance with Articles 40 and 41 of this Convention, officers of a Contracting Party are operating in the territory of another Contracting Party, the first Contracting Party shall be liable for any damage caused by them during their operations, in accordance with the law of the Contracting Party in whose territory they are operating.

2. The Contracting 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 officers.

3. The Contracting Party whose officers have caused damage to any person in the territory of another Contracting 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 Contracting Party shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Contracting Party.

Article 44

1. In accordance with the relevant international agreements and account being taken of local circumstances and technical possibilities, the Contracting Parties shall install, in particular in border areas, telephone, radio, and telex lines and other direct links to facilitate police and customs cooperation, in particular for the timely transmission of information for the purposes of cross-border surveillance and hot pursuit.

2. In addition to these short-term measures, they will in particular consider the following options:

- (a) exchanging equipment or posting liaison officers provided with appropriate radio equipment;
- (b) widening the frequency bands used in border areas;
- (c) establishing common links for police and customs services operating in these same areas;
- (d) coordinating their programmes for the procurement of communications equipment, with a view to installing standardised and compatible communications systems.

Article 45

1. The Contracting Parties undertake to adopt the necessary measures in order to ensure that:

- (a) the managers of establishments providing accommodation or their agents see to it that aliens accommodated therein, including nationals of the other Contracting Parties and those of other Member States of the European Communities, with the exception of accompanying spouses or accompanying minors or members of travel groups, personally complete and sign registration forms and confirm their identity by producing a valid identity document;
- (b) the completed registration forms will be kept for the competent authorities or forwarded to them where such authorities deem this necessary for the prevention of threats, for criminal investigations or for clarifying the circumstances of missing persons or accident victims, save where national law provides otherwise.

2. Paragraph 1 shall apply *mutatis mutandis* to persons staying in any commercially rented accommodation, in particular tents, caravans and boats.

Article 46

1. In specific cases, each Contracting Party may, in compliance with its national law and without being so requested, send the Contracting Party concerned any information which may be important in helping it combat future crime and prevent offences against or threats to public policy and public security.

2. Information shall be exchanged, without prejudice to the arrangements for cooperation in border areas referred to in Article 39(4), via a central body to be designated. In particularly urgent cases, the exchange of information within the meaning of this Article may take place directly between the police authorities concerned, unless national provisions stipulate otherwise. The central body shall be informed of this as soon as possible.

Article 47

1. The Contracting Parties may conclude bilateral agreements providing for the secondment, for a specified or unspecified period, of liaison officers from one Contracting Party to the police authorities of another Contracting Party.

2. The secondment of liaison officers for a specified or unspecified period is intended to further and accelerate cooperation between the Contracting Parties, particularly by providing assistance:

- (a) in the form of the exchange of information for the purposes of combating crime by means of both prevention and law enforcement;
- (b) in executing requests for mutual police and judicial assistance in criminal matters;
- (c) with the tasks carried out by the authorities responsible for external border surveillance.

3. Liaison officers shall have the task of providing advice and assistance. They shall not be empowered to take independent police action. They shall supply information and perform their duties in accordance with the instructions given to them by the seconding Contracting Party and by the Contracting Party to which they are seconded. They shall report regularly to the head of the police department to which they are seconded.

4. The Contracting Parties may agree within a bilateral or multilateral framework that liaison officers from a Contracting

Party seconded to third States shall also represent the interests of one or more other Contracting Parties. Under such agreements, liaison officers seconded to third States shall supply information to other Contracting Parties when requested to do so or on their own initiative and shall, within the limits of their powers, perform duties on behalf of such Parties. The Contracting Parties shall inform one another of their intentions with regard to the secondment of liaison officers to third States.

CHAPTER 2

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Article 48

1. The provisions of this Chapter are intended to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 as well as, in relations between the Contracting Parties which are members of the Benelux Economic Union, Chapter II of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974, and to facilitate the implementation of those Agreements.

2. Paragraph 1 shall not affect the application of the broader provisions of the bilateral agreements in force between the Contracting Parties.

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 50

1. The Contracting Parties undertake to afford each other, in accordance with the Convention and the Treaty referred to in Article 48, mutual assistance as regards infringements of their laws and regulations on excise duties, value added tax and customs duties. Customs provisions shall mean the rules laid down in Article 2 of the Convention of 7 September 1967 between Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands on Mutual Assistance between Customs Administrations, and Article 2 of Council Regulation (EEC) No 1468/81 of 19 May 1981.

2. Requests regarding evasion of excise duties may not be rejected on the grounds that the requested country does not levy excise duties on the goods referred to in the request.

3. The requesting Contracting Party shall not forward or use information or evidence obtained from the requested Contracting Party for investigations, prosecutions or proceedings other than those referred to in its request without the prior consent of the requested Contracting Party.

4. The mutual assistance provided for in this Article may be refused where the alleged amount of duty underpaid or evaded does not exceed ECU 25 000 or where the presumed value of the goods exported or imported without authorisation does not exceed ECU 100 000, unless, given the circumstances or the identity of the accused, the case is deemed to be extremely serious by the requesting Contracting Party.

5. The provisions of this Article shall also apply when the mutual assistance requested concerns acts punishable only by a fine by virtue of being infringements of the rules of law in proceedings brought by the administrative authorities, where the request for assistance was made by a judicial authority.

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.

Article 52

1. Each Contracting Party may send procedural documents directly by post to persons who are in the territory of another Contracting Party. The Contracting Parties shall send the Executive Committee a list of the documents which may be forwarded in this way.

2. Where there is reason to believe that the addressee does not understand the language in which the document is written, the document — or at least the important passages thereof — must be translated into (one of) the language(s) of the Contracting Party in whose territory the addressee is staying. If the authority forwarding the document 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.

3. Experts or witnesses who have failed to answer a summons to appear sent to them by post shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of constraint, unless subsequently they voluntarily enter into the territory of the requesting Party and are there again duly summoned. Authorities sending a postal summons to appear shall ensure that this does not involve a notice of penalty. This provision shall be without prejudice to Article 34 of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974.

4. If the act on which the request for assistance is based is punishable under the law of both Contracting Parties 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, the procedure outlined in paragraph 1 must in principle be used for the forwarding of procedural documents.

5. Notwithstanding paragraph 1, procedural documents may be forwarded via the judicial authorities of the requested Contracting Party where the addressee's address is unknown or where the requesting Contracting Party requires a document to be served in person.

Article 53

1. Requests for assistance may be made directly between judicial authorities and returned via the same channels.

2. Paragraph 1 shall not prejudice the possibility of requests being sent and returned between Ministries of Justice or through national central bureaux of the International Criminal Police Organisation.

3. Requests for the temporary transfer or transit of persons who are under provisional arrest, being detained or who are the subject of a penalty involving deprivation of liberty, and the periodic or occasional exchange of information from the judicial records must be effected through the Ministries of Justice.

4. Within the meaning of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, where the Federal Republic of Germany is concerned, Ministry of Justice shall mean the Federal Minister of Justice and the Justice Ministers or Senators in the Federal States (*Länder*).

5. Information laid in connection with proceedings against infringement of the legislation on driving and rest periods, in accordance with Article 21 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 or Article 42 of the Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974, may be sent by the judicial authorities of the requesting Contracting Party directly to the judicial authorities of the requested Contracting Party.

CHAPTER 3

APPLICATION OF THE NE BIS IN IDEM PRINCIPLE

Article 54

A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.

Article 55

1. A Contracting Party may, when ratifying, accepting or approving this Convention, declare that it is not bound by Article 54 in one or more of the following cases:

- (a) where the acts to which the foreign judgment relates took place in whole or in part in its own territory; in the latter case, however, this exception shall not apply if the acts took place in part in the territory of the Contracting Party where the judgment was delivered;
- (b) where the acts to which the foreign judgment relates constitute an offence against national security or other equally essential interests of that Contracting Party;
- (c) where the acts to which the foreign judgment relates were committed by officials of that Contracting Party in violation of the duties of their office.

2. A Contracting Party which has made a declaration regarding the exception referred to in paragraph 1(b) shall specify the categories of offences to which this exception may apply.

3. A Contracting Party may at any time withdraw a declaration relating to one or more of the exceptions referred to in paragraph 1.

4. The exceptions which were the subject of a declaration under paragraph 1 shall not apply where the Contracting Party concerned has, in connection with the same acts, requested the other Contracting Party to bring the prosecution or has granted extradition of the person concerned.

Article 56

If a further prosecution is brought in a Contracting Party against a person whose trial, in respect of the same acts, has been finally disposed of in another Contracting Party, any period of deprivation of liberty served in the latter Contracting Party arising from those acts shall be deducted from any penalty imposed. To the extent permitted by national law, penalties not involving deprivation of liberty shall also be taken into account.

Article 57

1. Where a Contracting Party charges a person with an offence and the competent authorities of that Contracting Party have reason to believe that the charge relates to the same acts as those in respect of which the person's trial has been finally disposed of in another Contracting Party, those authorities shall, if they deem it necessary, request the relevant information from the competent authorities of the Contracting Party in whose territory judgment has already been delivered.

2. The information requested shall be provided as soon as possible and shall be taken into consideration as regards further action to be taken in the proceedings under way.

3. Each Contracting Party shall, when ratifying, accepting or approving this Convention, nominate the authorities authorised to request and receive the information provided for in this Article.

Article 58

The above provisions shall not preclude the application of broader national provisions on the *ne bis in idem* principle with regard to judicial decisions taken abroad.

CHAPTER 4

EXTRADITION

Article 59

1. The provisions of this chapter are intended to supplement the European Convention on Extradition of 13 September 1957 as well as, in relations between the Contracting Parties which are members of the Benelux Economic Union, Chapter I of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974, and to facilitate the implementation of those agreements.

2. Paragraph 1 shall not affect the application of the broader provisions of the bilateral agreements in force between the Contracting Parties.

Article 60

In relations between two Contracting Parties, one of which is not a Party to the European Convention on Extradition of 13 September 1957, the provisions of the said Convention shall apply, subject to the reservations and declarations made at the time of ratifying that Convention or, for Contracting Parties which are not Parties to the Convention, at the time of ratifying, approving or accepting this Convention.

Article 61

The French Republic undertakes to extradite, at the request of one of the Contracting Parties, persons against whom proceedings are being brought for acts punishable under French law by a penalty involving deprivation of liberty or a detention order of a maximum period of at least two years and under the law of the requesting Contracting Party by a penalty involving deprivation of liberty or a detention order of a maximum period of at least one year.

Article 62

1. As regards interruption of limitation of actions, only the provisions of the requesting Contracting Party shall apply.

2. An amnesty granted by the requested Contracting Party shall not prevent extradition unless the offence falls within the jurisdiction of that Contracting Party.

3. The absence of a charge or an official notice authorising proceedings, necessary only under the law of the requested Contracting Party, shall not affect the obligation to extradite.

Article 63

The Contracting Parties undertake, in accordance with the Convention and the Treaty referred to in Article 59, to extradite between themselves persons being prosecuted by the judicial authorities of the requesting Contracting Party for one of the offences referred to in Article 50(1), or sought by the requesting Contracting Party for the purposes of enforcing a sentence or preventive measure imposed in respect of such an offence.

Article 64

An alert entered into the Schengen Information System in accordance with Article 95 shall have the same force as a request for provisional arrest under Article 16 of the European Convention on Extradition of 13 September 1957 or Article 15 of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974.

Article 65

1. Without prejudice to the option of using the diplomatic channel, requests for extradition and transit shall be sent by the relevant Ministry of the requesting Contracting Party to the competent Ministry of the requested Contracting Party.

2. The competent Ministries shall be:

— as regards the Kingdom of Belgium: the Ministry of Justice,

— as regards the Federal Republic of Germany: the Federal Ministry of Justice and the Justice Ministers or Senators in the Federal States (*Länder*),

— as regards the French Republic: the Ministry of Foreign Affairs,

— as regards the Grand Duchy of Luxembourg: the Ministry of Justice,

— as regards the Kingdom of the Netherlands: the Ministry of Justice.

Article 66

1. If the extradition of a wanted person is not clearly prohibited under the laws of the requested Contracting Party, that Contracting Party may authorise extradition without formal extradition proceedings, provided that the wanted person agrees thereto in a statement made before a member of the judiciary after being heard by the latter and informed of the right to formal extradition proceedings. The wanted person may be assisted by a lawyer during the hearing.

2. In cases of extradition under paragraph 1, wanted persons who explicitly state that they will relinquish the protection offered by the principle of speciality may not revoke that statement.

CHAPTER 5

TRANSFER OF THE ENFORCEMENT OF CRIMINAL JUDGMENTS

Article 67

The following provisions shall apply between the Contracting Parties which are Parties to the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983, for the purposes of supplementing that Convention.

Article 68

1. The Contracting Party in whose territory a penalty involving deprivation of liberty or a detention order has been imposed by a judgment which has obtained the force of *res judicata* in respect of a national of another Contracting Party who, by escaping to the national's own country, has avoided the enforcement of that penalty or detention order may request the latter Contracting Party, if the escaped person is within its territory, to take over the enforcement of the penalty or detention order.

2. The requested Contracting Party may, at the request of the requesting Contracting Party, prior to the arrival of the documents supporting the request that the enforcement of the penalty or detention order or part thereof remaining to be served be taken over, and prior to the decision on that request, take the sentenced person into police custody or take other measures to ensure that the person remains within the territory of the requested Contracting Party.

Article 69

The transfer of enforcement under Article 68 shall not require the consent of the person on whom the penalty or the detention order has been imposed. The other provisions of the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983 shall apply *mutatis mutandis*.

CHAPTER 6

NARCOTIC DRUGS

Article 70

1. The Contracting Parties shall set up a permanent working party to examine common problems relating to combating crime involving narcotic drugs and to draw up proposals, where necessary, to improve the practical and technical aspects of cooperation between the Contracting Parties. The working party shall submit its proposals to the Executive Committee.

2. The working party referred to in paragraph 1, whose members shall be nominated by the competent national authorities, shall include representatives of the police and customs authorities.

Article 71

1. The Contracting Parties undertake as regards the direct or indirect sale of narcotic drugs and psychotropic substances of whatever type, including cannabis, and the possession of such products and substances for sale or export, to adopt in accordance with the existing United Nations Conventions^(*), all necessary measures to prevent and punish the illicit trafficking in narcotic drugs and psychotropic substances.

2. The Contracting Parties undertake to prevent and punish by administrative and penal measures the illegal export of narcotic drugs and psychotropic substances, including cannabis, as well as the sale, supply and handing over of such products and substances, without prejudice to the relevant provisions of Articles 74, 75 and 76.

(*) Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol amending the 1961 Single Convention on Narcotic Drugs; the 1971 Convention on Psychotropic Substances; the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.

3. To combat the illegal import of narcotic drugs and psychotropic substances, including cannabis, the Contracting Parties shall step up their checks on the movement of persons, goods and means of transport at their external borders. Such measures shall be drawn up by the working party provided for in Article 70. This working party shall consider, *inter alia*, transferring some of the police and customs staff released from internal border duty and the use of modern drug-detection methods and sniffer dogs.

4. To ensure compliance with this Article, the Contracting Parties shall specifically carry out surveillance of places known to be used for drug trafficking.

5. The Contracting Parties shall do their utmost to prevent and combat the negative effects arising from the illicit demand for narcotic drugs and psychotropic substances of whatever type, including cannabis. Each Contracting Party shall be responsible for the measures adopted to this end.

Article 72

The Contracting Parties shall, in accordance with their constitutions and their national legal systems, ensure that legislation is enacted to enable the seizure and confiscation of the proceeds of the illicit trafficking in narcotic drugs and psychotropic substances.

Article 73

1. The Contracting Parties undertake, in accordance with their constitutions and their national legal systems, to adopt measures to allow controlled deliveries to be made in the context of the illicit trafficking in narcotic drugs and psychotropic substances.

2. In each individual case, a decision to allow controlled deliveries will be taken on the basis of prior authorisation from each Contracting Party concerned.

3. Each Contracting Party shall retain responsibility for and control over any operation carried out in its own territory and shall be entitled to intervene.

Article 74

As regards the legal trade in narcotic drugs and psychotropic substances, the Contracting Parties agree that the checks arising from obligations under the United Nations Conventions listed in Article 71 and which are carried out at internal borders shall, wherever possible, be transferred to within the country.

Article 75

1. As regards the movement of travellers to the territories of the Contracting Parties or their movement within these territories, persons may carry the narcotic drugs and psychotropic substances that are necessary for their medical treatment provided that, at any check, they produce a certificate issued or authenticated by a competent authority of their State of residence.

2. The Executive Committee shall lay down the form and content of the certificate referred to in paragraph 1 and issued by one of the Contracting Parties, with particular reference to details on the nature and quantity of the products and substances and the duration of the journey.

3. The Contracting Parties shall notify each other of the authorities responsible for the issue and authentication of the certificate referred to in paragraph 2.

Article 76

1. The Contracting Parties shall, where necessary, and in accordance with their medical, ethical and practical usage, adopt appropriate measures for the control of narcotic drugs and psychotropic substances which in the territory of one or more Contracting Parties are subject to more rigorous controls than in their own territory, so as not to jeopardise the effectiveness of such controls.

2. Paragraph 1 shall also apply to substances frequently used in the manufacture of narcotic drugs and psychotropic substances.

3. The Contracting Parties shall notify each other of the measures taken in order to monitor the legal trade of the substances referred to in paragraphs 1 and 2.

4. Problems experienced in this area shall be raised regularly in the Executive Committee.

CHAPTER 7

FIREARMS AND AMMUNITION

Article 77

1. The Contracting Parties undertake to adapt their national laws, regulations and administrative provisions relating to the acquisition, possession, trade in and handing over of firearms and ammunition to the provisions of this chapter.

2. This chapter covers the acquisition, possession, trade in and handing over of firearms and ammunition by natural and legal

persons; it does not cover the supply of firearms or ammunition to, or their acquisition or possession by, the central and territorial authorities, the armed forces or the police or the manufacture of firearms and ammunition by public undertakings.

Article 78

1. For the purposes of this chapter, firearms shall be classified as follows:

- (a) prohibited firearms;
- (b) firearms subject to authorisation;
- (c) firearms subject to declaration.

2. The breach-closing mechanism, the magazine and the barrel of firearms shall be subject *mutatis mutandis* to the regulations governing the weapon of which they are, or are intended to be, mounted.

3. For the purposes of this Convention, 'short firearms' shall mean firearms with a barrel not exceeding 30 cm or whose overall length does not exceed 60 cm; 'long firearms' shall mean all other firearms.

Article 79

1. The list of prohibited firearms and ammunition shall include the following:

- (a) firearms normally used as weapons of war;
- (b) automatic firearms, even if they are not weapons of war;
- (c) firearms disguised as other objects;
- (d) ammunition with penetrating, explosive or incendiary projectiles and the projectiles for such ammunition;
- (e) ammunition for pistols and revolvers with dum-dum or hollow-pointed projectiles and projectiles for such ammunition.

2. In special cases the competent authorities may grant authorisations for the firearms and ammunition referred to in paragraph 1 if this is not contrary to public policy or public security.

Article 80

1. The list of firearms the acquisition and possession of which is subject to authorisation shall include at least the following if they are not prohibited:

- (a) semi-automatic or repeating short firearms;
- (b) single-shot short firearms with centrefire percussion;
- (c) single-shot short firearms with rimfire percussion, with an overall length of less than 28 cm;
- (d) semi-automatic long firearms whose magazine and chamber can together hold more than three rounds;
- (e) repeating semi-automatic long firearms with smoothbore barrels not exceeding 60 cm in length;
- (f) semi-automatic firearms for civilian use which resemble weapons of war with automatic mechanisms.

2. The list of firearms subject to authorisation shall not include:

- (a) arms used as warning devices or alarms or to fire non-lethal incapacitants, provided that it is guaranteed by technical means that such arms cannot be converted, using ordinary tools, to fire ammunition with projectiles and provided that the firing of an irritant substance does not cause permanent injury to persons;
- (b) semi-automatic long firearms whose magazine and chamber cannot hold more than three rounds without being reloaded, provided that the loading device is non-removable or that it is certain that the firearms cannot be converted, using ordinary tools, into firearms whose magazine and chamber can together hold more than three rounds.

Article 81

The list of firearms subject to declaration shall include, if such arms are neither prohibited nor subject to authorisation:

- (a) repeating long firearms;
- (b) long firearms with single-shot rifled barrel or barrels;
- (c) single-shot short firearms with rimfire percussion whose overall length exceeds 28 cm;
- (d) the arms listed in Article 80(2)(b).

Article 82

The list of arms referred to in Articles 79, 80 and 81 shall not include:

- (a) firearms whose model or year of manufacture, save in exceptional cases, predates 1 January 1870, provided that they cannot fire ammunition intended for prohibited arms or arms subject to authorisation;
- (b) reproductions of arms listed under (a), provided that they cannot be used to fire metal-case cartridges;
- (c) firearms which by technical procedures guaranteed by the stamp of an official body or recognised by such a body have been rendered unfit to fire any kind of ammunition.

Article 83

Authorisation to acquire and to possess a firearm listed in Article 80 may be issued only:

- (a) if the person concerned is over 18 years of age, with the exception of dispensations for hunting or sporting purposes;
- (b) if the person concerned is not unfit, as a result of mental illness or any other mental or physical disability, to acquire or possess a firearm;
- (c) if the person concerned has not been convicted of an offence, or if there are no other indications that the person might be a danger to public policy or public security;
- (d) if the reasons given by the person concerned for acquiring or possessing firearms can be considered legitimate.

Article 84

1. Declarations in respect of the firearms mentioned in Article 81 shall be entered in a register kept by the persons referred to in Article 85.

2. If a firearm is transferred by a person not referred to in Article 85, a declaration of transfer must be made in accordance with procedures to be laid down by each Contracting Party.

3. The declarations referred to in this Article shall contain the details necessary in order to identify the persons and the arms concerned.

Article 85

1. The Contracting Parties undertake to impose an authorisation requirement on manufacturers of, and on dealers in, firearms subject to authorisation and to impose a declaration requirement on

manufacturers of, and on dealers in, firearms subject to declaration. Authorisation for firearms subject to authorisation shall also cover firearms subject to declaration. The Contracting Parties shall carry out checks on arms manufacturers and arms dealers, thereby guaranteeing effective control.

2. The Contracting Parties undertake to adopt measures to ensure that, as a minimum requirement, all firearms are permanently marked with a serial number enabling identification and that they carry the manufacturer's mark.

3. The Contracting Parties shall require manufacturers and dealers to keep a register of all firearms subject to authorisation or declaration; the register shall enable rapid identification of the type and origin of the firearms and the persons acquiring them.

4. As regards firearms subject to authorisation under Articles 79 and 80, the Contracting Parties undertake to adopt measures to ensure that the serial number and the manufacturer's mark on the firearm are entered in the authorisation issued to its holder.

Article 86

1. The Contracting Parties undertake to adopt measures prohibiting legitimate holders of firearms subject to authorisation or declaration from handing such arms over to persons who do not hold either an authorisation to acquire them or a declaration certificate.

2. The Contracting Parties may authorise the temporary handing over of such firearms in accordance with procedures that they shall lay down.

Article 87

1. The Contracting Parties shall incorporate in their national law provisions enabling authorisation to be withdrawn from persons who no longer satisfy the conditions for the issue of authorisations under Article 83.

2. The Contracting Parties undertake to adopt appropriate measures, including the seizure of firearms and withdrawal of authorisations, and to lay down appropriate penalties for any infringements of the laws and regulations on firearms. Such penalties may include the confiscation of firearms.

Article 88

1. A person who holds an authorisation to acquire a firearm shall not require an authorisation to acquire ammunition for that firearm.

2. The acquisition of ammunition by persons not holding an authorisation to acquire arms shall be subject to the arrangements governing the weapon for which the ammunition is intended. The authorisation may be issued for a single category or for all categories of ammunition.

Article 89

The lists of firearms which are prohibited, subject to authorisation or subject to declaration, may be amended or supplemented by the Executive Committee to take account of technical and economic developments and national security.

Article 90

The Contracting Parties may adopt more stringent laws and provisions on the acquisition and possession of firearms and ammunition.

Article 91

1. The Contracting Parties agree, on the basis of the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals of 28 June 1978, to set up within the framework of their national laws an exchange of information on the acquisition of firearms by persons — whether private individuals or firearms dealers — habitually resident or established in the territory of another Contracting Party. A firearms dealer shall mean any person whose trade or business consists, in whole or in part, in the retailing of firearms.

2. The exchange of information shall concern:

- (a) between two Contracting Parties having ratified the Convention referred to in paragraph 1: the firearms listed in Appendix 1(A)(1)(a) to (h) of the said Convention;
- (b) between two Contracting Parties at least one of which has not ratified the Convention referred to in paragraph 1: firearms which are subject to authorisation or declaration in each of the Contracting Parties.

3. Information on the acquisition of firearms shall be communicated without delay and shall include the following:

- (a) the date of acquisition of the firearm and the identity of the person acquiring it, i.e.:
 - in the case of a natural person: surname, forenames, date and place of birth, address and passport or identity card number, date of issue and details of the issuing authority, whether firearms dealer or not,

- in the case of a legal person: the name or business name and registered place of business and the surname, forenames, date and place of birth, address and passport or identity card number of the person authorised to represent the legal person;
- (b) the model, manufacturer's number, calibre and other characteristics of the firearm in question and its serial number.

4. Each Contracting Party shall designate the national authority responsible for sending and receiving the information referred to in paragraphs 2 and 3 and shall immediately inform the other Contracting Parties of any change of designated authority.

5. The authority designated by each Contracting Party may forward the information it has received to the competent local police authorities and the authorities responsible for border surveillance, for the purposes of preventing or prosecuting criminal offences and infringements of rules of law.

TITLE IV

THE SCHENGEN INFORMATION SYSTEM

CHAPTER 1

ESTABLISHMENT OF THE SCHENGEN INFORMATION SYSTEM

Article 92

1. The Contracting Parties shall set up and maintain a joint information system, hereinafter referred to as 'the Schengen Information System', consisting of a national section in each of the Contracting Parties and a technical support function. The Schengen Information System shall enable the authorities designated by the Contracting Parties, by means of an automated search procedure, to have access to alerts on persons and property for the purposes of border checks and other police and customs checks carried out within the country in accordance with national law and, in the case of the specific category of alerts referred to in Article 96, for the purposes of issuing visas, residence permits and the administration of legislation on aliens in the context of the application of the provisions of this Convention relating to the movement of persons.

2. Each Contracting Party shall set up and maintain, for its own account and at its own risk, its national section of the Schengen Information System, the data file of which shall be made materially identical to the data files of the national sections of each of the other Contracting Parties by means of the technical support function. To ensure the rapid and effective transmission of data as referred to in paragraph 3, each Contracting Party shall observe, when setting up its national section, the protocols and procedures which the Contracting Parties have jointly established for the technical support function. Each national section's data file shall be available for the purposes of carrying out automated searches in the territory of each of the Contracting Parties. It shall not be possible to search the data files of other Contracting Parties' national sections.

3. The Contracting Parties shall set up and maintain, on a common cost basis and bearing joint liability, the technical support function of the Schengen Information System. The French Republic shall be responsible for the technical support function, which shall be located in Strasbourg. The technical

support function shall comprise a data file which will ensure via on-line transmission that the data files of the national sections contain identical information. The data files of the technical support function shall contain alerts for persons and property in so far as these concern all the Contracting Parties. The data file of the technical support function shall contain no data other than those referred to in this paragraph and in Article 113(2).

CHAPTER 2

OPERATION AND USE OF THE SCHENGEN INFORMATION SYSTEM

Article 93

The purpose of the Schengen Information System shall be in accordance with this Convention to maintain public policy and public security, including national security, in the territories of the Contracting Parties and to apply the provisions of this Convention relating to the movement of persons in those territories, using information communicated via this system.

Article 94

1. The Schengen Information System shall contain only those categories of data which are supplied by each of the Contracting Parties, as required for the purposes laid down in Articles 95 to 100. The Contracting Party issuing an alert shall determine whether the case is important enough to warrant entry of the alert in the Schengen Information System.

2. The categories of data shall be as follows:

- (a) persons for whom an alert has been issued;
- (b) objects referred to in Article 100 and vehicles referred to in Article 99.

3. For persons, the information shall be no more than the following:

- (a) surname and forenames, any aliases possibly entered separately;
- (b) any specific objective physical characteristics not subject to change;
- (c) first letter of second forename;
- (d) date and place of birth;
- (e) sex;
- (f) nationality;
- (g) whether the persons concerned are armed;
- (h) whether the persons concerned are violent;
- (i) reason for the alert;
- (j) action to be taken.

Other information, in particular the data listed in the first sentence of Article 6 of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981, shall not be authorised.

4. Where a Contracting Party considers that an alert in accordance with Articles 95, 97 or 99 is incompatible with its national law, its international obligations or essential national interests, it may subsequently add to the alert contained in the data file of the national section of the Schengen Information System a flag to the effect that the action to be taken on the basis of the alert will not be taken in its territory. Consultation must be held in this connection with the other Contracting Parties. If the Contracting Party issuing the alert does not withdraw the alert, it shall continue to apply in full for the other Contracting Parties.

Article 95

1. Data on persons wanted for arrest for extradition purposes shall be entered at the request of the judicial authority of the requesting Contracting Party.

2. Before issuing an alert, the Contracting Party shall check whether the arrest is authorised under the national law of the requested Contracting Parties. If the Contracting Party issuing the alert has any doubts, it must consult the other Contracting Parties concerned.

The Contracting Party issuing the alert shall send the requested Contracting Parties by the quickest means possible both the alert and the following essential information relating to the case:

- (a) the authority which issued the request for arrest;
- (b) whether there is an arrest warrant or other document having the same legal effect, or an enforceable judgment;
- (c) the nature and legal classification of the offence;
- (d) a description of the circumstances in which the offence was committed, including the time, place and the degree of participation in the offence by the person for whom the alert has been issued;
- (e) in so far as is possible, the consequences of the offence.

3. A requested Contracting Party may add to the alert in the data file of its national section of the Schengen Information System a flag prohibiting arrest on the basis of the alert until the flag is deleted. The flag must be deleted no later than 24 hours after the alert has been entered, unless the Contracting Party refuses to make the requested arrest on legal grounds or for special reasons of expediency. In particularly exceptional cases where this is justified by the complex nature of the facts behind the alert, the above time limit may be extended to one week. Without prejudice to a flag or a decision to refuse the arrest, the other Contracting Parties may make the arrest requested in the alert.

4. If, for particularly urgent reasons, a Contracting Party requests an immediate search, the requested Contracting Party shall examine whether it is able to withdraw its flag. The requested Contracting Party shall take the necessary steps to ensure that the action to be taken can be carried out immediately if the alert is validated.

5. If the arrest cannot be made because an investigation has not been completed or because a requested Contracting Party refuses, the latter must regard the alert as being an alert for the purposes of communicating the place of residence of the person concerned.

6. The requested Contracting Parties shall carry out the action as requested in the alert in accordance with extradition Conventions in force and with national law. They shall not be obliged to carry out the action requested where one of their nationals is involved, without prejudice to the possibility of making the arrest in accordance with national law.

Article 96

1. Data on aliens for whom an alert has been issued for the purposes of refusing entry shall be entered on the basis of a

national alert resulting from decisions taken by the competent administrative authorities or courts in accordance with the rules of procedure laid down by national law.

2. Decisions may be based on a threat to public policy or public security or to national security which the presence of an alien in national territory may pose.

This situation may arise in particular in the case of:

- (a) an alien who has been convicted of an offence carrying a penalty involving deprivation of liberty of at least one year;
- (b) an alien in respect of whom there are serious grounds for believing that he has committed serious criminal offences, including those referred to in Article 71, or in respect of whom there is clear evidence of an intention to commit such offences in the territory of a Contracting Party.

3. Decisions may also be based on the fact that the alien has been subject to measures involving deportation, refusal of entry or removal which have not been rescinded or suspended, including or accompanied by a prohibition on entry or, where applicable, a prohibition on residence, based on a failure to comply with national regulations on the entry or residence of aliens.

Article 98

Data on missing persons or persons who, for their own protection or in order to prevent threats, need temporarily to be placed under police protection at the request of the competent authority or the competent judicial authority of the Party issuing the alert shall be entered, so that the police authorities may communicate their whereabouts to the Party issuing the alert or may move the persons to a safe place in order to prevent them from continuing their journey, if so authorised by national law. This shall apply in particular to minors and persons who must be interned following a decision by a competent authority. The communication of data on a missing person who is of age shall be subject to the person's consent.

Article 99

1. Data on witnesses, persons summoned to appear before the judicial authorities in connection with criminal proceedings in order to account for acts for which they are being prosecuted, or persons who are to be served with a criminal judgment or a summons to report in order to serve a penalty involving deprivation of liberty shall be entered, at the request of the competent judicial authorities, for the purposes of communicating their place of residence or domicile.

2. Information requested shall be communicated to the requesting Party in accordance with national law and the Conventions in force on mutual assistance in criminal matters.

Article 99

1. Data on persons or vehicles shall be entered in accordance with the national law of the Contracting Party issuing the alert, for the purposes of discreet surveillance or of specific checks in accordance with paragraph 5.

2. Such an alert may be issued for the purposes of prosecuting criminal offences and for the prevention of threats to public security:

- (a) where there is clear evidence that the person concerned intends to commit or is committing numerous and extremely serious criminal offences; or
- (b) where an overall assessment of the person concerned, in particular on the basis of past criminal offences, gives reason to suppose that that person will also commit extremely serious criminal offences in the future.

3. In addition, the alert may be issued in accordance with national law, at the request of the authorities responsible for national security, where there is clear evidence that the information referred to in paragraph 4 is necessary in order to prevent a serious threat by the person concerned or other serious threats to internal or external national security. The Contracting Party issuing the alert shall be obliged to consult the other Contracting Parties beforehand.

4. For the purposes of discreet surveillance, all or some of the following information may be collected and communicated to the authority issuing the alert when border checks or other police and customs checks are carried out within the country:

- (a) the fact that the person for whom or the vehicle for which an alert has been issued has been found;
- (b) the place, time or reason for the check;
- (c) the route and destination of the journey;
- (d) persons accompanying the person concerned or occupants of the vehicle;
- (e) the vehicle used;
- (f) objects carried;
- (g) the circumstances under which the person or the vehicle was found.

During the collection of this information steps must be taken not to jeopardise the discreet nature of the surveillance.

5. During the specific checks referred to in paragraph 1, persons, vehicles and objects carried may be searched in accordance with national law for the purposes referred to in paragraphs 2 and 3. If the specific check is not authorised under the law of a Contracting Party, it shall automatically be replaced, for that Contracting Party, by discreet surveillance.

6. A requested Contracting Party may add to the alert in the data file of its national section of the Schengen Information System a flag prohibiting, until the flag is deleted, performance of the action to be taken on the basis of the alert for the purposes of discreet surveillance or specific checks. The flag must be deleted no later than 24 hours after the alert has been entered unless the Contracting Party refuses to take the action requested on legal grounds or for special reasons of expediency. Without prejudice to a flag or a refusal, the other Contracting Parties may carry out the action requested in the alert.

Article 100

1. Data on objects sought for the purposes of seizure or use as evidence in criminal proceedings shall be entered in the Schengen Information System.

2. If a search brings to light an alert for an object which has been found, the authority which matched the two items of data shall contact the authority which issued the alert in order to agree on the measures to be taken. For this purpose, personal data may also be communicated in accordance with this Convention. The measures to be taken by the Contracting Party which found the object must be in accordance with its national law.

3. The following categories of objects shall be entered:

- (a) motor vehicles with a cylinder capacity exceeding 50 cc which have been stolen, misappropriated or lost;
- (b) trailers and caravans with an unladen weight exceeding 750 kg which have been stolen, misappropriated or lost;
- (c) firearms which have been stolen, misappropriated or lost;
- (d) blank official documents which have been stolen, misappropriated or lost;
- (e) issued identity papers (passports, identity cards, driving licences) which have been stolen, misappropriated or lost;
- (f) banknotes (suspect notes).

Article 101

1. Access to data entered in the Schengen Information System and the right to search such data directly shall be reserved exclusively to the authorities responsible for:

- (a) border checks;
- (b) other police and customs checks carried out within the country, and the coordination of such checks.

2. In addition, access to data entered in accordance with Article 96 and the right to search such data directly may be exercised by the authorities responsible for issuing visas, the central authorities responsible for examining visa applications and the authorities responsible for issuing residence permits and for the administration of legislation on aliens in the context of the application of the provisions of this Convention relating to the movement of persons. Access to data shall be governed by the national law of each Contracting Party.

3. Users may only search data which they require for the performance of their tasks.

4. Each Contracting Party shall send the Executive Committee a list of competent authorities which are authorised to search the data contained in the Schengen Information System directly. That list shall specify, for each authority, which data it may search and for what purposes.

CHAPTER 3

PROTECTION OF PERSONAL DATA AND SECURITY OF DATA IN THE SCHENGEN INFORMATION SYSTEM

Article 102

1. The Contracting Parties may use the data provided for in Articles 95 to 100 only for the purposes laid down for each category of alert referred to in those Articles.

2. Data may only be copied for technical purposes, provided that such copying is necessary in order for the authorities referred to in Article 101 to carry out a direct search. Alerts issued by other Contracting Parties may not be copied from the national section of the Schengen Information System into other national data files.

3. With regard to the alerts laid down in Articles 95 to 100 of this Convention, any derogation from paragraph 1 in order to change from one category of alert to another must be justified by the need to prevent an imminent serious threat to

public policy and public security, on serious grounds of national security or for the purposes of preventing a serious criminal offence. Prior authorisation from the Contracting Party issuing the alert must be obtained for this purpose.

4. Data may not be used for administrative purposes. By way of derogation, data entered under Article 96 may be used in accordance with the national law of each Contracting Party for the purposes of Article 101(2) only.

5. Any use of data which does not comply with paragraphs 1 to 4 shall be considered as misuse under the national law of each Contracting Party.

Article 103

Each Contracting Party shall ensure that, on average, every 10th transmission of personal data is recorded in the national section of the Schengen Information System by the data file management authority for the purposes of checking whether the search is admissible or not. The record may only be used for this purpose and shall be deleted after six months.

Article 104

1. Alerts shall be governed by the national law of the Contracting Party issuing the alert unless more stringent conditions are laid down in this Convention.

2. In so far as this Convention does not lay down specific provisions, the law of each Contracting Party shall apply to data entered in its national section of the Schengen Information System.

3. In so far as this Convention does not lay down specific provisions concerning performance of the action requested in the alert, the national law of the requested Contracting Party performing the action shall apply. In so far as this Convention lays down specific provisions concerning performance of the action requested in the alert, responsibility for that action shall be governed by the national law of the requested Contracting Party. If the requested action cannot be performed, the requested Contracting Party shall immediately inform the Contracting Party issuing the alert.

Article 105

The Contracting Party issuing the alert shall be responsible for ensuring that the data entered into the Schengen Information System is accurate, up-to-date and lawful.

Article 106

1. Only the Contracting Party issuing the alert shall be authorised to modify, add to, correct or delete data which it has entered.

2. If one of the Contracting Parties which has not issued the alert has evidence suggesting that an item of data is factually incorrect or has been unlawfully stored, it shall advise the Contracting Party issuing the alert thereof as soon as possible; the latter shall be obliged to check the communication and, if necessary, correct or delete the item in question immediately.

3. If the Contracting Parties are unable to reach agreement, the Contracting Party which did not issue the alert shall submit the case to the joint supervisory authority referred to in Article 115(1) for its opinion.

Article 107

Where a person is already the subject of an alert in the Schengen Information System, a Contracting Party which enters a further alert shall reach agreement on the entry of the alert with the Contracting Party which entered the first alert. The Contracting Parties may also lay down general provisions to this end.

Article 108

1. Each Contracting Party shall designate an authority which shall have central responsibility for its national section of the Schengen Information System.

2. Each Contracting Party shall issue its alerts via that authority.

3. The said authority shall be responsible for the smooth operation of the national section of the Schengen Information System and shall take the necessary measures to ensure compliance with the provisions of this Convention.

4. The Contracting Parties shall inform one another, via the depositary, of the authority referred to in paragraph 1.

Article 109

1. The right of persons to have access to data entered in the Schengen Information System which relate to them shall be exercised in accordance with the law of the Contracting Party before which they invoke that right. If national law so provides, the national supervisory authority provided for in

Article 114(1) shall decide whether information shall be communicated and by what procedures. A Contracting Party which has not issued the alert may communicate information concerning such data only if it has previously given the Contracting Party issuing the alert an opportunity to state its position.

2. Communication of information to the data subject shall be refused if this is indispensable for the performance of a lawful task in connection with the alert or for the protection of the rights and freedoms of third parties. In any event, it shall be refused throughout the period of validity of an alert for the purpose of discreet surveillance.

Article 110

Any person may have factually inaccurate data relating to them corrected or unlawfully stored data relating to them deleted.

Article 111

1. Any person may, in the territory of each Contracting Party, bring before the courts or the authority competent under national law an action to correct, delete or obtain information or to obtain compensation in connection with an alert involving them.

2. The Contracting Parties undertake mutually to enforce final decisions taken by the courts or authorities referred to in paragraph 1, without prejudice to the provisions of Article 116.

Article 112

1. Personal data entered into the Schengen Information System for the purposes of tracing persons shall be kept only for the time required to meet the purposes for which they were supplied. The Contracting Party which issued the alert must review the need for continued storage of such data not later than three years after they were entered. The period shall be one year in the case of the alerts referred to in Article 99.

2. Each Contracting Party shall, where appropriate, set shorter review periods in accordance with its national law.

3. The technical support function of the Schengen Information System shall automatically inform the Contracting Parties of scheduled deletion of data from the system one month in advance.

4. The Contracting Party issuing the alert may, within the review period, decide to keep the alert should this prove necessary for the purposes for which the alert was issued. Any extension of the alert must be communicated to the technical support function. The provisions of paragraph 1 shall apply to the extended alert.

Article 113

1. Data other than that referred to in Article 112 shall be kept for a maximum of 10 years, data on issued identity papers and suspect banknotes for a maximum of five years and data on motor vehicles, trailers and caravans for a maximum of three years.

2. Data which have been deleted shall be kept for one year in the technical support function. During that period they may only be consulted for subsequent checking as to their accuracy and as to whether the data were entered lawfully. Afterwards they must be destroyed.

Article 114

1. Each Contracting Party shall designate a supervisory authority responsible in accordance with national law for carrying out independent supervision of the data file of the national section of the Schengen Information System and for checking that the processing and use of data entered in the Schengen Information System does not violate the rights of the data subject. For this purpose, the supervisory authority shall have access to the data file of the national section of the Schengen Information System.

2. Any person shall have the right to ask the supervisory authorities to check data entered in the Schengen Information System which concern them and the use made of such data. That right shall be governed by the national law of the Contracting Party to which the request is made. If the data have been entered by another Contracting Party, the check shall be carried out in close coordination with that Contracting Party's supervisory authority.

Article 115

1. A joint supervisory authority shall be set up and shall be responsible for supervising the technical support function of the Schengen Information System. This authority shall consist of two representatives from each national supervisory authority. Each Contracting Party shall have one vote. Supervision shall be carried out in accordance with the provisions of this Convention, the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data, taking into account Recommendation No R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector, and in accordance with the national law of the Contracting Party responsible for the technical support function.

2. As regards the technical support function of the Schengen Information System, the joint supervisory authority shall have the task of checking that the provisions of this Convention are properly implemented. For that purpose, it shall have access to the technical support function.

3. The joint supervisory authority shall also be responsible for examining any difficulties of application or interpretation that may arise during the operation of the Schengen Information System, for studying any problems that may occur with the exercise of independent supervision by the national supervisory authorities of the Contracting Parties or in the exercise of the right of access to the system, and for drawing up harmonised proposals for joint solutions to existing problems.

4. Reports drawn up by the joint supervisory authority shall be submitted to the authorities to which the national supervisory authorities submit their reports.

Article 116

1. Each Contracting Party shall be liable in accordance with its national law for any injury caused to a person through the use of the national data file of the Schengen Information System. This shall also apply to injury caused by the Contracting Party which issued the alert, where the latter entered factually inaccurate data or stored data unlawfully.

2. If the Contracting Party against which an action is brought is not the Contracting Party issuing the alert, the latter shall be required to reimburse, on request, the sums paid out as compensation unless the data were used by the requested Contracting Party in breach of this Convention.

Article 117

1. As regards the automatic processing of personal data communicated pursuant to this Title, each Contracting Party shall, no later than the date of entry into force of this Convention, adopt the necessary national provisions in order to achieve a level of protection of personal data at least equal to that resulting from the principles laid down in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and in accordance with Recommendation No R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector.

2. The communication of personal data provided for in this Title may not take place until the provisions for the protection of personal data as specified in paragraph 1 have entered into force in the territories of the Contracting Parties involved in such communication.

Article 118

1. Each Contracting Party undertakes, in relation to its national section of the Schengen Information System, to adopt the necessary measures in order to:

- (a) deny unauthorised persons access to data-processing equipment used for processing personal data (equipment access control);
- (b) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
- (c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);
- (d) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);
- (e) ensure that persons authorised to use an automated data-processing system only have access to the data covered by their access authorisation (data access control);
- (f) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
- (g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems and when and by whom the data were input (input control);
- (h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control).

2. Each Contracting Party must take special measures to ensure the security of data while they are being communicated to services located outside the territories of the Contracting Parties. Such measures must be notified to the joint supervisory authority.

3. For the processing of data in its national section of the Schengen Information System each Contracting Party may appoint only specially qualified persons who have undergone security checks.

4. The Contracting Party responsible for the technical support function of the Schengen Information System shall adopt the measures laid down in paragraphs 1 to 3 in respect of that function.

CHAPTER 4

**APPORTIONMENT OF THE COSTS OF THE SCHENGEN
INFORMATION SYSTEM**

Article 119

1. The costs of installing and operating the technical support function referred to in Article 92(3), including the cost of lines connecting the national sections of the Schengen Information System to the technical support function, shall be

borne jointly by the Contracting Parties. Each Contracting Party's share shall be determined on the basis of the rate for each Contracting Party applied to the uniform basis of assessment of value added tax within the meaning of Article 2(1)(c) of the Decision of the Council of the European Communities of 24 June 1988 on the system of the Communities' own resources.

2. The costs of installing and operating the national section of the Schengen Information System shall be borne by each Contracting Party individually.

TITLE V

TRANSPORT AND MOVEMENT OF GOODS

Article 120

1. The Contracting Parties shall jointly ensure that their laws, regulations or administrative provisions do not unjustifiably impede the movement of goods at internal borders.

2. The Contracting Parties shall facilitate the movement of goods across internal borders by carrying out formalities relating to prohibitions and restrictions when goods are cleared through customs for home use. Such customs clearance may, at the discretion of the Party concerned, be conducted either within the country or at the internal borders. The Contracting Parties shall endeavour to encourage customs clearance within the country.

3. In so far as it is not possible in certain fields to achieve the simplifications referred to in paragraph 2 in whole or in part, the Contracting Parties shall endeavour either to create the conditions therefor amongst themselves or to do so within the framework of the European Communities.

This paragraph shall apply in particular to monitoring compliance with rules on commercial transport permits, roadworthiness of means of transport, veterinary inspections and animal health checks, veterinary checks on health and hygiene, including meat inspections, plant health inspections and monitoring the transportation of dangerous goods and hazardous waste.

4. The Contracting Parties shall endeavour to harmonise formalities governing the movement of goods across external borders and to monitor compliance therewith according to uniform principles. The Contracting Parties shall, to this end, work closely together within the Executive Committee in the framework of the European Communities and other international forums.

Article 121

1. In accordance with Community law, the Contracting Parties shall waive, for certain types of plant and plant products, the plant health inspections and presentation of plant health certificates required under Community law.

The Executive Committee shall adopt the list of plants and plant products to which the simplification specified in the first subparagraph shall apply. It may amend this list and shall fix the date of entry into force for such amendments. The Contracting Parties shall inform each other of the measures taken.

2. Should there be a danger of harmful organisms being introduced or propagated, a Contracting Party may request the temporary reinstatement of the control measures laid down in Community law and may implement those measures. It shall immediately inform the other Contracting Parties thereof in writing, giving the reasons for its decision.

3. Plant health certificates may continue to be used as the certificate required under the law on the protection of species.

4. The competent authority shall, upon request, issue a plant health certificate when a consignment is intended in whole or in part for re-export in so far as plant health requirements are met for the plants or plant products concerned.

Article 122

1. The Contracting Parties shall step up their cooperation with a view to ensuring the safe transportation of hazardous goods and undertake to harmonise their national provisions adopted pursuant to international Conventions in force. In addition, they undertake, particularly with a view to maintaining the existing level of safety, to:

- (a) harmonise their requirements with regard to the vocational qualifications of drivers;
- (b) harmonise the procedures for and the intensity of checks conducted during transportation and within undertakings;
- (c) harmonise the classification of offences and the legal provisions concerning the relevant penalties;

(d) ensure a permanent exchange of information and experience with regard to the measures implemented and the checks carried out.

2. The Contracting Parties shall step up their cooperation with a view to conducting checks on transfers of hazardous and non-hazardous waste across internal borders.

To this end, they shall endeavour to adopt a common position regarding the amendment of Community Directives on the monitoring and management of transfers of hazardous waste and regarding the introduction of Community acts on non-hazardous waste, with the aim of setting up an adequate infrastructure for its disposal and of introducing waste disposal standards harmonised at a high level.

Pending Community rules on non-hazardous waste, checks on transfers of such waste shall be conducted on the basis of a special procedure whereby transfers may be checked at the point of destination during clearance procedures.

The second sentence of paragraph 1 shall also apply to this paragraph.

Article 123

1. The Contracting Parties undertake to consult each other for the purposes of abolishing among themselves the current requirement to produce a licence for the export of strategic industrial products and technologies, and to replace such a licence, if necessary, by a flexible procedure in cases where the countries of first and final destination are Contracting Parties.

Subject to such consultations, and in order to guarantee the effectiveness of such checks as may prove necessary, the Contracting Parties shall, by cooperating closely through a coordinating mechanism, endeavour to exchange relevant information, while taking account of national law.

2. With regard to products other than the strategic industrial products and technologies referred to in paragraph 1, the Contracting Parties shall endeavour, on the one hand, to have export formalities carried out within the country and, on the other, to harmonise their control procedures.

3. In pursuit of the objectives set out in paragraphs 1 and 2, the Contracting Parties shall consult the other partners concerned.

Article 124

The number and intensity of checks on goods carried by travellers when crossing internal borders shall be reduced to the lowest level possible. Further reductions in and the final abolition of such checks will depend on the gradual increase in travellers' duty-free allowances and on future developments in the rules applicable to the cross-border movement of travellers.

Article 125

1. The Contracting Parties shall conclude arrangements on the secondment of liaison officers from their customs administrations.

2. The secondment of liaison officers shall have the general purposes of promoting and accelerating cooperation between the Contracting Parties, in particular under existing Conventions and Community acts on mutual assistance.

3. The task of liaison officers shall be to advise and to provide assistance. They shall not be authorised to take customs administration measures on their own initiative. They shall provide information and shall perform their duties in accordance with the instructions given to them by the seconding Contracting Party.

TITLE VI

PROTECTION OF PERSONAL DATA

Article 126

1. As regards the automatic processing of personal data communicated pursuant to this Convention, each Contracting Party shall, no later than the date of entry into force of this Convention, adopt the necessary national provisions in order to achieve a level of protection of personal data at least equal to that resulting from the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981.

2. The communication of personal data provided for in this Convention may not take place until the provisions for the protection of personal data as specified in paragraph 1 have entered into force in the territories of the Contracting Parties involved in such communication.

3. In addition, the following provisions shall apply to the automatic processing of personal data communicated pursuant to this Convention:

(a) such data may be used by the recipient Contracting Party solely for the purposes for which this Convention

stipulates that they may be communicated; such data may be used for other purposes only with the prior authorisation of the Contracting Party communicating the data and in accordance with the law of the recipient Contracting Party; such authorisation may be granted in so far as the national law of the Contracting Party communicating the data so permits;

- (b) such data may be used only by the judicial authorities and the departments and authorities carrying out tasks or performing duties in connection with the purposes referred to in paragraph (a);
- (c) the Contracting Party communicating such data shall be obliged to ensure the accuracy thereof; should it establish, either on its own initiative or further to a request by the data subject, that data have been provided that are inaccurate or should not have been communicated, the recipient Contracting Party or Parties must be immediately informed thereof; the latter Party or Parties shall be obliged to correct or destroy the data, or to indicate that the data are inaccurate or were unlawfully communicated;
- (d) a Contracting Party may not plead that another Contracting Party communicated inaccurate data, in order to avoid its liability under its national law vis-à-vis an injured party; if damages are awarded against the recipient Contracting Party because of its use of inaccurate communicated data, the Contracting Party which communicated the data shall refund in full to the recipient Contracting Party the amount paid in damages;
- (e) the transmission and receipt of personal data must be recorded both in the source data file and in the data file in which they are entered;
- (f) the joint supervisory authority referred to in Article 115 may, at the request of one of the Contracting Parties, deliver an opinion on the difficulties of implementing and interpreting this Article.

4. This Article shall not apply to the communication of data provided for under Chapter 7 of Title II and Title IV. Paragraph 3 shall not apply to the communication of data provided for under Chapters 2 to 5 of Title III.

Article 127

1. Where personal data are communicated to another Contracting Party pursuant to the provisions of this Convention, Article 126 shall apply to the communication of the data from a non-automated data file and to their inclusion in another non-automated data file.

2. Where, in cases other than those governed by Article 126(1), or paragraph 1 of this Article, personal data are communicated to another Contracting Party pursuant to this Convention, Article 126(3), with the exception of subparagraph (e), shall apply. The following provisions shall also apply:

- (a) a written record shall be kept of the transmission and receipt of personal data; this obligation shall not apply where such a record is not necessary given the use of the data, in particular if they are not used or are used only very briefly;
- (b) the recipient Contracting Party shall ensure, in the use of communicated data, a level of protection at least equal to that laid down in its national law for the use of similar data;
- (c) the decision concerning whether and under what conditions the data subject shall, at his request, be provided information concerning communicated data relating to him shall be governed by the national law of the Contracting Party to which the request was addressed.

3. This Article shall not apply to the communication of data provided for under Chapter 7 of Title II, Chapters 2 to 5 of Title III, and Title IV.

Article 128

1. The communication of personal data provided for by this Convention may not take place until the Contracting Parties involved in that communication have instructed a national supervisory authority to monitor independently that the processing of personal data in data files complies with Articles 126 and 127 and the provisions adopted for their implementation.

2. Where the Contracting Party has, in accordance with its national law, instructed a supervisory authority to monitor independently, in one or more areas, compliance with the provisions on the protection of personal data not entered in a data file, that Contracting Party shall instruct the same authority to supervise compliance with the provisions of this Title in the areas concerned.

3. This Article shall not apply to the communication of data provided for under Chapter 7 of Title II and Chapters 2 to 5 of Title III.

Article 129

As regards the communication of personal data pursuant to Chapter 1 of Title III, the Contracting Parties undertake, without prejudice to Articles 126 and 127, to achieve a level of protection of personal data which complies with the principles of Recommendation No R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe

regulating the use of personal data in the police sector. In addition, as regards the communication of data pursuant to Article 46, the following provisions shall apply:

- (a) the data may be used by the recipient Contracting Party solely for the purposes indicated by the Contracting Party which provided the data and in compliance with the conditions laid down by that Contracting Party;
- (b) the data may be communicated to police forces and authorities only; data may not be communicated to other authorities without the prior authorisation of the Contracting Party which provided them;

- (c) the recipient Contracting Party shall, upon request, inform the Contracting Party which provided the data of the use made of the data and the results thus obtained.

Article 130

If personal data are communicated via a liaison officer as referred to in Article 47 or Article 125, the provisions of this title shall not apply unless the liaison officer communicates such data to the Contracting Party which seconded the officer to the territory of the other Contracting Party.

TITLE VII

EXECUTIVE COMMITTEE

Article 131

1. An Executive Committee shall be set up for the purposes of implementing this Convention.
2. Without prejudice to the special powers conferred upon it by this Convention, the overall task of the Executive Committee shall be to ensure that this Convention is implemented correctly.

Article 132

1. Each Contracting Party shall have one seat on the Executive Committee. The Contracting Parties shall be represented on the Committee by a Minister responsible for the implementation of this Convention; that Minister may, if necessary, be assisted by experts, who may participate in the deliberations.

2. The Executive Committee shall take its decisions unanimously. It shall draw up its own rules of procedure; in this connection it may provide for a written decision-making procedure.

3. At the request of the representative of a Contracting Party, the final decision on a draft on which the Executive Committee has acted may be postponed for no more than two months from the date of submission of that draft.

4. The Executive Committee may set up working parties composed of representatives of the administrations of the Contracting Parties in order to prepare decisions or to carry out other tasks.

Article 133

The Executive Committee shall meet in the territory of each Contracting Party in turn. It shall meet as often as is necessary for it to discharge its duties properly.

TITLE VIII

FINAL PROVISIONS

Article 134

The provisions of this Convention shall apply only in so far as they are compatible with Community law.

Article 135

The provisions of this Convention shall apply subject to the provisions of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.

Article 136

1. A Contracting Party which envisages conducting negotiations on border checks with a third State shall inform the other Contracting Parties thereof in good time.

2. No Contracting Party shall conclude with one or more third States agreements simplifying or abolishing border checks without the prior agreement of the other Contracting Parties, subject to the right of the Member States of the European Communities to conclude such agreements jointly.

3. Paragraph 2 shall not apply to agreements on local border traffic in so far as those agreements comply with the exceptions and arrangements adopted under Article 3(1).

Article 137

This Convention shall not be the subject of any reservations, save for those referred to in Article 60.

Article 138

As regards the French Republic, the provisions of this Convention shall apply only to the European territory of the French Republic.

As regards the Kingdom of the Netherlands, the provisions of this Convention shall apply only to the territory of the Kingdom in Europe.

Article 139

1. This Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of the Grand Duchy of Luxembourg, which shall notify all the Contracting Parties thereof.

2. This Convention shall enter into force on the first day of the second month following the deposit of the final instrument of ratification, acceptance or approval. The provisions concerning the setting up, activities and powers of the Executive Committee shall apply as from the entry into force of this Convention. The other provisions shall apply as from the first day of the third month following the entry into force of this Convention.

3. The Government of the Grand Duchy of Luxembourg shall notify all the Contracting Parties of the date of entry into force.

Article 140

1. Any Member State of the European Communities may become a Party to this Convention. Accession shall be the subject of an agreement between that State and the Contracting Parties.

2. Such an agreement shall be subject to ratification, acceptance or approval by the acceding State and by each of the Contracting Parties. It shall enter into force on the first day of the second month following the deposit of the final instrument of ratification, acceptance or approval.

Article 141

1. Any Contracting Party may submit to the depositary a proposal to amend this Convention. The depositary shall forward that proposal to the other Contracting Parties. At the request of one Contracting Party, the Contracting Parties shall re-examine the provisions of the Convention if, in their opinion, there has been a fundamental change in the conditions obtaining when the Convention entered into force.

2. The Contracting Parties shall adopt amendments to this Convention by common consent.

3. Amendments shall enter into force on the first day of the second month following the date of deposit of the final instrument of ratification, acceptance or approval.

Article 142

1. When Conventions are concluded between the Member States of the European Communities with a view to the completion of an area without internal frontiers, the Contracting Parties shall agree on the conditions under which the provisions of this Convention are to be replaced or amended in the light of the corresponding provisions of such Conventions.

The Contracting Parties shall, to that end, take account of the fact that the provisions of this Convention may provide for more extensive cooperation than that resulting from the provisions of the said Conventions.

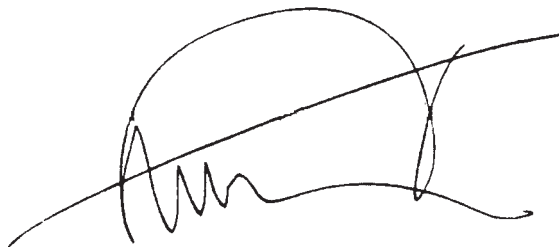
Provisions which conflict with those agreed between the Member States of the European Communities shall in any case be adapted.

2. Amendments to this Convention which are deemed necessary by the Contracting Parties shall be subject to ratification, acceptance or approval. The provision contained in Article 141(3) shall apply on the understanding that the amendments will not enter into force before the said Conventions between the Member States of the European Communities enter into force.

In witness whereof, the undersigned, duly empowered to this effect, have hereunto set their hands.

Done at Schengen, this nineteenth day of June in the year one thousand nine hundred and ninety, in a single original in the Dutch, French and German languages, all three texts being equally authentic, such original remaining deposited in the archives of the Government of the Grand Duchy of Luxembourg, which shall transmit a certified copy to each of the Contracting Parties.

For the Government of the Kingdom of Belgium



For the Government of the Federal Republic of Germany



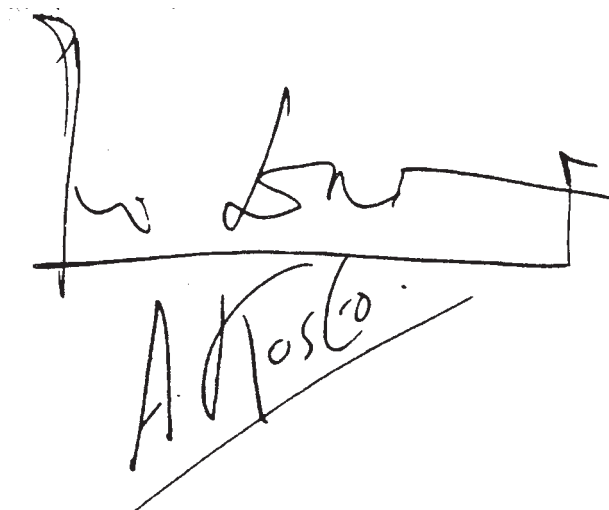
For the Government of the French Republic



For the Government of the Grand Duchy of Luxembourg



For the Government of the Kingdom of the Netherlands



FINAL ACT

At the time of signing the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, the Contracting Parties have adopted the following declarations:

1. Joint Declaration on Article 139

The Signatory States shall, prior to the entry into force of the Convention, inform each other of all circumstances that could have a significant bearing on the areas covered by this Convention and the bringing into force thereof.

The Convention shall not be brought into force until the preconditions for its implementation have been fulfilled in the Signatory States and checks at external borders are effective.

2. Joint Declaration on Article 4

The Contracting Parties undertake to make every effort to comply simultaneously with this deadline and to preclude any shortcomings in security. Before 31 December 1992, the Executive Committee shall examine what progress has been made. The Kingdom of the Netherlands stresses that difficulties in meeting the deadline in a particular airport cannot be excluded but that this will not give rise to any shortcomings in security. The other Contracting Parties will take account of this situation although this may not be allowed to entail difficulties for the internal market.

In the event of difficulties, the Executive Committee shall examine how best to achieve the simultaneous implementation of these measures at airports.

3. Joint Declaration on Article 71(2)

In so far as a Contracting Party departs from the principle referred to in Article 71(2) in connection with its national policy on the prevention and treatment of addiction to narcotic drugs and psychotropic substances, all Contracting Parties shall adopt the necessary administrative measures and penal measures to prevent and punish the illicit import and export of such products and substances, particularly towards the territories of the other Contracting Parties.

4. Joint Declaration on Article 121

In accordance with Community law, the Contracting Parties shall waive the plant health inspections and presentation of plant health certificates required under Community law for the types of plant and plant products:

(a) listed under 1, or

(b) listed under 2 to 6 and originating in one of the Contracting Parties:

(1) Cut flowers and parts of plants suitable for ornamental purposes of:

Castanea

Chrysanthemum

Dendranthema

Dianthus

Gladiolus

Gypsophila

Prunus

Quercus

Rosa

Salix

Syringa

Vitis.

(2) Fresh fruit of:

Citrus

Cydonia

Malus

Prunus

Pyrus.

(3) Wood of:

Castanea

Quercus.

(4) Growing medium constituted wholly or in part of earth or solid organic matter such as parts of plants, turf and bark with humus, but not constituted entirely of turf.

(5) Seeds.

(6) Live plants listed below and appearing under the CN codes listed below in the Customs Nomenclature published in the Official Journal of the European Communities of 7 September 1987.

CN code	Description
0601 20 30	Bulbs, onions, tubers, tuberous roots and rhizomes, in growth or in flower: orchids, hyacinths, narcissi and tulips
0601 20 90	Bulbs, onions, tubers, tuberous roots and rhizomes, in growth or in flower: other
0602 30 10	<i>Rhododendron simsii</i> (<i>Azalea indica</i>)
0602 99 51	Outdoor plants: perennial plants
0602 99 59	Outdoor plants: other
0602 99 91	Indoor plants: flowering plants with buds or flowers, excluding cacti
0602 99 99	Indoor plants: other

5. Joint Declaration on national asylum policies

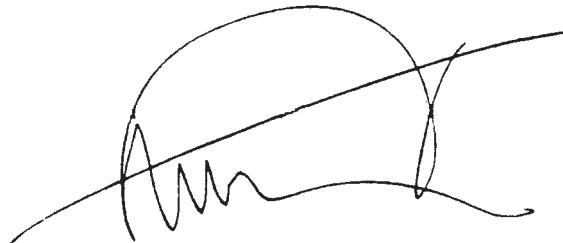
The Contracting Parties shall draw up an inventory of national asylum policies with a view to the harmonisation thereof.

6. Joint Declaration on Article 132

The Contracting Parties shall inform their national Parliaments of the implementation of this Convention.

Done at Schengen, this nineteenth day of June in the year one thousand nine hundred and ninety, in a single original, in the Dutch, French and German languages, all three texts being equally authentic, such original remaining deposited in the archives of the Government of the Grand Duchy of Luxembourg, which shall transmit a certified copy to each of the Contracting Parties.

For the Government of the Kingdom of Belgium



For the Government of the Federal Republic of Germany



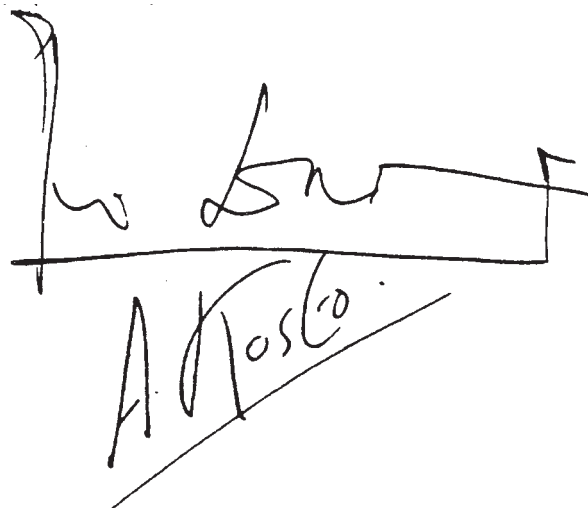
For the Government of the French Republic



For the Government of the Grand Duchy of Luxembourg



For the Government of the Kingdom of the Netherlands



MINUTES

Further to the Final Act of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, the Contracting Parties have adopted the following joint statement and taken note of the following unilateral declarations made in respect of the said Convention:

I. Declaration on the scope of the Convention

The Contracting Parties note that, after the unification of the two German States, the scope of the Convention shall under international law also extend to the current territory of the German Democratic Republic.

II. Declarations by the Federal Republic of Germany on the interpretation of the Convention

1. The Convention has been concluded in the light of the prospective unification of the two German States.

The German Democratic Republic is not a foreign country in relation to the Federal Republic of Germany.

Article 136 shall not apply in relations between the Federal Republic of Germany and the German Democratic Republic.

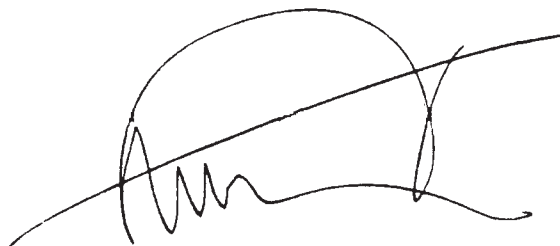
2. This Convention shall be without prejudice to the arrangements agreed in the Germano-Austrian exchange of letters of 20 August 1984 simplifying checks at their common borders for nationals of both States. Such arrangements will however have to be implemented in the light of the overriding security and immigration requirements of the Schengen Contracting Parties so that such facilities will in practice be restricted to Austrian nationals.

III. Declaration by the Kingdom of Belgium on Article 67

The procedure which will be implemented internally for the transfer of the enforcement of foreign criminal judgments will not be that specified under Belgian law for the transfer of sentenced persons between States, but rather a special procedure which will be determined when this Convention is ratified.

Done at Schengen, this nineteenth day of June in the year one thousand nine hundred and ninety, in a single original, in the Dutch, French and German languages, all three texts being equally authentic, such original remaining deposited in the archives of the Government of the Grand Duchy of Luxembourg, which shall transmit a certified copy to each of the Contracting Parties.

For the Government of the Kingdom of Belgium



For the Government of the Federal Republic of Germany



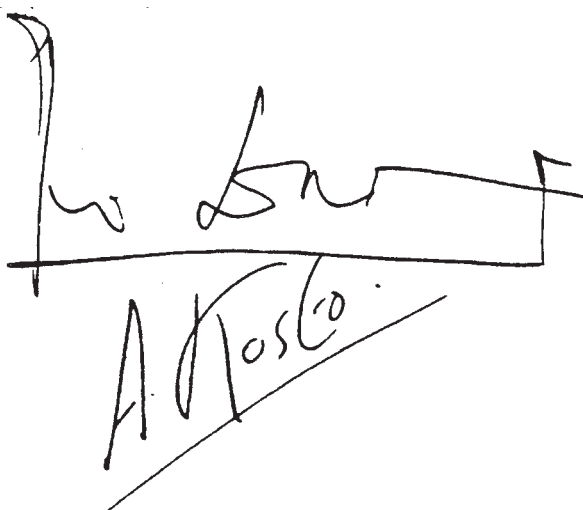
For the Government of the French Republic



For the Government of the Grand Duchy of Luxembourg



For the Government of the Kingdom of the Netherlands



Ad Noster

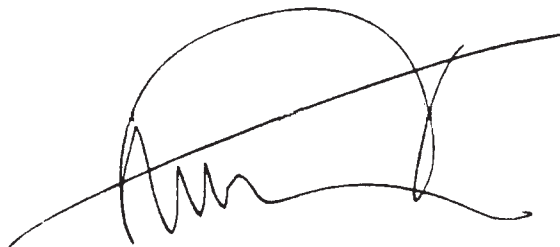
JOINT DECLARATION**BY THE MINISTERS AND STATE SECRETARIES MEETING IN SCHENGEN ON 19 JUNE 1990**

The Governments of the Contracting Parties to the Schengen Agreement will open or continue discussions in particular in the following areas:

- improving and simplifying extradition practices,
- improving cooperation on bringing proceedings against road traffic offences,
- arrangements for the mutual recognition of disqualifications from driving motor vehicles,
- possibilities of reciprocal enforcement of fines,
- introduction of rules on reciprocal transfers of criminal proceedings including the possibility of transferring the accused person to that person's country of origin,
- introduction of rules on the repatriation of minors who have been unlawfully removed from the authority of the person responsible for exercising parental authority,
- further simplification of checks on commercial movements of goods.

Done at Schengen, this nineteenth day of June in the year one thousand nine hundred and ninety, in a single original, in the Dutch, French and German languages, all three texts being equally authentic, such original remaining deposited in the archives of the Government of the Grand Duchy of Luxembourg, which shall transmit a certified copy to each of the Contracting Parties.

For the Government of the Kingdom of Belgium



For the Government of the Federal Republic of Germany



For the Government of the French Republic



For the Government of the Grand Duchy of Luxembourg



For the Government of the Kingdom of the Netherlands



DECLARATION BY THE MINISTERS AND STATE SECRETARIES

On 19 June 1990 representatives of the Governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands signed at Schengen, in the Grand Duchy of Luxembourg, the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

At the time of signing that Convention, they adopted the following declarations:

- The Contracting Parties consider that the Convention constitutes an important step towards creating an area without internal borders and take it as a basis for further activities amongst the Member States of the European Communities.
- In view of the risks in the fields of security and illegal immigration, the Ministers and State Secretaries underline the need for effective external border controls in accordance with the uniform principles laid down in Article 6. With a view to implementing those uniform principles, the Contracting Parties must, in particular, promote the harmonisation of working methods for border control and surveillance.

Moreover, the Executive Committee will examine all relevant measures with a view to establishing uniform and effective external border controls and the practical implementation thereof. Such measures will include measures making it possible to ascertain the circumstances under which a third-country national has entered the territories of the Contracting Parties, application of the same procedures for refusing entry, the drafting of a common manual for the officials responsible for border surveillance and encouragement of an equivalent level of external border control by means of exchanges and joint working visits.

At the time of signing that Convention, they also confirmed the Central Negotiating Group's decision to set up a working party with the following mandate:

- to inform the Central Negotiating Group before the entry into force of the Convention of all circumstances that have a significant bearing on the areas covered by the Convention and on its entry into force, in particular the progress achieved in harmonising legal provisions in connection with the unification of the two German States,
- to consult each other on any impact that that harmonisation and those circumstances may have on the implementation of the Convention,
- with a view to the movement of aliens exempt from the visa requirement, to devise practical measures and put forward proposals before the entry into force of the Convention for harmonising procedures for carrying out controls on persons at the future external borders.

ANNEX

CONVENTION

established by the Council 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

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 latter's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁾.
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.

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

*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 handling 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 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 latter's 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 European Communities* information on the progress of adoptions and accessions, statements and reservations and also any other notification concerning this Convention.

Hecho en Bruselas, el veintinueve de mayo de dos mil, en un ejemplar único, en lenguas alemana, danesa, española, finesa, francesa, griega, inglesa, irlandesa, italiana, neerlandesa, portuguesa y sueca, cuyos textos son igualmente auténticos y que será depositado en los archivos de la Secretaría General del Consejo de la Unión Europea. El Secretario General remitirá una copia certificado del mismo a cada Estado miembro.

Udfærdiget i Bruxelles den niogtyvende maj to tusind i ét eksemplar på dansk, engelsk, finsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, idet hver af disse tekster har samme gyldighed; de deponeres i arkiverne i Generalsekretariatet for Den Europæiske Union. Generalsekretæren fremsender en bekræftet kopi heraf til hver medlemsstat.

Geschehen zu Brüssel am neunundzwanzigsten Mai zweitausend in einer Urschrift in dänischer, deutscher, englischer, finnischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist; die Urschrift wird im Archiv des Generalsekretariats des Rates der Europäischen Union hinterlegt. Der Generalsekretär übermittelt jedem Mitgliedstaat eine beglaubigte Abschrift dieser Urschrift.

Έγινε στις Βρυξέλλες στις είκοσι εννέα Μαΐου δύο χιλιάδες σε ένα μόνο αντίτυπο στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα, και όλα τα κείμενα είναι εξίσου αυθεντικά. Η σύμβαση κατατίθεται στο αρχείο της Γενικής Γραμματείας του Συμβουλίου της Ευρωπαϊκής Ένωσης. Ο Γενικός Γραμματέας διαβιβάζει ακριβές επικυρωμένο αντίγραφο σε κάθε κράτος μέλος.

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.

Fait à Bruxelles, le vingt-neuf mai deux mille, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, les textes établis dans chacune de ces langues faisant également foi, lequel est déposé dans les archives du secrétariat général du Conseil de l'Union européenne. Le secrétaire général en fait parvenir une copie certifiée à chaque État membre.

Arna dhéanamh sa Bhruiséil, an naoú lá is fiche de Bhealtaine sa bhliain dhá mhíle i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis, agus comhúdarás ag gach ceann de na téacsanna sin; déanfar an scríbhinn bhunaidh sin a thaisceadh i gcartlann Ardrúnaíocht Chomhairle an Aontais Eorpaigh. Díreoidh an tArdrúnaí cóip fhíordheimhnithe de chuig gach Ballstát.

Fatto a Bruxelles, addì ventinove maggio duemila, in un esemplare unico nelle lingue danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, ciascuna di esse facente ugualmente fede, depositato negli archivi del segretariato generale del Consiglio dell'Unione europea. Il segretario generale ne trasmette una copia certificata conforme a ogni Stato membro.

Gedaan te Brussel, de negenentwintigste mei tweeduizend, in één exemplaar, in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat wordt neergelegd in het archief van het secretariaat-generaal van de Raad van de Europese Unie. De secretaris-generaal zendt een voor eensluidend gewaarmerkt afschrift daarvan toe aan elke lidstaat.

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).

ANNEX

PROTOCOL

established by the Council 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

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 ⁽¹⁾,

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 ⁽²⁾, hereinafter referred to as the '2000 Mutual Assistance Convention':

Article 1

Convention), or in the Annex to that Convention, as amended, or

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

- 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.

⁽¹⁾ OJ L 344, 15.12.1997, p. 7.

⁽²⁾ OJ C 197, 12.7.2000, p. 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 latter's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁾ (hereinafter referred to as the '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.

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2009/948/JHA

of 30 November 2009

on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(1)(c) and (d) and Article 34(2)(b) thereof,

Having regard to the initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) The Hague Programme⁽¹⁾ on strengthening freedom, security and justice in the European Union, which was approved by the European Council at its meeting on 4 and 5 November 2004, requires Member States to consider legislation on conflicts of jurisdiction, with a view to increasing the efficiency of prosecutions while guaranteeing the proper administration of justice, so as to complete the comprehensive programme of measures to implement the principle of mutual recognition of judicial decisions in criminal matters.
- (3) The measures provided for in this Framework Decision should aim to prevent situations where the same person is subject to parallel criminal proceedings in different Member States in respect of the same facts, which might lead to the final disposal of those proceedings in two or more Member States. The Framework Decision therefore seeks to prevent an infringement of the principle of '*ne bis in idem*', as set out in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of

Germany and the French Republic on the gradual abolition of checks at their common borders⁽²⁾ as interpreted by the Court of Justice of the European Communities.

- (4) There should be direct consultations between competent authorities of the Member States with the aim of achieving a consensus on any effective solution aimed at avoiding the adverse consequences arising from parallel proceedings and avoiding waste of time and resources of the competent authorities concerned. Such effective solution could notably consist in the concentration of the criminal proceedings in one Member State, for example through the transfer of criminal proceedings. It could also consist in any other step allowing efficient and reasonable handling of those proceedings, including concerning the allocation in time, for example through a referral of the case to Eurojust when the competent authorities are not able to reach consensus. In this respect, specific attention should be paid to the issue of gathering the evidence which can be influenced by the parallel proceedings being conducted.
- (5) When a competent authority in a Member State has reasonable grounds to believe that parallel criminal proceedings are being conducted in another Member State in respect of the same facts involving the same person, which could lead to the final disposal of those proceedings in two or more Member States, it should contact the competent authority of that other Member State. The question whether or not reasonable grounds exist should be examined solely by the contacting authority. Reasonable grounds could, *inter alia*, include cases where a suspected or accused person invokes, while giving details, that he is subject to parallel criminal proceedings in respect of the same facts in another Member State, or in case a relevant request for mutual legal assistance by a competent authority in another Member State reveals the possible existence of such parallel criminal proceedings, or in case a police authority provides information to this effect.

⁽¹⁾ OJ C 53, 3.3.2005, p. 1.

⁽²⁾ OJ L 239, 22.9.2000, p. 19.

- (6) The process of exchange of information between competent authorities should be based upon the obligatory exchange of a specific minimum set of information, which should always be provided. The information concerned should notably facilitate the process of ensuring the proper identification of the person concerned and the nature and stage of the respective parallel proceedings.
- (7) A competent authority which has been contacted by a competent authority of another Member State should have a general obligation to reply to the request submitted. The contacting authority is encouraged to set a deadline within which the contacted authority should respond, if possible. The specific situation of a person deprived of liberty should be fully taken into account by the competent authorities throughout the procedure of taking contact.
- (8) Direct contact between competent authorities should be the leading principle of cooperation established under this Framework Decision. Member States should have discretion to decide which authorities are competent to act in accordance with this Framework Decision, in compliance with the principle of national procedural autonomy, provided that such authorities have competence to intervene and decide accordingly with its provisions.
- (9) When striving to reach consensus on any effective solution aimed at avoiding the adverse consequences arising from parallel proceedings being conducted in two or more Member States, the competent authorities should take into account that each case is specific and give consideration to all its facts and merits. In order to reach consensus, the competent authorities should consider relevant criteria, which may include those set out in the Guidelines which were published in the Eurojust Annual Report 2003 and which were drawn up for the needs of practitioners, and take into account for example the place where the major part of the criminality occurred, the place where the majority of the loss was sustained, the location of the suspected or accused person and possibilities for securing its surrender or extradition to other jurisdictions, the nationality or residence of the suspected or accused person, significant interests of the suspected or accused person, significant interests of victims and witnesses, the admissibility of evidence or any delays that may occur.
- (10) The obligation for competent authorities to enter into direct consultations in order to reach consensus in the context of this Framework Decision should not exclude the possibility that such direct consultations be conducted with the assistance of Eurojust.
- (11) No Member State should be obliged to waive or to exercise jurisdiction unless it wishes to do so. As long as consensus on the concentration of criminal proceedings has not been reached, the competent authorities of the Member States should be able to continue criminal proceedings for any criminal offence which falls within their national jurisdiction.
- (12) Since the very aim of this Framework Decision is to prevent unnecessary parallel criminal proceedings which could result in an infringement of the principle of *ne bis in idem*, its application should not give rise to a conflict of exercise of jurisdiction which would not occur otherwise. In the common area of freedom, security and justice, the principle of mandatory prosecution, governing the law of procedure in several Member States, should be understood and applied in a way that it is deemed to be fulfilled when any Member State ensures the criminal prosecution of a particular criminal offence.
- (13) Where consensus has been reached on the concentration of criminal proceedings in one Member State, the competent authorities in the other Member State should act in a way that is compatible with that consensus.
- (14) As Eurojust is particularly well suited to provide assistance in resolving conflicts of jurisdiction, the referral of a case to Eurojust should be a usual step, when it has not been possible to reach consensus. It should be noted that, in accordance with Article 13(7)(a) of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime ⁽¹⁾ (the 'Eurojust Decision'), as modified, most recently by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust ⁽²⁾, Eurojust has to be informed of any case where conflicts of jurisdiction have arisen or are likely to arise and that a case can be referred to Eurojust at any moment if at least one competent authority involved in the direct consultations deems it appropriate.
- (15) This Framework Decision is without prejudice to proceedings under the European Convention on the Transfer of Proceedings in Criminal Matters, signed in Strasbourg on 15 May 1972, as well as any other arrangements concerning the transfer of proceedings in criminal matters between the Member States.
- (16) This Framework Decision should not lead to an undue administrative burden in cases where for the problems addressed more suitable options are readily available. Thus in situations where more flexible instruments or arrangements are in place between Member States, those should prevail over this Framework Decision.
- ⁽¹⁾ OJ L 63, 6.3.2002, p. 1.
⁽²⁾ OJ L 138, 4.6.2009, p. 14.

- (17) This Framework Decision is limited to establishing provisions on the exchange of information and direct consultations between the competent authorities of the Member States and therefore does not affect any right of individuals to argue that they should be prosecuted in their own or in another jurisdiction, if such right exists under national law.
- (18) Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ⁽¹⁾ should apply to the processing of personal data exchanged under this Framework Decision.
- (19) When making a declaration concerning the language regime, Member States are encouraged to include at least one language which is commonly used in the European Union other than their official language.
- (20) This Framework Decision respects the 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,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1

GENERAL PRINCIPLES

Article 1

Objective

1. The objective of this Framework Decision is to promote a closer cooperation between the competent authorities of two or more Member States conducting criminal proceedings, with a view to improving the efficient and proper administration of justice.
2. Such closer cooperation aims to:
 - (a) prevent situations where the same person is subject to parallel criminal proceedings in different Member States in respect of the same facts, which might lead to the final disposal of the proceedings in two or more Member States thereby constituting an infringement of the principle of '*ne bis in idem*'; and
 - (b) reach consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings.

⁽¹⁾ OJ L 350, 30.12.2008, p. 60.

Article 2

Subject matter and scope

1. With a view to achieving the objective set out in Article 1, this Framework Decision establishes a framework on:
 - (a) a procedure for establishing contact between the competent authorities of Member States, with a view to confirming the existence of parallel criminal proceedings in respect of the same facts involving the same person;
 - (b) the exchange of information, through direct consultations, between the competent authorities of two or more Member States conducting parallel criminal proceedings in respect of the same facts involving the same person, in case they already have knowledge of the existence of parallel criminal proceedings, with a view to reaching consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings.
2. This Framework Decision shall not apply to proceedings which are covered by the terms of Articles 5 and 13 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ⁽²⁾.

Article 3

Definitions

For the purposes of this Framework Decision:

- (a) 'parallel proceedings' means criminal proceedings, including both the pre-trial and the trial phases, which are conducted in two or more Member States concerning the same facts involving the same person;
- (b) 'competent authority' means a judicial authority or another authority, which is competent, under the law of its Member State, to carry out the acts envisaged by Article 2(1) of this Framework Decision;
- (c) 'contacting authority' means a competent authority of a Member State, which contacts a competent authority of another Member State to confirm the existence of parallel proceedings;
- (d) 'contacted authority' means the competent authority which is asked by a contacting authority to confirm the existence of parallel criminal proceedings.

⁽²⁾ OJ L 1, 4.1.2003, p. 1.

*Article 4***Determination of competent authorities**

1. Member States shall determine the competent authorities in a way that promotes the principle of direct contact between authorities.

2. In accordance with paragraph 1, each Member State shall inform the General Secretariat of the Council which authorities under its national law are competent to act in accordance with this Framework Decision.

3. Notwithstanding paragraphs 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 requests for information according to Article 5 and/or for the purpose of assisting the competent authorities in the consultation process. Member States wishing to make use of the possibility to designate a central authority or authorities shall communicate this information to the General Secretariat of the Council.

4. The General Secretariat of the Council shall make the information received under paragraphs 2 and 3 available to all Member States and to the Commission.

*CHAPTER 2***EXCHANGE OF INFORMATION***Article 5***Obligation to contact**

1. When a competent authority of a Member State has reasonable grounds to believe that parallel proceedings are being conducted in another Member State, it shall contact the competent authority of that other Member State to confirm the existence of such parallel proceedings, with a view to initiating direct consultations as provided for in Article 10.

2. If the contacting authority does not know the identity of the competent authority to be contacted, it shall make all necessary inquiries, including via the contact points of the European Judicial Network, in order to obtain the details of that competent authority.

3. The procedure of contacting shall not apply when the competent authorities conducting parallel proceedings have already been informed of the existence of these proceedings by any other means.

*Article 6***Obligation to reply**

1. The contacted authority shall reply to a request submitted in accordance with Article 5(1) within any reasonable deadline

indicated by the contacting authority, or, if no deadline has been indicated, without undue delay, and inform the contacting authority whether parallel proceedings are taking place in its Member State. In cases where the contacting authority has informed the contacted authority that the suspected or accused person is held in provisional detention or custody, the latter authority shall treat the request as a matter of urgency.

2. If the contacted authority cannot provide a reply within any deadline set by the contacting authority, it shall promptly inform the contacting authority of the reasons thereof and indicate the deadline within which it shall provide the requested information.

3. If the authority which has been contacted by a contacting authority is not the competent authority under Article 4, it shall without undue delay transmit the request for information to the competent authority and shall inform the contacting authority accordingly.

*Article 7***Means of communication**

The contacting and contacted authorities shall communicate by any means whereby a written record can be produced.

*Article 8***Minimum information to be provided in the request**

1. When submitting a request in accordance with Article 5, the contacting authority shall provide the following information:

- (a) the contact details of the competent authority;
- (b) a description of the facts and circumstances that are the subject of the criminal proceedings concerned;
- (c) all relevant details about the identity of the suspected or accused person and about the victims, if applicable;
- (d) the stage that has been reached in the criminal proceedings; and
- (e) information about provisional detention or custody of the suspected or accused person, if applicable.

2. The contacting authority may provide relevant additional information relating to the criminal proceedings that are being conducted in its Member State, for example relating to any difficulties which are being encountered in that State.

*Article 9***Minimum information to be provided in the response**

1. The response by the contacted authority in accordance with Article 6 shall contain the following information:

- (a) whether criminal proceedings are being or were conducted in respect of some or all of the same facts as those which are subject of the criminal proceedings referred to in the request for information submitted by the contacting authority, and whether the same persons are involved;

in case of a positive answer under (a):

- (b) the contact details of the competent authority; and
- (c) the stage of these proceedings, or, where a final decision has been reached, the nature of that final decision.

2. The contacted authority may provide relevant additional information relating to the criminal proceedings that are being or were conducted in its Member State, in particular concerning any related facts which are the subject of the criminal proceedings in that State.

*CHAPTER 3***DIRECT CONSULTATIONS***Article 10***Obligation to enter into direct consultations**

1. When it is established that parallel proceedings exist, the competent authorities of the Member States concerned shall enter into direct consultations in order to reach consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings, which may, where appropriate, lead to the concentration of the criminal proceedings in one Member State.

2. As long as the direct consultations are being conducted, the competent authorities concerned shall inform each other of any important procedural measures which they have taken in the proceedings.

3. In the course of the direct consultations, competent authorities involved in those consultations shall whenever reasonably possible reply to requests for information emanating from other competent authorities that are involved in those consultations. However, when a competent authority is requested by another competent authority to provide specific information which could harm essential national security

interests or could jeopardise the safety of individuals, it shall not be required to provide that information.

*Article 11***Procedure of reaching consensus**

When the competent authorities of Member States enter into direct consultations on a case in order to reach consensus in accordance with Article 10, they shall consider the facts and merits of the case and all the factors which they consider to be relevant.

*Article 12***Cooperation with Eurojust**

1. This Framework Decision shall be complementary and without prejudice to the Eurojust Decision.

2. Where it has not been possible to reach consensus in accordance with Article 10, the matter shall, where appropriate, be referred to Eurojust by any competent authority of the Member States involved, if Eurojust is competent to act under Article 4(1) of the Eurojust Decision.

*Article 13***Providing information about the outcome of the proceedings**

If during the course of the direct consultations in accordance with Article 10 consensus has been reached on the concentration of the criminal proceedings in one Member State, the competent authority of that Member State shall inform the respective competent authority (authorities) of the other Member State(s) about the outcome of the proceedings.

*CHAPTER 4***GENERAL AND FINAL PROVISIONS***Article 14***Languages**

1. Each Member State shall state in a declaration to be deposited with the General Secretariat of the Council which languages, among the official languages of the institutions of the Union, may be used in the procedure of taking contact in accordance with Chapter 2.

2. The competent authorities may agree to use any language in the course of their direct consultations in accordance with Article 10.

*Article 15***Relation to other legal instruments and other arrangements**

1. In so far as other legal instruments or arrangements allow the objectives of this Framework Decision to be extended or help to simplify or facilitate the procedure under which national authorities exchange information about their criminal proceedings, enter into direct consultations and try to reach consensus on any effective solution aimed at avoiding adverse consequences arising from the parallel proceedings, the Member States may:

- (a) continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision comes into force;
- (b) conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force.

2. The agreements and arrangements referred to in paragraph 1 shall in no case affect relations with Member States which are not parties to them.

*Article 16***Implementation**

Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 15 June 2012.

By 15 June 2012 Member States shall transmit to the General Secretariat of Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

*Article 17***Report**

The Commission shall, by 15 December 2012, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have complied with this Framework Decision, accompanied, if necessary, by legislative proposals.

*Article 18***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, 30 November 2009.

For the Council

The President

B. ASK

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 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

⁽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).

⁽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).

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 Member 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.

- (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

⁽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).

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.
- (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.

⁽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).

- (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.
- (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

⁽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).

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.

⁽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).

- (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.
- (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.

⁽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).

⁽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).

- (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

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.

⁽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).

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;

⁽¹⁾ OJ L 56, 4.3.1968, p. 1.

- (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;
 - (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

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.

⁽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).

⁽²⁾ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

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

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

International cooperation

Article 52

Relations with the authorities of third countries and international organisations

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.

⁽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).

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).

⁽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).

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 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.

⁽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).

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

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.

⁽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.

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 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.

⁽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).

⁽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).

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

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.

⁽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).

*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

The President

A. TAJANI

For the Council

The President

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.
-

COMMISSION DECISION (EU) 2019/1196**of 11 July 2019****on the participation of the United Kingdom of Great Britain and Northern Ireland in Regulation (EU) 2018/1727 of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 Treaty on European Union and to the Treaty on the Functioning of the European Union, and in particular Article 4 thereof,

Whereas:

- (1) By letter to the President of the Council of 14 March 2019, the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') notified its intention to participate in Regulation (EU) 2018/1727 of the European Parliament and of the Council ⁽¹⁾.
- (2) Since there are no specific conditions attached to the participation of the United Kingdom in Regulation (EU) 2018/1727, there is no need for transitional measures.
- (3) The participation of the United Kingdom in Regulation (EU) 2018/1727 should therefore be confirmed.
- (4) Regulation (EU) 2018/1727 entered into force on 11 December 2018 and applies from 12 December 2019.
- (5) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union (TEU). The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.
- (6) The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ⁽²⁾ (the 'Withdrawal Agreement') was agreed between the Union and the United Kingdom's government in November 2018 but the necessary internal procedures for its entry into force have not yet been completed. Part Four of the Withdrawal Agreement provides for a transition period, which starts on the date of entry into force of the Agreement. During the transition period Union law is to continue to apply to and in the United Kingdom in accordance with the Withdrawal Agreement.
- (7) On 22 March 2019, by European Council Decision (EU) 2019/476 ⁽³⁾, in agreement with the United Kingdom, the period under Article 50(3) TEU was extended until 22 May 2019 in the event that the House of Commons approved the Withdrawal Agreement by 29 March 2019, or, if that were not to be the case, until 12 April 2019. The House of Commons did not approve the Withdrawal Agreement by 29 March 2019. On 11 April 2019, by European Council Decision (EU) 2019/584 ⁽⁴⁾, in agreement with the United Kingdom, the period under Article 50(3) TEU was further extended until 31 October 2019. Upon a request of the United Kingdom, that period can be further extended by a unanimous decision of the European Council taken in agreement with the United Kingdom. Moreover, the United Kingdom can revoke at any time its notification of its intention to withdraw from the Union.

⁽¹⁾ 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 (OJ L 295, 21.11.2018, p. 138).

⁽²⁾ OJ C 144 I, 25.4.2019, p. 1.

⁽³⁾ European Council Decision (EU) 2019/476 taken in agreement with the United Kingdom of 22 March 2019 extending the period under Article 50(3) TEU (OJ L 80 I, 22.3.2019, p. 1).

⁽⁴⁾ European Council Decision (EU) 2019/584 taken in agreement with the United Kingdom of 11 April 2019 extending the period under Article 50(3) TEU (OJ L 101, 11.4.2019, p. 1).

- (8) Regulation (EU) 2018/1727 will therefore apply in respect of and in the United Kingdom only in the event that the United Kingdom is a Member State on 12 December 2019 or the Withdrawal Agreement has entered into force by that date.
- (9) Pursuant to Article 4 of Protocol No 21, this Decision should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

Article 1

The participation of the United Kingdom of Great Britain and Northern Ireland in Regulation (EU) 2018/1727 is confirmed.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 11 July 2019.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION DECISION (EU) 2019/2006**of 29 November 2019****on the participation of Ireland in Regulation (EU) 2018/1727 of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 Treaty on European Union and to the Treaty on the Functioning of the European Union, and in particular Article 4 thereof,

Whereas:

- (1) By letter to the Secretary General of the European Commission, registered on 9 September 2019, Ireland notified its intention to participate in Regulation (EU) 2018/1727 of the European Parliament and of the Council ⁽¹⁾.
- (2) Since there are no specific conditions attached to the participation of Ireland in Regulation (EU) 2018/1727, there is no need for transitional measures.
- (3) The participation of Ireland in Regulation (EU) 2018/1727 should therefore be confirmed.
- (4) Regulation (EU) 2018/1727 entered into force on 11 December 2018 and applies from 12 December 2019.
- (5) Pursuant to Article 4 of Protocol No 21, this Decision should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

Article 1

The participation of Ireland in Regulation (EU) 2018/1727 is confirmed.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 29 November 2019.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ 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 (OJ L 295, 21.11.2018, p. 138).

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL DECISION 2008/976/JHA

of 16 December 2008

on the European Judicial Network

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31 and 34(2)(c) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Czech Republic, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Kingdom of Sweden,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (3) The principle of mutual recognition of judicial decisions in criminal matters is being implemented gradually. It not only confirms the principle of direct contacts between competent judicial authorities, it also accelerates the procedures and makes them entirely judicial.
- (4) The impact of these changes on judicial cooperation was further increased by the enlargement of the European Union in 2004 and 2007. Because of this evolution, the European Judicial Network is even more necessary than at the time of its creation and should therefore be strengthened.
- (5) By Decision 2002/187/JHA ⁽⁴⁾, the Council set up Eurojust to improve coordination and cooperation between competent authorities of the Member States. Decision 2002/187/JHA provides that Eurojust is to maintain privileged relations with the European Judicial Network based on consultation and complementarity.
- (6) Five years of coexistence of Eurojust and the European Judicial Network have demonstrated both the need to maintain the two structures and the need to clarify their relationship.
- (7) Nothing in this Decision should be construed to affect the independence that contact points may have under national law.
- (8) It is necessary to strengthen judicial cooperation between the Member States and to allow contact points of the European Judicial Network and Eurojust for this purpose to communicate, whenever needed, directly and more efficiently through a secure telecommunications connection.
- (9) Joint Action 98/428/JHA should therefore be repealed and replaced by this Decision,
- (1) By Joint Action 98/428/JHA ⁽²⁾, the Council set up the European Judicial Network which has demonstrated its usefulness in the facilitation of judicial cooperation in criminal matters.
- (2) In accordance with Article 6 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union ⁽³⁾, mutual legal assistance takes place through direct contacts between competent judicial authorities. This decentralisation of mutual legal assistance is now widely implemented.

⁽¹⁾ Opinion delivered on 2 September 2008 (not yet published in the Official Journal).

⁽²⁾ OJ L 191, 7.7.1998, p. 4.

⁽³⁾ OJ C 197, 12.7.2000, p. 3.

⁽⁴⁾ OJ L 63, 6.3.2002, p. 1.

HAS DECIDED AS FOLLOWS:

Article 1

Creation

The network of judicial contact points set up between the Member States under Joint Action 98/428/JHA, hereinafter referred to as the 'European Judicial Network', shall continue to operate in accordance with the provisions of this Decision.

Article 2

Composition

1. The European Judicial Network shall be made up, taking into account the constitutional rules, legal traditions and internal structure of each Member State, of the central authorities responsible for international judicial cooperation and the judicial or other competent authorities with specific responsibilities within the context of international cooperation.

2. One or more contact points of each Member State shall be established in accordance with its internal rules and internal division of responsibilities, care being taken to ensure effective coverage of the whole of its territory.

3. Each Member State shall appoint, among the contact points, a national correspondent for the European Judicial Network.

4. Each Member State shall appoint a tool correspondent for the European Judicial Network.

5. Each Member State shall ensure that its contact points have functions in relation to judicial cooperation in criminal matters and adequate knowledge of a language of the European Union other than its own national language, bearing in mind the need to be able to communicate with the contact points in the other Member States.

6. Where the liaison magistrates referred to in 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⁽¹⁾ have been appointed in a Member State and have duties analogous to those assigned by Article 4 of this Decision to the contact points, they shall be linked to the European Judicial Network and to the secure telecommunications connection pursuant to Article 9 of this Decision by the Member State appointing the liaison magistrate in each case, in accordance with the procedures to be laid down by that Member State.

7. The Commission shall designate a contact point for those areas falling within its sphere of competence.

8. The European Judicial Network shall have a Secretariat which shall be responsible for the administration of the Network.

Article 3

Manner of operation of the Network

The European Judicial Network shall operate in particular in the following three ways:

- (a) it shall facilitate the establishment of appropriate contacts between the contact points in the various Member States in order to carry out the functions laid down in Article 4;
- (b) it shall organise periodic meetings of the Member States representatives in accordance with the procedures laid down in Articles 5 and 6;
- (c) it shall constantly provide a certain amount of up-to-date background information, in particular by means of an appropriate telecommunications network, under the procedures laid down in Articles 7, 8 and 9.

Article 4

Functions of contact points

1. The contact points shall be active intermediaries with the task of facilitating judicial cooperation between Member States, particularly in actions to combat forms of serious crime. They shall be available to enable local judicial authorities and other competent authorities in their own Member State, contact points in the other Member States and local judicial and other competent authorities in the other Member States to establish the most appropriate direct contacts.

They may if necessary travel to meet other Member States contact points, on the basis of an agreement between the administrations concerned.

2. The contact points shall provide the local judicial authorities in their own Member State, the contact points in the other Member States and the local judicial authorities in the other Member States with the legal and practical information necessary to enable them to prepare an effective request for judicial cooperation or to improve judicial cooperation in general.

3. At their respective level the contact points shall be involved in and promote the organisation of training sessions on judicial cooperation for the benefit of the competent authorities of their Member State, where appropriate in cooperation with the European Judicial Training Network.

⁽¹⁾ OJ L 105, 27.4.1996, p. 1.

4. The national correspondent, in addition to his tasks as a contact point referred to in paragraphs 1 to 3, shall in particular:

- (a) be responsible, in his Member State, for issues related to the internal functioning of the Network, including the coordination of requests for information and replies issued by the competent national authorities;
- (b) be the main person responsible for the contacts with the Secretariat of the European Judicial Network including the participation in the meetings referred to in Article 6;
- (c) where requested, give an opinion concerning the appointment of new contact points.

5. The European Judicial Network tool correspondent, who may also be a contact point referred to in paragraphs 1 to 4, shall ensure that the information related to his Member State and referred to in Article 7 is provided and updated in accordance with Article 8.

Article 5

Purposes and venues of the plenary meetings of contact points

1. The purposes of the plenary meetings of the European Judicial Network, to which at least three contact points per Member State shall be invited, shall be as follows:

- (a) to allow the contact points to get to know each other and exchange experience, particularly concerning the operation of the Network;
- (b) to provide a forum for discussion of practical and legal problems encountered by the Member States in the context of judicial cooperation, in particular with regard to the implementation of measures adopted by the European Union.

2. The relevant experience acquired within the European Judicial Network shall be passed on to the Council and the Commission to serve as a basis for discussion of possible legislative changes and practical improvements in the area of international judicial cooperation.

3. Meetings referred to in paragraph 1 shall be organised regularly and at least three times a year. Once a year, the meeting may be held on the premises of the Council in Brussels or on the premises of Eurojust in The Hague. Two contact points per Member States shall be invited to meetings organised on the premises of the Council and at Eurojust.

Other meetings may be held in the Member States, to enable the contact points of all the Member States to meet authorities of the host Member State other than its contact points and visit specific bodies in that Member State with responsibilities in the context of international judicial cooperation or of combating certain forms of serious crime. The contact points participate in these meetings at their own expense.

Article 6

Meetings of the correspondents

1. The European Judicial Network national correspondents shall meet on an *ad hoc* basis, at least once a year and as its members deem appropriate, at the invitation of the national correspondent of the Member State which holds the Presidency of the Council, which shall also take account of the Member States wishes for the correspondents to meet. During these meetings, administrative matters related to the Network shall in particular be discussed.

2. The European Judicial Network tool correspondents shall meet on an *ad hoc* basis, at least once a year and as its members deem appropriate, at the invitation of the tool correspondent of the Member State which holds the Presidency of the Council. The meetings shall deal with the issues referred to in Article 4(5).

Article 7

Content of the information disseminated within the European Judicial Network

The Secretariat of the European Judicial Network shall make the following information available to contact points and competent judicial authorities:

- (a) full details of the contact points in each Member State with, where necessary, an explanation of their responsibilities at national level;
- (b) an information technology tool allowing the requesting or issuing authority of a Member State to identify the competent authority in another Member State to receive and execute its request for, and decisions on, judicial co-operation, including regarding instruments giving effect to the principle of mutual recognition;
- (c) concise legal and practical information concerning the judicial and procedural systems in the Member States;
- (d) the texts of the relevant legal instruments and, for conventions currently in force, the texts of declarations and reservations.

*Article 8***Updating of information**

1. The information distributed within the European Judicial Network shall be constantly updated.

2. It shall be each Member State's individual responsibility to check the accuracy of the data contained in the system and to inform the Secretariat of the European Judicial Network as soon as data on one of the four points referred to in Article 7 need to be amended.

*Article 9***Telecommunication tools**

1. The Secretariat of the European Judicial Network shall ensure that the information provided under Article 7 is made available on a website which is constantly updated.

2. The secure telecommunications connection shall be set up for the operational work of the contact points of the European Judicial Network. The setting up of the secure telecommunications connection shall be at the charge of the general budget of the European Union.

The setting up of the secure telecommunications connection shall make possible the flow of data and of requests for judicial cooperation between Member States.

3. The secure telecommunications connection referred to in paragraph 2 may also be used for their operational work by the national correspondents for Eurojust, national correspondents for Eurojust for terrorist matters, the national members of Eurojust and liaison magistrates appointed by Eurojust. It may be linked to the Case Management System of Eurojust referred to in Article 16 of Decision 2002/187/JHA.

4. Nothing in this Article shall be construed to affect direct contacts between competent judicial authorities as provided for in instruments on judicial cooperation, such as Article 6 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

*Article 10***Relationship between the European Judicial Network and Eurojust**

The European Judicial Network and Eurojust shall maintain privileged relations with each other, based on consultation and complementarity, especially between the contact points of a Member State, the Eurojust national member of the same Member State and the national correspondents for the European Judicial Network and Eurojust. In order to ensure efficient cooperation, the following measures shall be taken:

(a) the European Judicial Network shall make available to Eurojust the centralised information indicated in Article 7

and the secure telecommunications connection set up under Article 9;

(b) the contact points of the European Judicial Network shall, on a case-by-case basis, inform their own national member of all cases which they deem Eurojust to be in a better position to deal with;

(c) the national members of Eurojust may attend meetings of the European Judicial Network at the invitation of the latter.

*Article 11***Budget**

In order for the European Judicial Network to be able to carry out its tasks, the budget of Eurojust shall contain a part related to the activities of the Secretariat of the European Judicial Network.

*Article 12***Territorial application**

The United Kingdom shall notify in writing the President of the Council when it wishes to apply this Decision to the Channel Islands and the Isle of Man. A decision on that request shall be taken by the Council.

*Article 13***Assessment of the operation of the European Judicial Network**

1. Every second year from 24 December 2008, the European Judicial Network shall report to the European Parliament, the Council and the Commission on its activities and management.

2. The European Judicial Network may, in the report referred to in paragraph 1, also indicate any criminal policy problems within the European Union highlighted as a result of the European Judicial Network's activities and it may also make proposals for the improvement of judicial cooperation in criminal matters.

3. The European Judicial Network may also submit any report or any other information on its operation which may be requested by the Council.

4. The Council shall, every four years from 24 December 2008, carry out an assessment of the operation of the European Judicial Network on the basis of a report drawn up by the Commission in cooperation with the European Judicial Network.

*Article 14***Repeal of Joint Action 98/428/JHA**

Joint Action 98/428/JHA is hereby repealed.

*Article 15***Taking of effect**

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 16 December 2008.

For the Council

The President

R. BACHELOT-NARQUIN

I

(Legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2017/1939**of 12 October 2017****implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 86 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the notification by Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Germany, Finland, France, Greece, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain, by which those Member States on 3 April 2017 notified the European Parliament, the Council and the Commission of their wish to establish enhanced cooperation on the basis of the draft Regulation,

Having regard to the consent of the European Parliament ⁽¹⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The Union has set itself the objective of establishing an area of freedom, security and justice.
- (2) The possibility of setting up the European Public Prosecutor's Office ('the EPPO') is foreseen by the Treaty on the Functioning of the European Union (TFEU) in the Title concerning the area of freedom, security and justice.
- (3) Both the Union and the Member States of the European Union have an obligation to protect the Union's financial interests against criminal offences, which generate significant financial damages every year. Yet, these offences are currently not always sufficiently investigated and prosecuted by the national criminal justice authorities.
- (4) On 17 July 2013, the Commission adopted a proposal for a Council Regulation on the establishment of the EPPO.
- (5) At its meeting of 7 February 2017, the Council registered the absence of unanimity on the draft Regulation.
- (6) In accordance with the second subparagraph of Article 86(1) TFEU, a group of seventeen Member States requested, by a letter of 14 February 2017, that the draft Regulation be referred to the European Council.
- (7) On 9 March 2017, the European Council discussed the draft Regulation and noted that there was disagreement within the meaning of the third subparagraph of Article 86(1) TFEU.

⁽¹⁾ Consent of 5 October 2017 (not yet published in the Official Journal).

- (8) On 3 April 2017, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Greece, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain notified the European Parliament, the Council and the Commission that they wished to establish enhanced cooperation on the establishment of the EPPO. Therefore, in accordance with the third subparagraph of Article 86(1) TFEU, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union (TEU) and Article 329(1) TFEU is deemed to be granted and the provisions on enhanced cooperation apply as from 3 April 2017. In addition, respectively by letters of 19 April 2017, 1 June 2017, 9 June 2017 and 22 June 2017, Latvia, Estonia, Austria and Italy indicated their wish to participate in the establishment of the enhanced cooperation.
- (9) In accordance with Article 328(1) TFEU, when enhanced cooperation is being established it is to be open to all Member States of the European Union. It is also to be open to them at any other time, including with regard to an enhanced cooperation in progress subject to compliance with the acts already adopted within that framework. The Commission and the Member States which participate in enhanced cooperation on the establishment of the EPPO (the 'Member States') should ensure that they promote participation by as many Member States of the European Union as possible. This Regulation should be binding in its entirety and directly applicable only in the Member States which participate in enhanced cooperation on the establishment of the EPPO, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU.
- (10) In accordance with Article 86 TFEU, the EPPO should be established from Eurojust. This implies that this Regulation should establish a close relationship between them based on mutual cooperation.
- (11) The TFEU provides that the material scope of competence of the EPPO is limited to criminal offences affecting the financial interests of the Union in accordance with this Regulation. The tasks of the EPPO should thus be to investigate, prosecute and bring to judgment the perpetrators of offences against the Union's financial interests under Directive (EU) 2017/1371 of the European Parliament and of the Council⁽¹⁾ and offences which are inextricably linked to them. Any extension of this competence to include serious crimes having a cross-border dimension requires a unanimous decision of the European Council.
- (12) In accordance with the principle of subsidiarity, combatting crimes affecting the financial interests of the Union can be better achieved at Union level by reason of its scale and effects. The present situation, in which the criminal prosecution of offences against the Union's financial interests is exclusively in the hands of the authorities of the Member States of the European Union, does not always sufficiently achieve that objective. Since the objectives of this Regulation, namely, to enhance the fight against offences affecting the financial interests of the Union by setting up the EPPO, cannot be sufficiently achieved by the Member States of the European Union, given the fragmentation of national prosecutions in the area of offences committed against the Union's financial interests but can rather, by reason of the fact that the EPPO is to have competence to prosecute such offences, 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 those objectives and ensures that its impact on the legal orders and the institutional structures of the Member States is the least intrusive possible.
- (13) This Regulation provides for a system of shared competence between the EPPO and national authorities in combating crimes affecting the financial interests of the Union, based on the right of evocation of the EPPO.
- (14) In the light of the principle of sincere cooperation, both the EPPO and the competent national authorities should support and inform each other with the aim of efficiently combatting the crimes falling under the competence of the EPPO.
- (15) This Regulation is without prejudice to Member States' national systems concerning the way in which criminal investigations are organised.

⁽¹⁾ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

- (16) Since the EPPO is to be granted powers of investigation and prosecution, institutional safeguards should be put in place to ensure its independence as well as its accountability towards the institutions of the Union.
- (17) The EPPO should act in the interest of the Union as a whole and neither seek nor take instructions from any person external to the EPPO.
- (18) Strict accountability is a complement to the independence and the powers granted to the EPPO under this Regulation. The European Chief Prosecutor is fully accountable for the performance of his/her duties as the head of the EPPO and as such he/she bears an overall institutional accountability for its general activities to the European Parliament, the Council and the Commission. As a result, any of these institutions can apply to the Court of Justice of the European Union (the 'Court of Justice'), with a view to his/her removal under certain circumstances, including in cases of serious misconduct. The same procedure should apply for the dismissal of European Prosecutors.
- (19) The EPPO should issue a public Annual Report on its general activities, which at a minimum should contain statistical data on the work of the EPPO.
- (20) The organisational structure of the EPPO should allow quick and efficient decision-making in the conduct of criminal investigations and prosecutions, whether they involve one or several Member States. The structure should also ensure that all national legal systems and traditions of the Member States are represented in the EPPO, and that prosecutors with knowledge of the individual legal systems will in principle handle investigations and prosecutions in their respective Member States.
- (21) To that end, the EPPO should be an indivisible Union body operating as a single office. The central level consists of a European Chief Prosecutor, who is the head of the EPPO as a whole and the head of the College of European Prosecutors, Permanent Chambers and European Prosecutors. The decentralised level consists of European Delegated Prosecutors located in the Member States.
- (22) In addition, to ensure consistency in its action and thus an equivalent protection of the Union's financial interests, the organisational structure and the internal decision-making process of the EPPO should enable the Central Office to monitor, direct and supervise all investigations and prosecutions undertaken by European Delegated Prosecutors.
- (23) In this Regulation, the terms 'general oversight', 'monitoring and directing' and 'supervision' are used to describe different control activities exercised by the EPPO. 'General oversight' should be understood as referring to the general administration of the activities of the EPPO, in which instructions are only given on issues which have a horizontal importance for the EPPO. 'Monitoring and directing' should be understood as referring to the powers to monitor and direct individual investigations and prosecutions. 'Supervision' should be understood as referring to a closer and continuous oversight of investigations and prosecutions, including, whenever necessary, intervention and instruction-giving on investigations and prosecution matters.
- (24) The College should take decisions on strategic matters, including determining the priorities and the investigation and prosecution policy of the EPPO, as well as on general issues arising from individual cases, for example regarding the application of this Regulation, the correct implementation of the investigation and prosecution policy of the EPPO or questions of principle or of significant importance for the development of a coherent investigation and prosecution policy of the EPPO. The decisions of the College on general issues should not affect the duty to investigate and prosecute in accordance with this Regulation and national law. The College should use its best efforts to take decisions by consensus. If such a consensus cannot be reached, decisions should be taken by voting.
- (25) The Permanent Chambers should monitor and direct investigations and ensure the coherence of the activities of the EPPO. The composition of Permanent Chambers should be determined in accordance with the internal rules of procedure of the EPPO, which should allow, among other things, for a European Prosecutor to be a member of more than one Permanent Chamber where this is appropriate to ensure, to the extent possible, an even workload between individual European Prosecutors.

- (26) Permanent Chambers should be chaired by the European Chief Prosecutor, one of the deputy European Chief Prosecutors or a European Prosecutor, in accordance with principles laid down in the internal rules of procedure of the EPPO.
- (27) The allocation of cases between the Permanent Chambers should be based on a system of a random distribution so as to ensure, to the extent possible, an equal division of workload. Deviations from this principle should be possible to ensure the proper and efficient functioning of the EPPO on a decision by the European Chief Prosecutor.
- (28) A European Prosecutor from each Member State should be appointed to the College. The European Prosecutors should in principle supervise, on behalf of the competent Permanent Chamber, the investigations and prosecutions handled by the European Delegated Prosecutors in their Member State of origin. They should act as liaison between the central office and the decentralised level in their Member States, facilitating the functioning of the EPPO as a single office. The supervising European Prosecutor should also check any instruction's compliance with national law and inform the Permanent Chamber if the instructions do not do so.
- (29) For reasons of workload linked to the high number of investigations and prosecutions in a given Member State, a European Prosecutor should be able to request that, exceptionally, the supervision of certain investigations and prosecutions in his/her Member State of origin may be assigned to other European Prosecutors. The decision should be taken by the European Chief Prosecutor with the agreement of the European Prosecutor who would take over the cases concerned. The criteria for such decisions should be laid down in the internal rules of procedure of the EPPO, and should include the requirement that the European Prosecutor taking over the cases has sufficient knowledge of the language and legal system of the Member State concerned.
- (30) The investigations of the EPPO should as a rule be carried out by European Delegated Prosecutors in the Member States. They should do so in accordance with this Regulation and, as regards matters not covered by this Regulation, in accordance with national law. European Delegated Prosecutors should carry out their tasks under the supervision of the supervising European Prosecutor and under the direction and instruction of the competent Permanent Chamber. Where the national law of a Member State provides for the internal review of certain acts within the structure of the national prosecutor's office, the review of such decisions taken by the European Delegated Prosecutor should fall under the supervision powers of the supervising European Prosecutor in accordance with the internal rules of procedure of the EPPO. In such cases, Member States should not be obliged to provide for review by national courts, without prejudice to Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- (31) The functions of prosecutor in competent courts apply until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any legal action or remedies available until that decision has become definitive.
- (32) The European Delegated Prosecutors should be an integral part of the EPPO and as such, when investigating and prosecuting offences within the competence of the EPPO, they should act exclusively on behalf and in the name of the EPPO on the territory of their respective Member State. This should entail granting them under this Regulation a functionally and legally independent status which is different from any status under national law.
- (33) Notwithstanding their special status under this Regulation, the European Delegated Prosecutors should, during their term of office, also be members of the prosecution service of their Member State, namely a prosecutor or member of the judiciary, and should be granted by their Member State at least the same powers as national prosecutors.
- (34) The European Delegated Prosecutors should be bound to follow instructions coming from the Permanent Chambers and the European Prosecutors. Where a European Delegated Prosecutor considers that an instruction would require him/her to undertake any measure that would not be in compliance with national law, he/she should ask for a review of that instruction by the European Chief Prosecutor.

- (35) The European Delegated Prosecutor handling a case should report any significant developments in a case, such as the performance of investigative measures or changes to the list of suspected persons, to the supervising European Prosecutor and to the competent Permanent Chamber.
- (36) The Permanent Chambers should exercise their decision-making power at specific steps of the proceedings of the EPPO with a view to ensuring a common investigation and prosecution policy. They should adopt decisions on the basis of a draft decision proposed by the handling European Delegated Prosecutor. However, in exceptional cases, a Permanent Chamber should be able to adopt a decision without a draft decision of the handling European Delegated Prosecutor. In such cases, the European Prosecutor supervising the case may present such a draft decision.
- (37) A Permanent Chamber should be able to delegate its decision-making power to the supervising European Prosecutor in specific cases where an offence is not serious or the proceedings are not complex. When assessing the degree of seriousness of an offence, account should be taken of its repercussions at Union level.
- (38) A substitution mechanism between European Prosecutors should be provided for in the internal rules of procedure of the EPPO. The substitution mechanism should be used in cases where a European Prosecutor is briefly unable to fulfil his/her duties, for example, due to absence.
- (39) In addition, a European Prosecutor should be substituted by one of the European Delegated Prosecutors of his/her Member State when the European Prosecutor resigns, is dismissed or leaves his/her position for any other reason or in cases, for example, of prolonged illness. The substitution should be limited to a period of up to 3 months. The possibility to prolong this time limit should be left to the discretion of the College, where deemed to be necessary, taking into account the workload of the EPPO and the duration of the absence, pending replacement or return of the European Prosecutor. The European Delegated Prosecutor substituting the European Prosecutor should, for the period of the substitution, no longer be in charge of investigations and prosecutions handled by him/her as a European Delegated Prosecutor or as national prosecutor. With regard to proceedings of the EPPO which were handled by the European Delegated Prosecutor substituting a European Prosecutor, the EPPO's rules on reallocation should apply.
- (40) The procedure for the appointment of the European Chief Prosecutor and the European Prosecutors should guarantee their independence. Their legitimacy should be drawn from the institutions of the Union involved in the appointment procedure. The Deputies to the European Chief Prosecutor should be appointed by the College from among its members.
- (41) A selection panel should establish a short list of candidates for the position of European Chief Prosecutor. The power to establish the panel's operating rules and to appoint its members should be conferred on the Council, based on a proposal from the Commission. Such an implementing power would mirror the specific powers conferred on the Council under Article 86 TFEU, and reflects the specific nature of the EPPO, which will remain firmly embedded in national legal structures while at the same time being a Union body. The EPPO will be acting in proceedings where most other actors will be national, such as courts, police and other law enforcement authorities, and therefore the Council has a specific interest in being closely involved in the appointment procedure. Conferring those powers on the Council also adequately takes into account the potential sensitive nature of any decision-making powers with direct implications for the national judicial and prosecution structures. The European Parliament and the Council should appoint, by common accord, one of the shortlisted candidates as Chief Prosecutor.

- (42) Each Member State should nominate three candidates for the position of European Prosecutor to be selected and appointed by the Council. With a view to ensuring the continuity of the work of the College, there should be a partial replacement of one third of the European Prosecutors every 3 years. The power to adopt transitional rules for the appointment of European Prosecutors for and during the first mandate period should be conferred on the Council. That implementing power mirrors the power of the Council to select and appoint the European Prosecutors. This is also justified by the specific nature of the European Prosecutors as being linked to their respective Member States while at the same time being Members of the College and more generally, by the specific nature of the EPPO following the same logic underlying the implementing power conferred on the Council to establish the panel's operating rules and to appoint its members. The Council should take into account the geographical range of the Member States when deciding on the partial replacement of one third of the European Prosecutors during their first mandate period.
- (43) The procedure for the appointment of the European Delegated Prosecutors should ensure that they are an integral part of the EPPO while they remain integrated at an operational level in their national legal systems and judicial and prosecution structures. Member States should nominate candidates for the position of European Delegated Prosecutors, who should be appointed by the College on a proposal by the European Chief Prosecutor.
- (44) There should be two or more European Delegated Prosecutors in each Member State to ensure the proper handling of the caseload of the EPPO. The European Chief Prosecutor should approve the number of European Delegated Prosecutors per Member State, as well as the functional and territorial division of tasks among them, in consultation with each Member State. In such consultations, due account should be taken of the organisation of the national prosecution systems. The notion of functional division of competences between European Delegated Prosecutors could allow for a division of tasks.
- (45) The total number of European Delegated Prosecutors in a Member State may be modified with the approval of the European Chief Prosecutor, subject to the limits of the annual budget line of the EPPO.
- (46) The College should be responsible for disciplinary procedures concerning European Delegated Prosecutors acting under this Regulation. Since European Delegated Prosecutors remain active members of the public prosecution or the judiciary of the Member States, and may also exercise functions as national prosecutors, national disciplinary provisions may apply for reasons not connected with this Regulation. However, in such cases the European Chief Prosecutor should be informed of the dismissal or of any disciplinary action, given his responsibilities for the management of the EPPO and in order to protect its integrity and independence.
- (47) The work of the EPPO should, in principle, be carried out in electronic form. A case management system should be established, owned and managed by the EPPO. The information in the case management system should include information received about possible offences that fall under the EPPO's competence, as well as information from the case files, also when those have been closed. The EPPO should, when establishing the case management system, ensure that the system allows the EPPO to operate as a single office, where the case files administered by European Delegated Prosecutors are available to the Central Office for the exercise of its decision-making, monitoring and direction, and supervision tasks.
- (48) National authorities should inform the EPPO without delay of any conduct that could constitute an offence within the competence of the EPPO. In cases which fall outside its scope of competence, the EPPO should inform the competent national authorities of any facts of which it becomes aware, and which might constitute a criminal offence, for example false testimony.
- (49) Institutions, bodies, offices and agencies of the Union, as well as national authorities, should provide without delay any information to the EPPO about offences in respect of which it could exercise its competence. The EPPO may also receive or gather information from other sources, such as private parties. A verification mechanism in the EPPO should aim to assess whether, on the basis of the information received, the conditions for material, territorial and personal competence of the EPPO are fulfilled.

- (50) Whistle-blowers may bring new information to the attention of the EPPO thereby assisting it in its work to investigate, prosecute and bring to judgment perpetrators of offences affecting the Union's financial interests. However, whistleblowing may be deterred by fear of retaliation. With a view to facilitating the detection of offences that fall within the competence of the EPPO, Member States are encouraged to provide, in accordance with their national law, effective procedures to enable reporting of possible offences that fall within the competence of the EPPO and to ensure protection of the persons who report such offences from retaliation, and in particular from adverse or discriminatory employment actions. The EPPO should develop its own internal rules if necessary.
- (51) In order to comply fully with their obligation to inform the EPPO where a suspicion of an offence within its competence is identified, the national authorities of the Member States as well as all institutions, bodies, offices and agencies of the Union should follow the existing reporting procedures and have in place efficient mechanisms for a preliminary evaluation of allegations reported to them. The institutions, bodies, offices and agencies of the Union may make use of the European Anti-Fraud Office ('OLAF') to that end.
- (52) Member States' authorities should set up a system that ensures that information is reported to the EPPO as soon as possible. It is up to the Member States to decide whether to set up a direct or centralised system.
- (53) Compliance with that reporting obligation is essential for the EPPO's good functioning and should be interpreted broadly to ensure that national authorities report cases where the assessment of some criteria is not immediately possible (for example the level of damage or the applicable penalty). The EPPO should also be able to request information from the Member States' authorities on a case-by-case basis about other offences affecting the Union's financial interests. This should not be considered as a possibility for the EPPO to request systematic or periodic information from Member States' authorities concerning minor offences.
- (54) The efficient investigation of offences affecting the financial interests of the Union and the principle of *ne bis in idem* may require, in certain cases, an extension of the investigation to other offences under national law, where these are inextricably linked to an offence affecting the financial interests of the Union. The notion of 'inextricably linked offences' should be considered in light of the relevant case-law which, for the application of the *ne bis in idem* principle, retains as a relevant criterion the identity of the material facts (or facts which are substantially the same), understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together in time and space.
- (55) The EPPO should have the right to exercise competence, where offences are inextricably linked and the offence affecting the Union's financial interests is preponderant, in terms of the seriousness of the offence concerned, as reflected in the maximum sanctions that could be imposed.
- (56) However, the EPPO should also have the right to exercise competence in the case of inextricably linked offences where the offence affecting the financial interests of the Union is not preponderant in terms of sanctions levels, but where the inextricably linked other offence is deemed to be ancillary in nature because it is merely instrumental to the offence affecting the financial interests of the Union, in particular where such other offence has been committed for the main purpose of creating the conditions to commit the offence affecting the financial interests of the Union, such as an offence strictly aimed at ensuring the material or legal means to commit the offence affecting the financial interests of the Union, or to ensure the profit or product thereof.
- (57) The notion of offences relating to participation in a criminal organisation should be subject to the definition provided for in national law in accordance with Council Framework Decision 2008/841/JHA ⁽¹⁾, and may cover, for example, membership in, or the organisation and leadership of, such a criminal organisation.

⁽¹⁾ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

- (58) The competence of the EPPO regarding offences affecting the financial interests of the Union should, as a general rule, take priority over national claims of competence so that it can ensure consistency and provide steering of investigations and prosecutions at Union level. With regard to those offences the authorities of Member States should refrain from acting, unless urgent measures are required, until the EPPO has decided whether to conduct an investigation.
- (59) A particular case should be considered to have repercussions at Union level, *inter alia*, where a criminal offence has a transnational nature and scale, where such an offence involves a criminal organisation, or where the specific type of offence could pose a serious threat to the Union's financial interests or the Union institutions' credit and Union citizens' confidence.
- (60) Where the EPPO cannot exercise its competence in a particular case because there is reason to assume that the damage caused, or likely to be caused, to the Union's financial interests does not exceed the damage caused, or likely to be caused, to another victim, the EPPO should nevertheless be able to exercise its competence provided that it would be better placed to investigate or prosecute than the authorities of the respective Member State(s). The EPPO could appear to be better placed, *inter alia*, where it would be more effective to let the EPPO investigate and prosecute the respective criminal offence due to its transnational nature and scale, where the offence involves a criminal organisation, or where a specific type of offence could be a serious threat to the Union's financial interests or the Union institutions' credit and Union citizens' confidence. In such a case the EPPO should be able to exercise its competence with the consent given by the competent national authorities of the Member State(s) where damage to such other victim(s) occurred.
- (61) When a judicial or law enforcement authority of a Member State initiates an investigation in respect of a criminal offence and considers that the EPPO could not exercise its competence, it should inform the EPPO thereof, in order to allow the latter to assess whether it should exercise competence.
- (62) In the case of disagreement over the questions of exercise of competence, the competent national authorities should decide on the attribution of competence. The notion of competent national authorities should be understood as any judicial authorities which have competence to decide on the attribution of competence in accordance with national law.
- (63) As the EPPO should bring prosecutions before national courts, its competence should be defined by reference to the criminal law of the Member States that criminalises acts or omissions affecting the Union's financial interests and determines the applicable penalties by implementing the relevant Union legislation, in particular Directive (EU) 2017/1371, in national legal systems.
- (64) The EPPO should exercise its competence as broadly as possible so that its investigations and prosecutions may extend to offences committed outside the territory of the Member States.
- (65) The investigations and prosecutions of the EPPO should be guided by the principles of proportionality, impartiality and fairness towards the suspect or accused person. This includes the obligation to seek all types of evidence, inculpatory as well as exculpatory, either *motu proprio* or at the request of the defence.
- (66) In order to ensure legal certainty and to effectively combat offences affecting the Union's financial interests, the investigation and prosecution activities of the EPPO should be guided by the legality principle, whereby the EPPO applies strictly the rules laid down in this Regulation relating in particular to competence and its exercise, the initiation of investigations, the termination of investigations, the referral of a case, the dismissal of the case and simplified prosecution procedures.

- (67) In order to best safeguard the rights of the defendant, in principle a suspect or accused person should only face one investigation or prosecution by the EPPO. Where an offence has been committed by several persons, the EPPO should in principle initiate only one case and conduct investigations in respect of all suspect or accused persons jointly.
- (68) Where several European Delegated Prosecutors have opened investigations in respect of the same criminal offence, the Permanent Chamber should where appropriate merge such investigations. The Permanent Chamber may decide not to merge such proceedings or decide to subsequently split such proceedings if this is in the interest of the efficiency of investigations, for example if proceedings against one suspect or accused person could be terminated at an earlier stage, whereas proceedings against other suspect or accused persons would still have to be continued, or if splitting the case could shorten the period of pre-trial detention of one of the suspects. Where different Permanent Chambers are in charge of the cases to be merged, the internal rules of procedure of the EPPO should determine the appropriate competence and procedure. Where the Permanent Chamber decides to split a case, its competence for the resulting cases should be maintained.
- (69) The EPPO should rely on national authorities, including police authorities, in particular for the execution of coercive measures. Under the principle of sincere cooperation, all national authorities and the relevant bodies of the Union, including Eurojust, Europol and OLAF, should actively support the investigations and prosecutions of the EPPO, as well as cooperate with it, from the moment a suspected offence is reported to the EPPO until the moment it determines whether to prosecute or otherwise dispose of the case.
- (70) It is essential for the effective investigation and prosecution of offences affecting the Union's financial interests that the EPPO be able to gather evidence by using at least a minimum set of investigation measures, while respecting the principle of proportionality. Those measures should be available with regard to the offences that are within the mandate of the EPPO, at least where they are punishable by a maximum penalty of at least 4 years of imprisonment, for the purpose of its investigations and prosecutions, but may be subject to limitations in accordance with national law.
- (71) In addition to the minimum set of investigation measures listed in this Regulation, European Delegated Prosecutors should be entitled to request or to order any measures which are available to prosecutors under national law in similar national cases. Availability should be ensured in all situations where the indicated investigative measure exists but may be subject to limitations in accordance with national law.
- (72) In cross-border cases, the handling European Delegated Prosecutor should be able to rely on assisting European Delegated Prosecutors when measures need to be undertaken in other Member States. Where judicial authorisation is required for such a measure, it should be clearly specified in which Member State the authorisation should be obtained, but in any case there should be only one authorisation. If an investigation measure is finally refused by the judicial authorities, namely after all legal remedies have been exhausted, the handling European Delegated Prosecutor should withdraw the request or the order.
- (73) The possibility foreseen in this Regulation to have recourse to legal instruments on mutual recognition or cross-border cooperation should not replace the specific rules on cross-border investigations under this Regulation. It should rather supplement them to ensure that, where a measure is necessary in a cross-border investigation but is not available in national law for a purely domestic situation, it can be used in accordance with national law implementing the relevant instrument, when conducting the investigation or prosecution.
- (74) The provisions of this Regulation on cross-border cooperation should be without prejudice to existing legal instruments that facilitate cross-border cooperation between national authorities, other than prosecution or judicial authorities. The same should apply to national authorities cooperating on the basis of administrative law.
- (75) The provisions of this Regulation relating to pre-trial arrest and cross-border surrender should be without prejudice to the specific procedures in Member States where judicial authorisation is not required for the initial arrest of a suspect or accused person.

- (76) The handling European Delegated Prosecutor should be entitled to issue or request European Arrest Warrants within the area of competence of the EPPO.
- (77) The EPPO should be entitled to refer a case to national authorities, where the investigation reveals that the offence is outside the competence of the EPPO. In such a referral, national authorities should preserve their full prerogatives under national law to open, continue or dismiss the investigation.
- (78) This Regulation requires the EPPO to exercise the functions of a prosecutor, which includes taking decisions on a suspect or accused person's indictment and the choice of the Member State whose courts will be competent to hear the prosecution. The decision whether to indict the suspect or accused person should in principle be made by the competent Permanent Chamber on the basis of a draft decision by the European Delegated Prosecutor, so that there is a common prosecution policy. The Permanent Chamber should be entitled to take any decision within 21 days of receiving the draft decision, including requesting further evidence, before deciding to bring a case to judgment, except a decision to dismiss a case where the European Delegated Prosecutor has proposed to bring the case to judgment.
- (79) The Member State whose courts will be competent to hear the prosecution should be chosen by the competent Permanent Chamber on the basis of a set of criteria laid down in this Regulation. The Permanent Chamber should take its decision on the basis of a report and a draft decision by the handling European Delegated Prosecutor, which should be transmitted to the Permanent Chamber by the supervising European Prosecutor with, if necessary, his/her own assessment. The supervising European Prosecutor should retain all the powers to give specific instructions to the European Delegated Prosecutor provided for in this Regulation.
- (80) The evidence presented by the EPPO in court should not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State, provided that the trial court considers its admission to respect the fairness of the procedure and the suspect or accused person's rights of defence under the Charter. This Regulation respects the fundamental rights and observes the principles recognised by Article 6 TEU and in the Charter, in particular Title VI thereof, by international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by Member States' constitutions in their respective fields of application. In line with those principles, and in respecting the different legal systems and traditions of the Member States as provided for in Article 67(1) TFEU, nothing in this Regulation may be interpreted as prohibiting the courts from applying the fundamental principles of national law on fairness of the procedure that they apply in their national systems, including in common law systems.
- (81) Taking into account the legality principle, the investigations of the EPPO should as a rule lead to prosecution in the competent national courts in cases where there is sufficient evidence and no legal ground bars prosecution, or where no simplified prosecution procedure has been applied. The grounds for dismissal of a case are exhaustively laid down in this Regulation.
- (82) National legal systems provide for various types of simplified prosecution procedures, which may or may not include involvement of a court, for example in the form of transactions with the suspect or accused person. If such procedures exist, the European Delegated Prosecutor should have the power to apply them under the conditions provided for in national law and in the situations provided for by this Regulation. Those situations should include cases where the final damage of the offence, after possible recovery of an amount corresponding to such damage, is not significant. Considering the interest of a coherent and effective prosecution policy of the EPPO, the competent Permanent Chamber should always be called upon to give its consent to the use of such procedures. When the simplified procedure has been successfully applied, the case should be finally disposed of.

- (83) This Regulation requires the EPPO to respect, in particular, the right to a fair trial, the rights of the defence and the presumption of innocence, as enshrined in Articles 47 and 48 of the Charter. Article 50 of the Charter, which protects the right not to be tried or punished twice in criminal proceedings for the same offence (*ne bis in idem*), ensures that there will be no double jeopardy as a result of the prosecutions brought by the EPPO. The activities of the EPPO should thus be exercised in full compliance with those rights and this Regulation should be applied and interpreted accordingly.
- (84) Article 82(2) TFEU allows the Union to establish minimum rules on rights of individuals in criminal proceedings, in order to ensure that the rights of defence and the fairness of the proceedings are respected. Those minimum rules have been gradually set out by the Union legislator in Directives on specific rights.
- (85) The rights of defence provided for in the relevant Union law, such as Directives 2010/64/EU ⁽¹⁾, 2012/13/EU ⁽²⁾, 2013/48/EU ⁽³⁾, (EU) 2016/343 ⁽⁴⁾, (EU) 2016/1919 ⁽⁵⁾, of the European Parliament and of the Council as implemented by national law, should apply to the activities of the EPPO. Any suspect or accused person in respect of whom the EPPO initiates an investigation should benefit from those rights, as well as from the rights provided for in national law to request that experts are appointed or that witnesses are heard, or that evidence on behalf of the defence is otherwise produced by the EPPO.
- (86) Article 86(3) TFEU allows the Union legislator to determine the rules applicable to the judicial review of procedural measures taken by the EPPO in the performance of its functions. That competence granted to the Union legislator reflects the specific nature of the tasks and structure of the EPPO, which is different from that of all other bodies and agencies of the Union and requires special rules regarding judicial review.
- (87) According to Article 86(2) TFEU, the EPPO exercises its functions of prosecutor before the competent courts of the Member States. Acts undertaken by the EPPO in the course of its investigations are closely related to the prosecution which may result therefrom, and thus have effects in the legal order of the Member States. In many cases the acts will be carried out by national law enforcement authorities acting under the instructions of the EPPO, in some cases after having obtained the authorisation of a national court.

It is therefore appropriate to consider that procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties should be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law. This should ensure that the procedural acts of the EPPO that are adopted before the indictment and intended to produce legal effects vis-à-vis third parties (a category which includes the suspect, the victim, and other interested persons whose rights may be adversely affected by such acts) are subject to judicial review by national courts. Procedural acts that relate to the choice of the Member State whose courts will be competent to hear the prosecution, which is to be determined on the basis of the criteria laid down in this Regulation, are intended to produce legal effects vis-à-vis third parties and should therefore be subject to judicial review by national courts, at the latest at the trial stage.

⁽¹⁾ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceeding (OJ L 280, 26.10.2010, p. 1).

⁽²⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁽³⁾ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

⁽⁴⁾ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

⁽⁵⁾ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).

Actions before competent national courts for failures of the EPPO to act are those regarding procedural acts which the EPPO is under a legal obligation to adopt and which are intended to produce legal effects vis-à-vis third parties. Where national law provides for judicial review concerning procedural acts which are not intended to produce legal effects vis-à-vis third parties or for legal actions concerning other failures to act, this Regulation should not be interpreted as affecting such legal provisions. In addition, Member States should not be required to provide for judicial review by the competent national courts of procedural acts which are not intended to produce legal effects vis-à-vis third parties, such as the appointment of experts or the reimbursement of witness costs.

Finally, this Regulation does not affect the powers of national trial courts.

- (88) The legality of procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties should be subject to judicial review before national courts. In that regard, effective remedies should be ensured in accordance with the second subparagraph of Article 19(1) TEU. Furthermore, as underlined by the case-law of the Court of Justice, the national procedural rules governing actions for the protection of individual rights granted by Union law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by Union law (principle of effectiveness).

When national courts review the legality of such acts, they may do so on the basis of Union law, including this Regulation, and also on the basis of national law, which applies to the extent that a matter is not dealt with by this Regulation. As underlined in the case-law of the Court of Justice, national courts should always refer preliminary questions to the Court of Justice when they entertain doubts about the validity of those acts vis-à-vis Union law.

However, national courts may not refer to the Court of Justice preliminary questions on the validity of the procedural acts of the EPPO with regard to national procedural law or to national measures transposing Directives, even if this Regulation refers to them. This is however without prejudice to preliminary references concerning the interpretation of any provision of primary law, including the Treaties and the Charter, or the interpretation and validity of any provision of Union secondary law, including this Regulation and applicable Directives. In addition, this Regulation does not exclude the possibility for national courts to review the validity of the procedural acts of the EPPO which are intended to produce legal effects vis-à-vis third parties with regard to the principle of proportionality as enshrined in national law.

- (89) The provision of this Regulation on judicial review does not alter the powers of the Court of Justice to review the EPPO administrative decisions, which are intended to have legal effects vis-à-vis third parties, namely decisions that are not taken in the performance of its functions of investigating, prosecuting or bringing to judgement. This Regulation is also without prejudice to the possibility for a Member State of the European Union, the European Parliament, the Council or the Commission to bring actions for annulment in accordance with the second paragraph of Article 263 TFEU and to the first paragraph of Article 265 TFEU, and to infringement proceedings under Articles 258 and 259 TFEU.
- (90) Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽¹⁾ applies to the processing of administrative personal data performed by the EPPO.
- (91) Consistent and homogeneous application of the rules for the protection of individuals' fundamental rights and freedoms with regard to the processing of personal data should be ensured throughout the Union.
- (92) Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the TEU and to the TFEU, provides that specific rules on the protection of personal data and the free movement of such data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU may prove to be necessary because of the specific nature of these fields.

⁽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).

- (93) The rules of this Regulation on the protection of personal data should be interpreted and applied in accordance with the interpretation and application of Directive (EU) 2016/680 of the European Parliament and of the Council ⁽¹⁾, which will apply to the processing of personal data by competent authorities of the Member States of the European Union for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.
- (94) The data protection principle of fair processing is a distinct notion from the right to a fair trial as defined in Article 47 of the Charter and in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (95) The data protection provisions of this Regulation are without prejudice to the applicable rules on the admissibility of personal data as evidence in criminal court proceedings.
- (96) All Member States of the European Union 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 whilst ensuring respect for fundamental rights and freedoms regarding the automatic processing of personal data. Where operational personal data are transferred from the EPPO 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 ⁽²⁾ and Council Decision 2007/533/JHA ⁽³⁾.
- (97) When the EPPO transfers operational personal data to an authority of a third country or to an international organisation or Interpol by virtue of an international agreement concluded pursuant to Article 218 TFEU, appropriate safeguards for the protection of privacy and the fundamental rights and freedoms of individuals should ensure that the data protection provisions of this Regulation are complied with.
- (98) In order to ensure effective, reliable and consistent monitoring of compliance with and enforcement of this Regulation as regards operational personal data, as required by Article 8 of the Charter, the European Data Protection Supervisor should have the tasks laid down in this Regulation and should have effective powers, including investigative, corrective, and advisory powers which constitute the necessary means to perform those tasks. However, the powers of the European Data Protection Supervisor should not unduly interfere with specific rules for criminal proceedings, including investigation and prosecution of criminal offences, or the independence of the judiciary.
- (99) In order to enable the EPPO to fulfil its tasks and to take account of developments in information technology, and in light of the state of progress in the information society, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of listing and updating the list of the categories of operational personal data and the categories of data subjects listed in an Annex. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016 ⁽⁴⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of the Commission expert group dealing with the preparation of delegated acts.

⁽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⁾ Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol (OJ L 27, 29.1.2005, p. 61).

⁽³⁾ 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).

⁽⁴⁾ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

- (100) The EPPO should work closely with other institutions, bodies, offices and agencies of the Union in order to facilitate the exercise of its functions under this Regulation and establish, where necessary, formal arrangements on detailed rules relating to exchange of information and cooperation. Cooperation with Europol and OLAF should be of particular importance to avoid duplication and enable the EPPO to obtain the relevant information in their possession, as well as to draw on their analysis in specific investigations.
- (101) The EPPO should be able to obtain any relevant information that falls within its competence stored in databases and registers of the institutions, bodies, offices and agencies of the Union.
- (102) The EPPO and Eurojust should become partners and should cooperate in operational matters in accordance with their respective mandates. Such cooperation may involve any investigations conducted by the EPPO where an exchange of information or coordination of investigative measures in respect of cases within the competence of Eurojust is considered to be necessary or appropriate. Whenever the EPPO is requesting such cooperation of Eurojust, the EPPO should liaise with the Eurojust national member of the handling European Delegated Prosecutor's Member State. The operational cooperation may also involve third countries that have a cooperation agreement with Eurojust.
- (103) The EPPO and OLAF should establish and maintain a close cooperation aimed at ensuring the complementarity of their respective mandates, and avoiding duplication. In that regard, OLAF should in principle not open any administrative investigations parallel to an investigation conducted by the EPPO into the same facts. This should, however, be without prejudice to the power of OLAF to start an administrative investigation on its own initiative, in close consultation with the EPPO.
- (104) In all actions in support of the EPPO, OLAF will act independently of the Commission, in accordance with Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽¹⁾.
- (105) In cases where the EPPO is not conducting an investigation, it should be able to provide relevant information to allow OLAF to consider appropriate action in accordance with its mandate. In particular, the EPPO could consider informing OLAF of cases where there are no reasonable grounds to believe that an offence within the competence of the EPPO is being or has been committed, but an administrative investigation by OLAF may be appropriate, or where the EPPO dismisses a case and a referral to OLAF is desirable for administrative follow-up or recovery. When the EPPO provides information, it may request that OLAF considers whether to open an administrative investigation or take other administrative follow-up or monitoring action, in particular for the purposes of precautionary measures, recovery or disciplinary action, in accordance with Regulation (EU, Euratom) No 883/2013.
- (106) To the extent that recovery procedures are deferred as a result of decisions taken by the EPPO in connection with investigations or prosecutions under this Regulation, Member States should not be considered at fault or negligent for the purposes of recovery procedures within the meaning of Article 122 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council ⁽²⁾.
- (107) The EPPO should enable the institutions, bodies, offices or agencies of the Union and other victims to take appropriate measures. This may include taking precautionary measures, in particular to prevent any continuous wrongdoing or to protect the Union from reputational damage, or to allow them to intervene as a civil party in the proceedings in accordance with national law. The exchange of information should take place in a manner that fully respects the independence of the EPPO, and only to the extent possible, without any prejudice to the proper conduct and confidentiality of investigations.

⁽¹⁾ 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).

⁽²⁾ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

- (108) In so far as necessary for the performance of its tasks, the EPPO should also be able to establish and maintain cooperative relations with the authorities of third countries and international organisations. For the purpose of this Regulation, 'international organisations' means international organisations and their subordinate bodies governed by public international law or other bodies which are set up by, or on the basis of, an agreement between two or more countries as well as Interpol.
- (109) 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 on the opening of negotiations on an international agreement.

Pending the conclusion of new international agreements by the Union or the accession by the Union to multilateral agreements already concluded by the Member States, on legal assistance in criminal matters, the Member States should facilitate the exercise by the EPPO of its functions pursuant to the principle of sincere cooperation enshrined in Article 4(3) TEU. If permitted under a relevant multilateral agreement and subject to the third country's acceptance, the Member States should recognise and, where applicable, notify the EPPO as a competent authority for the purpose of the implementation of those multilateral agreements. This may entail, in certain cases, an amendment to those agreements but the renegotiation of such agreements should not be regarded as a mandatory step, since it may not always be possible. The Member States may also notify the EPPO as a competent authority for the purpose of the implementation of other international agreements on legal assistance in criminal matters concluded by them, including by way of an amendment to those agreements.

Where the notification of the EPPO as a competent authority for the purposes of multilateral agreements already concluded by the Member States with third countries is not possible or is not accepted by the third countries and pending the Union accession to such international agreements, European Delegated Prosecutors may use their status as national prosecutor toward such third countries, provided that they inform and where appropriate endeavour to obtain consent from the authorities of third countries that the evidence collected from these third countries on the basis of those international agreements, will be used in investigations and prosecutions carried out by the EPPO.

The EPPO should also be able to rely on reciprocity or international comity vis-à-vis the authorities of third countries. This should however be carried out on a case-by-case basis, within the limits of the material competence of the EPPO and subject to possible conditions set by the authorities of the third countries.

- (110) Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO are not bound by this Regulation. The Commission should, if appropriate, submit proposals in order to ensure effective judicial cooperation in criminal matters between the EPPO and Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO. This should in particular concern the rules relating to judicial cooperation in criminal matters and surrender, fully respecting the Union *acquis* in this field as well as the duty of sincere cooperation in accordance with Article 4(3) TEU.
- (111) To guarantee the full autonomy and independence of the EPPO, it should be granted an autonomous budget, with revenue coming essentially from a contribution from the budget of the Union. The financial, budgetary and staff regime of the EPPO should follow the relevant Union standards applicable to bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁽¹⁾, with due regard, however, to the fact that the competence of the EPPO to carry out criminal investigations and prosecutions at Union level is unique.
- (112) The costs of investigation measures undertaken by the EPPO should in principle be covered by the national authorities carrying them out. Exceptionally high costs for investigation measures such as complex experts' opinions, extensive police operations or surveillance activities over a long period of time could partly be reimbursed by the EPPO, including, where possible, by reallocating resources from other budget lines of the EPPO, or by amending the budget in accordance with this Regulation and the applicable financial rules.

⁽¹⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

When preparing the proposal for the provisional draft estimate of the revenue and expenditure the Administrative Director should take into account the need of the EPPO to partly reimburse exceptionally costly investigation measures accepted by the Permanent Chamber.

- (113) Operational expenditures of the EPPO should be covered from the budget of the EPPO. These should include the cost of operational communication between the European Delegated Prosecutor and the central level of the EPPO, such as mail delivery costs, travel expenses, translations necessary for the internal functioning of the EPPO, and other costs not previously incurred by Member States during an investigation which are caused only due to the EPPO having assumed responsibilities for investigation and prosecution. However, the costs of the European Delegated Prosecutors' office and secretarial support should be covered by the Member States.

In accordance with Article 332 TFEU, expenditure resulting from the implementation of the EPPO will be borne by the Member States. That expenditure does not include the administrative costs entailed for the institutions within the meaning of Article 13(1) TEU.

- (114) The College should in principle always delegate its powers conferred on the appointing authority by the Staff Regulations of Officials and the Conditions of Employment of Other Servants⁽¹⁾ ('the Staff Regulations and the Conditions of Employment') to conclude contracts of employment, to the Administrative Director, unless specific circumstances call for it to exercise that power.
- (115) The Administrative Director, as authorising officer, is responsible for the implementation of the budget of the EPPO. When consulting with the Permanent Chamber regarding exceptionally costly investigation measures, the Administrative Director is responsible for deciding on the amount of the grant to be awarded, based on the available financial resources and in accordance with the criteria set out in the internal rules of procedure of the EPPO.
- (116) The remuneration of the European Delegated Prosecutors as special advisers, which will be set through a direct agreement, should be based on a specific decision to be taken by the College. This decision should, inter alia, ensure that the European Delegated Prosecutors, in the specific case that they also exercise functions as national prosecutors in accordance with Article 13(3), will in principle continue to be paid in their capacity as national prosecutors and that the remuneration as special adviser will only relate to the equivalent of the work on behalf of the EPPO in the capacity as a European Delegated Prosecutor. Each Member State retains the power to determine in its legislation, in compliance with Union law, the conditions for granting benefits under their social security scheme.
- (117) In order for the EPPO to be fully operational on the date to be determined, it will need staff with experience within the institutions, bodies, offices or agencies of the Union. With a view to meeting that need, the recruitment by the EPPO of temporary and contract agents already working in the institutions, bodies, offices or agencies of the Union should be facilitated by guaranteeing those staff members continuity of their contractual rights if they are recruited by the EPPO in its set-up phase until 1 year after the EPPO becomes operational in accordance with the decision in Article 120(2).
- (118) The EPPO's proceedings should be transparent in accordance with Article 15(3) TFEU and specific provisions on how the right of public access to documents is ensured, would need to 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 and other relevant provisions.

⁽¹⁾ Council Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385/62).

- (119) The general rules on transparency that apply to Union agencies should also apply to the EPPO but only with regard to documents other than case files, including electronic images of such files, so as not to jeopardise in any manner the requirement of confidentiality in its operational work. In the same manner, administrative inquiries conducted by the European Ombudsman should respect the requirement of confidentiality of the EPPO. In view of ensuring the integrity of the investigations and prosecutions of the EPPO, documents relating to the operational activity should not be covered by the rules of transparency.
- (120) The European Data Protection Supervisory has been consulted and, on 10 March 2014, delivered an opinion.
- (121) The Representatives of the Member States, meeting at Head of State or Government level in Brussels on 13 December 2003, have determined the seat of the EPPO in accordance with the provisions of the Decision of 8 April 1965 ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation establishes the European Public Prosecutor's Office ('the EPPO') and sets out rules concerning its functioning.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'Member State' means, except where otherwise indicated, in particular in Chapter VIII, a Member State which participates in enhanced cooperation on the establishment of the EPPO, as deemed to be authorised in accordance with the third subparagraph of Article 86(1) TFEU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU;
- (2) 'person' means any natural or legal person;
- (3) 'financial interests of the Union' means all revenues, expenditures and assets covered by, acquired through, or due to the Union budget and the budgets of the institutions, bodies, offices and agencies established under the Treaties and budgets managed and monitored by them;
- (4) 'staff of the EPPO' means the personnel at the central level who supports the College, the Permanent Chambers, the European Chief Prosecutor, the European Prosecutors, the European Delegated Prosecutors and the Administrative Director in the day-to-day activities in the performance of the tasks of this Office under this Regulation;
- (5) 'handling European Delegated Prosecutor' means a European Delegated Prosecutor responsible for the investigations and prosecutions, which he/she has initiated, which have been allocated to him/her or which he/she has taken over using the right of evocation according to Article 27;
- (6) 'assisting European Delegated Prosecutor' means a European Delegated Prosecutor located in a Member State, other than the Member State of the handling European Delegated Prosecutor, where an investigation or other measure assigned to him/her is to be carried out;

⁽¹⁾ Decision (67/446/EEC) (67/30/Euratom) of the representatives of the governments of the Member States of 8 April 1965 on the provisional location of certain institutions and departments of the Communities (OJ 152, 13.7.1967, p. 18).

- (7) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (8) 'processing' means any operation or set of operations which are performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- (9) 'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future;
- (10) 'profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;
- (11) 'pseudonymisation' means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;
- (12) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;
- (13) 'controller' means the EPPO or another competent authority which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union law or the law of a Member State of the European Union, the controller or the specific criteria for its nomination may be provided for by Union law or the law of a Member State of the European Union;
- (14) 'processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
- (15) 'recipient' means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed, whether a third party or not. However, Member States of the European Unions' public authorities other than competent authorities defined in point 7(a) of Article 3 of Directive (EU) 2016/680, which receive personal data in the framework of a particular inquiry of the EPPO shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;
- (16) 'personal data breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- (17) 'administrative personal data' means all personal data processed by the EPPO apart from operational personal data;
- (18) 'operational personal data' means all personal data processed by the EPPO for the purposes laid down in Article 49;

- (19) 'genetic data' means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;
- (20) 'biometric data' means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
- (21) 'data concerning health' means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his/her health status;
- (22) 'supervisory authority' means an independent public authority which is established by a Member State of the European Union pursuant to Article 51 of Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹⁾ or pursuant to Article 41 of Directive (EU) 2016/680;
- (23) 'international organisation' means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.

CHAPTER II

ESTABLISHMENT, TASKS AND BASIC PRINCIPLES OF THE EPPO

Article 3

Establishment

1. The EPPO is hereby established as a body of the Union.
2. The EPPO shall have legal personality.
3. The EPPO shall cooperate with Eurojust and rely on its support in accordance with Article 100.

Article 4

Tasks

The EPPO shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union which are provided for in Directive (EU) 2017/1371 and determined by this Regulation. In that respect the EPPO shall undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States, until the case has been finally disposed of.

Article 5

Basic principles of the activities

1. The EPPO shall ensure that its activities respect the rights enshrined in the Charter.
2. The EPPO shall be bound by the principles of rule of law and proportionality in all its activities.
3. The investigations and prosecutions on behalf of the EPPO shall be governed by this Regulation. National law shall apply to the extent that a matter is not regulated by this Regulation. Unless otherwise specified in this Regulation, the applicable national law shall be the law of the Member State whose European Delegated Prosecutor is handling the case in accordance with Article 13(1). Where a matter is governed by both national law and this Regulation, the latter shall prevail.

⁽¹⁾ Regulation (EU) 2016/679 of the European Parliament and the of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

4. The EPPO shall conduct its investigations in an impartial manner and shall seek all relevant evidence whether inculpatory or exculpatory.
5. The EPPO shall open and conduct investigations without undue delay.
6. The competent national authorities shall actively assist and support the investigations and prosecutions of the EPPO. Any action, policy or procedure under this Regulation shall be guided by the principle of sincere cooperation.

Article 6

Independence and accountability

1. The EPPO shall be independent. The European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, the European Delegated Prosecutors, the Administrative Director, as well as the staff of the EPPO shall act in the interest of the Union as a whole, as defined by law, and neither seek nor take instructions from any person external to the EPPO, any Member State of the European Union or any institution, body, office or agency of the Union in the performance of their duties under this Regulation. The Member States of the European Union and the institutions, bodies, offices and agencies of the Union shall respect the independence of the EPPO and shall not seek to influence it in the exercise of its tasks.
2. The EPPO shall be accountable to the European Parliament, to the Council and to the Commission for its general activities, and shall issue annual reports in accordance with Article 7.

Article 7

Reporting

1. Every year the EPPO shall draw up and publicly issue an Annual Report on its general activities in the official languages of the institutions of the Union. It shall transmit the report to the European Parliament and to national parliaments, as well as to the Council and to the Commission.
2. The European Chief Prosecutor shall appear once a year before the European Parliament and before the Council, and before national parliaments of the Member States at their request, to give account of the general activities of the EPPO, without prejudice to the EPPO's obligation of discretion and confidentiality as regards individual cases and personal data. The European Chief Prosecutor may be replaced by one of the Deputy European Chief Prosecutors for hearings organised by national parliaments.

CHAPTER III

STATUS, STRUCTURE AND ORGANISATION OF THE EPPO

SECTION 1

Status and structure of the EPPO

Article 8

Structure of the EPPO

1. The EPPO shall be an indivisible Union body operating as one single Office with a decentralised structure.
2. The EPPO shall be organised at a central level and at a decentralised level.
3. The central level shall consist of a Central Office at the seat of the EPPO. The Central Office shall consist of the College, the Permanent Chambers, the European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors and the Administrative Director.

4. The decentralised level shall consist of European Delegated Prosecutors who shall be located in the Member States.
5. The Central Office and the European Delegated Prosecutors shall be assisted by the staff of the EPPO in their duties under this Regulation.

Article 9

The College

1. The College of the EPPO shall consist of the European Chief Prosecutor and one European Prosecutor per Member State. The European Chief Prosecutor shall chair the meetings of the College and shall be responsible for their preparation.
2. The College shall meet regularly and shall be responsible for the general oversight of the activities of the EPPO. It shall take decisions on strategic matters, and on general issues arising from individual cases, in particular with a view to ensuring coherence, efficiency and consistency in the prosecution policy of the EPPO throughout the Member States, as well on other matters as specified in this Regulation. The College shall not take operational decisions in individual cases. The internal rules of procedure of the EPPO shall provide for modalities on the exercise by the College of the general oversight activities and for taking decisions on strategic matters and general issues in accordance with this Article.
3. On a proposal by the European Chief Prosecutor and following the internal rules of procedure of the EPPO, the College shall set up Permanent Chambers.
4. The College shall adopt internal rules of procedure of the EPPO in accordance with Article 21, and shall further stipulate the responsibilities for the performance of functions of the members of the College and the staff of the EPPO.
5. Unless otherwise stated in this Regulation, the College shall take decisions by simple majority. Any member of the College shall have the right to initiate voting on matters to be decided by the College. Each member of the College shall have one vote. The European Chief Prosecutor shall have a casting vote in the event of a tie vote on any matter to be decided by the College.

Article 10

The Permanent Chambers

1. The Permanent Chambers shall be chaired by the European Chief Prosecutor or one of the Deputy European Chief Prosecutors, or a European Prosecutor appointed as Chair in accordance with the internal rules of procedure of the EPPO. In addition to the Chair, the Permanent Chambers shall have two permanent Members. The number of Permanent Chambers, and their composition, as well as the division of competences between the Chambers, shall take due account of the functional needs of the EPPO and be determined in accordance with the internal rules of procedure of the EPPO.

The internal rules of procedure of the EPPO shall ensure an equal distribution of workload on the basis of a system of random allocation of cases and shall, in exceptional cases, establish procedures, where necessary for the proper functioning of the EPPO, to allow the European Chief Prosecutor to decide to deviate from the principle of random allocation.

2. The Permanent Chambers shall monitor and direct the investigations and prosecutions conducted by the European Delegated Prosecutors in accordance with paragraphs 3, 4 and 5 of this Article. They shall also ensure the coordination of investigations and prosecutions in cross-border cases, and shall ensure the implementation of decisions taken by the College in accordance with Article 9(2).
3. In accordance with the conditions and procedures set out by this Regulation, where applicable after reviewing a draft decision proposed by the handling European Delegated Prosecutor, the Permanent Chambers shall decide on the following issues:

- (a) to bring a case to judgment in accordance with Article 36(1), (3) and (4);
- (b) to dismiss a case in accordance with point (a) to (g) of Article 39(1);

(c) to apply a simplified prosecution procedure and to instruct the European Delegated Prosecutor to act with a view to finally dispose of the case in accordance with Article 40;

(d) to refer a case to the national authorities in accordance with Article 34(1), (2), (3) or (6);

(e) to reopen an investigation in accordance with Article 39(2).

4. Where necessary, the Permanent Chambers shall take the following decisions, in accordance with the conditions and procedures set out in this Regulation:

(a) to instruct the European Delegated Prosecutor to initiate an investigation in accordance with the rules in Article 26(1) to (4) where no investigation has been initiated;

(b) to instruct the European Delegated Prosecutor to exercise the right of evocation in accordance with Article 27(6) where the case has not been evoked;

(c) to refer to the College strategic matters or general issues arising from individual cases in accordance with Article 9(2);

(d) to allocate a case in accordance with Article 26(3);

(e) to reallocate a case in accordance with Article 26(5) or 28(3);

(f) to approve the decision of a European Prosecutor to conduct the investigation himself or herself in accordance with Article 28(4).

5. The competent Permanent Chamber, acting through the European Prosecutor who is supervising the investigation or the prosecution, may in a specific case give instructions in compliance with applicable national law to the handling European Delegated Prosecutor, where it is necessary for the efficient handling of the investigation or prosecution, in the interest of justice, or to ensure the coherent functioning of the EPPO.

6. The Permanent Chamber shall take decisions by simple majority. The Chamber shall vote at the request of any of its members. Each member shall have one vote. The Chair shall have a casting vote in the event of a tie vote. Decisions shall be taken after deliberation in meetings of the Chamber on the basis, where applicable, of the draft decision proposed by the handling European Delegated Prosecutor.

All case material shall be accessible upon request to the competent Permanent Chamber for the purpose of preparing decisions.

7. The Permanent Chambers may decide to delegate their decision-making power under point (a) or (b) of paragraph 3 of this Article, and in the latter case only in respect of the rules set out in points (a) to (f) of Article 39(1) to the European Prosecutor supervising the case in accordance with Article 12(1) where such delegations can be duly justified with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, with regard to an offence that has caused or is likely to cause damage to the financial interests of the Union of less than EUR 100 000. The internal rules of procedure of the EPPO shall set guidelines with a view to ensuring a consistent application within the EPPO.

The Permanent Chamber shall inform the European Chief Prosecutor of any decision to delegate their decision-making power. On reception of that information, the European Chief Prosecutor may within 3 days request the Permanent Chamber to review its decision if the European Chief Prosecutor considers that the interest to ensure the coherence of the investigations and prosecutions of the EPPO so requires. If the European Chief Prosecutor is a Member of the relevant Permanent Chamber, one of the Deputy European Chief Prosecutors shall exercise the right to request the said review. The supervising European Prosecutor shall report to the Permanent Chamber about the final disposal of the case as well as any information or circumstance he/she deems to be likely to necessitate a new assessment of the opportunity to maintain the delegation, in particular in circumstances referred to in Article 36(3).

The decision to delegate decision-making power may be withdrawn at any time on the request of one of the Members of the Permanent Chamber and shall be decided in accordance with paragraph 6 of this Article. A delegation shall be withdrawn when a European Delegated Prosecutor has substituted the European Prosecutor in accordance with Article 16(7).

To ensure coherent application of the principle of delegation, each Permanent Chamber shall report annually to the College on the use of delegation.

8. The internal rules of procedure of the EPPO shall authorise the Permanent Chambers to take decisions by means of a written procedure to be laid down in detail in the internal rules of procedure of the EPPO.

All decisions taken and instructions given in accordance with paragraphs 3, 4, 5 and 7 shall be recorded in writing and become part of the case file.

9. In addition to the permanent Members, the European Prosecutor who is supervising an investigation or a prosecution in accordance with Article 12(1) shall participate in the deliberations of the Permanent Chamber. The European Prosecutor shall have a right to vote, except as regards the Permanent Chamber's decisions on delegation or withdrawal of delegation in accordance with paragraph 7 of this Article, on allocation and reallocation under Article 26(3), (4) and (5) and Article 27(6) and on bringing a case to judgment in accordance with Article 36(3), where more than one Member State has jurisdiction for the case, as well as situations described in Article 31(8).

A Permanent Chamber may also, either at the request of a European Prosecutor or a European Delegated Prosecutor or on its own initiative, invite other European Prosecutors or European Delegated Prosecutors who are concerned by a case to attend its meetings without a right to vote.

10. The Chairs of the Permanent Chambers shall, in accordance with the internal rules of procedure of the EPPO, keep the College informed of the decisions taken pursuant to this Article, in order to enable the College to fulfil its role under Article 9(2).

Article 11

The European Chief Prosecutor and the Deputy European Chief Prosecutors

1. The European Chief Prosecutor shall be the Head of the EPPO. The European Chief Prosecutor shall organise the work of the EPPO, direct its activities, and take decisions in accordance with this Regulation and the internal rules of procedure of the EPPO.

2. Two Deputy European Chief Prosecutors shall be appointed to assist the European Chief Prosecutor in the discharge of his/her duties and to act as replacement when he/she is absent or is prevented from attending to those duties.

3. The European Chief Prosecutor shall represent the EPPO vis-à-vis the institutions of the Union and of the Member States of the European Union, and third parties. The European Chief Prosecutor may delegate his/her tasks relating to representation to one of the Deputy European Chief Prosecutors or to a European Prosecutor.

Article 12

The European Prosecutors

1. On behalf of the Permanent Chamber and in compliance with any instructions it has given in accordance with Article 10(3), (4) and (5), the European Prosecutors shall supervise the investigations and prosecutions for which the European Delegated Prosecutors handling the case in their Member State of origin are responsible. The European Prosecutors shall present summaries of the cases under their supervision and, where applicable, proposals for decisions to be taken by the said Chamber, on the basis of draft decisions prepared by the European Delegated Prosecutors.

The internal rules of procedure of the EPPO shall, without prejudice to Article 16(7), provide for a mechanism of substitution between European Prosecutors where the supervising European Prosecutor is temporarily absent from his/her duties or is for other reasons not available to carry out the functions of the European Prosecutors. The substitute European Prosecutor may fulfil any function of a European Prosecutor, except the possibility to conduct an investigation provided for in Article 28(4).

2. A European Prosecutor may request, on an exceptional basis, on grounds related to the workload resulting from the number of investigations and prosecutions in the European Prosecutor's Member State of origin, or a personal conflict of interest, that the supervision of investigations and prosecutions of individual cases handled by European Delegated Prosecutors in his/her Member State of origin be assigned to other European Prosecutors, subject to the agreement of the latter. The European Chief Prosecutor shall decide on the request based on the workload of a European Prosecutor. In the case of a conflict of interests concerning a European Prosecutor, the European Chief Prosecutor shall grant that request. The internal rules of procedure of the EPPO shall lay down the principles governing that decision and the procedure for the subsequent allocation of the cases concerned. Article 28(4) shall not apply to investigations and prosecutions supervised in accordance with this paragraph.

3. The supervising European Prosecutors may, in a specific case and in compliance with applicable national law and with the instructions given by the competent Permanent Chamber, give instructions to the handling European Delegated Prosecutor, whenever necessary for the efficient handling of the investigation or prosecution or in the interest of justice, or to ensure the coherent functioning of the EPPO.

4. Where the national law of a Member State provides for the internal review of certain acts within the structure of a national prosecutor's office, the review of such acts taken by the European Delegated Prosecutor shall fall under the supervisory powers of the supervising European Prosecutor in accordance with the internal rules of procedure of the EPPO without prejudice to the supervisory and monitoring powers of the Permanent Chamber.

5. The European Prosecutors shall function as liaisons and information channels between the Permanent Chambers and the European Delegated Prosecutors in their respective Member States of origin. They shall monitor the implementation of the tasks of the EPPO in their respective Member States, in close consultation with the European Delegated Prosecutors. They shall ensure, in accordance with this Regulation and the internal rules of procedure of the EPPO that all relevant information from the Central Office is provided to European Delegated Prosecutors and vice versa.

Article 13

The European Delegated Prosecutors

1. The European Delegated Prosecutors shall act on behalf of the EPPO in their respective Member States and shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment, in addition and subject to the specific powers and status conferred on them, and under the conditions set out in this Regulation.

The European Delegated Prosecutors shall be responsible for those investigations and prosecutions that they have initiated, that have been allocated to them or that they have taken over using their right of evocation. The European Delegated Prosecutors shall follow the direction and instructions of the Permanent Chamber in charge of a case as well as the instructions from the supervising European Prosecutor.

The European Delegated Prosecutors shall also be responsible for bringing a case to judgment, in particular have the power to present trial pleas, participate in taking evidence and exercise the available remedies in accordance with national law.

2. There shall be two or more European Delegated Prosecutors in each Member State. The European Chief Prosecutor shall, after consulting and reaching an agreement with the relevant authorities of the Member States, approve the number of European Delegated Prosecutors, as well as the functional and territorial division of competences between the European Delegated Prosecutors within each Member State.

3. The European Delegated Prosecutors may also exercise functions as national prosecutors, to the extent that this does not prevent them from fulfilling their obligations under this Regulation. They shall inform the supervising European Prosecutor of such functions. In the event that a European Delegated Prosecutor at any given moment is unable to fulfil his/her functions as a European Delegated Prosecutor because of the exercise of such functions as national prosecutor, he/she shall notify the supervising European Prosecutor, who shall consult the competent national prosecution authorities in order to determine whether priority should be given to their functions under this Regulation. The European Prosecutor may propose to the Permanent Chamber to reallocate the case to another European Delegated Prosecutor in the same Member State or that he/she conduct the investigations himself/herself in accordance with Article 28(3) and (4).

SECTION 2

Appointment and dismissal of the members of the EPPO*Article 14***Appointment and dismissal of the European Chief Prosecutor**

1. The European Parliament and the Council shall appoint by common accord the European Chief Prosecutor for a non-renewable term of 7 years. The Council shall act by simple majority.
2. The European Chief Prosecutor shall be selected from among candidates:
 - (a) who are active members of the public prosecution service or judiciary of the Member States, or active European Prosecutors;
 - (b) whose independence is beyond doubt;
 - (c) who possess the qualifications required for appointment to the highest prosecutorial or judicial offices in their respective Member States and have relevant practical experience of national legal systems, financial investigations and of international judicial cooperation in criminal matters, or have served as European Prosecutors, and
 - (d) who have sufficient managerial experience and qualifications for the position.
3. The selection shall be based on an open call for candidates, to be published in the *Official Journal of the European Union*, following which a selection panel shall draw up a shortlist of qualified candidates to be submitted to the European Parliament and to the Council. The selection panel shall comprise twelve persons chosen from among former members of the Court of Justice and the Court of Auditors, former national members of Eurojust, members of national supreme courts, high level prosecutors and lawyers of recognised competence. One of the persons chosen shall be proposed by the European Parliament. The Council shall establish the selection panel's operating rules and shall adopt a decision appointing its members on a proposal from the Commission.
4. If a European Prosecutor is appointed to be the European Chief Prosecutor, his/her position of European Prosecutor shall without delay be filled in accordance with the procedure set out in Article 16(1) and (2).
5. The Court of Justice may, upon the application of the European Parliament, of the Council or of the Commission, dismiss the European Chief Prosecutor if it finds that he/she is no longer able to perform his/her duties, or that he/she is guilty of serious misconduct.
6. If the European Chief Prosecutor resigns, if he/she is dismissed or leaves his/her position for any reason, the position shall immediately be filled in accordance with the procedure set out in paragraphs 1, 2 and 3.

*Article 15***Appointment and dismissal of the Deputy European Chief Prosecutors**

1. The College shall appoint two European Prosecutors to serve as Deputy European Chief Prosecutors for a renewable mandate period of 3 years, which shall not exceed the periods for their mandates as European Prosecutors. The selection process shall be regulated by the internal rules of procedure of the EPPO. The Deputy European Chief Prosecutors shall retain their status as European Prosecutors.
2. The rules and conditions for the exercise of the function of Deputy European Chief Prosecutor shall be set out in the internal rules of procedure of the EPPO. If a European Prosecutor is no longer able to perform his/her duties as Deputy European Chief Prosecutor, the College may decide in accordance with the internal rules of procedure of the EPPO to dismiss the Deputy European Chief Prosecutor from that position.
3. If a Deputy European Chief Prosecutor resigns, is dismissed or leaves his/her position as a Deputy European Chief Prosecutor for any reason, the position shall, without delay, be filled in accordance with the procedure set out in paragraph 1 of this Article. Subject to the rules in Article 16, he/she shall remain European Prosecutor.

*Article 16***Appointment and dismissal of the European Prosecutors**

1. Each Member State shall nominate three candidates for the position of European Prosecutor from among candidates:

- (a) who are active members of the public prosecution service or judiciary of the relevant Member State;
- (b) whose independence is beyond doubt; and
- (c) who possess the qualifications required for appointment to high prosecutorial or judicial office in their respective Member States, and who have relevant practical experience of national legal systems, of financial investigations and of international judicial cooperation in criminal matters.

2. After having received the reasoned opinion of the selection panel referred to in Article 14(3), the Council shall select and appoint one of the candidates to be the European Prosecutor of the Member State in question. If the selection panel finds that a candidate does not fulfil the conditions required for the performance of the duties of a European Prosecutor, its opinion shall be binding on the Council.

3. The Council, acting by simple majority, shall select and appoint the European Prosecutors for a non-renewable term of 6 years. The Council may decide to extend the mandate for a maximum of 3 years at the end of the 6-year period.

4. Every 3 years there shall be a partial replacement of one third of the European Prosecutors. The Council, acting by simple majority, shall adopt transitional rules for the appointment of European Prosecutors for and during the first mandate period.

5. The Court of Justice may, upon application of the European Parliament, of the Council or of the Commission, dismiss a European Prosecutor if it finds that he/she is no longer able to perform his/her duties or that he/she is guilty of serious misconduct.

6. If a European Prosecutor resigns, is dismissed or leaves his/her position for any other reason, the position shall without delay be filled in accordance with the procedure set out in paragraphs 1 and 2. If the European Prosecutor in question also serves as Deputy European Chief Prosecutor, he/she shall automatically be dismissed from the latter position.

7. The College shall, upon nomination of each European Prosecutor, designate one of the European Delegated Prosecutors of the same Member State to substitute the European Prosecutor in case he/she is unable to carry out his/her functions or left his/her position according to paragraphs 5 and 6.

Where the College acknowledges the need for substitution, the designated person shall act as an interim European Prosecutor, pending replacement or return of the European Prosecutor, for a period not exceeding 3 months. The College may, upon request, prolong that period if necessary. The mechanisms and modalities of temporary substitution shall be determined and governed by the internal rules of procedure of the EPPO.

*Article 17***Appointment and dismissal of the European Delegated Prosecutors**

1. Upon a proposal by the European Chief Prosecutor, the College shall appoint the European Delegated Prosecutors nominated by the Member States. The College may reject a person who has been nominated if he/she does not fulfil the criteria referred to in paragraph 2. The European Delegated Prosecutors shall be appointed for a renewable term of 5 years.

2. The European Delegated Prosecutors shall, from the time of their appointment as European Delegated Prosecutors until dismissal, be active members of the public prosecution service or judiciary of the respective Member States which nominated them. Their independence shall be beyond doubt and they shall possess the necessary qualifications and relevant practical experience of their national legal system.

3. The College shall dismiss a European Delegated Prosecutor if it finds that he/she no longer fulfils the requirements set out in paragraph 2, is unable to perform his/her duties, or is guilty of serious misconduct.

4. If a Member State decides to dismiss, or to take disciplinary action against, a national prosecutor who has been appointed as European Delegated Prosecutor for reasons not connected with his/her responsibilities under this Regulation, it shall inform the European Chief Prosecutor before taking such action. A Member State may not dismiss, or take disciplinary action against, a European Delegated Prosecutor for reasons connected with his/her responsibilities under this Regulation without the consent of the European Chief Prosecutor. If the European Chief Prosecutor does not consent, the Member State concerned may request the College to review the matter.

5. If a European Delegated Prosecutor resigns, if his/her services are no longer necessary to fulfil the duties of the EPPO, or if he/she is dismissed or leaves his/her position for any other reason, the relevant Member State shall immediately inform the European Chief Prosecutor and, where necessary, nominate another prosecutor to be appointed as the new European Delegated Prosecutor in accordance with paragraph 1.

Article 18

Status of the Administrative Director

1. The Administrative Director shall be engaged as a temporary agent of the EPPO under Article 2(a) of the Conditions of Employment.

2. The Administrative Director shall be appointed by the College from a list of candidates proposed by the European Chief Prosecutor, following an open and transparent selection procedure in accordance with the internal rules of procedure of the EPPO. For the purpose of concluding the contract of the Administrative Director, the EPPO shall be represented by the European Chief Prosecutor.

3. The term of office of the Administrative Director shall be 4 years. By the end of that period, the College shall undertake an assessment which takes into account an evaluation of the performance of the Administrative Director.

4. The College, acting on a proposal from the European Chief Prosecutor which takes into account the assessment referred to in paragraph 3, may extend once the term of office of the Administrative Director for a period of no more than 4 years.

5. An Administrative Director whose term of office has been extended may 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 European Chief Prosecutor and the College.

7. Upon a decision of the College on the basis of a two-thirds majority of its members and without prejudice to the applicable rules pertaining to the termination of contract in the Staff Regulations and the Conditions of Employment, the Administrative Director may be removed from the EPPO.

Article 19

Responsibilities of the Administrative Director

1. For administrative and budgetary purposes, the EPPO shall be managed by its Administrative Director.

2. Without prejudice to the powers of the College or the European Chief Prosecutor, the Administrative Director shall be independent in the performance of his/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 the EPPO for administrative and budgetary purposes. The Administrative Director shall implement the budget of the EPPO.

4. The Administrative Director shall be responsible for the implementation of the administrative tasks assigned to the EPPO, in particular:

- (a) the day-to-day administration of the EPPO and staff management;
- (b) implementing the decisions adopted by the European Chief Prosecutor or the College;
- (c) preparing a proposal for the annual and multi-annual programming document and submitting it to the European Chief Prosecutor;
- (d) implementing the annual and multi-annual programming documents and reporting to the College on their implementation;
- (e) preparing the administrative and budgetary parts of the annual report on the EPPO's activities;
- (f) preparing an action plan following-up on the conclusions of the internal or external audit reports, evaluations and investigations, including those of the European Data Protection Supervisor and OLAF and reporting to them and to the College twice a year;
- (g) preparing an internal anti-fraud strategy for the EPPO and presenting it to the College for approval;
- (h) preparing a proposal for the draft financial rules applicable to the EPPO, and submitting it to the European Chief Prosecutor;
- (i) preparing a proposal for the EPPO's draft statement of estimates of revenues and expenditures, and submitting it to the European Chief Prosecutor;
- (j) providing necessary administrative support to facilitate the operational work of the EPPO;
- (k) providing support to the European Chief Prosecutor and the Deputy European Chief Prosecutors in the carrying out of their duties.

Article 20

Provisional administrative arrangements of the EPPO

1. Based on provisional budgetary appropriations allocated in its own budget, the Commission shall be responsible for the establishment and initial administrative operation of the EPPO until the latter has the capacity to implement its own budget. For that purpose the Commission may:

- (a) designate, after consulting with the Council, a Commission official to act as interim Administrative Director and exercise the duties assigned to the Administrative Director, including the powers conferred by the Staff Regulations and the Conditions of Employment on the appointing authority regarding administrative staff of the EPPO, in respect of any staff positions which need to be filled before the Administrative Director takes up his or her duties in accordance with Article 18;
- (b) offer assistance to the EPPO, in particular by seconding a limited number of Commission officials necessary to carry out the administrative activities of the EPPO under the responsibility of the interim Administrative Director.

2. The interim Administrative Director may authorise all payments covered by appropriations entered in the EPPO's budget and may conclude contracts, including staff contracts.

3. Once the College takes up its duties in accordance with Article 9(1), the interim Administrative Director shall exercise his/her duties in accordance with Article 18. The interim Administrative Director shall cease to exercise that function once the Administrative Director has taken up duties following appointment by the College in accordance with Article 18.

4. Until the College takes up its duties in accordance with Article 9(1), the Commission shall exercise its functions set out in this Article in consultation with a group of experts composed of representatives of the Member States.

SECTION 3

Internal rules of procedure of the EPPO

Article 21

Internal rules of procedure of the EPPO

1. The organisation of the work of the EPPO shall be governed by its internal rules of procedure
2. Once the EPPO has been set up, the European Chief Prosecutor shall without delay prepare a proposal for the internal rules of procedure of the EPPO, to be adopted by the College by a two-thirds majority.
3. Modifications to the internal rules of procedure of the EPPO may be proposed by any European Prosecutor and shall be adopted if the College so decides by a two-thirds majority.

CHAPTER IV

COMPETENCE AND EXERCISE OF THE COMPETENCE OF THE EPPO

SECTION 1

Competence of the EPPO

Article 22

Material competence of the EPPO

1. The EPPO shall be competent in respect of the criminal offences affecting the financial interests of the Union that are provided for in Directive (EU) 2017/1371, as implemented by national law, irrespective of whether the same criminal conduct could be classified as another type of offence under national law. As regards offences referred to in point (d) of Article 3(2) of Directive (EU) 2017/1371, as implemented by national law, the EPPO shall only be competent when the intentional acts or omissions defined in that provision are connected with the territory of two or more Member States and involve a total damage of at least EUR 10 million.
2. The EPPO shall also be competent for offences regarding participation in a criminal organisation as defined in Framework Decision 2008/841/JHA, as implemented in national law, if the focus of the criminal activity of such a criminal organisation is to commit any of the offences referred to in paragraph 1.
3. The EPPO shall also be competent for any other criminal offence that is inextricably linked to criminal conduct that falls within the scope of paragraph 1 of this Article. The competence with regard to such criminal offences may only be exercised in conformity with Article 25(3).
4. In any case, the EPPO shall not be competent for criminal offences in respect of national direct taxes including offences inextricably linked thereto. The structure and functioning of the tax administration of the Member States shall not be affected by this Regulation.

Article 23

Territorial and personal competence of the EPPO

The EPPO shall be competent for the offences referred to in Article 22 where such offences:

- (a) were committed in whole or in part within the territory of one or several Member States;
- (b) were committed by a national of a Member State, provided that a Member State has jurisdiction for such offences when committed outside its territory, or

- (c) were committed outside the territories referred to in point (a) by a person who was subject to the Staff Regulations or to the Conditions of Employment, at the time of the offence, provided that a Member State has jurisdiction for such offences when committed outside its territory.

SECTION 2

Exercise of the competence of the EPPO

Article 24

Reporting, registration and verification of information

1. The institutions, bodies, offices and agencies of the Union and the authorities of the Member States competent under applicable national law shall without undue delay report to the EPPO any criminal conduct in respect of which it could exercise its competence in accordance with Article 22, Article 25(2) and (3).
2. When a judicial or law enforcement authority of a Member State initiates an investigation in respect of a criminal offence for which the EPPO could exercise its competence in accordance with Article 22, Article 25(2) and (3), or where, at any time after the initiation of an investigation, it appears to the competent judicial or law enforcement authority of a Member State that an investigation concerns such an offence, that authority shall without undue delay inform the EPPO so that the latter can decide whether to exercise its right of evocation in accordance with Article 27.
3. When a judicial or law enforcement authority of a Member State initiates an investigation in respect of a criminal offence as defined in Article 22 and considers that the EPPO could, in accordance with Article 25(3), not exercise its competence, it shall inform the EPPO thereof.
4. The report shall contain, as a minimum, a description of the facts, including an assessment of the damage caused or likely to be caused, the possible legal qualification and any available information about potential victims, suspects and any other involved persons.
5. The EPPO shall also be informed, in accordance with paragraphs 1 and 2 of this Article, of cases where an assessment of whether the criteria in Article 25(2) are met is not possible.
6. Information provided to the EPPO shall be registered and verified in accordance with its internal rules of procedure. The verification shall assess whether, on the basis of the information provided in accordance with paragraphs 1 and 2, there are grounds to initiate an investigation or to exercise the right of evocation.
7. Where upon verification the EPPO decides that there are no grounds to initiate an investigation in accordance with Article 26, or to exercise its right of evocation in accordance with Article 27, the reasons shall be noted in the case management system.

The EPPO shall inform the authority that reported the criminal conduct in accordance with paragraph 1 or 2, as well as crime victims and if so provided by national law, other persons who reported the criminal conduct.

8. Where it comes to the knowledge of the EPPO that a criminal offence outside of the scope of the competence of the EPPO may have been committed, it shall without undue delay inform the competent national authorities and forward all relevant evidence to them.
9. In specific cases, the EPPO may request further relevant information available to the institutions, bodies, offices and agencies of the Union and the authorities of the Member States. The requested information may concern infringements which caused damage to the Union's financial interests, other than those within the competence of the EPPO in accordance with Article 25(2).
10. The EPPO may request other information in order to enable the College, in accordance with Article 9(2), to issue general guidelines on the interpretation of the obligation to inform the EPPO of cases falling within the scope of Article 25(2).

Article 25

Exercise of the competence of the EPPO

1. The EPPO shall exercise its competence either by initiating an investigation under Article 26 or by deciding to use its right of evocation under Article 27. If the EPPO decides to exercise its competence, the competent national authorities shall not exercise their own competence in respect of the same criminal conduct.

2. Where a criminal offence that falls within the scope of Article 22 caused or is likely to cause damage to the Union's financial interests of less than EUR 10 000, the EPPO may only exercise its competence if:

- (a) the case has repercussions at Union level which require an investigation to be conducted by the EPPO; or
- (b) officials or other servants of the Union, or members of the institutions of the Union could be suspected of having committed the offence.

The EPPO shall, where appropriate, consult the competent national authorities or bodies of the Union to establish whether the criteria set out in points (a) and (b) of the first subparagraph are met.

3. The EPPO shall refrain from exercising its competence in respect of any offence falling within the scope of Article 22 and shall, upon consultation with the competent national authorities, refer the case without undue delay to the latter in accordance with Article 34 if:

- (a) the maximum sanction provided for by national law for an offence falling within the scope of Article 22(1) is equal to or less severe than the maximum sanction for an inextricably linked offence as referred to in Article 22(3) unless the latter offence has been instrumental to commit the offence falling within the scope of Article 22(1); or
- (b) there is a reason to assume that the damage caused or likely to be caused, to the Union's financial interests by an offence as referred to in Article 22 does not exceed the damage caused, or likely to be caused to another victim.

Point (b) of the first subparagraph of this paragraph shall not apply to offences referred to in Article 3(2)(a), (b) and (d) of Directive (EU) 2017/1371 as implemented by national law.

4. The EPPO may, with the consent of the competent national authorities, exercise its competence for offences referred to in Article 22 in cases which would otherwise be excluded due to application of paragraph 3(b) of this Article if it appears that the EPPO is better placed to investigate or prosecute.

5. The EPPO shall inform the competent national authorities without undue delay of any decision to exercise or to refrain from exercising its competence.

6. In the case of disagreement between the EPPO and the national prosecution authorities over the question of whether the criminal conduct falls within the scope of Article 22(2), or (3) or Article 25(2) or (3), the national authorities competent to decide on the attribution of competences concerning prosecution at national level shall decide who is to be competent for the investigation of the case. Member States shall specify the national authority which will decide on the attribution of competence.

CHAPTER V

RULES OF PROCEDURE ON INVESTIGATIONS, INVESTIGATION MEASURES, PROSECUTION AND ALTERNATIVES TO PROSECUTION

SECTION 1

Rules on investigations

Article 26

Initiation of investigations and allocation of competences within the EPPO

1. Where, in accordance with the applicable national law, there are reasonable grounds to believe that an offence within the competence of the EPPO is being or has been committed, a European Delegated Prosecutor in a Member State which according to its national law has jurisdiction over the offence shall, without prejudice to the rules set out in Article 25(2) and (3), initiate an investigation and note this in the case management system.

2. Where upon verification in accordance with Article 24(6), the EPPO decides to initiate an investigation, it shall without undue delay inform the authority that reported the criminal conduct in accordance with Article 24(1) or (2).

3. Where no investigation has been initiated by a European Delegated Prosecutor, the Permanent Chamber to which the case has been allocated shall, under the conditions set out in paragraph 1, instruct a European Delegated Prosecutor to initiate an investigation.

4. A case shall as a rule be initiated and handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competences of the EPPO have been committed, the Member State where the bulk of the offences has been committed. A European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber to initiate an investigation where a deviation from the rule set out in the previous sentence is duly justified, taking into account the following criteria, in order of priority:

- (a) the place of the suspect's or accused person's habitual residence;
- (b) the nationality of the suspect or accused person;
- (c) the place where the main financial damage has occurred.

5. Until a decision to prosecute under Article 36 is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to:

- (a) reallocate the case to a European Delegated Prosecutor in another Member State;
- (b) merge or split cases and, for each case choose the European Delegated Prosecutor handling it,

if such decisions are in the general interest of justice and in accordance with the criteria for the choice of the handling European Delegated Prosecutor in accordance with paragraph 4 of this Article.

6. Whenever the Permanent Chamber is taking a decision to reallocate, merge or split a case, it shall take due account of the current state of the investigations.

7. The EPPO shall inform the competent national authorities without undue delay of any decision to initiate an investigation.

Article 27

Right of evocation

1. Upon receiving all relevant information in accordance with Article 24(2), the EPPO shall take its decision on whether to exercise its right of evocation as soon as possible, but no later than 5 days after receiving the information from the national authorities and shall inform the national authorities of that decision. The European Chief Prosecutor may in a specific case take a reasoned decision to prolong the time limit by a maximum period of 5 days, and shall inform the national authorities accordingly.

2. During the periods referred to in paragraph 1, the national authorities shall refrain from taking any decision under national law that may have the effect of precluding the EPPO from exercising its right of evocation.

The national authorities shall take any urgent measures necessary, under national law, to ensure effective investigation and prosecution.

3. If the EPPO becomes aware, by means other than the information referred to in Article 24(2), of the fact that an investigation in respect of a criminal offence for which it could be competent is already undertaken by the competent authorities of a Member State, it shall inform these authorities without delay. After being duly informed in accordance with Article 24(2), the EPPO shall take a decision on whether to exercise its right of evocation. The decision shall be taken within the time limits set out in paragraph 1 of this Article.

4. The EPPO shall, where appropriate, consult the competent authorities of the Member State concerned before deciding whether to exercise its right of evocation.

5. Where the EPPO exercises its right of evocation, the competent authorities of the Member States shall transfer the file to the EPPO and refrain from carrying out further acts of investigation in respect of the same offence.

6. The right of evocation set out in this Article may be exercised by a European Delegated Prosecutor from any Member State whose competent authorities have initiated an investigation in respect of an offence that falls within the scope of Articles 22 and 23.

Where a European Delegated Prosecutor, who has received the information in accordance with Article 24(2), considers not to exercise the right of evocation, he/she shall inform the competent Permanent Chamber through the European Prosecutor of his/her Member State with a view to enabling the Permanent Chamber to take a decision in accordance with Article 10(4).

7. Where the EPPO has refrained from exercising its competence, it shall inform the competent national authorities without undue delay. At any time in the course of the proceedings, the competent national authorities shall inform the EPPO of any new facts which could give the EPPO reasons to reconsider its decision not to exercise competence.

The EPPO may exercise its right of evocation after receiving such information, provided that the national investigation has not already been finalised and that an indictment has not been submitted to a court. The decision shall be taken within the time limit set out in paragraph 1.

8. Where, with regard to offences which caused or are likely to cause damage to the Union's financial interests of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute at Union level, it shall in accordance with Article 9(2), issue general guidelines allowing the European Delegated Prosecutors to decide, independently and without undue delay, not to evoke the case.

The guidelines shall specify, with all necessary details, the circumstances to which they apply, by establishing clear criteria, taking specifically into account the nature of the offence, the urgency of the situation and the commitment of the competent national authorities to take all necessary measures in order to fully recover the damage to the Union's financial interests.

9. To ensure coherent application of the guidelines, a European Delegated Prosecutor shall inform the competent Permanent Chamber of each decision taken in accordance with paragraph 8 and each Permanent Chamber shall report annually to the College on the application of the guidelines.

Article 28

Conducting the investigation

1. The European Delegated Prosecutor handling a case may, in accordance with this Regulation and with national law, either undertake the investigation measures and other measures on his/her own or instruct the competent authorities in his/her Member State. Those authorities shall, in accordance with national law, ensure that all instructions are followed and undertake the measures assigned to them. The handling European Delegated Prosecutor shall report through the case management system to the competent European Prosecutor and to the Permanent Chamber any significant developments in the case, in accordance with the rules laid down in the internal rules of procedure of the EPPO.

2. At any time during the investigations conducted by the EPPO, the competent national authorities shall take urgent measures in accordance with national law necessary to ensure effective investigations even where not specifically acting under an instruction given by the handling European Delegated Prosecutor. The national authorities shall without undue delay inform the handling European Delegated Prosecutor of the urgent measures they have taken.

3. The competent Permanent Chamber may, on proposal of the supervising European Prosecutor decide to reallocate a case to another European Delegated Prosecutor in the same Member State when the handling European Delegated Prosecutor:

(a) cannot perform the investigation or prosecution; or

(b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.

4. In exceptional cases, after having obtained the approval of the competent Permanent Chamber, the supervising European Prosecutor may take a reasoned decision to conduct the investigation personally, either by undertaking personally the investigation measures and other measures or by instructing the competent authorities in his/her Member State, where this appears to be indispensable in the interest of the efficiency to the investigation or prosecution by reasons of one or more of the following criteria:

- (a) the seriousness of the offence, in particular in view of its possible repercussions at Union level;
- (b) when the investigation concerns officials or other servants of the Union or members of the institutions of the Union;
- (c) in the event of failure of the reallocation mechanism provided for in paragraph 3.

In such exceptional circumstances Member States shall ensure that the European Prosecutor is entitled to order or request investigative measures and other measures and that he/she has all the powers, responsibilities and obligations of a European Delegated Prosecutor in accordance with this Regulation and national law.

The competent national authorities and the European Delegated Prosecutors concerned by the case shall be informed without undue delay of the decision taken under this paragraph.

Article 29

Lifting privileges or immunities

1. Where the investigations of the EPPO involve persons protected by a privilege or immunity under national law, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Chief Prosecutor shall make a reasoned written request for its lifting in accordance with the procedures laid down by that national law.
2. Where the investigations of the EPPO involve persons protected by privileges or immunities under the Union law, in particular the Protocol on the privileges and immunities of the European Union, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Chief Prosecutor shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.

SECTION 2

Rules on investigation measures and other measures

Article 30

Investigation measures and other measures

1. At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least 4 years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request the following investigation measures:
 - (a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;
 - (b) obtain the production of any relevant object or document either in its original form or in some other specified form;
 - (c) obtain the production of stored computer data, encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council ⁽¹⁾;
 - (d) freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the judgement ordering confiscation.

⁽¹⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).

(e) intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using;

(f) track and trace an object by technical means, including controlled deliveries of goods.

2. Without prejudice to Article 29, the investigation measures set out in paragraph 1 of this Article may be subject to conditions in accordance with the applicable national law if the national law contains specific restrictions that apply with regard to certain categories of persons or professionals who are legally bound by an obligation of confidentiality.

3. The investigation measures set out in points(c), (e) and (f) of paragraph 1 of this Article may be subject to further conditions, including limitations, provided for in the applicable national law. In particular, Member States may limit the application of points (e) and (f) of paragraph 1 of this Article to specific serious offences. A Member State intending to make use of such limitation shall notify the EPPO of the relevant list of specific serious offences in accordance with Article 117.

4. The European Delegated Prosecutors shall be entitled to request or to order any other measures in their Member State that are available to prosecutors under national law in similar national cases, in addition to the measures referred to in paragraph 1.

5. The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 4 where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective. The procedures and the modalities for taking the measures shall be governed by the applicable national law.

Article 31

Cross-border investigations

1. The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the handling European Delegated Prosecutor, the latter European Delegated Prosecutor shall decide on the adoption of the necessary measure and assign it to a European Delegated Prosecutor located in the Member State where the measure needs to be carried out.

2. The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30. The justification and adoption of such measures shall be governed by the law of the Member States' of the handling European Delegated Prosecutor. Where the handling European Delegated Prosecutor assigns an investigation measure to one or several European Delegated Prosecutors from another Member State, he/she shall at the same time inform his supervising European Prosecutor.

3. If judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor shall obtain that authorisation in accordance with the law of that Member State.

If judicial authorisation for the assigned measure is refused, the handling European Delegated Prosecutor shall withdraw the assignment.

However, where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor requires it, the authorisation shall be obtained by the latter European Delegated Prosecutor and submitted together with the assignment.

4. The assisting European Delegated Prosecutor shall undertake the assigned measure, or instruct the competent national authority to do so.

5. Where the assisting European Delegated Prosecutor considers that:

- (a) the assignment is incomplete or contains a manifest relevant error;
- (b) the measure cannot be undertaken within the time limit set out in the assignment for justified and objective reasons;
- (c) an alternative but less intrusive measure would achieve the same results as the measure assigned; or
- (d) the assigned measure does not exist or would not be available in a similar domestic case under the law of his/her Member State,

he/she shall inform his supervising European Prosecutor and consult with the handling European Delegated Prosecutor in order to resolve the matter bilaterally.

6. If the assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation, the European Delegated Prosecutors concerned may, in agreement with the supervising European Prosecutors concerned, have recourse to such instruments.

7. If the European Delegated Prosecutors cannot resolve the matter within 7 working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.

8. The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then decide without undue delay, in accordance with applicable national law as well as this Regulation, whether and by when the assigned measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision to the said European Delegated Prosecutors through the competent European Prosecutor.

Article 32

Enforcement of assigned measures

The assigned measures shall be carried out in accordance with this Regulation and the law of the Member State of the assisting European Delegated Prosecutor. Formalities and procedures expressly indicated by the handling European Delegated Prosecutor shall be complied with unless such formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor.

Article 33

Pre-trial arrest and cross-border surrender

1. The handling European Delegated Prosecutor may order or request the arrest or pre-trial detention of the suspect or accused person in accordance with the national law applicable in similar domestic cases.
2. Where it is necessary to arrest and surrender a person who is not present in the Member State in which the handling European Delegated Prosecutor is located, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA ⁽¹⁾.

SECTION 3

Rules on prosecution

Article 34

Referrals and transfers of proceedings to the national authorities

1. Where an investigation conducted by the EPPO reveals that the facts subject to investigation do not constitute a criminal offence for which it is competent under Articles 22 and 23, the competent Permanent Chamber shall decide to refer the case without undue delay to the competent national authorities.

⁽¹⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

2. Where an investigation conducted by the EPPO reveals that the specific conditions for the exercise of its competence set out in Article 25(2) and (3) are no longer met, the competent Permanent Chamber shall decide to refer the case to the competent national authorities without undue delay and before initiating prosecution at national courts.

3. Where, with regard to offences which caused or are likely to cause damage to the financial interests of the Union of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute a case at Union level and that it would be in the interest of the efficiency of investigation or prosecution, it shall in accordance with Article 9(2), issue general guidelines allowing the Permanent Chambers to refer a case to the competent national authorities.

Such guidelines shall also allow the Permanent Chambers to refer a case to the competent national authorities where the EPPO exercises a competence in respect of offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371 and where the damage caused or likely to be caused to the Union's financial interests does not exceed the damage caused or likely to be caused to another victim.

To ensure coherent application of the guidelines, each Permanent Chamber shall report annually to the College on the application of the guidelines.

Such referrals shall also include any inextricably linked offences within the competence of the EPPO as referred to in Article 22(3).

4. The Permanent Chamber shall communicate any decision to refer a case to national authorities on the basis of paragraph 3 to the European Chief Prosecutor. Within 3 days of receiving of this information, the European Chief Prosecutor may request the Permanent Chamber to review its decision if the European Chief Prosecutor considers that the interest to ensure the coherence of the referral policy of the EPPO so requires. If the European Chief Prosecutor is a Member of the relevant Permanent Chamber, one of the Deputy European Chief Prosecutors shall exercise the right to request the said review.

5. Where the competent national authorities do not accept to take over the case in accordance with paragraph 2 and 3 within a timeframe of maximum 30 days, the EPPO shall remain competent to prosecute or dismiss the case, in accordance with the rules laid down in this Regulation.

6. Where the EPPO considers a dismissal in accordance with Article 39(3), and if the national authority so requires, the Permanent Chamber shall refer the case without delay to that authority.

7. If, following a referral in accordance with paragraph (1), (2) or (3) of this Article and Article 25(3), the national authority decides to open an investigation, the EPPO shall transfer the file to that national authority, refrain from taking further investigative or prosecutorial measures and close the case.

8. If a file is transferred in accordance with paragraph (1), (2) or (3) of this Article and Article 25(3), the EPPO shall inform the relevant institutions, bodies, offices and agencies of the Union, as well as, where appropriate under national law, suspects or accused persons and the crime victims of the transfer.

Article 35

Termination of the investigation

1. When the handling European Delegated Prosecutor considers the investigation to be completed, he/she shall submit a report to the supervising European Prosecutor, containing a summary of the case and a draft decision whether to prosecute before a national court or to consider a referral of the case, dismissal or simplified prosecution procedure in accordance with Article 34, 39 or 40. The supervising European Prosecutor shall forward those documents to the competent Permanent Chamber accompanied, if he/she considers it to be necessary, by his/her own assessment. When the Permanent Chamber, in accordance with Article 10(3), takes the decision as proposed by the European Delegated Prosecutor, he/she shall pursue the matter accordingly.

2. If the Permanent Chamber, based on the reports received, considers that it will not take the decision as proposed by the European Delegated Prosecutor, it shall, where necessary, undertake its own review of the case file before taking a final decision or giving further instructions to the European Delegated Prosecutor.

3. Where applicable, the report of the European Delegated Prosecutor shall also provide sufficient reasoning for bringing the case to judgment either at a court of the Member State where he/she is located, or, in accordance with Article 26(4) at a court of a different Member State which has jurisdiction over the case.

Article 36

Prosecution before national Courts

1. When the European Delegated Prosecutor submits a draft decision proposing to bring a case to judgment, the Permanent Chamber shall, following the procedures set out in Article 35, decide on this draft within 21 days. The Permanent Chamber cannot decide to dismiss the case if a draft decision proposes bringing a case to judgment.

2. Where the Permanent Chamber does not take a decision within the 21-day time limits, the decision proposed by the European Delegated Prosecutor shall be deemed to be accepted.

3. Where more than one Member State has jurisdiction over the case, the Permanent Chamber shall in principle decide to bring the case to prosecution in the Member State of the handling European Delegated Prosecutor. However, the Permanent Chamber may, taking into account the report provided in accordance with Article 35(1), decide to bring the case to prosecution in a different Member State, if there are sufficiently justified grounds to do so, taking into account the criteria set out in Article 26(4) and (5), and instruct a European Delegated Prosecutor of that Member State accordingly.

4. Before deciding to bring a case to judgment, the competent Permanent Chamber may, on the proposal of the handling European Delegated Prosecutor, decide to join several cases, where investigations have been conducted by different European Delegated Prosecutors against the same person(s) with a view to prosecuting these cases in the courts of a single Member State which, in accordance with its law, has jurisdiction for each of those cases.

5. Once a decision on the Member State in which the prosecution shall be brought has been taken, the competent national court within that Member State shall be determined on the basis of national law.

6. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the Central Office shall notify the competent national authorities, interested persons and the relevant institutions, bodies, offices and agencies of the Union of the decision to prosecute.

7. Where, following a judgment of the Court, the prosecution has to decide whether to lodge an appeal, the European Delegated Prosecutor shall submit a report including a draft decision to the competent Permanent Chamber and await its instructions. Should it be impossible to await those instructions within the deadline set by national law, the European Delegated Prosecutor shall be entitled to lodge the appeal without prior instructions from the Permanent Chamber, and shall subsequently submit the report to the Permanent Chamber without delay. The Permanent Chamber shall then instruct the European Delegated Prosecutor either to maintain or withdraw the appeal. The same procedure shall apply when, in the course of the court proceedings and in accordance with applicable national law, the handling European Delegated Prosecutor would take a position that would lead to the dismissal of the case.

Article 37

Evidence

1. Evidence presented by the prosecutors of the EPPO or the defendant to a court shall not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State.

2. The power of the trial court to freely assess the evidence presented by the defendant or the prosecutors of the EPPO shall not be affected by this Regulation.

*Article 38***Disposition of confiscated assets**

Where, in accordance with the requirements and procedures under national law including the national law transposing Directive 2014/42/EU of the European Parliament and of the Council ⁽¹⁾, the competent national court has decided by a final ruling to confiscate any property related to, or proceeds derived from, an offence within the competence of the EPPO, such assets or proceeds shall be disposed of in accordance with applicable national law. This disposition shall not negatively affect the rights of the Union or other victims to be compensated for damage that they have incurred.

*SECTION 4****Rules on alternatives to prosecution****Article 39***Dismissal of the case**

1. Where prosecution has become impossible, pursuant to the law of the Member State of the handling European Delegated Prosecutor, the Permanent Chamber shall, based on a report provided by the European Delegated Prosecutor handling the case in accordance with Article 35(1), decide to dismiss the case against a person on account of any of the following grounds:

- (a) the death of the suspect or accused person or winding up of a suspect or accused legal person;
- (b) the insanity of the suspect or accused person;
- (c) amnesty granted to the suspect or accused person;
- (d) immunity granted to the suspect or accused person, unless it has been lifted;
- (e) expiry of the national statutory limitation to prosecute;
- (f) the suspect's or accused person's case has already been finally disposed of in relation to the same acts;
- (g) the lack of relevant evidence.

2. A decision in accordance with paragraph 1 shall not bar further investigations on the basis of new facts which were not known to the EPPO at the time of the decision and which become known after the decision. The decision to reopen investigations on the basis of such new facts shall be taken by the competent Permanent Chamber.

3. Where the EPPO is competent in accordance with Article 22(3), it shall dismiss a case only after consultation with the national authorities of the Member State referred to in Article 25(6). If applicable, the Permanent Chamber shall refer the case to the competent national authorities in accordance with Article 34(6), (7) and (8).

The same applies where the EPPO exercises a competence in respect of offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371 and where the damage caused or likely to be caused to the Union's financial interests does not exceed the damage caused or likely to be caused to another victim.

4. Where a case has been dismissed, the EPPO shall officially notify the competent national authorities and shall inform the relevant institutions, bodies, offices and agencies of the Union, as well as, where appropriate under national law, the suspects or accused persons and the crime victims, of such dismissal. The dismissed cases may also be referred to OLAF or to the competent national administrative or judicial authorities for recovery or other administrative follow-up.

*SECTION 5****Rules on simplified procedures****Article 40***Simplified prosecution procedures**

1. If the applicable national law provides for a simplified prosecution procedure aiming at the final disposal of a case on the basis of terms agreed with the suspect, the handling European Delegated Prosecutor may, in accordance with Article 10(3) and Article 35(1), propose to the competent Permanent Chamber to apply that procedure in accordance with the conditions provided for in national law.

⁽¹⁾ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

Where the EPPO exercises a competence in respect of offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371 and where the damage caused or likely to be caused to the Union's financial interest does not exceed the damage caused or likely to be caused to another victim, the handling European Delegated Prosecutor shall consult national prosecution authorities before proposing to apply a simplified prosecution procedure.

2. The Permanent Chamber shall decide on the proposal of the handling European Delegated Prosecutor taking into account the following grounds:

- (a) the seriousness of the offence, based on in particular the damage caused;
- (b) the willingness of the suspected offender to repair the damage caused by the illegal conduct;
- (c) the use of the procedure would be in accordance with the general objectives and basic principles of the EPPO as set out in this Regulation.

The College shall, in accordance with Article 9(2), adopt guidelines on the application of those grounds.

3. If the Permanent Chamber agrees with the proposal, the handling European Delegated Prosecutor shall apply the simplified prosecution procedure in accordance with the conditions provided for in national law and register it in the case management system. When the simplified prosecution procedure has been finalised upon fulfilment of the terms agreed with the suspect, the Permanent Chamber shall instruct the European Delegated Prosecutor to act with a view to finally dispose of the case.

CHAPTER VI

PROCEDURAL SAFEGUARDS

Article 41

Scope of the rights of the suspects and accused persons

1. The activities of the EPPO shall be carried out in full compliance with the rights of suspects and accused persons enshrined in the Charter, including the right to a fair trial and the rights of defence.

2. Any suspected or accused person in the criminal proceedings of the EPPO shall, at a minimum, have the procedural rights provided for in Union law, including directives concerning the rights of suspects and accused persons in criminal procedures, as implemented by national law, such as:

- (a) the right to interpretation and translation, as provided for in Directive 2010/64/EU;
- (b) the right to information and access to the case materials, as provided for in Directive 2012/13/EU;
- (c) the right of access to a lawyer and the right to communicate with and have third persons informed in the event of detention, as provided for in Directive 2013/48/EU;
- (d) the right to remain silent and the right to be presumed innocent as provided for in Directive (EU) 2016/343;
- (e) the right to legal aid as provided for in Directive (EU) 2016/1919.

3. Without prejudice to the rights referred to in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the EPPO shall have all the procedural rights available to them under the applicable national law, including the possibility to present evidence, to request the appointment of experts or expert examination and hearing of witnesses, and to request the EPPO to obtain such measures on behalf of the defence.

Article 42

Judicial review

1. Procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties shall be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law. The same applies to failures of the EPPO to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties and which it was legally required to adopt under this Regulation.

2. The Court of Justice shall have jurisdiction, in accordance with Article 267 TFEU, to give preliminary rulings concerning:

- (a) the validity of procedural acts of the EPPO, in so far as such a question of validity is raised before any court or tribunal of a Member State directly on the basis of Union law;
- (b) the interpretation or the validity of provisions of Union law, including this Regulation;
- (c) the interpretation of Articles 22 and 25 of this Regulation in relation to any conflict of competence between the EPPO and the competent national authorities.

3. By way of derogation from paragraph 1 of this Article, the decisions of the EPPO to dismiss a case, in so far as they are contested directly on the basis of Union law, shall be subject to review before the Court of Justice in accordance with the fourth paragraph of Article 263 TFEU.

4. The Court of Justice shall have jurisdiction in accordance with Article 268 TFEU in any dispute relating to compensation for damage caused by the EPPO.

5. The Court of Justice shall have jurisdiction in accordance with Article 272 TFEU in any dispute concerning arbitration clauses contained in contracts concluded by the EPPO.

6. The Court of Justice shall have jurisdiction in accordance with Article 270 TFEU in any dispute concerning staff-related matters.

7. The Court of Justice shall have jurisdiction on the dismissal of the European Chief Prosecutor or European Prosecutors, in accordance, respectively, with Article 14(5) and Article 16(5).

8. This Article is without prejudice to judicial review by the Court of Justice in accordance with the fourth paragraph of Article 263 TFEU of decisions of the EPPO that affect the data subjects' rights under Chapter VIII and of decisions of the EPPO which are not procedural acts, such as decisions of the EPPO concerning the right of public access to documents, or decisions dismissing European Delegated Prosecutors adopted pursuant to Article 17(3) of this Regulation, or any other administrative decisions.

CHAPTER VII

PROCESSING OF INFORMATION

Article 43

Access to information by the EPPO

1. European Delegated Prosecutors shall be able to obtain any relevant information stored in national criminal investigation and law enforcement databases, as well as other relevant registers of public authorities, under the same conditions as those that apply under national law in similar cases.

2. The EPPO shall also be able to obtain any relevant information falling within its competence that is stored in databases and registers of the institutions, bodies, offices and agencies of the Union.

Article 44

Case management system

1. The EPPO shall establish a case management system, which shall be held and managed in accordance with the rules established in this Regulation and in the internal rules of procedure of the EPPO.

2. The purpose of the case management system shall be to:

- (a) support the management of investigations and prosecutions conducted by the EPPO, in particular by managing internal information workflows and by supporting investigative work in cross-border cases;
- (b) ensure secure access to information on investigations and prosecutions at the Central Office and by the European Delegated Prosecutors;

- (c) allow for the cross-referencing of information and the extraction of data for operational analysis and statistical purposes;
- (d) facilitate monitoring to ensure that the processing of operational personal data is lawful and complies with the relevant provisions of this Regulation.

3. The case management system may be linked to the secure telecommunications connection referred to in Article 9 of Council Decision 2008/976/JHA ⁽¹⁾.

4. The case management system shall contain:

- (a) a register of information obtained by the EPPO in accordance with Article 24, including any decisions in relation to that information,
- (b) an index of all case files;
- (c) all information from the case files stored electronically in the case management system in accordance with Article 45(3).

The index shall not contain any operational personal data other than data needed to identify cases or establish cross-links between different case files.

5. For the processing of operational personal data, the EPPO may only establish automated data files other than case files in accordance with this Regulation and with the internal rules of procedure of the EPPO. Details on such other automated data files shall be notified to the European Data Protection Supervisor.

Article 45

Case files of the EPPO

1. Where the EPPO decides to open an investigation or exercise its right of evocation in accordance with this Regulation, the handling European Delegated Prosecutor shall open a case file.

The case file shall contain all the information and evidence available to the European Delegated Prosecutor that relates to the investigation or prosecution by the EPPO.

Once an investigation has been opened, the information from the register referred to in Article 44(4)(a) shall become part of the case file.

2. The case file shall be managed by the handling European Delegated Prosecutor in accordance with the law of his/her Member State.

The internal rules of procedure of the EPPO may include rules on the organisation and management of the case files to the extent necessary to ensure the functioning of the EPPO as a single office. Access to the case file by suspects and accused persons as well as other persons involved in the proceedings shall be granted by the handling European Delegated Prosecutor in accordance with the national law of that Prosecutor's Member State.

3. The case management system of the EPPO shall include all information and evidence from the case file that may be stored electronically, in order to enable the Central Office to carry out its functions in accordance with this Regulation. The handling European Delegated Prosecutor shall ensure that the content of information in the case management system reflects at all times the case file, in particular that operational personal data contained in the case management system is erased or rectified whenever such data has been erased or rectified in the corresponding case file.

Article 46

Access to the case management system

The European Chief Prosecutor, the Deputy European Chief Prosecutors, other European Prosecutors and the European Delegated Prosecutors shall have direct access to the register and to the index.

⁽¹⁾ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

The supervising European Prosecutor as well as the competent Permanent Chamber shall, when exercising their competences in accordance with Articles 10 and 12, have direct access to information stored electronically in the case management system. The supervising European Prosecutor shall also have direct access to the case file. The competent Permanent Chamber shall have access to the case file at its request.

Other European Delegated Prosecutors may request access to information stored electronically in the case management system as well as any case file. The handling European Delegated Prosecutor shall decide on granting such access to other European Delegated Prosecutors in accordance with applicable national law. If the access is not granted, the matter may be referred to the competent Permanent Chamber. The competent Permanent Chamber shall, to the extent necessary, hear the European Delegated Prosecutors concerned and then decide in accordance with applicable national law as well as this Regulation.

The internal rules of procedure of the EPPO shall set out further rules regarding the right to access, and the procedure to establish the level of access to the case management system by the European Chief Prosecutor, the Deputy European Chief Prosecutors, other European Prosecutors, the European Delegated Prosecutors and the staff of the EPPO, to the extent required for the performance of their duties.

CHAPTER VIII

DATA PROTECTION

Article 47

Principles relating to processing of personal data

1. Personal data shall be:

- (a) processed lawfully and fairly ('lawfulness and fairness');
- (b) collected for specified, explicit and legitimate purposes and not further processed in a manner incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes provided that the EPPO provides appropriate safeguards for the rights and freedoms of data subjects ('purpose limitation');
- (c) adequate, relevant, and not excessive in relation to the purposes for which they are processed ('data minimisation');
- (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes provided that the EPPO provides appropriate safeguards for the rights and freedoms of data subjects, in particular by the implementation of the appropriate technical and organisational measures required by this Regulation ('storage limitation');
- (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

2. The EPPO shall be responsible for, and be able to demonstrate compliance with paragraph 1 ('accountability') when processing personal data wholly or partly by automated means and when processing other than by automated means personal data which form part of a filing system or are intended to form part of a filing system.

3. Processing by the EPPO for any of the purposes set out in Article 49 other than that for which the operational personal data are collected shall be permitted in so far as:

- (a) the EPPO is authorised to process such operational personal data for such a purpose in accordance with this Regulation; and
- (b) processing is necessary and proportionate to that other purpose in accordance with Union law; and
- (c) where relevant, the use of operational personal data is not prohibited by the applicable national procedural law on the investigative measures taken in accordance with Article 30. The applicable national procedural law is the law of the Member State where the data was obtained.

Article 48

Administrative personal data

1. Regulation (EC) No 45/2001 applies to all administrative personal data processed by the EPPO.
2. The EPPO shall determine the time limits for the storage of administrative personal data in the data protection provisions of its internal rules of procedure.

Article 49

Processing of operational personal data

1. The EPPO shall process operational personal data by automated means or in structured manual files in accordance with this Regulation, and only for the following purposes:
 - (a) criminal investigations and prosecutions undertaken in accordance with this Regulation; or
 - (b) information exchange with the competent authorities of Member States of the European Union and other institutions, bodies, offices and agencies of the Union in accordance with this Regulation; or
 - (c) cooperation with third countries and international organisations in accordance with this Regulation.
2. Categories of operational personal data, and the categories of data subjects whose operational personal data may be processed in the index as referred to in point (b) of Article 44(4) by the EPPO for each purpose referred to in paragraph 1 of this Article shall be listed in an Annex in accordance with paragraph 3.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 to list the categories of operational personal data and the categories of data subjects referred to in paragraph 2 of this Article and to update such a list in order to take account of developments in information technology and in the light of the state of progress in the information society.

Where imperative grounds of urgency so require, the procedure provided for in Article 116 shall apply to delegated acts adopted pursuant to this paragraph.

4. The EPPO may temporarily process operational personal data for the purpose of determining whether such data are relevant to its tasks and for the purposes referred to in paragraph 1. The College, acting on a proposal from the European Chief Prosecutor and after consulting the European Data Protection Supervisor, shall further specify the conditions relating to the processing of such operational personal data, in particular with respect to access to and the use of the data, as well as time limits for the storage and deletion of the data.

5. The EPPO shall process operational personal data in such a way that it can be established which authority provided the data or where the data has been retrieved from.

6. When applying Articles 57 to 62, the EPPO shall, where relevant, act in compliance with national procedural law on the obligation to provide information to the data subject and the possibilities to omit, restrict or delay such information. Where appropriate, the handling European Delegated Prosecutor shall consult other European Delegated Prosecutors concerned by the case before taking a decision in respect of Articles 57 to 62.

*Article 50***Time limits for the storage of operational personal data**

1. The EPPO shall review periodically the need for the storage of the operational personal data processed. At the latest, such a review shall be carried out not later than 3 years after the operational personal data were first processed and then every 3 years. If operational personal data are stored for a period exceeding 5 years, the European Data Protection Supervisor shall be informed of that fact.
2. Operational personal data processed by the EPPO shall not be stored beyond 5 years after an acquitting decision in respect of the case has become final; in case the accused was found guilty the time limits shall be extended until the penalty that has been imposed, is enforced or can no longer be enforced under the law of the sentencing Member State.
3. Before one of the deadlines referred to in paragraph 2 expires, the EPPO shall review the need for the continued storage of the operational personal data where and as long this is necessary to perform its tasks. The reasons for the continued storage shall be justified and recorded. If no decision is taken on the continued storage of operational personal data, those data shall be deleted automatically.

*Article 51***Distinction between different categories of data subject**

The EPPO shall, where applicable and as far as possible, make a clear distinction between operational personal data of different categories of data subjects, such as:

- (a) persons with regard to whom there are serious grounds for believing that they have committed or are about to commit a criminal offence;
- (b) persons convicted of a criminal offence;
- (c) victims of a criminal offence or persons with regard to whom certain facts give rise to reasons for believing that they could be the victim of a criminal offence; and
- (d) other parties to a criminal offence, such as persons who might be called upon to testify in investigations in connection with criminal offences or subsequent criminal proceedings, persons who can provide information on criminal offences, or contacts or associates of one of the persons referred to in points (a) and (b).

*Article 52***Distinction between operational personal data and verification of quality of personal data**

1. The EPPO shall distinguish, as far as possible, operational personal data based on facts from operational personal data based on personal assessments.
2. The EPPO shall take all reasonable steps to ensure that operational personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available. To that end, the EPPO shall, as far as practicable, verify the quality of operational personal data before they are transmitted or made available. As far as possible, in all transmissions of operational personal data, the EPPO shall add necessary information enabling the recipient to assess the degree of accuracy, completeness and reliability of operational personal data, and the extent to which they are up to date.
3. If it emerges that incorrect operational personal data have been transmitted or operational personal data have been unlawfully transmitted, the recipient shall be notified without delay. In such a case, the operational personal data shall be rectified or erased or processing shall be restricted in accordance with Article 61.

*Article 53***Specific processing conditions**

1. When required by this Regulation, the EPPO shall provide for specific conditions for processing and shall inform the recipient of such operational personal data of those conditions and the requirement to comply with them.

2. The EPPO shall comply with specific processing conditions for processing provided by a national authority in accordance with Article 9(3) and (4) of Directive (EU) 2016/680.

Article 54

Transmission of operational personal data to institutions, bodies, offices and agencies of the Union

1. Subject to any further restrictions pursuant to this Regulation, in particular Article 53, the EPPO shall only transmit operational personal data to another institution, body, office or agency of the Union if the data are necessary for the legitimate performance of tasks covered by the competence of the other institution, body, office or agency of the Union.
2. Where the operational personal data are transmitted following a request from the other institution, body, office or agency of the Union, both the controller and the recipient shall bear the responsibility for the legitimacy of this transfer.

The EPPO shall be required to verify the competence of the other institution, body, office or agency of the Union and to make a provisional evaluation of the necessity for the transmission of the operational personal data. If doubts arise as to this necessity, the EPPO shall seek further information from the recipient.

The other institution, body, office or agency of the Union shall ensure that the necessity for the transmission of the operational personal data can be subsequently verified.

3. The other institution, body, office or agency of the Union shall process the operational personal data only for the purposes for which they were transmitted.

Article 55

Processing of special categories of operational personal data

1. Processing of operational personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade-union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, operational personal data concerning health or operational personal data concerning a natural person's sex life or sexual orientation shall be allowed only where strictly necessary for the EPPO's investigations, subject to appropriate safeguards for the rights and freedoms of the data subject and only if they supplement other operational personal data already processed by the EPPO.
2. The Data Protection Officer shall be informed immediately of recourse to this Article.

Article 56

Automated individual decision-making, including profiling

The data subject shall have the right not to be subject to a decision of the EPPO based solely on automated processing, including profiling, which produces legal effects concerning him/her or similarly significantly affects him/her.

Article 57

Communication and modalities for exercising the rights of the data subject

1. The EPPO shall take reasonable steps to provide any information referred to in Article 58. It shall make any communication with regard to Articles 56, 59 to 62 and 75 relating to processing to the data subject in a concise, intelligible and easily accessible form, using clear and plain language. The information shall be provided by any appropriate means, including by electronic means. As a general rule, the controller shall provide the information in the same form as the request.
2. The EPPO shall facilitate the exercise of the rights of the data subject under Articles 58 to 62.
3. The EPPO shall inform the data subject in writing about the follow up to his/her request without undue delay, and in any case at the latest after 3 months after receipt of the request by the data subject.

4. The EPPO shall provide for the information provided under Article 58 and any communication made or action taken pursuant to Articles 56, 59 to 62 and 75 to be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the EPPO may either:

- (a) charge a reasonable fee, taking into account the administrative costs of providing the information or communication, or taking the action requested; or
- (b) refuse to act on the request.

The EPPO shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

5. Where the EPPO has reasonable doubts concerning the identity of the natural person making a request referred to in Article 59 or 61, the EPPO may request the provision of additional information necessary to confirm the identity of the data subject.

Article 58

Information to be made available or given to the data subject

1. The EPPO shall make available to the data subject at least the following information:

- (a) the identity and the contact details of the EPPO;
- (b) the contact details of the data protection officer;
- (c) the purposes of the processing for which the operational personal data are intended;
- (d) the right to lodge a complaint with the European Data Protection Supervisor and its contact details;
- (e) the existence of the right to request from the EPPO access to and rectification or erasure of operational personal data and restriction of processing of the operational personal data concerning the data subject.

2. In addition to the information referred to in paragraph 1, the EPPO shall give to the data subject, in specific cases, the following further information to enable the exercise of his/her rights:

- (a) the legal basis for the processing;
- (b) the period for which the operational personal data will be stored, or, where that is not possible, the criteria used to determine that period;
- (c) where applicable, the categories of recipients of the operational personal data, including in third countries or international organisations;
- (d) where necessary, further information, in particular where the operational personal data are collected without the knowledge of the data subject.

3. The EPPO may delay, restrict or omit the provision of the information to the data subject pursuant to paragraph 2 to the extent that, and for as long as, such a measure constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and the legitimate interests of the natural person concerned, in order to:

- (a) avoid obstructing official or legal inquiries, investigations or procedures;
- (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
- (c) protect public security of the Member States of the European Union;
- (d) protect national security of the Member States of the European Union;
- (e) protect the rights and freedoms of others.

*Article 59***Right of access by the data subject**

The data subject shall have the right to obtain from the EPPO confirmation as to whether or not operational personal data concerning him/her are being processed, and, where that is the case, access to the operational personal data and the following information:

- (a) the purposes of and legal basis for the processing;
- (b) the categories of operational personal data concerned;
- (c) the recipients or categories of recipients to whom the operational personal data have been disclosed, in particular recipients in third countries or international organisations;
- (d) where possible, the envisaged period for which the operational personal data will be stored, or, if not possible, the criteria used to determine that period;
- (e) the existence of the right to request from the EPPO rectification or erasure of operational personal data or restriction of processing of operational personal data concerning the data subject;
- (f) the right to lodge a complaint with the European Data Protection Supervisor and the contact details of the European Data Protection Supervisor;
- (g) the communication of the operational personal data undergoing processing and of any available information as to their origin.

*Article 60***Limitations to the right of access**

1. The EPPO may restrict, wholly or partly, the data subject's right of access to the extent that, and for as long as, such a partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and legitimate interests of the natural person concerned, in order to:

- (a) avoid obstructing official or legal inquiries, investigations or procedures;
- (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
- (c) protect public security of the Member States of the European Union;
- (d) protect national security of the Member States of the European Union;
- (e) protect the rights and freedoms of others.

2. Where the provision of such information would undermine the purpose of paragraph 1, the EPPO shall only notify the data subject concerned that it has carried out the checks, without giving any information which might reveal to him/her whether or not operational personal data concerning him/her are processed by the EPPO.

The EPPO shall inform the data subject of the possibility of lodging a complaint with the European Data Protection Supervisor or seeking a judicial remedy in the Court of Justice against the EPPO's decision.

3. The EPPO shall document the factual or legal reasons on which the decision is based. That information shall be made available to the European Data Protection Supervisor on request.

*Article 61***Right to rectification or erasure of operational personal data and restriction of processing**

1. The data subject shall have the right to obtain from the EPPO without undue delay the rectification of inaccurate operational personal data relating to him/her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete operational personal data completed, including by means of providing a supplementary statement.

2. The EPPO shall erase operational personal data without undue delay and the data subject shall have the right to obtain from the EPPO the erasure of operational personal data concerning him/her without undue delay where processing infringes Article 47, 49 or 55, or where operational personal data must be erased in order to comply with a legal obligation to which the EPPO is subject.

3. Instead of erasure, the EPPO shall restrict processing where:

(a) the accuracy of the operational personal data is contested by the data subject and their accuracy or inaccuracy cannot be ascertained; or

(b) the operational personal data must be maintained for the purposes of evidence.

Where processing is restricted pursuant to point (a) of the first subparagraph, the EPPO shall inform the data subject before lifting the restriction of processing.

4. Where processing has been restricted under paragraph 3, such operational personal data shall, with the exception of storage, only be processed for the protection of the rights of the data subject or another natural or legal person who is a party of the proceedings of the EPPO, or for the purposes laid down in point (b) of paragraph 3.

5. The EPPO shall inform the data subject in writing of any refusal of rectification or erasure of operational personal data or restriction of processing and of the reasons for the refusal. The EPPO may restrict, wholly or partly, the obligation to provide such information to the extent that such a restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and legitimate interests of the natural person concerned in order to:

(a) avoid obstructing official or legal inquiries, investigations or procedures;

(b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;

(c) protect public security of the Member States of the European Union;

(d) protect national security of the Member States of the European Union;

(e) protect the rights and freedoms of others.

The EPPO shall inform the data subject of the possibility of lodging a complaint with the European Data Protection Supervisor or of seeking a judicial remedy from the Court of Justice against the EPPO's decision.

6. The EPPO shall communicate the rectification of inaccurate operational personal data to the competent authority from which the inaccurate operational personal data originate.

7. The EPPO shall, where operational personal data has been rectified or erased or processing has been restricted pursuant to paragraphs 1, 2 and 3, notify the recipients and inform them that they have to rectify or erase the operational personal data or restrict processing of the operational personal data under their responsibility.

Article 62

Exercise of rights by the data subject and verification by the European Data Protection Supervisor

1. In the cases referred to in Articles 58(3), 60(2) and 61(5), the rights of the data subject may also be exercised through the European Data Protection Supervisor.

2. The EPPO shall inform the data subject of the possibility of exercising his/her rights through the European Data Protection Supervisor pursuant to paragraph 1.

3. Where the right referred to in paragraph 1 is exercised, the European Data Protection Supervisor shall inform the data subject at least that all necessary verifications or a review by it have taken place. The European Data Protection Supervisor shall also inform the data subject of his/her right to seek a judicial remedy in the Court of Justice against the European Data Protection Supervisor's decision.

*Article 63***Obligations of the EPPO**

1. Taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the EPPO shall implement appropriate technical and organisational measures to ensure, and to be able to demonstrate that processing is performed in accordance with this Regulation. Those measures shall be reviewed and updated where necessary.
2. Where proportionate in relation to processing activities, the measures referred to in paragraph 1 shall include the implementation of appropriate data protection policies by the EPPO.

*Article 64***Joint controllers**

1. Where the EPPO together with one or more controllers jointly determine the purposes and means of processing, they shall be joint controllers. They shall, in a transparent manner, determine their respective responsibilities for compliance with their data protection obligations, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union law or the law of a Member State of the European Union to which the controllers are subject. The arrangement may designate a contact point for data subjects.
2. The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The essence of the arrangement shall be made available to the data subject.
3. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his/her rights under this Regulation in respect, and against each, of the controllers.

*Article 65***Processor**

1. Where processing is to be carried out on behalf of the EPPO, the EPPO shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.
2. The processor shall not engage another processor without prior specific or general written authorisation of the EPPO. In the case of general written authorisation, the processor shall inform the EPPO of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes.
3. Processing by a processor shall be governed by a contract or other legal act under Union law, or the law of a Member State of the European Union, that is binding on the processor with regard to the EPPO and that sets out the subject matter and duration of the processing, the nature and purpose of the processing, the type of operational personal data and categories of data subjects and the obligations and rights of the EPPO. That contract or other legal act shall stipulate, in particular, that the processor:
 - (a) acts only on instructions from the controller;
 - (b) ensures that persons authorised to process the operational personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (c) assists the controller by any appropriate means to ensure compliance with the provisions on the data subject's rights;
 - (d) at the choice of the EPPO, deletes or returns all the operational personal data to the EPPO after the end of the provision of services relating to processing, and deletes existing copies unless Union law or the law of a Member State of the European Union requires storage of the operational personal data;

- (e) makes available to the EPPO all information necessary to demonstrate compliance with the obligations laid down in this Article;
 - (f) complies with the conditions referred to in paragraphs 2 and 3 for engaging another processor.
4. The contract or the other legal act referred to in paragraphs 3 shall be in writing, including in electronic form.
5. If a processor infringes this Regulation by determining the purposes and means of processing, the processor shall be considered to be a controller in respect of that processing.

Article 66

Processing under the authority of the controller or processor

The processor and any person acting under the authority of the EPPO or of the processor, who has access to operational personal data, shall not process those data except on instructions from the EPPO, unless required to do so by Union law or the law of a Member State of the European Union.

Article 67

Data protection by design and by default

1. The EPPO shall, taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing, as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing, in order to meet the requirements of this Regulation and protect the rights of the data subjects.
2. The EPPO shall implement appropriate technical and organisational measures ensuring that, by default, only operational personal data which are adequate, relevant and not excessive in relation to the purpose of the processing are processed. That obligation applies to the amount of operational personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default operational personal data are not made accessible without the individual's intervention to an indefinite number of natural persons.

Article 68

Records of categories of processing activities

1. The EPPO shall maintain a record of all categories of processing activities under its responsibility. That record shall contain all of the following information:
- (a) its contact details and the name and the contact details of the data protection officer;
 - (b) the purposes of the processing;
 - (c) a 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 73.
2. The records referred to in paragraph 1 shall be in writing, including in electronic form.
3. The EPPO shall make the record available to the European Data Protection Supervisor on request.

*Article 69***Logging in respect of automated processing**

1. The EPPO shall keep logs of any of the following processing operations in automated processing systems: collection, alteration, consultation, disclosure including transfers, combination and erasure of operational personal data used for operational purposes. The logs of consultation and disclosure shall make it possible to establish the justification for, and the date and time of, such operations, the identification of the person who consulted or disclosed operational personal data, and, as far as possible, the identity of the recipients of such operational personal data.
2. The logs shall be used solely for verification of the lawfulness of processing, self-monitoring, ensuring the integrity and security of the operational personal data, and for criminal proceedings. Such logs shall be deleted after 3 years, unless they are required for on-going control.
3. The EPPO shall make the logs available to the European Data Protection Supervisor on request.

*Article 70***Cooperation with the European Data Protection Supervisor**

The EPPO shall, on request, cooperate with the European Data Protection Supervisor in the performance of its tasks.

*Article 71***Data protection impact assessment**

1. Where a type of processing, in particular, using new technologies, and taking into account the nature, scope, context and purposes of the processing is likely to result in a high risk to the rights and freedoms of natural persons, the EPPO shall carry out, prior to the processing, an assessment of the impact of the envisaged processing operations on the protection of operational personal data.
2. The assessment referred to in paragraph 1 shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, the measures envisaged to address those risks, safeguards, security measures and mechanisms to ensure the protection of operational personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of the data subjects and other persons concerned.

*Article 72***Prior consultation of the European Data Protection Supervisor**

1. The EPPO shall consult the European Data Protection Supervisor prior to processing which will form part of a new filing system to be created, where:
 - (a) a data protection impact assessment as provided for in Article 71 indicates that the processing would result in a high risk in the absence of measures taken by the EPPO to mitigate the risk; or
 - (b) the type of processing, in particular, where using new technologies, mechanisms or procedures, involves a high risk to the rights and freedoms of data subjects.
2. The European Data Protection Supervisor may establish a list of the processing operations which are subject to prior consultation pursuant to paragraph 1.
3. The EPPO shall provide the European Data Protection Supervisor with the data protection impact assessment pursuant to Article 71 and, on request, with any other information to allow the European Data Protection Supervisor to make an assessment of the compliance of the processing and in particular of the risks for the protection of operational personal data of the data subject and of the related safeguards.

4. Where the European Data Protection Supervisor is of the opinion that the intended processing referred to in paragraph 1 of this Article would infringe this Regulation, in particular where the EPPO has insufficiently identified or mitigated the risk, the European Data Protection Supervisor shall provide, within a period of up to 6 weeks of receipt of the request for consultation, written advice to the EPPO according to its powers in accordance with Article 85. That period may be extended by a month, taking into account the complexity of the intended processing. The European Data Protection Supervisor shall inform the EPPO of any such extension within 1 month of receipt of the request for consultation, together with the reasons for the delay.

Article 73

Security of processing of operational personal data

1. The EPPO shall, taking into account the state of the art, costs of implementation and the nature, scope, context and purposes of the processing as well as risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, in particular as regards the processing of special categories of operational personal data referred to in Article 55.

2. In respect of automated processing, the EPPO shall, following an evaluation of the risks, implement measures designed to:

- (a) deny unauthorised persons access to data processing equipment used for processing (equipment access control);
- (b) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
- (c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored operational personal data (storage control);
- (d) prevent the use of automated processing systems by unauthorised persons using data communication equipment (user control);
- (e) ensure that persons authorised to use an automated processing system have access only to the operational personal data covered by their access authorisation (data access control);
- (f) ensure that it is possible to verify and establish the bodies to which operational personal data have been or may be transmitted or made available using data communication (communication control);
- (g) ensure that it is subsequently possible to verify and establish which operational personal data have been input into automated data processing systems, and when and by whom the data were input (input control);
- (h) prevent unauthorised reading, copying, modification or deletion of operational personal data during transfers of operational personal data or during transportation of data media (transport control);
- (i) ensure that installed systems may, in the case of interruption, be restored (recovery);
- (j) ensure that the functions of the system perform, that the appearance of faults in the functions is reported (reliability) and that stored operational personal data cannot be corrupted by means of a malfunctioning of the system (integrity).

Article 74

Notification of a personal data breach to the European Data Protection Supervisor

1. In the case of a personal data breach, the EPPO shall notify without undue delay and, where feasible, not later than 72 hours after having become aware of it, the personal data breach to the European Data Protection Supervisor, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification to the European Data Protection Supervisor is not made within 72 hours, it shall be accompanied by reasons for the delay.

2. The notification referred to in paragraph 1 shall at least:
 - (a) describe the nature of the personal data breach including, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
 - (b) communicate the name and contact details of the data protection officer;
 - (c) describe the likely consequences of the personal data breach;
 - (d) describe the measures taken or proposed to be taken by the EPPO to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.
3. Where, and in so far as, it is not possible to provide the information referred to in paragraph 2 at the same time, the information may be provided in phases without undue further delay.
4. The EPPO shall document any personal data breaches referred to in paragraph 1, comprising the facts relating to the personal data breach, its effects and the remedial action taken. That documentation shall enable the European Data Protection Supervisor to verify compliance with this Article.
5. Where the personal data breach involves personal data that have been transmitted by or to another controller, the EPPO shall communicate the information referred to in paragraph 3 to that controller without undue delay.

Article 75

Communication of a personal data breach to the data subject

1. Where the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the EPPO shall communicate the personal data breach to the data subject without undue delay.
2. The communication to the data subject referred to in paragraph 1 of this Article shall describe, in clear and plain language the nature of the personal data breach and shall contain at least the information and the recommendations provided for in points (b), (c) and (d) of Article 74(2).
3. The communication to the data subject referred to in paragraph 1 shall not be required if any of the following conditions are met:
 - (a) the EPPO has implemented appropriate technological and organisational protection measures, and that those measures were applied to the personal data affected by the personal data breach, in particular those that render the personal data unintelligible to any person who is not authorised to access it, such as encryption;
 - (b) the EPPO has taken subsequent measures which ensure that the high risk to the rights and freedoms of data subjects referred to in paragraph 1 is no longer likely to materialise;
 - (c) it would involve a disproportionate effort. In such a case, there shall instead be a public communication or a similar measure whereby the data subjects are informed in an equally effective manner.
4. If the EPPO has not already communicated the personal data breach to the data subject, the European Data Protection Supervisor, having considered the likelihood of the personal data breach resulting in a high risk, may require it to do so, or may decide that any of the conditions referred to in paragraph 3 are met.
5. The communication to the data subject referred to in paragraph 1 of this Article may be delayed, restricted or omitted subject to the conditions and on the grounds referred to in Article 60(3).

Article 76

Authorised access to operational personal data within the EPPO

Only the European Chief Prosecutor, the European Prosecutors, the European Delegated Prosecutors and authorised staff assisting them may, for the purpose of achieving their tasks and within the limits provided for in this Regulation, have access to operational personal data processed by the EPPO.

*Article 77***Designation of the Data Protection Officer**

1. The College shall designate a Data Protection Officer, on the basis of a proposal from the European Chief Prosecutor. The Data Protection Officer shall be a member of staff specifically appointed for this purpose. In the performance of his/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 the Officer's professional qualities and, in particular, expert knowledge of data protection law and practice, and the ability to fulfil the tasks referred to in this Regulation, in particular those referred to in Article 79.
3. The selection of the Data Protection Officer shall not be liable to result in a conflict of interests between the Officer's duty as Data Protection Officer and any other official duties, in particular in relation to the application of this Regulation.
4. The Data Protection Officer shall be appointed for a term of 4 years and shall be eligible for reappointment up to a maximum total term of 8 years. The Officer may be dismissed from the post of Data Protection Officer by the College only with the agreement of the European Data Protection Supervisor, if the Officer no longer fulfils the conditions required for the performance of his/her duties.
5. The EPPO shall publish the contact details of the data protection officer and communicate them to the European Data Protection Supervisor.

*Article 78***Position of the Data Protection Officer**

1. The EPPO 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. The EPPO shall support the data protection officer in performing the tasks referred to in Article 79 by providing resources 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. The EPPO shall ensure that the data protection officer does not receive any instructions regarding the exercise of those tasks. The Officer shall not be dismissed or penalised by the College for performing his/her tasks. The data protection officer shall directly report to the European Chief Prosecutor.
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 (EC) No 45/2001.
5. The College 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 and the Officer's dismissal, tasks, duties and powers and safeguards for independence of the Data Protection Officer.
6. The EPPO shall provide the Data Protection Officer with the staff and resources necessary for him/her to carry out his/her duties.
7. The Data Protection Officer and his/her staff shall be bound by the obligation of confidentiality in accordance with Article 108.

*Article 79***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 EPPO's compliance with the data protection provisions of this Regulation, of Regulation (EC) No 45/2001 and of the relevant data protection provisions in the internal rules of procedure of the EPPO; this includes monitoring compliance with this Regulation, with other Union or national data protection provisions and with the policies of the EPPO in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits;

- (b) informing and advising the EPPO and the staff who carry out processing of their obligations pursuant to this Regulation and to other Union or national data protection provisions;
- (c) providing advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 71;
- (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 the internal rules of procedure of the EPPO;
- (e) cooperating with the staff of the EPPO responsible for procedures, training and advice on data processing;
- (f) cooperating with the European Data Protection Supervisor;
- (g) ensuring that data subjects are informed of their rights under this Regulation;
- (h) acting as the contact point for the European Data Protection Supervisor; on issues relating to processing, including the prior consultation referred to in Article 72, and consulting, where appropriate, with regard to any other matter;
- (i) preparing an annual report and communicate that report to the European Chief Prosecutor and to the European Data Protection Supervisor.

2. The Data Protection Officer shall carry out the functions provided for in Regulation (EC) No 45/2001 with regard to administrative personal data.

3. The Data Protection Officer and the staff members of the EPPO assisting the Data Protection Officer in the performance of duties shall have access to the personal data processed by the EPPO 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 (EC) No 45/2001 related to the processing of administrative personal data or the provisions of this Regulation related to the processing of operational personal data have not been complied with, the Officer shall inform the European Chief Prosecutor, requesting him/her to resolve the non-compliance within a specified time. If the European Chief Prosecutor does not resolve the non-compliance of the processing within the specified time, the Data Protection Officer shall refer the matter to the European Data Protection Supervisor.

Article 80

General principles for transfers of operational personal data

1. The EPPO may transfer operational personal data to a third country or international organisation, subject to compliance with the other provisions of this Regulation, in particular Article 53, only where the conditions laid down in the Articles 80 to 83 are met, namely:

- (a) the transfer is necessary for the performance of the tasks of the EPPO;
- (b) the operational personal data are transferred to a controller in a third country or international organisation that is an authority competent for the purpose of Article 104;
- (c) where the operational personal data to be transferred in accordance with this Article have been transmitted or made available by a Member State of the European Union to the EPPO, the latter shall obtain prior authorisation for the transfer by the relevant competent authority of that Member State of the European Union in compliance with its national law, unless that Member State of the European Union has granted this authorisation to such transfer in general terms or subject to specific conditions;
- (d) the Commission has decided pursuant to Article 81 that the third country or international organisation in question ensures an adequate level of protection, or in the absence of such an adequacy decision, where appropriate safeguards are adduced or exist pursuant to Article 82, or both in absence of an adequacy decision and of such appropriate safeguards, derogation for specific situations apply pursuant to Article 83; and

(e) in the case of an onward transfer to another third country or international organisation by a third country or international organisation, the EPPO shall require the third country or international organisation to seek its prior authorisation for that onward transfer, which the EPPO may provide only after taking into due account all relevant factors, including the seriousness of the criminal offence, the purpose for which the operational personal data was originally transferred and the level of personal data protection in the third country or an international organisation to which operational personal data are onward transferred.

2. The EPPO may transfer operational personal data without prior authorisation by a Member State of the European Union in accordance with point (c) of paragraph 1 only if the transfer of the operational personal data is necessary for the prevention of an immediate and serious threat to public security of a Member State of the European Union or a third country or to essential interests of a Member State of the European Union and the prior authorisation cannot be obtained in good time. The authority responsible for giving prior authorisation shall be informed without delay.

3. The transfer of operational personal data received from the EPPO to a third country or an international organisation by a Member State of the European Union, or institution, body, office or agency of the Union shall be prohibited. This shall not apply in cases where the EPPO has authorised such transfer, after taking into due account all relevant factors, including the seriousness of the criminal offence, the purpose for which the operational personal data was originally transmitted and the level of personal data protection in the third country or an international organisation to which operational personal data are transferred. That obligation to obtain prior authorisation from the EPPO shall not apply to cases that have been referred to competent national authorities in accordance with Article 34.

4. Articles 80 to 83 shall be applied in order to ensure that the level of protection of natural persons ensured by this Regulation and by Union law is not undermined.

Article 81

Transfers on the basis of an adequacy decision

The EPPO may transfer operational personal data to a third country or 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 82

Transfers subject to appropriate safeguards

1. In the absence of an adequacy decision, the EPPO 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) the EPPO has assessed all the circumstances surrounding the transfer of operational personal data and concludes that appropriate safeguards exist with regard to the protection of operational personal data.

2. The EPPO shall inform the European Data Protection Supervisor 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 European Data Protection Supervisor on request, including 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 83

Derogations for specific situations

1. In the absence of an adequacy decision, or of appropriate safeguards pursuant to Article 82, the EPPO 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 of the European Union or a third country; or
- (d) in individual cases for the performance of the tasks of the EPPO, unless the EPPO determines that 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 European Data Protection Supervisor on request, including 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 84

Transfers of operational personal data to recipients established in third countries

1. By way of derogation from point (b) of Article 80(1) and without prejudice to any international agreement referred to in paragraph 2 of this Article, the EPPO, in individual and specific cases, may transfer operational personal data directly to recipients established in third countries only if the other provisions of this Chapter are complied with and all of the following conditions are fulfilled:

- (a) the transfer is strictly necessary for the performance of its tasks as provided for by this Regulation for the purposes set out in Article 49(1);
- (b) the EPPO determines that no fundamental rights and freedoms of the data subject concerned override the public interest necessitating the transfer in the case at hand;
- (c) the EPPO considers that the transfer to an authority that is competent for the purposes referred to in Article 49(1) in the third country is ineffective or inappropriate, in particular because the transfer cannot be achieved in good time;
- (d) the authority that is competent for the purposes referred to in Article 49(1) in the third country is informed without undue delay, unless this is ineffective or inappropriate;
- (e) the EPPO informs the recipient of the specified purpose or purposes for which the operational personal data are only to be processed by the latter provided that such processing is necessary.

2. An international agreement referred to in paragraph 1 shall be any bilateral or multilateral international agreement in force between the Union and third countries in the field of judicial cooperation in criminal matters and police cooperation.

3. Where a transfer is based on paragraph 1, such a transfer shall be documented and the documentation shall be made available to the European Data Protection Supervisor on request, including 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 85

Supervision by the European Data Protection Supervisor

1. The European Data Protection Supervisor shall be responsible for monitoring and ensuring the application of the provisions of this Regulation relating to the protection of fundamental rights and freedoms of natural persons with regard to processing of operational personal data by the EPPO, and for advising the EPPO and data subjects on all matters concerning the processing of operational personal data. To this end, the European Data Protection Supervisor 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 87.

2. The European Data Protection Supervisor shall have the following duties under this Regulation:

- (a) hear and investigate complaints, and inform the data subject of the outcome within a reasonable period;
- (b) conduct inquiries either on his/her own initiative or on the basis of a complaint, and inform the data subjects of the outcome within a reasonable period;

- (c) monitor and ensure the application of the provisions of this Regulation relating to the protection of natural persons with regard to the processing of operational personal data by the EPPO;
- (d) advise the EPPO, either on his/her own initiative or in response to a consultation, on all matters concerning the processing of operational personal data, in particular before it draws up internal rules relating to the protection of fundamental rights and freedoms with regard to the processing of operational personal data.

3. The European Data Protection Supervisor may under this Regulation:

- (a) give advice to data subjects in the exercise of their rights;
- (b) refer the matter to the EPPO 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 the EPPO when requests to exercise certain rights in relation to operational personal data have been refused in breach of Articles 56 to 62;
- (d) refer the matter to the EPPO;
- (e) order the EPPO to carry out the rectification, restriction or erasure of operational personal data which have been processed by the EPPO in breach of the provisions governing the processing of operational personal data and the notification of such actions to third parties to whom such data have been disclosed, provided that this does not interfere with investigations and prosecutions led by the EPPO;
- (f) refer the matter to the Court of Justice under the conditions set out in the Treaties;
- (g) intervene in actions brought before the Court of Justice.

4. The European Data Protection Supervisor shall have access to the operational personal data processed by the EPPO and to its premises to the extent necessary for the performance of its tasks.

5. The European Data Protection Supervisor shall draw up an annual report on the supervisory activities on the EPPO.

Article 86

Professional secrecy of the European Data Protection Supervisor

The European Data Protection Supervisor and 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 the performance of official duties.

Article 87

Cooperation between the European Data Protection Supervisor and national supervisory authorities

1. The European Data Protection Supervisor shall act in close cooperation with national supervisory authorities with respect to specific issues requiring national involvement, in particular if the European Data Protection Supervisor or a national supervisory authority finds major discrepancies between practices of Member States of the European Union or finds potentially unlawful transfers using the communication channels of the EPPO, 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, the European Data Protection Supervisor and the national supervisory authorities competent for data protection supervision may, each acting within the scope of their respective competences, exchange relevant information, and assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Regulation, study problems related to the exercise of independent supervision or to the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems, and promote awareness of data protection rights, as necessary.

3. The European Data Protection Board established by Regulation (EU) 2016/679 shall also carry out the tasks laid down in Article 51 of Directive (EU) 2016/680 with regard to matters covered by this Regulation, in particular those referred to in paragraphs 1 and 2 of this Article.

Article 88

Right to lodge a complaint with the European Data Protection Supervisor

1. Every data subject shall have the right to lodge a complaint with the European Data Protection Supervisor, if the data subject considers that the processing by the EPPO of operational personal data relating to the data subject infringes this Regulation.
2. The European Data Protection Supervisor shall inform the data subject of the progress and the outcome of the complaint, including of the possibility of a judicial remedy pursuant to Article 89.

Article 89

Right to judicial review against the European Data Protection Supervisor

Actions against decisions of the European Data Protection Supervisor shall be brought before the Court of Justice.

CHAPTER IX

FINANCIAL AND STAFF PROVISIONS

SECTION 1

Financial provisions

Article 90

Financial actors

1. The European Chief Prosecutor shall be responsible for preparing decisions on the establishment of the budget and submitting them to the College for adoption.
2. The Administrative Director shall be responsible as authorising officer for implementing the budget of the EPPO.

Article 91

Budget

1. The European Chief Prosecutor shall prepare estimates of the revenue and expenditure of the EPPO for each financial year, corresponding to the calendar year, on the basis of a proposal drawn up by the Administrative Director. Those estimates shall be shown in the budget of the EPPO.
2. The budget of the EPPO shall be balanced in terms of revenue and expenditure.
3. Without prejudice to other resources, the revenue of the EPPO shall comprise:
 - (a) a contribution from the Union entered in the general budget of the Union, subject to paragraphs 7 and 8;
 - (b) charges for publications and any service provided by the EPPO.
4. The expenditure of the EPPO shall include the remuneration of the European Chief Prosecutor, European Prosecutors, European Delegated Prosecutors, the Administrative Director and the staff of the EPPO, administrative and infrastructure expenses, and operational expenditure.
5. Where European Delegated Prosecutors act within the framework of the EPPO, the relevant expenditure incurred by the European Delegated Prosecutors in the course of those activities shall be regarded as operational expenditure of the EPPO.

The operational expenditure of the EPPO's shall in principle not include costs related to investigation measures carried out by competent national authorities or costs of legal aid. However, it shall, within the budget of the EPPO, include certain costs related to its investigation and prosecution activities as set out in paragraph 6.

The operational expenditure shall also include the setting up of a case management system, training, missions and translations necessary for the internal functioning of the EPPO, such as translations for the Permanent Chamber.

6. Where an exceptionally costly investigation measure is carried out on behalf of the EPPO, the European Delegated Prosecutors may, on their own initiative or at the reasoned request of the competent national authorities, consult the Permanent Chamber as to whether the cost of the investigation measure could partly be met by the EPPO. Such consultations shall not delay the investigation.

The Permanent Chamber may then, upon consultation with the Administrative Director and based on the proportionality of the measure carried out in the specific circumstances and the extra-ordinary nature of the cost it entails decide to accept or refuse the request, in accordance with the rules on the assessment of these criteria to be set out in the internal rules of procedure of the EPPO. The Administrative Director shall then decide on the amount of the grant to be awarded based on the available financial resources. The Administrative Director shall without delay inform the handling European Delegated Prosecutor of the decision on the amount.

7. In accordance with Article 332 TFEU, the expenditure of the EPPO referred to in paragraphs 4 and 5 of this Article shall be borne by the Member States. Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO shall receive an adjustment in accordance with Article 11 of Council Regulation (EU, Euratom) No 609/2014 ⁽¹⁾.

8. Paragraph 7 shall not apply to the administrative costs entailed for the Union's institutions resulting from implementation of enhanced cooperation on the establishment of the EPPO.

Article 92

Establishment of the budget

1. Each year the European Chief Prosecutor shall prepare a provisional draft estimate of the revenue and expenditure of the EPPO for the following financial year on the basis of a proposal drawn up by the Administrative Director. The European Chief Prosecutor shall send the provisional draft estimate to the College for adoption.

2. The provisional draft estimate of the revenue and expenditure of the EPPO shall be sent to the Commission by 31 January each year. The EPPO shall send a final draft estimate, which shall include a draft establishment plan, to the Commission by 31 March each year.

3. 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.

4. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the Union the estimates it considers to be necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall submit to the budgetary authority in accordance with Articles 313 and 314 TFEU.

5. The budgetary authority shall authorise the appropriations for the contribution from the general budget of the Union to the EPPO.

6. The budgetary authority shall adopt the establishment plan of the EPPO.

7. The College shall adopt the budget of the EPPO on a proposal from the European Chief Prosecutor. It shall become final following the final adoption of the general budget of the Union. Where necessary, it shall be adjusted in accordance with the same procedure as for the adoption of the initial budget.

8. For any building project likely to have significant implications for the budget of the EPPO, Article 88 of Commission Delegated Regulation (EU) No 1271/2013 ⁽²⁾ shall apply.

⁽¹⁾ Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements (OJ L 168, 7.6.2014, p. 39).

⁽²⁾ 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).

*Article 93***Implementation of the budget**

1. The Administrative Director acting as the authorising officer of the EPPO, shall implement its budget under his/her own responsibility and within the limits authorised in the budget.
2. Each year the Administrative Director shall send to the budgetary authority all information relevant to the findings of any evaluation procedures.

*Article 94***Presentation of accounts and discharge**

1. The accounting officer of the EPPO 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. The EPPO shall send the report on the budgetary and financial management to the European Parliament, to the Council and to the Court of Auditors, by 31 March of the following financial year.
3. The Commission's Accounting Officer shall send the provisional accounts of the EPPO consolidated with the Commission's accounts, to the Court of Auditors by 31 March following each financial year.
4. In accordance with Article 148(1) of Regulation (EU, Euratom) No 966/2012, the Court of Auditors shall, make its observations on the provisional accounts of the EPPO by 1 June of the following year at the latest.
5. On receipt of the Court of Auditors' observations on the provisional accounts of the EPPO pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the EPPO shall draw up its final accounts under his/her own responsibility and submit these to the College for an opinion.
6. The accounting officer of the EPPO shall, by 1 July following each financial year, send the final accounts to the European Parliament, to the Council, to the Commission and to the Court of Auditors, together with the opinion of the College referred to in paragraph 5.
7. The final accounts of the EPPO shall be published in the *Official Journal of the European Union* by 15 November of the year following each financial year.
8. The Administrative Director shall send the Court of Auditors a reply to its observations by 30 September following each financial year at the latest. The Administrative Director shall also send the reply to the Commission.
9. The Administrative Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question as laid down in Article 109(3) of Delegated Regulation (EU) No 1271/2013.
10. On a recommendation from the Council acting by a qualified majority, the European Parliament, shall, before 15 May of year N + 2, give a discharge to the Administrative Director in respect of the implementation of the budget for year N.

*Article 95***Financial rules**

The European Chief Prosecutor shall draw up the draft financial rules applicable to the EPPO on the basis of a proposal from the Administrative Director. Those rules shall be adopted by the College after consultation with the Commission. The financial rules shall not depart from those contained in Delegated Regulation (EU) No 1271/2013 unless such departure is specifically required for the operation of the EPPO and the Commission has given its prior consent.

SECTION 2

Staff provisions

Article 96

General provisions

1. The Staff Regulations and the Conditions of Employment and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and Conditions of Employment shall apply to the European Chief Prosecutor and the European Prosecutors, the European Delegated Prosecutors, the Administrative Director and the staff of the EPPO, unless otherwise provided for in this Regulation.

The European Chief Prosecutor and the European Prosecutors shall be engaged as temporary agents of the EPPO under Article 2(a) of the Conditions of Employment.

2. The staff of the EPPO shall be recruited according to the rules and regulations applicable to officials and other servants of the European Union.

3. The powers conferred on the appointing authority by the Staff Regulations and the Conditions of Employment to conclude contracts of employment shall be exercised by the College. The College may delegate these powers to the Administrative Director with respect to the staff of the EPPO. Delegation of powers referred to in this paragraph shall not concern the European Chief Prosecutor, the European Prosecutors, the European Delegated Prosecutors or the Administrative Director.

4. The College shall adopt appropriate rules to implement the Staff Regulations and the Conditions of Employment in accordance with Article 110 of the Staff Regulations. The College shall also adopt staff resource programming as part of the programming document.

5. The Protocol on the Privileges and Immunities of the European Union shall apply to the EPPO and its staff.

6. European Delegated Prosecutors shall be engaged as Special Advisors in accordance with Articles 5, 123 and 124 of the Conditions of Employment. The competent national authorities shall facilitate the exercise of the functions of European Delegated Prosecutors under this Regulation and refrain from any action or policy that may adversely affect their career or status in the national prosecution system. In particular, the competent national authorities shall provide the European Delegated Prosecutors with the resources and equipment necessary to exercise their functions under this Regulation, and shall ensure that they are fully integrated into their national prosecution services. It shall be ensured that adequate arrangements are in place so that the European Delegated Prosecutors' rights relating to social security, pension and insurance coverage under the national scheme are maintained. It shall also be ensured that the total remuneration of a European Delegated Prosecutor is not lower than what it would be if that prosecutor would only have remained a national prosecutor. The general working conditions and work environment of the European Delegated Prosecutors shall fall under the responsibility of the competent national judicial authorities.

7. The European Prosecutors and the European Delegated Prosecutors shall not receive in the exercise of their investigation and prosecution powers, any orders, guidelines or instructions other than those expressly provided for in Article 6.

Article 97

Temporary agents and contract agents

1. Temporary agents employed under point (a) of Article 2 of the Conditions of Employment in the institutions, bodies, offices or agencies of the Union who are engaged by the EPPO with a contract concluded before and no later than 1 year after the EPPO becomes operational in accordance with the decision mentioned in Article 120(2) shall be offered contracts under point (f) of Article 2 of the Conditions of Employment whereas all other conditions of the contract shall remain unchanged, without prejudice to the need to respect the obligations stemming from the Conditions of Employment. Those temporary agents shall be deemed to have served their entire service in the EPPO.

2. Contract agents employed under Article 3a or 3b of the Conditions of Employment in the institutions of the Union who are engaged by the EPPO with a contract concluded before and no later than 1 year after the EPPO becomes operational in accordance with the decision mentioned in Article 120(2) shall be offered contracts under Article 3a Conditions of Employment whereas all other conditions of the contract shall remain unchanged. Those contract agents shall be deemed to have served their entire service in the EPPO.

3. Temporary agents employed under point (f) of Article 2 of the Conditions of Employment and contract agents employed under Article 3a of the Conditions of Employment in the institutions, bodies, offices or agencies of the Union who are engaged by the EPPO with a contract concluded before and no later than 1 year after the EPPO becomes operational in accordance with the decision mentioned in Article 120(2) shall be offered contracts under the same conditions. Those agents shall be deemed to have served their entire service in the EPPO.

Article 98

Seconded national experts and other staff

1. The EPPO may make use, in addition to its own staff, of seconded national experts or other persons put at its disposal but not employed by it. The seconded national experts shall be subject to the authority of the European Chief Prosecutor in the exercise of tasks related to the functions of the EPPO.

2. The College shall adopt a decision laying down rules on the secondment of national experts to the EPPO or other persons put at its disposal but not employed by it.

CHAPTER X

PROVISIONS ON THE RELATIONS OF THE EPPO WITH ITS PARTNERS

Article 99

Common provisions

1. In so far as necessary for the performance of its tasks, the EPPO may establish and maintain cooperative relations with institutions, bodies, offices or agencies of the Union in accordance with their respective objectives, and with the authorities of Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO, the authorities of third countries and international organisations.

2. In so far as relevant to the performance of its tasks, the EPPO may, in accordance with Article 111, directly exchange all information, with the entities referred to in paragraph 1 of this Article, unless otherwise provided for in this Regulation.

3. For the purposes set out in paragraphs 1 and 2, the EPPO may conclude working arrangements with the entities referred to in paragraph 1. Those working arrangements shall be of a technical and/or operational nature, and shall in particular aim to facilitate cooperation and the exchange of information between the parties thereto. The working arrangements may neither form the basis for allowing the exchange of personal data nor have legally binding effects on the Union or its Member States.

Article 100

Relations with Eurojust

1. The EPPO shall establish and maintain a close relationship with Eurojust based on mutual cooperation within their respective mandates and on the development of operational, administrative and management links between them as defined in this Article. To this end, the European Chief Prosecutor and the President of Eurojust shall meet on a regular basis to discuss issues of common concern.

2. In operational matters, the EPPO may associate Eurojust with its activities concerning cross-border cases, including by:

(a) sharing information, including personal data, on its investigations in accordance with the relevant provisions in this Regulation;

(b) inviting Eurojust or its competent national member(s) to provide support in the transmission of its decisions or requests for mutual legal assistance to, and execution in, Member States of the European Union that are members of Eurojust but do not take part in the establishment of the EPPO, as well as third countries.

3. The EPPO shall have indirect access to information in Eurojust'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 the EPPO, as well as the Member State of the European Union which provided the data to Eurojust. The EPPO shall take appropriate measures to enable Eurojust to have access to information in its case management system on the basis of a hit/no-hit system.

4. 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 means of an Arrangement.

Article 101

Relations with OLAF

1. The EPPO shall establish and maintain a close relationship with OLAF based on mutual cooperation within their respective mandates and on information exchange. The relationship shall aim in particular to ensure that all available means are used to protect the Union's financial interests through the complementarity and support by OLAF to the EPPO.

2. Without prejudice to the actions set out in paragraph 3, where the EPPO conducts a criminal investigation in accordance with this Regulation, OLAF shall not open any parallel administrative investigation into the same facts.

3. In the course of an investigation by the EPPO, the EPPO may request OLAF, in accordance with OLAF's mandate, to support or complement the EPPO's activity in particular by:

(a) providing information, analyses (including forensic analyses), expertise and operational support;

(b) facilitating coordination of specific actions of the competent national administrative authorities and bodies of the Union;

(c) conducting administrative investigations.

4. The EPPO may, with a view to enabling OLAF to consider appropriate administrative action in accordance with its mandate, provide relevant information to OLAF on cases where the EPPO has decided not to conduct an investigation or has dismissed a case.

5. The EPPO shall have indirect access to information in OLAF'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 OLAF, the fact that there is a match shall be communicated to both OLAF and the EPPO. The EPPO shall take appropriate measures to enable OLAF to have access to information in its case management system on the basis of a hit/no-hit system.

Article 102

Relations with Europol

1. The EPPO shall establish and maintain a close relationship with Europol. To that end, they shall conclude a working arrangement setting out the modalities of their cooperation.

2. Where necessary for the purpose of its investigations, the EPPO shall be able to obtain, at its request, any relevant information held by Europol, concerning any offence within its competence, and may also ask Europol to provide analytical support to a specific investigation conducted by the EPPO.

*Article 103***Relations with other institutions, bodies, offices and agencies of the Union**

1. The EPPO shall establish and maintain a cooperative relationship with the Commission for the purpose of protecting the financial interests of the Union. To that end, they shall conclude an agreement setting out the modalities for their cooperation.
2. Without prejudice to the proper conduct and confidentiality of its investigations, the EPPO shall without delay, provide the institution, body, office or agency of the Union and other victims concerned sufficient information in order to allow them to take appropriate measures, in particular:
 - (a) administrative measures, such as precautionary measures to protect the financial interests of the Union, in this regard. The EPPO may recommend specific measures to the institution, body, office or agency of the Union;
 - (b) intervention as a civil party in the proceedings;
 - (c) measures for the purpose of administrative recovery of sums due to the Union budget or disciplinary action.

*Article 104***Relations with third countries and international organisations**

1. The working arrangements referred to in Article 99(3) with the authorities of third countries and international organisations may in particular, concern the exchange of strategic information and the secondment of liaison officers to the EPPO.
2. The EPPO may designate, in agreement with the competent authorities concerned, contact points in third countries in order to facilitate cooperation in line with the operational needs of the EPPO.
3. International agreements with one or more third countries concluded by the Union or to which the Union has acceded in accordance with Article 218 TFEU in areas that fall under the competence of the EPPO, such as international agreements concerning cooperation in criminal matters between the EPPO and those third countries, shall be binding on the EPPO.
4. In the absence of an agreement pursuant to paragraph 3, the Member States shall, if permitted under the relevant multilateral international agreement and subject to the third country's acceptance, recognise and, where applicable, notify the EPPO as a competent authority for the purpose of the implementation of multilateral international agreements on legal assistance in criminal matters concluded by them, including, where necessary and possible, by way of an amendment to those agreements.

The Member States may also notify the EPPO as a competent authority for the purpose of the implementation of other international agreements on legal assistance in criminal matters concluded by them, including, by way of an amendment to those agreements.

5. In the absence of an agreement pursuant to paragraph 3 of this Article or a recognition pursuant to paragraph 4 of this Article, the handling European Delegated Prosecutor, in accordance with Article 13(1), may have recourse to the powers of a national prosecutor of his/her Member State to request legal assistance in criminal matters from authorities of third countries, on the basis of international agreements concluded by that Member State or applicable national law and, where required, through the competent national authorities. In that case, the European Delegated Prosecutor shall inform and where appropriate shall endeavour to obtain consent from the authorities of third countries that the evidence collected on that basis will be used by the EPPO for the purposes of this Regulation. In any case, the third country shall be duly informed that the final recipient of the reply to the request is the EPPO.

Where the EPPO cannot exercise its functions on the basis of a relevant international agreement as referred to in paragraph 3 or 4 of this Article, the EPPO may also request legal assistance in criminal matters from authorities of third countries in a particular case and within the limits of its material competence. The EPPO shall comply with the conditions which may be set by those authorities concerning the use of the information that they provided on that basis.

6. Subject to the other provisions of this Regulation, the EPPO may, upon request, provide the competent authorities of third countries or international organisations, for the purpose of investigations or use as evidence in criminal investigations, with information or evidence which is already in the possession of the EPPO. After consulting the Permanent Chamber, the handling European Delegated Prosecutor shall decide on any such transfer of information or evidence in accordance with the national law of his/her Member State and this Regulation.

7. Where it is necessary to request the extradition of a person, the handling European Delegated Prosecutor may request the competent authority of his/her Member State to issue an extradition request in accordance with applicable treaties and/or national law.

Article 105

Relations with Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO

1. The working arrangements referred to in Article 99(3) with the authorities of Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO may in particular, concern the exchange of strategic information and the secondment of liaison officers to the EPPO.

2. The EPPO may designate, in agreement with the competent authorities concerned, contact points in the Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO in order to facilitate cooperation in line with the EPPO's needs.

3. In the absence of a legal instrument relating to cooperation in criminal matters and surrender between the EPPO and the competent authorities of the Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO, the Member States shall notify the EPPO as a competent authority for the purpose of implementation of the applicable Union acts on judicial cooperation in criminal matters in respect of cases falling within the competence of the EPPO, in their relations with Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO.

CHAPTER XI

GENERAL PROVISIONS

Article 106

Legal status and operating conditions

1. In each of the Member States the EPPO shall have the legal capacity accorded to legal persons under national law.

2. The necessary arrangements concerning the accommodation provided for the EPPO and the facilities made available by Luxembourg, as well as the specific rules applicable in that Member State to the Members of the College, the Administrative Director and the staff of the EPPO, and members of their families, shall be laid down in a Headquarters Agreement to be concluded between the EPPO and Luxembourg by the date the EPPO assumes its investigative and prosecutorial tasks determined in accordance with Article 120(2).

Article 107

Language arrangements

1. Council Regulation (EEC) No 1/58 ⁽¹⁾ shall apply to the acts referred to in Articles 21 and 114 of this Regulation.

2. The College shall decide by a two-thirds majority of its members on the internal language arrangements of the EPPO.

3. The translation services required for the administrative functioning of the EPPO at the central level shall be provided by the Translation Centre of the bodies of the European Union, unless the urgency of the matter requires another solution. European Delegated Prosecutors shall decide on the modalities of translation for the purpose of investigations in accordance with applicable national law.

⁽¹⁾ Council Regulation (EEC) No 1/58 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

*Article 108***Confidentiality and professional secrecy**

1. The members of the College, the Administrative Director and the staff of the EPPO, seconded national experts and other persons put at the disposal of the EPPO but not employed by it, and European Delegated Prosecutors shall be bound by an obligation of confidentiality in accordance with Union legislation with respect to any information held by the EPPO.
2. Any other person who participates or assists in carrying out the functions of the EPPO at the national level shall be bound by an obligation of confidentiality as provided for under applicable national law.
3. The obligation of confidentiality shall also apply to the persons referred to in paragraphs 1 and 2 after they have left office or employment and after the termination of activities.
4. The obligation of confidentiality shall, in accordance with applicable national or Union law, apply to all information received by the EPPO, unless that information has already lawfully been made public.
5. Investigations carried out under the authority of the EPPO shall be protected by the rules concerning professional secrecy under the applicable Union law. Any person who participates or assists in carrying out the functions of the EPPO shall be bound to respect professional secrecy under the applicable national law.

*Article 109***Transparency**

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹⁾ shall apply to documents other than case files, including electronic images of those files, that are kept in accordance with Article 45 of this Regulation.
2. The European Chief Prosecutor shall, within 6 months of the date of his/her appointment, prepare a proposal for detailed rules for applying this Article. That proposal shall be adopted by the College.
3. Decisions taken by the EPPO under Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the European Ombudsman or of an action before the Court of Justice, under the conditions laid down in Articles 228 and 263 TFEU respectively.

*Article 110***OLAF and the Court of Auditors**

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EU, Euratom) No 883/2013, by 6 months after the date to be set by the Commission pursuant to Article 120(2), the EPPO shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office (OLAF) ⁽²⁾, and shall adopt the appropriate provisions applicable to the European Chief Prosecutor, the European Prosecutors, the Administrative Director and the staff of the EPPO, seconded national experts and other persons put at the disposal of the EPPO but not employed by it, and European Delegated Prosecutors 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 contractors and subcontractors who have received Union funds from the EPPO.
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 ⁽³⁾ with a view to establishing whether there have been any irregularities affecting the financial interests of the Union in connection with expenditure funded by the EPPO.

⁽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⁾ 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) (OJ L 136, 31.5.1999, p. 15).

⁽³⁾ 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).

4. Without prejudice to paragraphs 1, 2 and 3, working arrangements with bodies of the Union, authorities of third countries and international organisations, and contracts of the EPPO shall contain provisions expressly empowering the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

Article 111

Rules on the protection of sensitive non-classified and classified information

1. The EPPO shall establish internal rules on the protection of sensitive non-classified information, including the creation and processing of such information at the EPPO.
2. The EPPO shall establish internal rules on the protection of the EU classified information that shall be consistent with Council Decision 2013/488/EU ⁽¹⁾ in order to ensure an equivalent level of protection for such information.

Article 112

Administrative inquiries

The administrative activities of the EPPO shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 TFEU.

Article 113

General regime of liability

1. The contractual liability of the EPPO shall be governed by the law applicable to the contract in question.
2. The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the EPPO.
3. In the case of non-contractual liability, the EPPO shall, in accordance with the general principles common to the laws of the Member States of the European Union make good any damage caused by the EPPO or its staff in the performance of their duties in so far as it may be imputed to them.
4. Paragraph 3 shall also apply to damage caused through the fault of a European Delegated Prosecutor in the performance of his/her duties.
5. The Court of Justice shall have jurisdiction in disputes over compensation for damages as referred to in paragraph 3.
6. The national courts of the Member States of the European Union competent to deal with disputes involving the contractual liability of the EPPO 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 ⁽²⁾.
7. The personal liability of the staff of the EPPO shall be governed by the applicable provisions laid down in the Staff Regulations and the Conditions of Employment.

Article 114

Implementing rules and programme documents

The College, on the proposal of the European Chief Prosecutor, shall adopt in particular:

- (a) on an annual basis, the programming document containing annual and multi-annual programming of the EPPO;
- (b) an anti-fraud strategy, which is proportionate to the fraud risks having regard to the cost-benefit of the measures to be implemented;
- (c) rules on the conditions of employment, performance criteria, professional insufficiency, rights and obligations of the European Delegated Prosecutors, including rules on the prevention and management of conflicts of interest;

⁽¹⁾ 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).

⁽²⁾ 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).

(d) detailed rules concerning the application of Regulation (EC) No 1049/2001 in the activities of the EPPO;

(e) implementing rules referred to in Article 24(8) of Regulation (EC) No 45/2001.

Article 115

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 49(3) shall be conferred on the Commission for an indeterminate period of time from 20 November 2017.

3. The delegation of power referred to in Article 49(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the date of publication of the decision in the *Official Journal of the European Union* or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 49(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Article 116

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 115(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

Article 117

Notifications

Each Member State shall designate the authorities that are competent for the purposes of implementing this Regulation. Information on the designated authorities, as well as on any subsequent change thereto, shall be notified simultaneously to the European Chief Prosecutor, to the Council and to the Commission. Member States shall also notify to the EPPO an extensive list of the national substantive criminal law provisions that apply to the offences defined in Directive (EU) 2017/1371 and any other relevant national law. The EPPO shall ensure that the information received through these lists is made public. Furthermore, Member States that, in accordance with Article 30(3), intend to limit the application of points (e) and (f) of Article 30(1) to specific serious offences shall notify the EPPO of a list of those offences.

*Article 118***Review of the rules relating to the protection of natural persons with regard to the processing of personal data by the EPPO**

In the context of the adaptation of Regulation (EC) No 45/2001 in accordance with Article 2(3) and Article 98 of Regulation (EU) 2016/679, the Commission shall review the provisions relating to the protection of natural persons with regard to the processing of personal data by the EPPO laid down in this Regulation. The Commission shall, if appropriate, submit a legislative proposal with a view to amending or repealing those provisions.

*Article 119***Review clause**

1. No later than 5 years after the date to be set by the Commission pursuant to Article 120(2), and every 5 years thereafter, the Commission shall commission an evaluation and shall submit an evaluation report on the implementation and impact of this Regulation, as well as on the effectiveness and efficiency of the EPPO and its working practices. The Commission shall forward the evaluation report together with its conclusions to the European Parliament and to the Council and to national parliaments. The findings of the evaluation shall be made public.
2. The Commission shall submit legislative proposals to the European Parliament and the Council if it concludes that it is necessary to have additional or more detailed rules on the setting up of the EPPO, its functions or the procedure applicable to its activities, including its cross-border investigations.

*Article 120***Entry into force**

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. The EPPO shall exercise its competence with regard to any offence within its competence committed after the date on which this Regulation has entered into force.

The EPPO shall assume the investigative and prosecutorial tasks conferred on it by this Regulation on a date to be determined by a decision of the Commission on a proposal of the European Chief Prosecutor once the EPPO is set up. The decision of the Commission shall be published in the *Official Journal of the European Union*.

The date to be set by the Commission shall not be earlier than 3 years after the date of entry into force of this Regulation.

For those Member States which participate in enhanced cooperation by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU, this Regulation shall apply as from the date indicated in the decision concerned.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Luxembourg, 12 October 2017.

For the Council
The President
U. REINSALU

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION

of 13 June 2002

on joint investigation teams

(2002/465/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the European Union, and in particular Article 34(2)(b) thereof,

Having regard to the initiative of the Kingdom of Belgium, the French Republic, the Kingdom of Spain and the United Kingdom ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) One of the Union's objectives is to provide citizens with a high level of safety within an area of freedom, security and justice and this objective is to be achieved by preventing and combating crime through closer cooperation between police forces, customs authorities and other competent authorities in the Member States, while respecting the principles of human rights and fundamental freedoms and the rule of law on which the Union is founded and which are common to the Member States.
- (2) The European Council held in Tampere on 15 and 16 October 1999 called for joint investigation teams as foreseen in the Treaty to be set up without delay, as a first step, to combat trafficking in drugs and human beings as well as terrorism.
- (3) Provision has been made in Article 13 of the Convention established by the Council 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 ⁽³⁾ for the establishment and operation of joint investigation teams.
- (4) The Council urges that all measures be taken to ensure that this Convention is ratified as soon as possible, and in any event in the course of 2002.
- (5) The Council recognises that it is important to respond quickly to the European Council's call for the setting up of joint investigative teams without delay.
- (6) The Council considers that for the purpose of combating international crime as effectively as possible, it is appropriate that at this stage a specific legally binding instru-

ment on joint investigation teams should be adopted at the level of the Union which should apply to joint investigations into trafficking in drugs and human beings as well as terrorism.

- (7) The Council considers that such teams should be set up, as a matter of priority, to combat offences committed by terrorists.
- (8) The Member States that set up a team should decide on its composition, purpose and duration.
- (9) The Member States setting up a team should have the possibility to decide, where possible and in accordance with applicable law, to let persons not representing the competent authorities of Member States take part in the activities of the team, and that such persons may include representatives of, for example, Europol, the Commission (OLAF) or representatives of authorities of non Member States, and in particular representatives of law enforcement authorities of the United States. In such cases the agreement setting up the team should specify issues relating to possible liability for such representatives.
- (10) A joint investigating team should operate in the territory of a Member State in conformity with the law applicable to that Member State.
- (11) This Framework Decision should be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

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.

⁽¹⁾ OJ C 295, 20.10.2001, p. 9.

⁽²⁾ Opinion delivered on 13 November 2001 (not yet published in the Official Journal).

⁽³⁾ OJ C 197, 12.7.2000, p. 1.

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 Convention on Mutual Assistance in Criminal Matters and Article 37 of the Benelux Treaty of 27 June 1962, as amended by the Protocol of 11 May 1974, 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 Framework Decision, 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, investigating 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 Framework Decision 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. The rights conferred upon the members or seconded members of the team by virtue of this Framework Decision shall not apply to these persons unless the agreement expressly states otherwise.

*Article 2***Criminal liability regarding officials**

During the operations referred to in Article 1, 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 to offences committed against them or by them.

*Article 3***Civil liability regarding officials**

1. Where, in accordance with Article 1, 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.

*Article 4***Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 1 January 2003.

2. Member States shall transmit to the General Secretariat of the Council and the Commission the text of any provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of this and other information, the Commission shall, by 1 July 2004, submit a report to the Council on the operation of this Framework Decision. The Council shall assess the extent to which the Member States have complied with this Framework Decision.

*Article 5***Entry into force**

This Framework Decision shall enter into force on the date of its publication in the Official Journal. It shall cease to have effect when the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union has entered into force in all Member States.

Done at Luxembourg, 13 June 2002.

For the Council

The President

M. RAJOY BREY

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

COUNCIL

COUNCIL RESOLUTION

of 26 February 2010

on a Model Agreement for setting up a Joint Investigation Team (JIT)

(2010/C 70/01)

THE COUNCIL OF THE EUROPEAN UNION,

CONVINCED that the practitioners need an updated model based on best practices where establishing JITs,

HAVING REGARD to Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ⁽¹⁾ (hereinafter referred to as 'the Convention') and to the Council Framework Decision of 13 June 2002 ⁽²⁾ on joint investigation teams (hereinafter referred to as the 'Framework Decision'),

BEARING IN MIND the conclusions of the network of JIT experts set up in 2005 ⁽⁴⁾, particularly the conclusions reached at its third, fourth and fifth meetings held in November 2007 ⁽⁵⁾, December 2008 ⁽⁶⁾ and December 2009 ⁽⁷⁾, and Eurojust and Europol best practice and experience,

HAVING REGARD to the Council Recommendation on a model agreement for setting up a joint investigation team ⁽³⁾, approved in 2003 to support experts in the initial implementation of JITs,

BEARING IN MIND that since practice in the establishment and operation of JITs developed and with due regard for the problems and difficulties encountered to date, it was found necessary to replace the Model agreement under Council Recommendation of 2003 with an updated one,

BEARING IN MIND that at that time it was not possible to base the model agreement on best practice derived from actual experience because of the limited number of JITs then in operation, although it did provide the basis for later JIT agreements,

TAKING INTO ACCOUNT that this need is also recognised in the Stockholm Programme, point 4.3.1 of which states that the model agreement for setting up joint investigation teams should be updated,

AWARE that a significant number of JITs have been set up since 2003 and that there is now much greater readiness to set them up than there was a few years ago,

TAKING INTO ACCOUNT that the main objective of a JIT is to obtain information and evidence about the crime for the investigation of which it has been established,

BEARING IN MIND that such a model agreement should be comprehensive but also flexible so as to ensure that the competent authorities may adapt it to the particular circumstances of each case,

⁽⁴⁾ doc. 11037/05 Crimorg 67 Enfopol 88.

⁽⁵⁾ doc. 5526/08 Crimorg 14 Enfopol 13 Eurojust 7 Copen 10.

⁽⁶⁾ doc. 17512/08 Crimorg 217 Enfopol 265 Eurojust 118 Copen 262.

⁽⁷⁾ doc. 17161/09 Crimorg 180 Eurojust 73 Enfopol 310 EJM 39 Copen 243 Enfocustom 137.

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

⁽²⁾ OJ L 162, 20.6.2002, p. 1.

⁽³⁾ OJ C 121, 23.5.2003, p. 1.

ENCOURAGES the competent authorities of the Member States that wish to set up a Joint Investigation Team in accordance with the terms of the Framework Decision and the Convention with competent authorities from other Member States, to use, where appropriate, the model agreement set out in the Annex to this Resolution in order to agree upon the modalities for the joint investigation team.

Done at Brussels, 26 February 2010.

For the Council
The President
F. CAAMAÑO

ANNEX

MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

In accordance with Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ⁽¹⁾ (hereinafter referred to as the Convention) and the Council Framework Decision of 13 June 2002 on joint investigation teams ⁽²⁾ (hereinafter referred to as the Framework Decision)

1. Parties to the Agreement

The following parties have concluded an agreement on the setting up of a joint investigation team, hereinafter referred to as 'JIT':

1. (Name of the first competent agency/administration of a Member State as a Party to the agreement)

and

2. (Name of the second competent agency/administration of a Member State as a party to the agreement)

3. (Name of the last competent agency/administration of a Member State party to the agreement)

The parties to the agreement may decide by common agreement to invite other Member States' agencies/administrations to become parties to this agreement. For possible arrangements with third countries, bodies competent by virtue of provisions adopted within the framework of the Treaties and international bodies involved in the activities of the JIT, see Appendix I.

2. Purpose of the JIT

The agreement shall cover the setting up of a JIT for the following purpose:

Description of the specific purpose of the JIT. This should include the circumstances of the crime(s) being investigated (date, place and nature).

The parties may redefine the specific purpose of the JIT by common agreement.

3. Approach

The parties to the agreement may agree on an operational action plan (OAP) setting out the orientations according to which the purpose of the JIT is to be achieved ⁽³⁾.

4. Period covered by the agreement

In accordance with Article 13(1) of the Convention and Article 1(1) of the Framework Decision, JITs shall be set up for a limited period of time. With respect to this agreement, this JIT may operate during the following period:

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

⁽²⁾ OJ L 162, 20.6.2002, p. 1.

⁽³⁾ In the light of the relevant national legislation and its disclosure requirements, the OAP could be included in the JIT agreement, or as an appendix to the agreement or treated as a separate confidential document. In all cases the competent authorities which sign the agreement shall be aware of the content of the OAP. The OAP must be a flexible document containing practical agreements on a common strategy and on how to achieve the purpose of the JIT set out in Article 2, including the practical arrangements not otherwise covered by this agreement.

A check list regarding the points related to the possible content of the OAP is set out in Appendix IV to this model agreement.

from

[insert date]

to

[insert date]

The expiry date stated in this agreement may be extended by mutual consent of the parties in the form provided for in Appendix II to this model agreement.

5. Member State(s) in which the JIT will operate

The JIT will operate in the Member State(s) designated hereafter:

[Designate Member State or States in which the JIT is intended to operate]

In accordance with Article 13(3)(b) of the Convention and Article 1(3)(b) of the Framework Decision, the team shall carry out its operations in accordance with the law of the Member State in which it operates at any particular time. Should the JIT move its operational basis to another Member State, the law of this Member State shall then apply.

6. JIT Leader(s) ⁽¹⁾

The parties have designated the following person, who shall be a representative of the competent authorities in the Member State(s) where the team is operating, as the leader of the JIT and under whose leadership the members of the JIT must carry out their tasks in the Member State to which he belongs:

Member State	On secondment from (name of body)	Name	Rank and affiliation (judicial, police or other competent authority)
—	—	—	—
—	—	—	—

Should any of the abovementioned persons be prevented from carrying out their duties, a replacement will be designated without delay by mutual consent of the parties in an appendix to the agreement. In urgent cases, it will be sufficient for the parties to the JIT to give notification of the replacement by letter. Such notification shall subsequently be confirmed in an appendix to the agreement.

7. Members of the JIT

In addition to the persons referred to in Article 6, the following persons ⁽²⁾ shall be members of the JIT:

Member State	On secondment from (name of body)	Name/identification number ⁽¹⁾	Rank and affiliation (judicial, police or other competent authority)	Role
—	—	—	—	—
—	—	—	—	—

⁽¹⁾ If there are good grounds for protecting the identity of one or more members of the JIT, such as, in cases of covert investigations or in cases of terrorism that require maximum security, identification numbers must be assigned to those persons, as far as it is compatible with the national legislation of the Member State, party to the agreement. The numbers assigned must be included in a confidential document. Should it not be possible to assign an identification number, it may be agreed that the identity of the members is set out in a confidential document, which is attached to this agreement and which is made available to all parties thereto.

Should any of the above-mentioned persons be prevented from carrying out their duties, a replacement will be designated without delay in an appendix to this agreement or by a written notification sent by the competent leader of the JIT.

⁽¹⁾ Article 1(3)(a) of the Framework Decision shall apply, i.e. 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.

⁽²⁾ The JIT may include representatives of judicial, police or other competent authorities with investigative functions. Under this heading, it may also include members of Eurojust when they operate as competent national authorities as referred to in Article 9f of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime. These are the national members of Eurojust, their deputies and assistants — as well as other persons who, in line with their national legislation, are also members of the national office, i.e. seconded national experts. The police authorities may comprise members of the Europol national units of the Member States. These national units are based in the Member States and are national police authorities. Also the liaison officers of the Member States at Europol retain their capacity to act as national police authorities.

8. Participants in the JIT

The provisions on participants ⁽¹⁾ in the JIT are dealt with in the relevant appendix to this agreement.

9. Evidence

The parties entrust the leader or a member (s) of the JIT with the task of giving advice on the obtaining of evidence. His or her role includes providing guidance to members of the JIT on aspects and procedures to be taken into account in the taking of evidence. The person(s) who carry out this function should be indicated here.

In the OAP the parties may inform each other about giving testimony by members of the JIT.

10. General Conditions of the Agreement

In general, the conditions laid down in Article 13 of the Convention and the Framework Decision shall apply as implemented by each Member State in which the JIT operates.

11. Amendments to the agreement

Amendments to this agreement, including but not limited to the following:

- (a) the incorporation of new members of the JIT;
- (b) changes to the purpose provided for in Article 2 of this agreement;
- (c) additions or changes to the current articles.

shall take the form provided for in Appendix III to this model agreement, shall be signed by the parties and shall be attached to the original version.

12. Internal evaluation

Every six months at least, the JIT leaders shall evaluate the progress achieved as regards the general purpose of the JIT, while determining and addressing any problems thus identified.

After the operation of the JIT ends, the parties may, where appropriate, arrange a meeting to evaluate the performance of the JIT.

The JIT may draw up a report on the operation, which may show how the operational action plan was implemented and which results were achieved.

13. Specific arrangements of the agreement (in order to avoid making the agreement too cumbersome some or all points indicated under 13.1-13.11 may be located in OAP).

The following special arrangements may apply to this agreement (note that a number of these aspects are also regulated in the Convention and the Framework Decision):

(To be inserted, if applicable. The following sub-chapters are intended to highlight possible areas that need to be specifically described).

- 13.1. Terms under which seconded members of the JIT may be excluded when investigative measures are taken.
- 13.2. Specific conditions under which seconded members may carry out investigations within the MS of operation.
- 13.3. Specific conditions under which a seconded member of a JIT may request his/her own national authorities to take measures which are requested by the team without submitting a letter of request.

⁽¹⁾ Participants in the JIT are designated by third countries, Eurojust, Europol, the Commission (OLAF), bodies competent by virtue of provisions adopted within the framework of the Treaties and international organisations which participate in the activities of the JIT, as parties to the agreement provided for in Appendix I to this model Agreement.

- 13.4. Conditions under which seconded members may share information derived from seconding authorities.
- 13.5. Provisions concerning the media, in particular the need for consultation prior to the presentation of press releases and official information briefings.
- 13.6. Provisions concerning the confidentiality of this agreement.
- 13.7. The language to be used for communication must be defined.
- 13.8. Specific provisions on expenditure:
 - 13.8.1. Provisions on insurance for seconded members of the JIT;
 - 13.8.2. Provisions concerning expenditure on translation/interpreting/telephone tapping, etc.
 - 13.8.3. Provisions on the translation of, for example, the documents obtained into the language of other members of the JIT, as well as into the official language of communication (if different), since this can entail considerable (unnecessary) expenditure;
 - 13.8.4. Provisions concerning expenses or income arising from seized assets.
- 13.9. Conditions under which assistance sought under the Convention and other arrangements may be given.
- 13.10. Specific data protection rules.
- 13.10.bis Confidentiality and use of information already existing and/or obtained during the operation of the JIT.
- 13.11. Conditions under which seconded members may carry/use weapons.

Done at (place of signature), (date)

(Signatures of all parties)

Appendix I

TO THE MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

Participants in a JIT

Arrangement with Europol/Eurojust/the Commission (OLAF), bodies competent by virtue of provisions adopted within the framework of the Treaties, other international bodies or third countries

1. Parties to the arrangement

Name of the first party to the agreement that is not a Member State

Name of the last party to the agreement that is not a Member State (if there is more than one)

and

Name of the first competent agency/administration of a Member State as a party to the agreement

and

Name of the second competent agency/administration of a Member State as a party to the agreement

(... and ...)

have agreed that the following persons from *(names of the parties to the agreement that are not Member States)* will participate in the joint investigation team, established by agreement on ... *(date and place of the agreement to which this appendix is attached)*.

2. Participants in the JIT

The following persons will participate in the JIT:

State/Organisation	On secondment from (name of agency/body)	Name	Rank and affiliation	Role
—	—	—	—	—
—	—	—	—	—

The Member State ... has decided that its national members of Eurojust will participate in the joint investigation team as a competent national authority ⁽¹⁾.

Should any of the above-mentioned persons be prevented from carrying out their duties, a replacement will be designated in an appendix to this agreement. In urgent cases, it will be sufficient for the party to give notification of the replacement by letter. Such notification shall subsequently be confirmed in an appendix to the agreement.

⁽¹⁾ Delete this paragraph if not applicable.

3. **Specific arrangements**

The participation of the above-mentioned persons will be subject to the following conditions and only for the following purposes:

3.1. *First party to the agreement that is not a Member State*

3.1.1. Purpose of participation

3.1.2. Rights conferred (if any)

3.1.3. Provisions concerning costs

3.1.4. Specific provisions concerning or enabling achievement of the purpose of participation

3.1.5. Other specific provisions or conditions ⁽¹⁾

3.1.6. Specific data protection rules

3.2. *Second party to the agreement that is not a Member State (if applicable)*

3.2.1. ...

4. **Specific arrangements related to the participation of Europol ⁽²⁾**

4.1. *Principles of participation*

4.1.1. Europol staff participating in the JIT shall assist the members of the team in accordance with the Europol Decision and in accordance with the national law of the Member State where the team operates.

4.1.2. The Europol staff participating in the JIT shall work under the guidance of the leader(s) of the team as identified in point [...] of the Agreement and shall provide any assistance necessary to achieve the objectives and purpose of the JIT, as identified by the leader(s) of the team.

4.1.3. Europol staff has the right not to perform tasks which they consider to be in breach of their obligations under the Europol Decision. In that case, the Europol staff member shall inform the Director or his representative thereof. Europol shall consult with the leader(s) of the team with a view to finding a mutually satisfactory solution.

4.1.4. Europol staff participating in the JIT shall not be involved in the taking of any coercive measures. However, participating Europol staff can, under the guidance of the leader(s) of the team, be present during operational activities of the JIT, in order to render on-the-spot advice and assistance to the members of the team who execute coercive measures, provided that no legal constraints exist at national level where the team operates.

4.1.5. Article 11(a) of the Protocol on the Privileges and Immunities of the European Union shall not apply to Europol staff participating in the JIT ⁽³⁾.

⁽¹⁾ For example, references to basic or applicable legal frameworks, etc.

⁽²⁾ To be included only where Europol is a participant to the JIT. These rules were adopted by the Europol Management Board on 9 July 2009 (file No 3710-426r6) and a model JIT arrangement was adopted by the Europol Management Board on 18 November 2009 (file No 2610-74r2), as required under Article 6(2) of the Europol Decision. For updated information please refer to the Europol's website: <http://www.europol.europa.eu>

⁽³⁾ Protocol on the Privileges and Immunities of the European Union (consolidated version) (OJ C 115, 9.5.2008, p. 266).

4.1.6. During the operations of the JIT, Europol staff shall, with respect to offences committed against or by them, be subject to the national law of the Member State of operation applicable to persons with comparable functions.

4.2. *Type of assistance*

4.2.1. Participating Europol staff will provide full range of Europol's support services, in accordance with the Europol Council Decision as far as required or requested. Those will include, inter alia, operational and strategic analytical support, in particular through the analysis work file(s) (AWF) (name(s) of the work file(s) and related projects). Where required and when requested by the leader(s) of the team, Europol may support the JIT by deployment of a Europol 'mobile office' or of other technical equipment, if available and in compliance with Europol's security standards.

4.2.2. Europol staff participating in the JIT may assist in all activities, in particular by providing a communication platform, strategic, technical and forensic support and tactical and operational expertise and advice to the members of the JIT, as required by the leader(s) of the team.

4.2.3. Europol shall, within the boundaries of its legal framework facilitate the secure exchange of information between the parties of the JIT and non-participating States and/or EU bodies and international organisations, if requested by the leader(s) of the team.

4.3. *Access to Europol information processing systems*

4.3.1. Europol staff participating in the JIT shall have access to Europol's information processing systems, referred to in Article 10 of the Europol Decision. This access shall be in accordance with the provisions of the Europol Decision and in line with the applicable security and data protection standards for the duration of their membership of the JIT.

4.3.2. Europol staff may liaise directly with members of the JIT and provide members and seconded members of the JIT, in accordance with the Europol Decision, with information from any of the components of the information processing systems referred to in Article 10 of the Europol Decision. The conditions and restrictions on the use of this information must be respected.

4.3.3. Information obtained by a Europol staff member while part of the JIT may be, with the consent and under the responsibility of the Member State which provided the information, included in any of the components of the information processing systems referred to in Article 10 of the Europol Decision, under the conditions laid down therein.

4.4. *Costs and equipment*

4.4.1. The Member State in which investigative measures are taking place is responsible for providing the technical equipment (office accommodation, telecommunication etc.) necessary for the accomplishment of the tasks and shall pay the costs incurred. The respective Member State shall also provide office communication and other technical equipment necessary for the (encrypted) exchange of data. The costs are to be paid by that Member State.

4.4.2. Europol shall cover the costs incurred as a result of the participation of Europol staff in the JIT, in particular concerning insurance and salaries for staff as well as accommodation and travel costs. Europol shall also bear the costs for the special equipment mentioned in points 4.1 and 4.2 above.

Date/signatures ⁽¹⁾

⁽¹⁾ Signatures of the parties to this arrangement.

*Appendix II***TO THE MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM****Agreement to extend a joint investigation team**

In accordance with Article 13(1) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ⁽¹⁾ and Article 1(1) of the Council Framework Decision of 13 June 2002 on joint investigation teams ⁽²⁾:

The parties have agreed to extend the joint investigation team (hereinafter 'JIT') set up by agreement of [insert date] done at [insert place of signature], a copy of which is attached hereto.

The parties consider that the JIT should be extended beyond the period for which it was set up [insert date on which period ends] since its purpose as established in Article [insert article on purpose of JIT here] has not yet been achieved.

The circumstances requiring the JIT to be extended have been carefully examined by all the parties. The extension of the JIT is considered essential to the achievement of the purpose for which the JIT was set up.

The JIT will therefore remain in operation until [insert date on which new period ends]. The above period may be extended further by the parties by mutual agreement.

Date/Signature

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

⁽²⁾ OJ L 162, 20.6.2002, p. 1.

*Appendix III***TO THE MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM****Suggested wording for changes other than the period for which a JIT is set up**

In accordance with Article 13(1) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ⁽¹⁾ and Article 1(1) of the Council Framework Decision of 13 June 2002 on joint investigation teams ⁽²⁾, under which the present joint investigation team was set up:

The parties have agreed to amend the written agreement setting up a joint investigation team (hereinafter 'JIT') of *[insert date]*, done at *[insert place]*, a copy of which is attached hereto.

The signatories have agreed that the above agreement should be amended as follows:

1. (Amendment ...)
2. (Amendment ...)

The circumstances requiring the JIT agreement to be amended have been carefully examined by all the parties. The amendment(s) to the JIT agreement is/are deemed essential to achieve the purpose for which the JIT was set up.

Date/Signature

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

⁽²⁾ OJ L 162, 20.6.2002, p. 1.

Appendix IV

Proposal for a check list for the Operational Action Plan (OAP) ⁽¹⁾

The following points may be addressed by the parties:

Introduction — describe the purpose of the JIT. The text used under ‘purpose of the JIT’ in the JIT agreement would normally be sufficient

Operational procedure — identify the location(s) where the JIT is likely to operate, describe how the JIT will be managed and the investigation conducted, taking note of national legislation, guidelines and procedure

Role of members and/or participants of the JIT — identify and describe the different operational roles and tasks of each member and/or participant in the JIT (EU MS, Europol, Eurojust, OLAF) if not yet described in the JIT agreement

Special or specific measures to be implemented — identify and describe investigative activity that requires special measures or procedure e.g. child suspects, victims, dangerous/hostile working environment

Operations and investigative powers — identify and describe special operations/investigative techniques that will be employed during the investigation e.g. intrusive surveillance, informants, undercover officers, communication intercepts etc. and related legislation/procedure

Information exchange and communication — describe how information will be exchanged and the procedures for communication and identify competent partner or agency e.g. Europol, Eurojust, OLAF, SECI, Interpol; it may be necessary to agree upon a language of communication; consider the use of Europol’s secure means of communication (SIENA) and the Analytical Work Files (AWFs) as a means for a secure environment to store sensitive information

Intelligence assessment and tasking — describe the process of intelligence collection and development and any related guidelines

Financial investigations — consider the need for following the ‘money trail’

Evidence gathering — identify according to the jurisdiction(s) any legislation, guidelines, procedure etc. which must be taken into account including responsible agency/individual, requirement to translate evidence

Prosecution — identify the competent authority in each country/jurisdiction and any guidelines related to decisions to prosecute including the role of Eurojust in this respect

Testimony — identify the likelihood and procedures in place for each jurisdiction in respect of the requirement for JIT members to give evidence

Disclosure — describe the rules and procedures for all jurisdictions where the JIT is likely to operate

Operational and strategic meetings — identify and describe the meetings that will take place, their frequency and participants

Administration and logistics — any issues concerning administration, equipment (such as office accommodation, vehicles, IT equipment or any other technical equipment), resources, personnel, media, confidentiality issues, etc. should be dealt with here:

— Translation

— Office accommodation

— Vehicles

— Other technical equipment

⁽¹⁾ The content of the OAP is a living document reflecting the practical issues of a JIT. The OAP should be coherent with section 13 ‘Specific arrangements’ of the JIT Agreement. Some elements of section 13 may be located in the OAP.

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2009/315/JHA

of 26 February 2009

**on the organisation and content of the exchange of information extracted from the criminal record
between Member States**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31 and 34(2)(b) thereof,

Having regard to the proposal from the Commission and the initiative of the Kingdom of Belgium,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The European Union has set itself the objective of providing citizens with a high level of safety within the area of freedom, security and justice. This objective presupposes the exchange between the competent authorities of the Member States of information extracted from criminal records.
- (2) On 29 November 2000 the Council, in accordance with the conclusions of the Tampere European Council of 15 and 16 October 1999, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters ⁽²⁾. This Framework Decision contributes to achieving the goals provided for by measure 3 of the programme, which calls for the establishment of a standard form like that drawn up for the Schengen bodies, translated into all the official languages of the Union, for criminal records requests.
- (3) The Final Report on the first evaluation exercise on mutual legal assistance in criminal matters ⁽³⁾ called on the Member States to simplify the procedures for transferring documents between States, using, if necessary, standard forms to facilitate mutual legal assistance.

(4) The need to improve the quality of information exchanged on convictions was prioritised in the European Council Declaration on Combating Terrorism of 25 and 26 March 2004 and was reiterated in the Hague Programme ⁽⁴⁾, adopted by the European Council on 4 and 5 November 2004, which called for greater exchange of information from national conviction and disqualification registers. These objectives are reflected in the Action Plan jointly adopted by the Council and the Commission on 2 and 3 June 2005 with a view to carrying out the Hague Programme.

(5) With a view to improving the exchange of information between Member States on criminal records, projects developed with the aim to achieve this objective are welcomed, including the existing project for the interconnection of national criminal registers. The experience gathered from these activities has encouraged the Member States to further enhance their efforts and showed the importance to continue streamlining the mutual exchange of information on convictions between the Member States.

(6) This Framework Decision is a response to the wishes expressed by the Council on 14 April 2005, following the publication of the White Paper on exchanges of information on convictions and the effect of such convictions in the European Union and the subsequent general discussion thereof. Its main aim is to improve the exchange of information on convictions and, where imposed and entered in the criminal records of the convicting Member State, on disqualifications arising from criminal conviction of citizens of the Union.

(7) The application of the mechanisms established by this Framework Decision only to the transmission of information extracted from criminal records concerning natural persons should be without prejudice to a possible future broadening of the scope of application of such mechanisms to the exchange of information concerning legal persons.

⁽¹⁾ Opinion delivered on 17 June 2008 (not yet published in the Official Journal).

⁽²⁾ OJ C 12, 15.1.2001, p. 10.

⁽³⁾ OJ C 216, 1.8.2001, p. 14.

⁽⁴⁾ OJ C 53, 3.3.2005, p. 1.

- (8) Information on convictions handed down in other Member States is currently governed by Articles 13 and 22 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. These provisions are not, however, sufficient to meet the present requirements of judicial cooperation in an area such as the European Union.
- (9) As between the Member States, this Framework Decision should replace Article 22 of the European Convention on Mutual Assistance in Criminal Matters. In addition to the obligations of a convicting Member State to transmit information to the Member States of the person's nationality concerning convictions handed down against their nationals which this Framework Decision incorporates and further defines, an obligation on the Member States of the person's nationality to store information so transmitted is also introduced, in order to ensure that they are able to reply fully to requests for information from other Member States.
- (10) This Framework Decision should be without prejudice to the possibility of judicial authorities' directly requesting and transmitting information from criminal records pursuant to Article 13 in conjunction with Article 15(3), of the European Convention on Mutual Assistance in Criminal Matters and without prejudice to Article 6(1) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, established by Council Act of 29 May 2000 ⁽¹⁾.
- (11) Improving the circulation of information on convictions is of little benefit if Member States are not able to take transmitted information into account. On 24 July 2008, Council adopted Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings ⁽²⁾.
- (12) The main objective of the initiative of the Kingdom of Belgium is attained by this Framework Decision to the extent that the central authority of every Member State should request and include all information provided from the criminal records of the Member State of the person's nationality in its extract from criminal records when it replies to a request from the person concerned. Awareness of the existence of the conviction as well as, where imposed and entered in the criminal record, of a disqualification arising from it, is a prerequisite for giving them effect in accordance with the national law of the Member State in which the person intends to perform professional activity related to supervision of children. The mechanism established by this Framework Decision aims at inter alia ensuring that a person convicted of a sexual offence against children should no longer, where the criminal record of that person in the convicting Member State contains such conviction and, if imposed and entered in the criminal record, a disqualification arising from it, be able to conceal this conviction or disqualification with a view to performing professional activity related to supervision of children in another Member State.
- (13) This Framework Decision establishes rules on the protection of personal data transmitted between the Member States as a result of its implementation. Existing general rules on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters are complemented by the rules established in this Framework Decision. Furthermore, the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data applies to the personal data handled on the basis of this Framework Decision. This Framework Decision also incorporates the provisions of Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record ⁽³⁾ which limit the use the requesting Member State can make of information asked for. This Framework Decision supplements such provisions with specific rules applying where the Member State of the person's nationality forwards information on convictions transmitted to it by the convicting Member State.
- (14) This Framework Decision does not modify obligations and practices established in relation to third States under the European Convention on Mutual Assistance in Criminal Matters, in so far as that instrument remains applicable.
- (15) Under Council of Europe Recommendation No R (84) 10 on criminal records and rehabilitation of convicted persons, the main aim of establishment of criminal records is to inform the authorities responsible for the criminal justice system of the background of a person subject to legal proceedings with a view to adapting the decision to be taken to the individual situation. Since all other use of criminal records that might compromise the chances of social rehabilitation of the convicted person must be as limited as possible, the use of information transmitted under this Framework Decision for purposes other than that of criminal proceedings can be limited in accordance with the national law of the requested Member State and the requesting Member State.

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

⁽²⁾ OJ L 220, 15.8.2008, p. 32.

⁽³⁾ OJ L 322, 9.12.2005, p. 33.

- (16) The aim of the provisions of this Framework Decision concerning the transmission of information to the Member State of the person's nationality for the purpose of its storage and retransmission is not to harmonise national systems of criminal records of the Member States. This Framework Decision does not oblige the convicting Member State to change its internal system of criminal records as regards the use of information for domestic purposes.
- (17) Improving the circulation of information on convictions is of little benefit if such information cannot be understood by the Member State receiving it. Mutual understanding may be enhanced by the creation of a 'standardised European format' allowing information to be exchanged in a uniform, electronic and easily machine-translatable way. Information on convictions sent by the convicting Member State should be transmitted in the official language or one of the official languages of that Member State. Measures should be taken by Council to set up the information exchange system introduced by this Framework Decision.
- (18) This Framework Decision respects the 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.
- (19) This Framework Decision respects the principle of subsidiarity referred to in Article 2 of the Treaty on European Union and set out in Article 5 of the Treaty establishing the European Community since the improvement of systems for the transmission of information on convictions between Member States cannot be carried out adequately by the Member States unilaterally and requires coordinated action in the European Union. In accordance with the principle of proportionality, as set out in the Article 5 of the Treaty establishing the European Community, this Framework Decision does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Objective

The purpose of this Framework Decision is:

- (a) to define the ways in which a Member State where a conviction is handed down against a national of another Member State (the 'convicting Member State') transmits the information on such a conviction to the Member

State of the convicted person's nationality (the 'Member State of the person's nationality');

- (b) to define storage obligations for the Member State of the person's nationality and to specify the methods to be followed when replying to a request for information extracted from criminal records;
- (c) to lay down the framework for a computerised system of exchange of information on convictions between Member States to be built and developed on the basis of this Framework Decision and the subsequent decision referred to in Article 11(4).

Article 2

Definitions

For the purposes of this Framework Decision:

- (a) 'conviction' means any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent these decisions are entered in the criminal record of the convicting Member State;
- (b) 'criminal proceedings' means the pre-trial stage, the trial stage itself and the execution of the conviction;
- (c) 'criminal record' means the national register or registers recording convictions in accordance with national law.

Article 3

Central authority

1. For the purposes of this Framework Decision, each Member State shall designate a central authority. However, for the transmission of information under Article 4 and for replies under Article 7 to requests referred to in Article 6, Member States may designate one or more central authorities.

2. Each Member State shall inform the General Secretariat of the Council and the Commission of the central authority or authorities designated in accordance with paragraph 1. The General Secretariat of the Council shall notify the Member States and Eurojust of this information.

Article 4

Obligations of the convicting Member State

1. Each Member State shall take the necessary measures to ensure that all convictions handed down within its territory are accompanied, when provided to its criminal record, by information on the nationality or nationalities of the convicted person if he is a national of another Member State.

2. The central authority of the convicting Member State shall, as soon as possible, inform the central authorities of the other Member States of any convictions handed down within its territory against the nationals of such other Member States, as entered in the criminal record.

If it is known that the convicted person is a national of several Member States, the relevant information shall be transmitted to each of these Member States, even if the convicted person is a national of the Member State within whose territory he was convicted.

3. Information on subsequent alteration or deletion of information contained in the criminal record shall be immediately transmitted by the central authority of the convicting Member State to the central authority of the Member State of the person's nationality.

4. Any Member State which has provided information under paragraphs 2 and 3 shall communicate to the central authority of the Member State of the person's nationality, on the latter's request in individual cases, a copy of the convictions and subsequent measures as well as any other information relevant thereto in order to enable it to consider whether they necessitate any measure at national level.

Article 5

Obligations of the Member State of the person's nationality

1. The central authority of the Member State of the person's nationality shall store all information in accordance with Article 11(1) and (2) transmitted under Article 4(2) and (3), for the purpose of retransmission in accordance with Article 7.

2. Any alteration or deletion of information transmitted in accordance with Article 4(3) shall entail identical alteration or deletion by the Member State of the person's nationality regarding information stored in accordance with paragraph 1 of this Article for the purpose of retransmission in accordance with Article 7.

3. For the purpose of retransmission in accordance with Article 7 the Member State of the person's nationality may only use information which has been updated in accordance with paragraph 2 of this Article.

Article 6

Request for information on convictions

1. When information from the criminal record of a Member State is requested for the purposes of criminal proceedings against a person or for any purposes other than that of

criminal proceedings, the central authority of that Member State may, in accordance with its national law, submit a request to the central authority of another Member State for information and related data to be extracted from the criminal record.

2. When a person asks for information on his own criminal record, the central authority of the Member State in which the request is made may, in accordance with its national law, submit a request to the central authority of another Member State for information and related data to be extracted from the criminal record, provided the person concerned is or was a resident or a national of the requesting or requested Member State.

3. Once the time limit set out in Article 11(7) has elapsed, whenever a person asks the central authority of a Member State other than the Member State of the person's nationality for information on his own criminal record, the central authority of the Member State in which the request is made shall submit a request to the central authority of the Member State of the person's nationality for information and related data to be extracted from the criminal record in order to be able to include such information and related data in the extract to be provided to the person concerned.

4. All requests from the central authority of a Member State for information extracted from the criminal record shall be submitted using the form set out in the Annex.

Article 7

Reply to a request for information on convictions

1. When information extracted from the criminal record is requested under Article 6 from the central authority of the Member State of the person's nationality for the purposes of criminal proceedings, that central authority shall transmit to the central authority of the requesting Member State information on:

- (a) convictions handed down in the Member State of the person's nationality and entered in the criminal record;
- (b) any convictions handed down in other Member States which were transmitted to it after 27 April 2012, in application of Article 4, and stored in accordance with Article 5(1) and (2);
- (c) any convictions handed down in other Member States which were transmitted to it by 27 April 2012, and entered in the criminal record;

(d) any convictions handed down in third countries and subsequently transmitted to it and entered in the criminal record.

2. When information extracted from the criminal record is requested under Article 6 from the central authority of the Member State of the person's nationality for any purposes other than that of criminal proceedings, that central authority shall in respect of convictions handed down in the Member State of the person's nationality and of convictions handed down in third countries, which have been subsequently transmitted to it and entered in its criminal record, reply in accordance with its national law.

In respect of information on convictions handed down in another Member State, which have been transmitted to the Member State of the person's nationality, the central authority of the latter Member State shall in accordance with its national law transmit to the requesting Member State the information which has been stored in accordance with Article 5 (1) and (2) as well as the information which has been transmitted to that central authority by 27 April 2012, and has been entered in its criminal record.

When transmitting the information in accordance with Article 4, the central authority of the convicting Member State may inform the central authority of the Member State of the person's nationality that the information on convictions handed down in the former Member State and transmitted to the latter central authority may not be retransmitted for any purposes other than that of criminal proceedings. In this case, the central authority of the Member State of the person's nationality shall, in respect of such convictions, inform the requesting Member State which other Member State had transmitted such information so as to enable the requesting Member State to submit a request directly to the convicting Member State in order to receive information on these convictions.

3. When information extracted from the criminal record is requested from the central authority of the Member State of the person's nationality by a third country, the Member State of the person's nationality may reply in respect of convictions transmitted by another Member State only within the limitations applicable to the transmission of information to other Member States in accordance with paragraphs 1 and 2.

4. When information extracted from the criminal record is requested under Article 6 from the central authority of a Member State other than the Member State of the person's nationality, the requested Member State shall transmit information on convictions handed down in the requested Member State and on convictions handed down against third

country nationals and against stateless persons contained in its criminal record to the same extent as provided for in Article 13 of the European Convention on Mutual Assistance in Criminal Matters.

5. The reply shall be made using the form set out in the Annex. It shall be accompanied by a list of convictions, as provided for by national law.

Article 8

Deadlines for replies

1. Replies to the requests referred to in Article 6(1) shall be transmitted by the central authority of the requested Member State to the central authority of the requesting Member State immediately and in any event within a period not exceeding ten working days from the date the request was received, as provided for by its national law, rules or practice, using the form set out in the Annex.

When the requested Member State requires further information to identify the person involved in the request, it shall immediately consult the requesting Member State with a view to providing a reply within ten working days from the date the additional information is received.

2. Replies to the request referred to in Article 6(2) shall be transmitted within twenty working days from the date the request was received.

Article 9

Conditions for the use of personal data

1. Personal data provided under Article 7(1) and (4) for the purposes of criminal proceedings may be used by the requesting Member State only for the purposes of the criminal proceedings for which it was requested, as specified in the form set out in the Annex.

2. Personal data provided under Article 7(2) and (4) for any purposes other than that of criminal proceedings may be used by the requesting Member State in accordance with its national law only for the purposes for which it was requested and within the limits specified by the requested Member State in the form set out in the Annex.

3. Notwithstanding paragraphs 1 and 2, personal data provided under Article 7(1), (2) and (4) may be used by the requesting Member State for preventing an immediate and serious threat to public security.

4. Member States shall take the necessary measures to ensure that personal data received from another Member State under Article 4, if transmitted to a third country in accordance with Article 7(3), is subject to the same usage limitations as those applicable in a requesting Member State in accordance with paragraph 2 of this Article. Member States shall specify that personal data, if transmitted to a third country for the purposes of a criminal proceeding, may be further used by that third country only for the purposes of criminal proceedings.

5. This Article does not apply to personal data obtained by a Member State under this Framework Decision and originating from that Member State.

Article 10

Languages

When submitting a request referred to in Article 6(1), the requesting Member State shall transmit to the requested Member State the form set out in the Annex in the official language or one of the official languages of the latter Member State.

The requested Member State shall reply either in one of its official languages or in any other language accepted by both Member States.

Any Member State may, at the time of the adoption of this Framework Decision or at a later date, indicate, in a statement to the General Secretariat of the Council, which are the official languages of the institutions of the European Union that it accepts. The General Secretariat of the Council shall notify the Member States of this information.

Article 11

Format and other ways of organising and facilitating exchanges of information on convictions

1. When transmitting information in accordance with Article 4(2) and (3), the central authority of the convicting Member State shall transmit the following information:

- (a) information that shall always be transmitted, unless, in individual cases, such information is not known to the central authority (obligatory information):
 - (i) information on the convicted person (full name, date of birth, place of birth (town and State), gender, nationality and – if applicable – previous name(s));
 - (ii) information on the nature of the conviction (date of conviction, name of the court, date on which the decision became final);

- (iii) information on the offence giving rise to the conviction (date of the offence underlying the conviction and name or legal classification of the offence as well as reference to the applicable legal provisions); and

- (iv) information on the contents of the conviction (notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence);

(b) information that shall be transmitted if entered in the criminal record (optional information):

- (i) the convicted person's parents' names;

- (ii) the reference number of the conviction;

- (iii) the place of the offence; and

- (iv) disqualifications arising from the conviction;

(c) information that shall be transmitted, if available to the central authority (additional information):

- (i) the convicted person's identity number, or the type and number of the person's identification document;

- (ii) fingerprints, which have been taken from that person; and

- (iii) if applicable, pseudonym and/or alias name(s).

In addition, the central authority may transmit any other information concerning convictions entered in the criminal record.

2. The central authority of the Member State of the person's nationality shall store all information of the types listed in points (a) and (b) of paragraph 1, which it has received in accordance with Article 5(1) for the purpose of retransmission in accordance with Article 7. For the same purpose it may store the information of the types listed in point (c) of the first subparagraph and in the second subparagraph of paragraph 1.

3. Until the time limit set out in paragraph 7 has elapsed, central authorities of Member States which have not carried out the notification referred to in paragraph 6 shall transmit all information in accordance with Article 4, requests in accordance with Article 6, replies in accordance with Article 7 and other relevant information by any means capable of producing a written record under conditions allowing the central authority of the receiving Member State to establish the authenticity thereof.

Once the time limit set out in paragraph 7 of this Article has elapsed, central authorities of Member States shall transmit such information electronically using a standardised format.

4. The format referred to in paragraph 3 and any other means of organising and facilitating exchanges of information on convictions between central authorities of Member States shall be set up by the Council in accordance with the relevant procedures of the Treaty on the European Union by 27 April 2012.

Other such means include:

- (a) defining all means by which understanding and automatically translating transmitted information may be facilitated;
- (b) defining the means by which information may be exchanged electronically, particularly as regards the technical specification to be used and, if need be, any applicable exchange procedures;
- (c) possible alterations to the form set out in the Annex.

5. If the mode of transmission referred to in paragraphs 3 and 4 is not available, the first subparagraph of paragraph 3 shall remain applicable for the entire period of such unavailability.

6. Each Member State shall carry out the necessary technical alterations to be able to use the standardised format and electronically transmit it to other Member States. It shall notify the Council of the date from which it will be able to carry out such transmissions.

7. Member States shall carry out the technical alterations referred to in paragraph 6 within three years from the date of adoption of the format and the means by which information on convictions may be exchanged electronically.

Article 12

Relationship to other legal instruments

1. In relations between the Member States, this Framework Decision supplements the provisions of Article 13 of the European Convention on Mutual Assistance in Criminal Matters, its additional Protocols of 17 March 1978 and 8 November 2001, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Protocol of 16 October 2001 ⁽¹⁾.

2. For the purposes of this Framework Decision, Member States shall waive the right to rely among themselves on their

reservations to Article 13 of the European Convention on Mutual Assistance in Criminal Matters.

3. Without prejudice to their application in relations between Member States and third States, this Framework Decision replaces in relations between Member States which have taken the necessary measures to comply with this Framework Decision and ultimately with effect from 27 April 2012 the provisions of Article 22 of the European Convention on Mutual Assistance in Criminal Matters, as supplemented by Article 4 of said Convention's additional Protocol of 17 March 1978.

4. Decision 2005/876/JHA is hereby repealed.

5. This Framework Decision shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States.

Article 13

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 27 April 2012.

2. 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.

3. On the basis of that information the Commission shall, by 27 April 2015, present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

Article 14

Entry into force

This Framework Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 26 February 2009.

For the Council

The President

I. LANGER

⁽¹⁾ OJ C 326, 21.11.2001, p. 1.

ANNEX

Form referred to in Articles 6, 7, 8, 9 and 10 of the Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States**Request for information extracted from the criminal record**

Members States are to consult the Manual of Procedures for assistance in filling in this form correctly

(a) Information on the requesting Member State:

Member State:

Central authority(ies):

Contact person:

Telephone (with STD code):

Fax (with STD code):

E-mail address:

Correspondence address:

File reference, if known:

(b) Information on the identity of the person concerned by the request (*):

Full name (forenames and all surnames)

Previous names:

Pseudonym and/or alias, if any:

Gender: M ☐ F ☐

Nationality:

Date of birth (in figures: dd/mm/yyyy):

Place of birth (town and State):

Father's name:

Mother's name:

Residence or known address:

Person's identity number or type and number of the person's identification document:

Fingerprints:

Other available identification information:

(*) To facilitate the identification of the person as much information as possible is to be provided.

(c) Purpose of the request:

Please tick the appropriate box

- (1) ☐ criminal proceedings (please identify the authority before which the proceedings are pending and, if available, the case reference number)
-
- (2) ☐ request outside the context of criminal proceedings (please identify the authority before which the proceedings are pending and, if available, the case reference number, while ticking the relevant box):
- (i) ☐ from a judicial authority
-
- (ii) ☐ from a competent administrative authority
-
- (iii) ☐ from the person concerned for information on own criminal record
-

Purpose for which the information is requested:

Requesting authority:

- ☐ the person concerned does not consent for this information to be divulged (if the person concerned was asked for its consent in accordance with the law of the requesting Member State).

Contact person for any further information needed:

Name:

Telephone:

E-mail address:

Other information (e.g. urgency of the request):

Reply to the request

Information relating to the person concerned

Please tick the appropriate box

The undersigned authority confirms that:

- ☐ there is no information on convictions in the criminal record of the person concerned
- ☐ there is information on convictions entered in the criminal record of the person concerned; a list of convictions is attached
- ☐ there is other information entered in the criminal record of the person concerned; such information is attached (optional)
- ☐ there is information on convictions entered in the criminal record of the person concerned but the convicting Member State intimated that the information about these convictions may not be retransmitted for any purposes other than that of criminal proceedings. The request for more information may be sent directly to (please indicate the convicting Member State)
- ☐ in accordance with the national law of the requested Member State, requests made for any purposes other than that of criminal proceedings may not be dealt with.

Contact person for any further information needed:

Name:

Telephone:

E-mail address:

Other information (limitations of use of the data concerning requests outside the context of criminal proceedings):

Please indicate the number of pages attached to the reply form:

Done at

on

Signature and official stamp (if appropriate):

Name and position/organisation:

If appropriate, please attach a list of convictions and send the complete package to the requesting Member State. It is not necessary to translate the form or the list into the language of the requesting Member State.

COUNCIL DECISION 2009/316/JHA**of 6 April 2009****on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31 and 34(2)(c) thereof,

Having regard to the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States ⁽¹⁾, and in particular Article 11(4) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) Article 29 of the Treaty on European Union states that the Union's objective is to provide citizens with a high level of safety in the area of freedom, security and justice. This objective presupposes the systematic exchange between the competent authorities of the Member States of information extracted from criminal records in a way that would guarantee its common understanding and the efficiency of such exchange.
- (2) Information on convictions handed down against Member States' nationals by other Member States does not circulate efficiently on the current basis of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. Therefore, there is a need for more efficient and accessible procedures of exchange of such information at European Union level.
- (3) The need to improve the exchange of information on convictions was prioritised in the European Council Declaration on Combating Terrorism of 25 and 26 March 2004 and was subsequently reiterated in the Hague Programme ⁽³⁾ and in the Action Plan ⁽⁴⁾ on its implementation. Furthermore, the computerised interconnection of criminal records at European Union level was recognised as a political priority by the European Council in its Conclusions of 21 and 22 June 2007.
- (4) The computerised interconnection of criminal records is part of the E-Justice project, which was acknowledged as a priority by the European Council several times in 2007.
- (5) A pilot project is currently being developed with a view to interconnecting criminal records. Its achievements constitute a valuable basis for further work on computerised exchange of information at the European Union level.
- (6) This Decision aims to implement Framework Decision 2009/315/JHA in order to build and develop a computerised system of exchange of information on convictions between Member States. Such a system should be capable of communicating information on convictions in a form which is easily understandable. Therefore, a standardised format allowing information to be exchanged in a uniform, electronic and easily computer-translatable way as well as any other means of organising and facilitating electronic exchanges of information on convictions between central authorities of Member States should be set up.
- (7) This Decision is based on the principles established by Framework Decision 2009/315/JHA and applies and supplements those principles from a technical standpoint.
- (8) The categories of data to be entered into the system, the purposes for which the data is to be entered, the criteria for its entry, the authorities permitted to access the data, and some specific rules on protection of personal data are defined in the Framework Decision 2009/315/JHA.
- (9) Neither this Decision nor Framework Decision 2009/315/JHA establishes any obligation to exchange information about non-criminal rulings.
- (10) Since the objective of this Decision is not to harmonise national systems of criminal records there is no obligation for a convicting Member State to change its internal system of criminal records as regards the use of information for domestic purposes.

⁽¹⁾ See page 23 of this Official Journal.

⁽²⁾ Opinion delivered on 9 October 2008 (not yet published in the Official Journal).

⁽³⁾ OJ C 53, 3.3.2005, p. 1.

⁽⁴⁾ OJ C 198, 12.8.2005, p. 1.

- (11) The European Criminal Records System (ECRIS) is a decentralised information technology system. The criminal records data should be stored solely in databases operated by Member States, and there should be no direct online access to criminal records databases of other Member States. Member States should bear the responsibility for the operation of national criminal records databases and for the efficient exchanges of information between themselves. The common communication infrastructure of ECRIS should be initially the Trans European Services for Telematics between Administrations (S-TESTA) network. All expenditure concerning the common communication infrastructure should be covered by the general budget of the European Union.
- (12) The reference tables of categories of offences and categories of penalties and measures provided for in this Decision should facilitate the automatic translation and should enable the mutual understanding of the information transmitted by using a system of codes. The content of the tables is the result of the analysis of the needs of all 27 Member States. That analysis took into account the pilot project categorisation and the results of the clustering exercise of various national offences and penalties and measures. Moreover, in case of the table of offences, it also took into consideration the existing harmonised common definitions on the European and international level as well as the Eurojust and Europol data models.
- (13) In order to ensure the mutual understanding and transparency of the common categorisation, each Member State should submit the list of national offences and penalties and measures falling in each category referred to in the respective table. Member States may provide a description of offences and penalties and measures and, given the usefulness of such description, they should be encouraged to do so. Such information should be made accessible to Member States.
- (14) The reference tables of categories of offences and categories of penalties and measures provided for in this Decision are not designed to set up legal equivalences between offences and penalties and measures existing at national level. They are a tool aimed at helping the recipient to gain better understanding of the fact(s) and type of penalty(ies) or measure(s) contained in the information transmitted. The accuracy of the codes mentioned cannot be fully guaranteed by the Member State supplying the information and it should not preclude the competent authorities in the receiving Member State from interpreting the information.
- (15) The reference tables of categories of offences and categories of penalties and measures should be revised and updated in accordance with the procedure for the adoption of implementing measures for decisions provided for in the Treaty on European Union.
- (16) Member States and the Commission should inform and consult one another within the Council in accordance with the modalities set out in the Treaty on European Union, with a view to drawing up a non-binding manual for practitioners which should address the procedures governing the exchange of information, in particular modalities of identification of offenders, common understanding of the categories of offences and penalties and measures, and explanation of problematic national offences and penalties and measures, and ensuring the coordination necessary for the development and operation of ECRIS.
- (17) In order to accelerate the development of ECRIS, the Commission should adopt a number of technical measures to assist Member States in preparing the technical infrastructure for interconnecting their criminal records databases. The Commission may provide reference implementation software, namely appropriate software enabling Member States to make this interconnection, which they may choose to apply instead of their own interconnection software implementing a common set of protocols enabling the exchange of information between criminal records databases.
- (18) Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ⁽¹⁾ should apply in the context of computerised exchange of information extracted from criminal records of Member States, providing for an adequate level of data protection when information is exchanged between Member States, whilst allowing for Member States to require higher standards of protection to national data processing.
- (19) Since the objective of this Decision, namely the development of a computerised system for the exchange of information on convictions between Member States, cannot be adequately achieved by the Member States unilaterally, and can therefore, by reason of the necessity for coordinated action in the European Union, be better achieved at the level of the European Union, the Council may adopt measures, in accordance with the principle of subsidiarity referred to in Article 2 of the Treaty on European Union and set out in Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the Article 5 of the Treaty establishing the European Community, this Decision does not go beyond what is necessary in order to achieve that objective.
- (20) This Decision respects fundamental rights and observes the principles recognised in particular by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union,
- ⁽¹⁾ OJ L 350, 30.12.2008, p. 60.

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

This Decision establishes the European Criminal Records Information System (ECRIS).

This Decision also establishes the elements of a standardised format for the electronic exchange of information extracted from criminal records between the Member States, in particular as regards information on the offence giving rise to the conviction and information on the content of the conviction, as well as other general and technical implementation means related to organising and facilitating the exchange of information.

Article 2

Definitions

For the purposes of this Decision, the definitions laid down in Framework Decision 2009/315/JHA shall apply.

Article 3

European Criminal Records Information System (ECRIS)

1. ECRIS is a decentralised information technology system based on the criminal records databases in each Member State. It is composed of the following elements:

- (a) an interconnection software built in compliance with a common set of protocols enabling the exchange of information between Member States' criminal records databases;
- (b) a common communication infrastructure that provides an encrypted network.

2. This Decision is not aimed at establishing any centralised criminal records database. All criminal records data shall be stored solely in databases operated by the Member States.

3. Central authorities of the Member States referred to in Article 3 of Framework Decision 2009/315/JHA shall not have direct online access to criminal records databases of other Member States. The best available techniques identified together by Member States with the support of the Commission shall be employed to ensure the confidentiality and integrity of criminal records information transmitted to other Member States.

4. The interconnection software and databases storing, sending and receiving information extracted from criminal

records shall operate under the responsibility of the Member State concerned.

5. The common communication infrastructure shall be the S-TESTA communications network. Any further developments thereof or any alternative secure network shall ensure that the common communication infrastructure in place continues to meet the conditions set out in paragraph 6.

6. The common communication infrastructure shall be operated under the responsibility of the Commission, and shall fulfil the security requirements and thoroughly respond to the needs of ECRIS.

7. In order to ensure the efficient operation of ECRIS, the Commission shall provide general support and technical assistance, including the collection and drawing up of statistics referred to in Article 6(2)(b)(i) and the reference implementation software.

8. Notwithstanding the possibility of using the European Union financial programmes in accordance with the applicable rules, each Member State shall bear its own costs arising from the implementation, administration, use and maintenance of its criminal records database and the interconnection software referred to in paragraph 1.

The Commission shall bear the costs arising from the implementation, administration, use, maintenance and future developments of the common communication infrastructure of ECRIS, as well as the implementation and future developments of the reference implementation software.

Article 4

Format of transmission of information

1. When transmitting information in accordance with Article 4(2) and (3) and Article 7 of Framework Decision 2009/315/JHA relating to the name or legal classification of the offence and to the applicable legal provisions, Member States shall refer to the corresponding code for each of the offences referred to in the transmission, as provided for in the table of offences in Annex A. By way of exception, where the offence does not correspond to any specific sub-category, the 'open category' code of the relevant or closest category of offences or, in the absence of the latter, an 'other offences' code, shall be used for that particular offence.

Member States may also provide available information relating to the level of completion and the level of participation in the offence and, where applicable, to the existence of total or partial exemption from criminal responsibility or to recidivism.

2. When transmitting information in accordance with Article 4(2) and (3) and Article 7 of Framework Decision 2009/315/JHA relating to the contents of the conviction, notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence, Member States shall refer to the corresponding code for each of the penalties and measures referred to in the transmission, as provided for in the table of penalties and measures in Annex B. By way of exception, where the penalty or measure does not correspond to any specific sub-category, the 'open category' code of the relevant or closest category of penalties and measures or, in the absence of the latter, an 'other penalties and measures' code, shall be used for that particular penalty or measure.

Member States shall also provide, where applicable, available information relating to the nature and/or conditions of execution of the penalty or measure imposed as provided for in the parameters of Annex B. The parameter 'non-criminal ruling' shall be indicated only in cases where information on such a ruling is provided on a voluntary basis by the Member State of nationality of the person concerned, when replying to a request for information on convictions.

Article 5

Information on national offences and penalties and measures

1. The following information shall be provided by the Member States to the General Secretariat of the Council, with a view in particular to drawing up the non-binding manual for practitioners referred to in Article 6(2)(a):

- (a) the list of national offences in each of the categories referred to in the table of offences in Annex A. The list shall include the name or legal classification of the offence and reference to the applicable legal provisions. It may also include a short description of the constitutive elements of the offence;
- (b) the list of types of sentences, possible supplementary penalties and security measures and possible subsequent decisions modifying the enforcement of the sentence as defined in national law, in each of the categories referred to in the table of penalties and measures in Annex B. It may also include a short description of the specific penalty or measure.

2. The lists and descriptions referred to in paragraph 1 shall be regularly updated by Member States. Updated information shall be sent to the General Secretariat of the Council.

3. The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to this Article.

Article 6

Implementing measures

1. The Council, acting by a qualified majority and after consulting the European Parliament, shall adopt any modifications of Annexes A and B as may be necessary.

2. The representatives of the relevant departments of the administrations of the Member States and the Commission shall inform and consult one another within the Council with a view to:

- (a) drawing up a non-binding manual for practitioners setting out the procedure for the exchange of information through ECRIS, addressing in particular the modalities of identification of offenders, as well as recording the common understanding of the categories of offences and penalties and measures listed respectively in Annexes A and B;
- (b) coordinating their action for the development and operation of ECRIS, concerning in particular:
 - (i) the establishment of logging systems and procedures making it possible to monitor the functioning of ECRIS and the establishment of non-personal statistics relating to the exchange through ECRIS of information extracted from criminal records;
 - (ii) the adoption of technical specifications of the exchange, including security requirements, in particular the common set of protocols;
 - (iii) the establishment of procedures verifying the conformity of the national software applications with the technical specifications.

Article 7

Report

The Commission services shall regularly publish a report concerning the exchange, through ECRIS, of information extracted from the criminal record based in particular on the statistics referred to in Article 6(2)(b)(i). This report shall be published for the first time one year after submitting the report referred to in Article 13(3) of Framework Decision 2009/315/JHA.

Article 8

Implementation and time limits

1. Member States shall take the necessary measures to comply with the provisions of this Decision by 7 April 2012.

2. Member States shall use the format specified in Article 4 and comply with the means of organising and facilitating exchanges of information laid down in this Decision from the date notified in accordance with Article 11(6) of Framework Decision 2009/315/JHA.

*Article 9***Taking of effect**

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 6 April 2009.

For the Council

The President

J. POSPÍŠIL

ANNEX A

Common table of offences categories referred to in Article 4

Parameters		
Level of completion:	Completed act	C
	Attempt or preparation	A
	Non-transmitted element	Ø
Level of participation:	Perpetrator	M
	Aider and abettor or instigator/ organiser, conspirator	H
	Non-transmitted element	Ø
Exemption from criminal responsibility:	Insanity or diminished responsibility	S
Recidivism		R

Code	Categories and sub-categories of offences
0100 00 open category	Crimes within the jurisdiction of the International Criminal Court
0101 00	Genocide
0102 00	Crimes against humanity
0103 00	War crimes
0200 00 open category	Participation in a criminal organisation
0201 00	Directing a criminal organisation
0202 00	Knowingly taking part in the criminal activities of a criminal organisation
0203 00	Knowingly taking part in the non-criminal activities of a criminal organisation
0300 00 open category	Terrorism
0301 00	Directing a terrorist group
0302 00	Knowingly participating in the activities of a terrorist group
0303 00	Financing of terrorism
0304 00	Public provocation to commit a terrorist offence
0305 00	Recruitment or training for terrorism
0400 00 open category	Trafficking in human beings

Code	Categories and sub-categories of offences
0401 00	Trafficking in human beings for the purposes of labour or services exploitation
0402 00	Trafficking in human beings for the purposes of the exploitation of the prostitution of others or other forms of sexual exploitation
0403 00	Trafficking in human beings for the purposes of organ or human tissue removal
0404 00	Trafficking in human beings for the purpose of slavery, practices similar to slavery or servitude
0405 00	Trafficking in human beings for the purposes of labour or services exploitation of a minor
0406 00	Trafficking in human beings for the purposes of the exploitation of the prostitution of minors or other forms of their sexual exploitation
0407 00	Trafficking in human beings for the purposes of organ or human tissue removal of a minor
0408 00	Trafficking in human beings for the purpose of slavery, practices similar to slavery or servitude of a minor
0500 00 open category	Illicit trafficking ⁽¹⁾ and other offences related to weapons, firearms, their parts and components, ammunition and explosives
0501 00	Illicit manufacturing of weapons, firearms, their parts and components, ammunition and explosives
0502 00	Illicit trafficking of weapons, firearms, their parts and components ammunition and explosives at national level ⁽²⁾
0503 00	Illicit exportation or importation of weapons, firearms, their parts and components, ammunition and explosives
0504 00	Unauthorised possession or use of weapons, firearms, their parts and components, ammunition and explosives
0600 00 open category	Environmental crime
0601 00	Destroying or damaging protected fauna and flora species
0602 00	Unlawful discharges of polluting substances or ionising radiation into air, soil or water
0603 00	Offences related to waste, including hazardous waste
0604 00	Offences related to illicit trafficking ⁽¹⁾ in protected fauna and flora species or parts thereof
0605 00	Unintentional environmental offences
0700 00 open category	Offences related to drugs or precursors, and other offences against public health
0701 00	Offences related to illicit trafficking ⁽³⁾ in narcotic drugs, psychotropic substances and precursors not exclusively for own personal consumption
0702 00	Illicit consumption of drugs and their acquisition, possession, manufacture or production exclusively for own personal consumption

Code	Categories and sub-categories of offences
0703 00	Aiding or inciting others to use narcotic drugs or psychotropic substances illicitly
0704 00	Manufacture or production of narcotic drugs not exclusively for personal consumption
0800 00 open category	Crimes against the person
0801 00	Intentional killing
0802 00	Aggravated cases of intentional killing ⁽⁴⁾
0803 00	Unintentional killing
0804 00	Intentional killing of a new-born by his/her mother
0805 00	Illegal abortion
0806 00	Illegal euthanasia
0807 00	Offences related to committing suicide
0808 00	Violence causing death
0809 00	Causing grievous bodily injury, disfigurement or permanent disability
0810 00	Unintentionally causing grievous bodily injury, disfigurement or permanent disability
0811 00	Causing minor bodily injury
0812 00	Unintentionally causing minor bodily injury
0813 00	Exposing to danger of loss of life or grievous bodily injury
0814 00	Torture
0815 00	Failure to offer aid or assistance
0816 00	Offences related to organ or tissue removal without authorisation or consent
0817 00	Offences related to illicit trafficking ⁽³⁾ in human organs and tissue
0818 00	Domestic violence or threat
0900 00 open category	Offences against personal liberty, dignity and other protected interests, including racism and xenophobia
0901 00	Kidnapping, kidnapping for ransom, illegal restraint
0902 00	Unlawful arrest or deprivation of liberty by public authority
0903 00	Hostage-taking
0904 00	Unlawful seizure of an aircraft or ship
0905 00	Insults, slander, defamation, contempt

Code	Categories and sub-categories of offences
0906 00	Threats
0907 00	Duress, pressure, stalking, harassment or aggression of a psychological or emotional nature
0908 00	Extortion
0909 00	Aggravated extortion
0910 00	Illegal entry into private property
0911 00	Invasion of privacy other than illegal entry into private property
0912 00	Offences against protection of personal data
0913 00	Illegal interception of data or communication
0914 00	Discrimination on grounds of gender, race, sexual orientation, religion or ethnic origin
0915 00	Public incitement to racial discrimination
0916 00	Public incitement to racial hatred
0917 00	Blackmail
1000 00 open category	Sexual offences
1001 00	Rape
1002 00	Aggravated rape ⁽⁵⁾ other than rape of a minor
1003 00	Sexual assault
1004 00	Procuring for prostitution or sexual act
1005 00	Indecent exposure
1006 00	Sexual harassment
1007 00	Soliciting by a prostitute
1008 00	Sexual exploitation of children
1009 00	Offences related to child pornography or indecent images of minors
1010 00	Rape of a minor
1011 00	Sexual assault of a minor
1100 00 open category	Offences against family law
1101 00	Illicit sexual relations between close family members
1102 00	Polygamy

Code	Categories and sub-categories of offences
1103 00	Evading the alimony or maintenance obligation
1104 00	Neglect or desertion of a minor or a disabled person
1105 00	Failure to comply with an order to produce a minor or removal of a minor
1200 00 open category	Offences against the State, public order, course of justice or public officials
1201 00	Espionage
1202 00	High treason
1203 00	Offences related to elections and referendum
1204 00	Attempt against life or health of the Head of State
1205 00	Insult of the State, Nation or State symbols
1206 00	Insult or resistance to a representative of public authority
1207 00	Extortion, duress, pressure towards a representative of public authority
1208 00	Assault or threat on a representative of public authority
1209 00	Public order offences, breach of the public peace
1210 00	Violence during sports events
1211 00	Theft of public or administrative documents
1212 00	Obstructing or perverting the course of justice, making false allegations in the course of criminal or judicial proceedings, perjury
1213 00	Unlawful impersonation of a person or an authority
1214 00	Escape from lawful custody
1300 00 open category	Offences against public property or public interests
1301 00	Public, social security or family benefit fraud
1302 00	Fraud affecting European benefits or allowances
1303 00	Offences related to illegal gambling
1304 00	Obstructing of public tender procedures
1305 00	Active or passive corruption of a civil servant, a person holding public office or public authority
1306 00	Embezzlement, misappropriation or other diversion of property by a public official
1307 00	Abuse of a function by a public official

Code	Categories and sub-categories of offences
1400 00 open category	Tax and customs offences
1401 00	Tax offences
1402 00	Customs offences
1500 00 open category	Economic and trade related offences
1501 00	Bankruptcy or fraudulent insolvency
1502 00	Breach of accounting regulation, embezzlement, concealment of assets or unlawful increase in a company's liabilities
1503 00	Violation of competition rules
1504 00	Laundering of proceeds from crime
1505 00	Active or passive corruption in the private sector
1506 00	Revealing a secret or breaching an obligation of secrecy
1507 00	'Insider trading'
1600 00 open category	Offences against property or causing damage to goods
1601 00	Unlawful appropriation
1602 00	Unlawful appropriation or diversion of energy
1603 00	Fraud, including swindling
1604 00	Dealing in stolen goods
1605 00	Illicit trafficking ⁽⁶⁾ in cultural goods, including antiques and works of art
1606 00	Intentional damage or destruction of property
1607 00	Unintentional damage or destruction of property
1608 00	Sabotage
1609 00	Offences against industrial or intellectual property
1610 00	Arson
1611 00	Arson causing death or injury to persons
1612 00	Forest arson
1700 00 open category	Theft offences

Code	Categories and sub-categories of offences
1701 00	Theft
1702 00	Theft after unlawful entry into property
1703 00	Theft, using violence or weapons, or using threat of violence or weapons against person
1704 00	Forms of aggravated theft which do not involve use of violence or weapons, or use of threat of violence or weapons, against persons.
1800 00 open category	Offences against information systems and other computer-related crime
1801 00	Illegal access to information systems
1802 00	Illegal system interference
1803 00	Illegal data interference
1804 00	Production, possession, dissemination of or trafficking in computer devices or data enabling commitment of computer-related offences
1900 00 open category	Forgery of means of payment
1901 00	Counterfeiting or forging currency, including the euro
1902 00	Counterfeiting of non-cash means of payment
1903 00	Counterfeiting or forging public fiduciary documents
1904 00	Putting into circulation/using counterfeited or forged currency, non-cash means of payment or public fiduciary documents
1905 00	Possession of a device for the counterfeiting or forgery of currency or public fiduciary documents
2000 00 open category	Falsification of documents
2001 00	Falsification of a public or administrative document by a private individual
2002 00	Falsification of a document by a civil servant or a public authority
2003 00	Supply or acquisition of a forged public or administrative document; supply or acquisition of a forged document by a civil servant or a public authority
2004 00	Using forged public or administrative documents
2005 00	Possession of a device for the falsification of public or administrative documents
2006 00	Forgery of private documents by a private individual
2100 00 open category	Offences against traffic regulations
2101 00	Dangerous driving
2102 00	Driving under the influence of alcohol or narcotic drugs

Code	Categories and sub-categories of offences
2103 00	Driving without a licence or while disqualified
2104 00	Failure to stop after a road accident
2105 00	Avoiding a road check
2106 00	Offences related to road transport
2200 00 open category	Offences against labour law
2201 00	Unlawful employment
2202 00	Offences relating to remuneration, including social security contributions
2203 00	Offences relating to working conditions, health and safety at work
2204 00	Offences relating to access to or exercise of a professional activity
2205 00	Offences relating to working hours and rest time
2300 00 open category	Offences against migration law
2301 00	Unauthorised entry or residence
2302 00	Facilitation of unauthorised entry and residence
2400 00 open category	Offences against military obligations
2500 00 open category	Offences related to hormonal substances and other growth promoters
2501 00	Illicit importation, exportation or supply of hormonal substances and other growth promoters
2600 00 open category	Offences related to nuclear materials or other hazardous radioactive substances
2601 00	Illicit importation, exportation, supply or acquisition of nuclear or radioactive materials
2700 00 open category	Other offences
2701 00	Other intentional offences
2702 00	Other unintentional offences

(¹) Unless otherwise specified in this category, 'trafficking' means import, export, acquisition, sale, delivery, movement or transfer.

(²) For the purpose of this sub-category trafficking includes acquisition, sale, delivery, movement or transfer.

(³) For the purpose of this sub-category trafficking includes import, export, acquisition, sale, delivery, movement or transfer.

(⁴) For example: particularly grave circumstances.

(⁵) For example rape with particular cruelty.

(⁶) Trafficking includes import, export, acquisition, sale, delivery, movement or transfer.

ANNEX B

Common table of penalties and measures categories referred to in Article 4

Code	Categories and sub-categories of offences
1000 open category	Deprivation of freedom
1001	Imprisonment
1002	Life imprisonment
2000 open category	Restriction of personal freedom
2001	Prohibition from frequenting some places
2002	Restriction to travel abroad
2003	Prohibition to stay in some places
2004	Prohibition from entry to a mass event
2005	Prohibition to enter in contact with certain persons through whatever means
2006	Placement under electronic surveillance ⁽¹⁾
2007	Obligation to report at specified times to a specific authority
2008	Obligation to stay/reside in a certain place
2009	Obligation to be at the place of residence on the set time
2010	Obligation to comply with the probation measures ordered by the court, including the obligation to remain under supervision
3000 open category	Prohibition of a specific right or capacity
3001	Disqualification from function
3002	Loss/suspension of capacity to hold or to be appointed to public office
3003	Loss/suspension of the right to vote or to be elected
3004	Incapacity to contract with public administration
3005	Ineligibility to obtain public subsidies
3006	Cancellation of the driving licence ⁽²⁾
3007	Suspension of driving licence
3008	Prohibition to drive certain vehicles
3009	Loss/suspension of the parental authority
3010	Loss/suspension of right to be an expert in court proceedings/witness under oath/juror
3011	Loss/suspension of right to be a legal guardian ⁽³⁾
3012	Loss/suspension of right of decoration or title
3013	Prohibition to exercise professional, commercial or social activity
3014	Prohibition from working or activity with minors
3015	Obligation to close an establishment
3016	Prohibition to hold or to carry weapons
3017	Withdrawal of a hunting/fishing license

Code	Categories and sub-categories of offences
3018	Prohibition to issue cheques or to use payment/credit cards
3019	Prohibition to keep animals
3020	Prohibition to possess or use certain items other than weapons
3021	Prohibition to play certain games/sports
4000 open category	Prohibition or expulsion from territory
4001	Prohibition from national territory
4002	Expulsion from national territory
5000 open category	Personal obligation
5001	Submission to medical treatment or other forms of therapy
5002	Submission to a social-educational programme
5003	Obligation to be under the care/control of the family
5004	Educational measures
5005	Socio-judicial probation
5006	Obligation of training/working
5007	Obligation to provide judicial authorities with specific information
5008	Obligation to publish the judgment
5009	Obligation to compensate for the prejudice caused by the offence
6000 open category	Penalty on personal property
6001	Confiscation
6002	Demolition
6003	Restoration
7000 open category	Placing in an institution
7001	Placing in a psychiatric institution
7002	Placing in a detoxification institution
7003	Placing in an educational institution
8000 open category	Financial penalty
8001	Fine
8002	Day-fine ⁽⁴⁾
8003	Fine for the benefit of a special recipient ⁽⁵⁾
9000 open category	Working penalty
9001	Community service or work
9002	Community service or work accompanied with other restrictive measures

Code	Categories and sub-categories of offences
10000 open category	Military penalty
10001	Loss of military rank ⁽⁶⁾
10002	Expulsion from professional military service
10003	Military imprisonment
11000 open category	Exemption/deferment of sentence/penalty, warning
12000 open category	Other penalties and measures

⁽¹⁾ Fixed or mobile placement.

⁽²⁾ Reapplication in order to obtain a new driving licence is necessary.

⁽³⁾ Legal guardian for a person who is legally incompetent or for a minor.

⁽⁴⁾ Fine expressed in daily units.

⁽⁵⁾ E.g.: for an institution, association, foundation or a victim.

⁽⁶⁾ Military demotion.

Parameters (to be specified where applicable)

ø	Penalty
m	Measure
a	Suspended penalty/measure
b	Partially suspended penalty/measure
c	Suspended penalty/measure with probation/supervision
d	Partially suspended penalty/measure with probation/supervision
e	Conversion of penalty/measure
f	Alternative penalty/measure imposed as principal penalty
g	Alternative penalty/measure imposed initially in case of non-respect of the principal penalty
h	Revocation of suspended penalty/measure
i	Subsequent formation of an overall penalty
j	Interruption of enforcement/postponement of the penalty/measure ⁽¹⁾
k	Remission of the penalty
l	Remission of the suspended penalty
n	End of penalty
o	Pardon
p	Amnesty
q	Release on parole (liberation of a person before end of the sentence under certain conditions)
r	Rehabilitation (with or without the deletion of penalty from criminal records)
s	Penalty or measure specific to minors
t	Non-criminal ruling ⁽²⁾

⁽¹⁾ Does not lead to avoidance of enforcement of penalty.

⁽²⁾ This parameter will be indicated only when such information is provided in reply to the request received by the Member State of nationality of the person concerned.

This text is meant purely as a documentation tool and has no legal effect. The Union's institutions do not assume any liability for its contents. The authentic versions of the relevant acts, including their preambles, are those published in the Official Journal of the European Union and available in EUR-Lex. Those official texts are directly accessible through the links embedded in this document

► **B** REGULATION (EU) 2019/816 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 17 April 2019

establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726

(OJ L 135, 22.5.2019, p. 1)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019	L 135	85	22.5.2019

▼B**REGULATION (EU) 2019/816 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL****of 17 April 2019****establishing a centralised system for the identification of Member
States holding conviction information on third-country nationals
and stateless persons (ECRIS-TCN) to supplement the European
Criminal Records Information System and amending
Regulation (EU) 2018/1726***CHAPTER I***General provisions***Article 1***Subject matter**

This Regulation establishes:

- (a) a system to identify the Member States holding information on previous convictions of third-country nationals ('ECRIS-TCN');
- (b) the conditions under which ECRIS-TCN shall be used by the central authorities in order to obtain information on such previous convictions through the European Criminal Records Information System (ECRIS) established by Decision 2009/316/JHA, as well as the conditions under which Eurojust, Europol and the EPPO shall use ECRIS-TCN;

▼M1

- (c) the conditions under which ECRIS-TCN contributes to facilitating and assisting in the correct identification of persons registered in ECRIS-TCN under the conditions and for the purposes of Article 20 of Regulation (EU) 2019/818 of the European Parliament and of the Council ⁽¹⁾, by storing identity data, travel document data and biometric data in the CIR.

*Article 2***Scope**

This Regulation applies to the processing of identity information of third-country nationals who have been subject to convictions in the Member States for the purpose of identifying the Member States where such convictions were handed down. With the exception of point (b)(ii) of Article 5(1), the provisions of this Regulation that apply to third-country nationals also apply to citizens of the Union who also hold the nationality of a third country and who have been subject to convictions in the Member States. This Regulation also facilitates and assists in the correct identification of persons in accordance with this Regulation and with Regulation (EU) 2019/818.

⁽¹⁾ Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).

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Article 3
Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘conviction’ means any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent that the decision is entered in the criminal records of the convicting Member State;
- (2) ‘criminal proceedings’ means the pre-trial stage, the trial stage and the execution of the conviction;
- (3) ‘criminal record’ means the national register or registers recording convictions in accordance with national law;
- (4) ‘convicting Member State’ means the Member State in which a conviction is handed down;
- (5) ‘central authority’ means an authority designated in accordance with Article 3(1) of Framework Decision 2009/315/JHA;
- (6) ‘competent authorities’ means the central authorities and Eurojust, Europol and the EPPO, which are competent to access or query ECRIS-TCN in accordance with this Regulation;
- (7) ‘third-country national’ means a person who is not a citizen of the Union within the meaning of Article 20(1) TFEU, or who is a stateless person or a person whose nationality is unknown;

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- (9) ‘interface software’ means the software hosted by the competent authorities allowing them to access the central system through the communication infrastructure referred to in point (d) of Article 4(1);
- (10) ‘identity information’ means alphanumeric data, fingerprint data and facial images that are used to establish a connection between these data and a natural person;
- (11) ‘alphanumeric data’ means data represented by letters, digits, special characters, spaces and punctuation marks;
- (12) ‘fingerprint data’ means the data relating to plain and rolled impressions of the fingerprints of each of a person's fingers;
- (13) ‘facial image’ means a digital image of a person's face;
- (14) ‘hit’ means a match or matches established by comparison between identity information recorded in the central system and the identity information used for a search;
- (15) ‘national central access point’ means the national connection point to the communication infrastructure referred to in point (d) of Article 4(1);
- (16) ‘ECRIS reference implementation’ means the software developed by the Commission and made available to the Member States for the exchange of criminal records information through ECRIS;

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- (17) ‘national supervisory authority’ means an independent public authority which is established by a Member State pursuant to applicable Union data protection rules;
- (18) ‘supervisory authorities’ means the European Data Protection Supervisor and the national supervisory authorities;

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- (19) ‘CIR’ means the common identity repository established by Article 17(1) of Regulation (EU) 2019/818;
- (20) ‘ECRIS-TCN data’ means all data stored in the central system and in the CIR in accordance with Article 5;
- (21) ‘ESP’ means the European search portal established by Article 6(1) of Regulation (EU) 2019/818.

▼B*Article 4***Technical architecture of ECRIS-TCN**

1. ECRIS-TCN shall be composed of:

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- (a) a central system;
- (aa) the CIR;

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- (b) a national central access point in each Member State;
- (c) interface software enabling the connection of the competent authorities to the central system via the national central access points and the communication infrastructure referred to in point (d);
- (d) a communication infrastructure between the central system and the national central access points;

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- (e) a communication infrastructure between the central system and the central infrastructures of the ESP and the CIR.

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2. The central system shall be hosted by eu-LISA at its technical sites.
3. The interface software shall be integrated with the ECRIS reference implementation. The Member States shall use the ECRIS reference implementation or, in the situation and under the conditions set out in paragraphs 4 to 8, the national ECRIS implementation software to query ECRIS-TCN and to send subsequent requests for criminal records information.
4. The Member States which use their national ECRIS implementation software shall be responsible for ensuring that their national ECRIS implementation software allows their national criminal records authorities to use ECRIS-TCN, with the exception of the Interface Software, in accordance with this Regulation. For that purpose, they shall, before the date of start of operations of ECRIS-TCN in accordance with Article 35(4), ensure that their national ECRIS implementation software functions in accordance with the protocols and technical specifications established in the implementing acts referred to in Article 10, and with any further technical requirements established by eu-LISA pursuant to this Regulation based on those implementing acts.

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5. For as long as they do not use the ECRIS reference implementation, Member States which use their national ECRIS implementation software shall also ensure the implementation of any subsequent technical adaptations to their national ECRIS implementation software required by any changes to the technical specifications established in the implementing acts referred to in Article 10, or changes to any further technical requirements established by eu-LISA pursuant to this Regulation based on those implementing acts, without undue delay.

6. The Member States which use their national ECRIS implementation software shall bear all the costs associated with the implementation, maintenance and further development of their national ECRIS implementation software and its interconnection with ECRIS-TCN, with the exception of the interface software.

7. If a Member State which uses its national ECRIS implementation software is unable to comply with its obligations under this Article, it shall be obliged to use the ECRIS reference implementation, including the integrated interface software, to make use of ECRIS-TCN.

8. In view of the assessment to be carried out by the Commission pursuant to point (b) of Article 36(10), the Member States concerned shall provide the Commission with all necessary information.

*CHAPTER II**Entry and use of data by central authorities**Article 5***Data entry in ECRIS-TCN****▼M1**

1. For each convicted third-country national, the central authority of the convicting Member State shall create a data record in ECRIS-TCN. The data record shall include:

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(a) as concerns alphanumeric data:

(i) information to be included unless, in individual cases, such information is not known to the central authority (obligatory information):

- surname (family name),
- first names (given names),
- date of birth,
- place of birth (town and country),
- nationality or nationalities,
- gender,
- previous names, if applicable,
- the code of the convicting Member State,

(ii) information to be included if it has been entered in the criminal record (optional information):

- parents' names,

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- (iii) information to be included if it is available to the central authority (additional information):
 - identity number, or the type and number of the person's identification documents, as well as the name of the issuing authority,
 - pseudonyms or aliases;
- (b) as concerns fingerprint data:
 - (i) fingerprint data that have been collected in accordance with national law during criminal proceedings;
 - (ii) as a minimum, fingerprint data collected on the basis of either of the following criteria:
 - where the third-country national has received a custodial sentence of at least 6 months;
 - or
 - where the third-country national has been convicted of a criminal offence which is punishable under the law of the Member State by a custodial sentence of a maximum period of at least 12 months.

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1a. The CIR shall contain the data referred to in point (b) of paragraph 1 and the following data of point (a) of paragraph 1: surname (family name), first names (given names), date of birth, place of birth (town and country), nationality or nationalities, gender, previous names, if applicable, where available pseudonyms or aliases, where available, the type and number of the person's travel documents, as well as the name of the issuing authority. The CIR may contain the data referred to in paragraph 3. The remaining ECRIS-TCN data shall be stored in the central system.

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2. The fingerprint data referred to in point (b) of paragraph 1 of this Article shall have the technical specifications for the quality, resolution and processing of fingerprint data provided for in the implementing act referred to in point (b) of Article 10(1). The reference number of the fingerprint data of the convicted person shall include the code of the convicting Member State.
3. The data record may also contain facial images of the convicted third-country national, if the law of the convicting Member State allows for the collection and storage of facial images of convicted persons.
4. The convicting Member State shall create the data record automatically, where possible, and without undue delay after the conviction has been entered into the criminal records.
5. The convicting Member States shall also create data records for convictions handed down prior to the date of start of entry of data in accordance with Article 35(1) to the extent that data related to convicted persons are stored in their national databases. In those cases, fingerprint data shall be included only where they have been collected during criminal proceedings in accordance with national law, and where they can be clearly matched with other identity information in criminal records.

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6. In order to comply with the obligations set out in points (b)(i) and (ii) of paragraph 1, and in paragraph 5, Member States may use fingerprint data collected for purposes other than criminal proceedings, where such use is permitted under national law.

*Article 6***Facial images**

1. Until the entry into force of the delegated act provided for in paragraph 2, facial images may be used only to confirm the identity of a third-country national who has been identified as a result of an alphanumeric search or a search using fingerprint data.

2. The Commission is empowered to adopt delegated acts in accordance with Article 37 supplementing this Regulation concerning the use of facial images for the purpose of identifying third-country nationals in order to identify the Member States holding information on previous convictions concerning such persons, when it becomes technically possible. Before exercising this empowerment, the Commission, taking into account necessity and proportionality, as well as technical developments in the field of facial recognition software, shall assess the availability and readiness of the required technology.

*Article 7***Use of ECRIS-TCN for identifying the Member States holding criminal records information**

1. The central authorities shall use ECRIS-TCN to identify the Member States holding criminal records information on a third-country national in order to obtain information on previous convictions through ECRIS, when criminal records information on that person is requested in the Member State concerned for the purposes of criminal proceedings against that person, or for any of the following purposes, if provided for under and in accordance with national law:

- checking a person's own criminal record at his or her request,
- security clearance,
- obtaining a licence or permit,
- employment vetting,
- vetting for voluntary activities involving direct and regular contacts with children or vulnerable persons,
- visa, acquisition of citizenship and migration procedures, including asylum procedures, and
- checks in relation with public contracts and public examinations.

However, in specific cases other than those in which a third-country national asks the central authority for information on his or her own criminal record, or where the request is made in order to obtain criminal records information pursuant to Article 10(2) of Directive 2011/93/EU, the authority requesting criminal records information may decide that such use of ECRIS-TCN is not appropriate.

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2. Any Member State which decides, if provided for under and in accordance with national law, to use ECRIS-TCN for purposes other than those set out in paragraph 1 in order to obtain information on previous convictions through ECRIS, shall, by the date of start of operations as referred to in Article 35(4), or any time thereafter, notify the Commission of such other purposes and any changes to such purposes. The Commission shall publish such notifications in the *Official Journal of the European Union* within 30 days of receipt of the notifications.

3. Eurojust, Europol and the EPPO are entitled to query ECRIS-TCN to identify the Member States holding criminal records information on a third-country national in accordance with Articles 14 to 18. However, they shall not enter, rectify or erase any data in ECRIS-TCN.

4. For the purposes referred to in paragraphs 1, 2 and 3, the competent authorities may also query ECRIS-TCN to verify whether, in respect of a citizen of the Union, any Member State holds criminal records information concerning this person as a third-country national.

5. When querying ECRIS-TCN, the competent authorities may use all or only some of the data referred to in Article 5(1). The minimum set of data that is required to query the system shall be specified in an implementing act adopted in accordance with point (g) of Article 10(1).

6. The competent authorities may also query ECRIS-TCN using facial images, provided that such functionality has been implemented in accordance with Article 6(2).

7. In the event of a hit, the central system shall automatically provide the competent authority with information on the Member States holding criminal records information on the third-country national, along with the associated reference numbers and any corresponding identity information. Such identity information shall only be used for the purpose of verifying the identity of the third-country national concerned. The result of a search in the central system may only be used for the purpose of making a request according to Article 6 of Framework Decision 2009/315/JHA or a request referred to in Article 17(3) of this Regulation.

8. In the event that there is no hit, the central system shall automatically inform the competent authority.

*CHAPTER III****Retention and modification of the data****Article 8***Retention period for data storage****▼M1**

1. Each data record shall be stored in the central system and the CIR for as long as the data related to the convictions of the person concerned are stored in the criminal records.

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2. Upon expiry of the retention period referred to in paragraph 1, the central authority of the convicting Member State shall erase the data record, including any fingerprint data or facial images, from the central system and the CIR. The erasure shall be done automatically, where possible, and in any event no later than one month after the expiry of the retention period.

▼B*Article 9***Modification and erasure of data**

1. The Member States may modify or erase the data which they have entered into ►**M1** the central system and the CIR ◀.

2. Any modification of the information in the criminal records which led to the creation of a data record in accordance with Article 5 shall include identical modification of the information stored in that data record in ►**M1** the central system and the CIR ◀ by the convicting Member State without undue delay.

3. If a convicting Member State has reason to believe that the data it has recorded in ►**M1** the central system and the CIR ◀ are inaccurate or that data were processed in ►**M1** the central system and the CIR ◀ in contravention of this Regulation, it shall:

- (a) immediately launch a procedure for checking the accuracy of the data concerned or the lawfulness of its processing, as appropriate;
- (b) if necessary, rectify the data or erase them from ►**M1** the central system and the CIR ◀ without undue delay.

4. If a Member State other than the convicting Member State which entered the data has reason to believe that data recorded in ►**M1** the central system and the CIR ◀ are inaccurate or that data were processed in ►**M1** the central system and the CIR ◀ in contravention of this Regulation, it shall contact the central authority of the convicting Member State without undue delay.

The convicting Member State shall:

- (a) immediately launch a procedure for checking the accuracy of the data concerned or the lawfulness of its processing, as appropriate;
- (b) if necessary, rectify the data or erase them from ►**M1** the central system and the CIR ◀ without undue delay;
- (c) inform the other Member State that the data have been rectified or erased, or of the reasons why the data have not been rectified or erased, without undue delay.

▼B*CHAPTER IV****Development, operation and responsibilities****Article 10***Adoption of implementing acts by the Commission**

1. The Commission shall adopt the implementing acts necessary for the technical development and implementation of ECRIS-TCN as soon as possible, and in particular acts concerning:

- (a) the technical specifications for the processing of the alphanumeric data;
- (b) the technical specifications for the quality, resolution and processing of fingerprint data;
- (c) the technical specifications of the interface software;
- (d) the technical specifications for the quality, resolution and processing of facial images for the purposes of and under the conditions set out in Article 6;
- (e) data quality, including a mechanism for and procedures to carry out data quality checks;
- (f) entering the data in accordance with Article 5;
- (g) accessing and querying ECRIS-TCN in accordance with Article 7;
- (h) modifying and erasing the data in accordance with Articles 8 and 9;
- (i) keeping and accessing logs in accordance with Article 31;

▼M1**▼B**

(k) providing statistics in accordance with Article 32;

- (l) performance and availability requirements of ECRIS-TCN, including minimal specifications and requirements on the biometric performance of ECRIS-TCN in particular in terms of the required false positive identification rate and false negative identification rate.

2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 38(2).

*Article 11***Development and operational management of ECRIS — TCN**

1. eu-LISA shall be responsible for the development of ECRIS-TCN in accordance with the principle of data protection by design and by default. In addition, eu-LISA shall be responsible for the operational management of ECRIS-TCN. The development shall consist of the elaboration and implementation of the technical specifications, testing and overall project coordination.

2. eu-LISA shall also be responsible for the further development and maintenance of the ECRIS reference implementation.

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3. eu-LISA shall define the design of the physical architecture of ECRIS-TCN including its technical specifications and evolution as regards the central system, the national central access point and the interface software. That design shall be adopted by its Management Board, subject to a favourable opinion of the Commission.

4. eu-LISA shall develop and implement ECRIS-TCN as soon as possible after the entry into force of this Regulation and following the adoption by the Commission of the implementing acts provided for in Article 10.

5. Prior to the design and development phase of ECRIS-TCN, the Management Board of eu-LISA shall establish a Programme Management Board composed of ten members.

The Programme Management Board shall be composed of eight members appointed by the Management Board, the Chair of the Advisory Group referred to in Article 39 and one member appointed by the Commission. The members appointed by the Management Board shall be elected only from those Member States which are fully bound under Union law by the legislative instruments governing ECRIS and which will participate in ECRIS-TCN. The Management Board shall ensure that the members it appoints to the Programme Management Board have the necessary experience and expertise in the development and management of IT systems supporting judicial and criminal records authorities.

eu-LISA shall participate in the work of the Programme Management Board. To that end, representatives of eu-LISA shall attend the meetings of the Programme Management Board in order to report on work regarding the design and development of ECRIS-TCN and on any other related work and activities.

The Programme Management Board shall meet at least once every three months, and more often when necessary. It shall ensure the adequate management of the design and development phase of ECRIS-TCN and shall ensure consistency between central and national ECRIS-TCN projects, and national ECRIS implementation software. The Programme Management Board shall submit written reports regularly and if possible every month to the Management Board of eu-LISA on the progress of the project. The Programme Management Board shall have no decision-making power nor any mandate to represent the members of the Management Board.

6. The Programme Management Board shall establish its rules of procedure which shall include in particular rules on:

- (a) chairmanship;
- (b) meeting venues;
- (c) preparation of meetings;
- (d) admission of experts to the meetings;
- (e) communication plans ensuring that non-participating Members of the Management Board are kept fully informed.

7. The chairmanship of the Programme Management Board shall be held by a Member State which is fully bound under Union law by the legislative instruments governing ECRIS and the legislative instruments governing the development, establishment, operation and use of all the large-scale IT systems managed by eu-LISA.

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8. All travel and subsistence expenses incurred by the members of the Programme Management Board shall be paid by eu-LISA. Article 10 of the eu-LISA Rules of Procedure shall apply *mutatis mutandis*. The Programme Management Board's secretariat shall be ensured by eu-LISA.

9. During the design and development phase, the Advisory Group referred to in Article 39 shall be composed of the national ECRIS-TCN project managers and chaired by eu-LISA. During the design and development phase it shall meet regularly, if possible at least once a month, until the start of operations of ECRIS-TCN. It shall report after each meeting to the Programme Management Board. It shall provide the technical expertise to support the tasks of the Programme Management Board and shall follow up on the state of preparation of the Member States.

10. In order to ensure the confidentiality and integrity of data stored in ECRIS-TCN at all times, eu-LISA shall, in cooperation with the Member States, provide for appropriate technical and organisational measures, taking into account the state of the art, the cost of implementation and the risks posed by the processing.

11. eu-LISA shall be responsible for the following tasks related to the communication infrastructure referred to in point (d) of Article 4(1):

- (a) supervision;
- (b) security;
- (c) the coordination of relations between the Member States and the provider of the communication infrastructure.

12. The Commission shall be responsible for all other tasks relating to the communication infrastructure referred to in point (d) of Article 4(1), in particular:

- (a) tasks relating to the implementation of the budget;
- (b) acquisition and renewal;
- (c) contractual matters.

13. eu-LISA shall develop and maintain a mechanism and procedures for carrying out quality checks on the data stored in ECRIS-TCN and shall provide regular reports to the Member States. eu-LISA shall provide regular reports to the Commission covering the issues encountered and the Member States concerned.

14. The operational management of ECRIS-TCN shall consist of all the tasks necessary to keep ECRIS-TCN operational in accordance with this Regulation, and in particular the maintenance work and technical developments necessary to ensure that ECRIS-TCN functions at a satisfactory level in accordance with the technical specifications.

15. eu-LISA shall perform tasks related to providing training on the technical use of ECRIS-TCN and the ECRIS reference implementation.

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16. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾, eu-LISA shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to its entire staff required to work with data registered in the central system. That obligation shall also apply after such staff leave office or employment or after the termination of their activities.

*Article 12***Responsibilities of the Member States**

1. Each Member State shall be responsible for:
 - (a) ensuring a secure connection between its national criminal records and fingerprints databases and the national central access point;
 - (b) the development, operation and maintenance of the connection referred to in point (a);
 - (c) ensuring a connection between its national systems and the ECRIS reference implementation;
 - (d) the management of and arrangements for access of duly authorised staff of the central authorities to ECRIS-TCN in accordance with this Regulation and for establishing and regularly updating a list of such staff and the profiles referred to in point (g) of Article 19(3).
2. Each Member State shall give the staff of its central authority who have a right to access ECRIS-TCN appropriate training covering, in particular, data security and data protection rules and applicable fundamental rights, before authorising them to process data stored in the ►**M1** the central system and the CIR ◀.

*Article 13***Responsibility for the use of data**

1. In accordance with applicable Union data protection rules, each Member State shall ensure that the data recorded in ECRIS-TCN are processed lawfully, and in particular that:
 - (a) only duly authorised staff have access to the data for the performance of their tasks;
 - (b) the data are collected lawfully in a manner that fully respects the human dignity and fundamental rights of the third-country national;
 - (c) the data are entered into ECRIS-TCN lawfully;
 - (d) the data are accurate and up-to-date when they are entered into ECRIS-TCN.

⁽¹⁾ OJ L 56, 4.3.1968, p. 1.

▼B

2. eu-LISA shall ensure that ECRIS-TCN is operated in accordance with this Regulation, with the delegated act referred to in Article 6(2) and with the implementing acts referred to in Article 10, as well as in accordance with Regulation (EU) 2018/1725. In particular, eu-LISA shall take the necessary measures to ensure the security of ►**M1** the central system, the CIR ◀ and the communication infrastructure referred to in point (d) of Article 4(1), without prejudice to the responsibilities of each Member State.

3. eu-LISA shall inform the European Parliament, the Council and the Commission as well as the European Data Protection Supervisor as soon as possible of the measures it takes pursuant to paragraph 2 in view of the start of operations of ECRIS-TCN.

4. The Commission shall make the information referred to in paragraph 3 available to the Member States and to the public through a regularly updated public website.

*Article 14***Access for Eurojust, Europol, and the EPPO**

1. Eurojust shall have direct access to ECRIS-TCN for the purpose of the implementation of Article 17, as well as for fulfilling its tasks under Article 2 of Regulation (EU) 2018/1727, in order to identify the Member States holding information on previous convictions of third-country nationals.

2. Europol shall have direct access to ECRIS-TCN for the purpose of fulfilling its tasks under points (a) to (e) and (h) of Article 4(1) of Regulation (EU) 2016/794, in order to identify the Member States holding information on previous convictions of third-country nationals.

3. The EPPO shall have direct access to ECRIS-TCN for the purpose of fulfilling its tasks under Article 4 of Regulation (EU) 2017/1939, in order to identify the Member States holding information on previous convictions of third-country nationals.

4. Following a hit indicating the Member States holding criminal records information on a third-country national, Eurojust, Europol, and the EPPO may use their respective contacts with the national authorities of those Member States to request the criminal records information in the manner provided for in their respective founding acts.

*Article 15***Access by authorised staff of Eurojust, Europol and the EPPO**

Eurojust, Europol and the EPPO shall be responsible for the management of and arrangements for access of duly authorised staff to ECRIS-TCN in accordance with this Regulation and for establishing and regularly updating a list of such staff and their profiles.



Article 16

Responsibilities of Eurojust, Europol and the EPPO

Eurojust, Europol and the EPPO shall:

- (a) establish the technical means to connect to ECRIS-TCN and be responsible for maintaining that connection;
- (b) provide appropriate training covering, in particular, data security and data protection rules and applicable fundamental rights to those members of their staff who have a right to access ECRIS-TCN before authorising them to process data stored in the central system;
- (c) ensure that the personal data processed by them under this Regulation is protected in accordance with the applicable data protection rules.

Article 17

Contact point for third countries and international organisations

1. Third countries and international organisations may, for the purposes of criminal proceedings, address requests for information on which Member States, if any, hold criminal records information on a third-country national to Eurojust. To that end, they shall use the standard form set out in the Annex to this Regulation.

2. When Eurojust receives a request under paragraph 1, it shall use ECRIS-TCN to identify which Member States, if any, hold criminal records information on the third-country national concerned.

3. If there is a hit, Eurojust shall ask the Member State that holds criminal records information on the third-country national concerned whether it consents to Eurojust informing the third country or the international organisation of the name of the Member State concerned. Where that Member State gives its consent, Eurojust shall inform the third country or the international organisation of the name of that Member State, and of how it can introduce a request for extracts from the criminal records with that Member State in accordance with the applicable procedures.

4. In cases where there is no hit or where Eurojust cannot provide an answer in accordance with paragraph 3 to requests made under this Article, it shall inform the third country or international organisation concerned that it has completed the procedure, without providing any indication of whether criminal records information on the person concerned is held by one of the Member States.

Article 18

Providing information to a third country, international organisation or private party

Neither Eurojust, Europol, the EPPO nor any central authority shall transfer or make available to a third country, an international organisation or a private party information obtained from ECRIS-TCN concerning a third-country national. This Article shall be without prejudice to Article 17(3).



Article 19

Data Security

1. eu-LISA shall take the necessary measures to ensure the security of ECRIS-TCN, without prejudice to the responsibilities of each Member State, taking the security measures specified in paragraph 3 into consideration.

2. As regards the operation of ECRIS-TCN, eu-LISA shall take the necessary measures in order to achieve the objectives set out in paragraph 3, including the adoption of a security plan and a business continuity and disaster recovery plan, and to ensure that installed systems may, in case of interruption, be restored.

3. The Member States shall ensure the security of the data before and during the transmission to and receipt from the national central access point. In particular, each Member State shall:

- (a) physically protect data, including by making contingency plans for the protection of infrastructure;
- (b) deny unauthorised persons access to national installations in which the Member State carries out operations related to ECRIS-TCN;
- (c) prevent the unauthorised reading, copying, modification or removal of data media;
- (d) prevent the unauthorised input of data and the unauthorised inspection, modification or erasure of stored personal data;
- (e) prevent the unauthorised processing of data in ECRIS-TCN and any unauthorised modification or erasure of data processed in ECRIS-TCN;
- (f) ensure that persons authorised to access ECRIS-TCN have access only to the data covered by their access authorisation, by means of individual user identities and confidential access modes only;
- (g) ensure that all authorities with a right of access to ECRIS-TCN create profiles describing the functions and responsibilities of persons who are authorised to enter, rectify, erase, consult and search the data and make their profiles available to the national supervisory authorities without undue delay at their request;
- (h) ensure that it is possible to verify and establish to which Union bodies, offices and agencies personal data may be transmitted using data communication equipment;
- (i) ensure that it is possible to verify and establish what data have been processed in ECRIS-TCN, when, by whom and for what purpose;
- (j) prevent the unauthorised reading, copying, modification or erasure of personal data during the transmission of personal data to or from ECRIS-TCN or during the transport of data media, in particular by means of appropriate encryption techniques;

▼B

(k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to self-monitoring and supervision to ensure compliance with this Regulation.

4. eu-LISA and the Member States shall cooperate in order to ensure a coherent data security approach based on a security risk management process encompassing the entire ECRIS-TCN.

*Article 20***Liability**

1. Any person who, or any Member State which, has suffered material or non-material damage as a result of an unlawful processing operation or any other act incompatible with this Regulation shall be entitled to receive compensation from:

- (a) the Member State which is responsible for the damage suffered; or
- (b) eu-LISA, where eu-LISA has not complied with its obligations set out in this Regulation or in Regulation (EU) 2018/1725.

The Member State which is responsible for the damage suffered or eu-LISA, respectively, shall be exempted from liability, in whole or in part, if it proves that it is not responsible for the event which gave rise to the damage.

2. If any failure of a Member State, Eurojust, Europol, or the EPPO to comply with its obligations under this Regulation causes damage to ECRIS-TCN, that Member State, Eurojust, Europol, or the EPPO, respectively, shall be held liable for such damage, unless and insofar as eu-LISA or another Member State participating in ECRIS-TCN failed to take reasonable measures to prevent the damage from occurring or to minimise its impact.

3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the law of the defendant Member State. Claims for compensation against eu-LISA, Eurojust, Europol and the EPPO for the damage referred to in paragraphs 1 and 2 shall be governed by their respective founding acts.

*Article 21***Self-monitoring**

Member States shall ensure that each central authority takes the measures necessary to comply with this Regulation and cooperates, where necessary, with the supervisory authorities.

*Article 22***Penalties**

Any misuse of data entered in ECRIS-TCN shall be subject to penalties or disciplinary measures, in accordance with national or Union law, that are effective, proportionate and dissuasive.

▼B*CHAPTER V****Data protection rights and supervision****Article 23***Data controller and data processor**

1. Each central authority is to be considered as data controller in accordance with applicable Union data protection rules for the processing of the personal data by that central authority's Member State under this Regulation.

2. eu-LISA shall be considered as data processor in accordance with Regulation (EU) 2018/1725 as regards the personal data entered into ►**M1** the central system and the CIR ◀ by the Member States.

*Article 24***Purpose of the processing of personal data****▼M1**

1. The data entered into the central system and the CIR shall only be processed for the purposes of the identification of the Member States holding the criminal records information of third-country nationals. The data entered into the CIR shall also be processed in accordance with Regulation (EU) 2019/818 for facilitating and assisting in the correct identification of persons registered in the ECRIS-TCN in accordance with this Regulation.

▼B

2. With the exception of duly authorised staff of Eurojust, Europol and the EPPO who have access to ECRIS-TCN for the purposes of this Regulation, access to ECRIS-TCN shall be reserved exclusively to duly authorised staff of the central authorities. Access shall be limited to the extent needed for the performance of the tasks in accordance with the purpose referred to in paragraph 1, and to what is necessary and proportionate to the objectives pursued.

▼M1

3. Without prejudice to paragraph 2, access for the purposes of consulting the data stored in the CIR shall also be reserved for the duly authorised staff of the national authorities of each Member State and for the duly authorised staff of the Union agencies that are competent for the purposes laid down in Articles 20 and 21 of Regulation (EU) 2019/818. Such access shall be limited according to the extent that the data are required for the performance of their tasks for those purposes, and proportionate to the objectives pursued.

▼B*Article 25***Right of access, rectification, erasure and restriction of processing**

1. The requests of third-country nationals concerning the rights of access to personal data, to rectification and erasure and to restriction of processing of personal data which are set out in the applicable Union data protection rules may be addressed to the central authority of any Member State.

▼B

2. Where a request is made to a Member State other than the convicting Member State, the Member State to which the request has been made shall forward it to the convicting Member State without undue delay and in any event within 10 working days of receiving the request. Upon receipt of the request, the convicting Member State shall:

- (a) immediately launch a procedure for checking the accuracy of the data concerned and the lawfulness of its processing in ECRIS-TCN; and
- (b) respond to the Member State that forwarded the request without undue delay.

3. In the event that data recorded in ECRIS-TCN are inaccurate or have been processed unlawfully, the convicting Member State shall rectify or erase the data in accordance with Article 9. The convicting Member State or, where applicable, the Member State to which the request has been made shall confirm in writing to the person concerned without undue delay that action has been taken to rectify or erase data relating to that person. The convicting Member State shall also without undue delay inform any other Member State which has been a recipient of conviction information obtained as a result of a query of ECRIS-TCN of what action has been taken.

4. If the convicting Member State does not agree that data recorded in ECRIS-TCN are inaccurate or have been processed unlawfully, that Member State shall adopt an administrative or judicial decision explaining in writing to the person concerned why it is not prepared to rectify or erase data relating to him or her. Such cases may, where appropriate, be communicated to the national supervisory authority.

5. The Member State which has adopted the decision pursuant to paragraph 4 shall also provide the person concerned with information explaining the steps which that person can take if the explanation given pursuant to paragraph 4 is not acceptable to him or her. This shall include information on how to bring an action or a complaint before the competent authorities or courts of that Member State and any assistance, including from the national supervisory authorities, that is available in accordance with the national law of that Member State.

6. Any request made pursuant to paragraph 1 shall contain the information necessary to identify the person concerned. That information shall be used exclusively to enable the exercise of the rights referred to in paragraph 1 and shall be erased immediately afterwards.

7. Where paragraph 2 applies, the central authority to whom the request was addressed shall keep a written record that such a request was made and of how it was addressed and to which authority it was forwarded. Upon request from the national supervisory authority, the central authority shall make that record available to that national supervisory authority without delay. The central authority and the national supervisory authority shall erase such records three years after their creation.

Article 26

Cooperation to ensure respect for data protection rights

1. The central authorities shall cooperate with each other in order to ensure respect for the rights laid down in Article 25.

▼B

2. In each Member State, the national supervisory authority shall, upon request, provide information to the person concerned on how to exercise his or her right to rectify or erase data relating to him or to her, in accordance with the applicable Union data protection rules.

3. For the purposes of this Article, the national supervisory authority of the Member State which transmitted the data and the national supervisory authority of the Member State to which the request has been made shall cooperate with each other.

*Article 27***Remedies**

Any person shall have the right to lodge a complaint and the right to a legal remedy in the convicting Member State which refused the right of access to or the right of rectification or erasure of data relating to him or to her, referred to in Article 25 in accordance with national or Union law.

*Article 28***Supervision by the national supervisory authorities**

1. Each Member State shall ensure that the national supervisory authorities designated pursuant to applicable Union data protection rules shall monitor the lawfulness of the processing of personal data referred to in Articles 5 and 6 by the Member State concerned, including their transmission to and from ECRIS-TCN.

2. The national supervisory authority shall ensure that an audit of the data processing operations in the national criminal records and fingerprints databases related to the data exchange between those systems and ECRIS-TCN is carried out in accordance with relevant international auditing standards at least every three years from the date of the start of operations of ECRIS-TCN.

3. Member States shall ensure that their national supervisory authorities have sufficient resources to fulfil the tasks entrusted to them under this Regulation.

4. Each Member State shall supply any information requested by its national supervisory authorities and shall, in particular, provide them with information on the activities carried out in accordance with Articles 12, 13 and 19. Each Member State shall grant its national supervisory authorities access to its records pursuant to Article 25(7) and to its logs pursuant to Article 31(6) and allow them access at all times to all its ECRIS-TCN related premises.

*Article 29***Supervision by the European Data Protection Supervisor**

1. The European Data Protection Supervisor shall monitor that the personal data processing activities of eu-LISA concerning ECRIS-TCN are carried out in accordance with this Regulation.

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2. The European Data Protection Supervisor shall ensure that an audit of eu-LISA's personal data processing activities is carried out in accordance with relevant international auditing standards at least every three years. A report of that audit shall be sent to the European Parliament, the Council, the Commission, eu-LISA and the supervisory authorities. eu-LISA shall be given an opportunity to make comments before the report is adopted.

3. eu-LISA shall supply information requested by the European Data Protection Supervisor, give him or her access to all documents and to its logs referred to in Article 31 and allow him or her access to all of its premises at any time.

*Article 30***Cooperation among national supervisory authorities and the European Data Protection Supervisor**

Coordinated supervision of ECRIS-TCN shall be ensured in accordance with Article 62 of Regulation (EU) 2018/1725.

*Article 31***Keeping of logs**

1. eu-LISA and the competent authorities shall ensure, in accordance with their respective responsibilities, that all data processing operations in ECRIS-TCN are logged in accordance with paragraph 2 for the purposes of checking the admissibility of requests, monitoring data integrity and security and the lawfulness of the data processing as well as for the purposes of self-monitoring.

2. The log shall show:

- (a) the purpose of the request for access to ECRIS-TCN data;
- (b) the data transmitted as referred to in Article 5;
- (c) the national file reference;
- (d) the date and exact time of the operation;
- (e) the data used for a query;
- (f) the identifying mark of the official who carried out the search.

3. The log of consultations and disclosures shall make it possible to establish the justification of such operations.

4. Logs shall be used only for monitoring the lawfulness of data processing and for ensuring data integrity and security. Only logs containing non-personal data may be used for the monitoring and evaluation referred to in Article 36. Those logs shall be protected by appropriate measures against unauthorised access and erased after three years, if they are no longer required for monitoring procedures which have already begun.

5. On request, eu-LISA shall make the logs of its processing operations available to the central authorities without undue delay.

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6. The competent national supervisory authorities responsible for checking the admissibility of the requests and monitoring the lawfulness of the data processing and data integrity and security shall have access to logs at their request for the purpose of fulfilling their duties. On request, the central authorities shall make the logs of their processing operations available to the competent national supervisory authorities without undue delay.

*CHAPTER VI****Final provisions****Article 32***Use of data for reporting and statistics**

1. The duly authorised staff of eu-LISA, of the competent authorities and of the Commission shall have access to the data processed within ECRIS-TCN solely for the purposes of reporting and providing statistics, without allowing for individual identification.

▼M1

2. For the purpose of paragraph 1 of this Article, eu-LISA shall store the data referred to in that paragraph in the central repository for reporting and statistics referred to in Article 39 of Regulation (EU) 2019/818.

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3. The procedures put in place by eu-LISA to monitor the functioning of ECRIS-TCN referred to in Article 36 as well as the ECRIS reference implementation shall include the possibility to produce regular statistics for monitoring purposes.

Every month eu-LISA shall submit to the Commission statistics relating to the recording, storage and exchange of information extracted from criminal records through ECRIS-TCN and the ECRIS reference implementation. eu-LISA shall ensure that it is not possible to identify individuals on the basis of those statistics. At the request of the Commission, eu-LISA shall provide it with statistics on specific aspects related to the implementation of this Regulation.

4. The Member States shall provide eu-LISA with the statistics necessary to fulfil its obligations referred to in this Article. They shall provide the Commission with statistics on the number of convicted third-country nationals, as well as the number of convictions of third-country nationals on their territory.

*Article 33***Costs**

1. The costs incurred in connection with the establishment and operation of the ►**M1** central system, the CIR and ◀, the communication infrastructure referred to in point (d) of Article 4(1), the interface software and the ECRIS reference implementation shall be borne by the general budget of the Union.

▼B

2. The costs of connection of Eurojust, Europol and the EPPO to ECRIS-TCN shall be borne by their respective budgets.

3. Other costs shall be borne by the Member States, specifically the costs incurred by the connection of the existing national criminal records registers, fingerprints databases and the central authorities to ECRIS-TCN, as well as the costs of hosting the ECRIS reference implementation.

*Article 34***Notifications**

1. Each Member State shall notify eu-LISA of its central authority, or authorities, that has access to enter, rectify, erase, consult or search data, as well as of any change in this respect.

2. eu-LISA shall ensure publication of the list of central authorities notified by the Member States, both in the *Official Journal of the European Union* and on its website. When eu-LISA receives notification of a change to a Member State's central authority, it shall update the list without undue delay.

*Article 35***Entry of data and start of operations**

1. Once the Commission is satisfied that the following conditions are met, it shall determine the date from which the Member States shall start entering the data referred to in Article 5 into ECRIS-TCN:

- (a) the relevant implementing acts referred to in Article 10 have been adopted;
- (b) the Member States have validated the technical and legal arrangements to collect and transmit the data referred to in Article 5 to ECRIS-TCN and have notified them to the Commission;
- (c) eu-LISA has carried out a comprehensive test of ECRIS-TCN, in cooperation with the Member States, using anonymous test data.

2. When the Commission has determined the date of start of entry of data in accordance with paragraph 1, it shall communicate that date to the Member States. Within a period of two months following that date, the Member States shall enter the data referred to in Article 5 into ECRIS-TCN, taking account of Article 41(2).

3. After the end of the period referred to in paragraph 2, eu-LISA shall carry out a final test of ECRIS-TCN, in cooperation with the Member States.

4. When the test referred to in paragraph 3 has been successfully completed and eu-LISA considers that ECRIS-TCN is ready to start operations, it shall notify the Commission. The Commission shall inform the European Parliament and the Council of the results of the test and shall decide on the date on which ECRIS-TCN is to start operations.

▼B

5. The decision of the Commission on the date of the start of operations of ECRIS-TCN, as referred to in paragraph 4, shall be published in the *Official Journal of the European Union*.

6. The Member States shall start using ECRIS-TCN from the date determined by the Commission in accordance with paragraph 4.

7. When taking the decisions referred to in this Article, the Commission may specify different dates for the entry into ECRIS-TCN of alphanumeric data and fingerprint data as referred to in Article 5, as well as for the start of operations with respect to those different categories of data.

*Article 36***Monitoring and evaluation**

1. eu-LISA shall ensure that procedures are in place to monitor the development of ECRIS-TCN in light of objectives relating to planning and costs and to monitor the functioning of ECRIS-TCN and the ECRIS reference implementation in light of objectives relating to the technical output, cost-effectiveness, security and quality of service.

2. For the purposes of monitoring the functioning of ECRIS-TCN and its technical maintenance, eu-LISA shall have access to the necessary information relating to the data processing operations performed in ECRIS-TCN and in the ECRIS reference implementation.

3. By 12 December 2019 and every six months thereafter during the design and development phase, eu-LISA shall submit a report to the European Parliament and the Council on the state of play of the development of ECRIS-TCN and of the ECRIS reference implementation.

4. The report referred to in paragraph 3 shall include an overview of the current costs and the progress of the project, a financial impact assessment, and information on any technical problems and risks that may impact the overall costs of ECRIS-TCN to be borne by the general budget of the Union in accordance with Article 33.

5. In the event of substantial delays in the development process, eu-LISA shall inform the European Parliament and the Council as soon as possible of the reasons for these delays and of their impact in terms of time and finances.

6. Once the development of ECRIS-TCN and of the ECRIS reference implementation is finalised, eu-LISA shall submit a report to the European Parliament and to the Council explaining how the objectives, in particular relating to planning and costs, were achieved and justifying any divergences.

7. In the event of a technical upgrade of ECRIS-TCN which could result in substantial costs, eu-LISA shall inform the European Parliament and the Council.

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8. Two years after the start of operations of ECRIS-TCN and every year thereafter, eu-LISA shall submit to the Commission a report on the technical functioning of ECRIS-TCN and of the ECRIS reference implementation, including their security, based in particular on the statistics on the functioning and use of ECRIS-TCN and on the exchange, through the ECRIS reference implementation, of information extracted from the criminal records.

9. Four years after the start of operations of ECRIS-TCN and every four years thereafter, the Commission shall conduct an overall evaluation of ECRIS-TCN and of the ECRIS reference implementation. The overall evaluation report established on this basis shall include an assessment of the application of this Regulation and an examination of results that have been achieved relative to the objectives that were set and of the impact on fundamental rights. The report shall also include an assessment of whether the underlying rationale for operating ECRIS-TCN continues to hold, of the appropriateness of the use of biometric data for the purposes of ECRIS-TCN, of the security of ECRIS-TCN and of any security implications for future operations. The evaluation shall include any necessary recommendations. The Commission shall transmit the report to the European Parliament, the Council, the European Data Protection Supervisor and the European Union Agency for Fundamental Rights.

10. In addition, the first overall evaluation as referred to in paragraph 9 shall include an assessment of:

- (a) the extent to which, on the basis of relevant statistical data and further information from the Member States, the inclusion in ECRIS-TCN of identity information of citizens of the Union who also hold the nationality of a third country has contributed to the achievement of the objectives of this Regulation;
- (b) the possibility, for some Member States, to continue the use of national ECRIS implementation software, as referred to in Article 4;
- (c) the entry of fingerprint data into ECRIS-TCN, in particular the application of the minimum criteria as referred to in point (b)(ii) of Article 5(1);
- (d) the impact of ECRIS and of ECRIS-TCN on the protection of personal data.

The assessment may be accompanied, if necessary, by legislative proposals. Subsequent overall evaluations may include an assessment of any or all of those aspects.

11. The Member States, Eurojust, Europol and the EPPO shall provide eu-LISA and the Commission with the information necessary to draft the reports referred to in paragraphs 3, 8 and 9 according to the quantitative indicators predefined by the Commission or eu-LISA or both. That information shall not jeopardise working methods or include information that reveals sources, staff members or investigations.

12. Where relevant, the supervisory authorities shall provide eu-LISA and the Commission with the information necessary to draft the reports referred to in paragraph 9 according to the quantitative indicators predefined by the Commission or eu-LISA or both. That information shall not jeopardise working methods or include information that reveals sources, staff members or investigations.

▼B

13. eu-LISA shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 9.

*Article 37***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 6(2) shall be conferred on the Commission for an indeterminate period of time from 11 June 2019.

3. The delegation of power referred to in Article 6(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 6(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 38***Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

*Article 39***Advisory Group**

eu-LISA shall establish an Advisory Group in order to obtain expertise related to ECRIS-TCN and the ECRIS reference implementation, in particular in the context of preparation of its annual work programme and its annual activity report. During the design and development phase, Article 11(9) shall apply.



Article 40

Amendments to Regulation (EU) 2018/1726

Regulation (EU) 2018/1726 is amended as follows:

(1) In Article 1, paragraph 4 is replaced by the following:

‘4. The Agency shall be responsible for the preparation, development or operational management of the Entry/Exit System (EES), Dublinet, the European Travel Information and Authorisation System (ETIAS), ECRIS-TCN and the ECRIS reference implementation.’;

(2) The following Article is inserted:

‘Article 8a

Tasks related to ECRIS-TCN and the ECRIS reference implementation

In relation to ECRIS-TCN and the ECRIS reference implementation, the Agency shall perform:

- (a) the tasks conferred on it by Regulation (EU) 2019/816 of the European Parliament and of the Council (*);
- (b) tasks relating to training on the technical use of ECRIS-TCN and the ECRIS reference implementation.

(*) Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System) and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1).’;

(3) In Article 14, paragraph 1 is replaced by the following:

‘1. The Agency shall monitor developments in research relevant for the operational management of SIS II, VIS, Eurodac, the EES, ETIAS, Dublinet, ECRIS-TCN and other large-scale IT systems as referred to in Article 1(5).’;

(4) In Article 19, paragraph 1 is amended as follows:

(a) point (ee) is replaced by the following:

‘(ee) adopt the reports on the development of the EES pursuant to Article 72(2) of Regulation (EU) 2017/2226, the reports on the development of ETIAS pursuant to Article 92(2) of Regulation (EU) 2018/1240 and the reports on the development of ECRIS-TCN and of the ECRIS reference implementation pursuant to Article 36(3) of Regulation (EU) 2019/816;’;

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(b) point (ff) is replaced by the following:

‘(ff) adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively, of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and Article 17(3) of Decision 2008/633/JHA, of the EES pursuant to Article 72(4) of Regulation (EU) 2017/2226, of ETIAS pursuant to Article 92(4) of Regulation (EU) 2018/1240, and of ECRIS-TCN and of the ECRIS reference implementation pursuant to Article 36(8) of Regulation (EU) 2019/816;’;

(c) point (hh) is replaced by the following:

‘(hh) adopt formal comments on the European Data Protection Supervisor's reports on the audits carried out pursuant to Article 45(2) of Regulation (EC) No 1987/2006, Article 42(2) of Regulation (EC) No 767/2008 and Article 31(2) of Regulation (EU) No 603/2013, Article 56(2) of Regulation (EU) 2017/2226, Article 67 of Regulation (EU) 2018/1240 and to Article 29(2) of Regulation (EU) 2019/816 and ensure appropriate follow-up of those audits;’;

(d) the following point is inserted:

‘(lla) submit to the Commission statistics related to ECRIS-TCN and to the ECRIS reference implementation pursuant to the second subparagraph of Article 32(3) of Regulation (EU) 2019/816;’;

(e) point (mm) is replaced by the following:

‘(mm) ensure annual publication of the list of competent authorities authorised to search directly the data contained in SIS II pursuant to Article 31(8) of Regulation (EC) No 1987/2006 and Article 46(8) of Decision 2007/533/JHA, together with the list of Offices of the national systems of SIS II (N.SIS II Offices) and SIRENE Bureaux pursuant to Article 7(3) of Regulation (EC) No 1987/2006 and Article 7(3) of Decision 2007/533/JHA respectively as well as the list of competent authorities pursuant to Article 65(2) of Regulation (EU) 2017/2226, the list of competent authorities pursuant to Article 87(2) of Regulation (EU) 2018/1240 and the list of central authorities pursuant to Article 34(2) of Regulation (EU) 2019/816;’;

(5) In Article 22(4), the following subparagraph is inserted after the third subparagraph:

‘Eurojust, Europol and the EPPO may attend the meetings of the Management Board as observers when a question concerning ECRIS-TCN in relation to the application of Regulation (EU) 2019/816 is on the agenda.’;

▼B

(6) In Article 24(3), point (p) is replaced by the following:

‘(p) establishing, without prejudice to Article 17 of the Staff Regulations of Officials, confidentiality requirements in order to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA, Article 26(9) of Regulation (EC) No 767/2008, Article 4(4) of Regulation (EU) No 603/2013, Article 37(4) of Regulation (EU) 2017/2226, Article 74(2) of Regulation (EU) No 2018/1240 and Article 11(16) of Regulation (EU) 2019/816;’;

(7) In Article 27(1), the following point is inserted:

‘(da) ECRIS-TCN Advisory Group;’.

*Article 41***Implementation and transitional provisions**

1. Member States shall take the necessary measures to comply with this Regulation as soon as possible so as to ensure the proper functioning of ECRIS-TCN.

▼M1

2. For convictions handed down prior to the date of start of entry of data in accordance with Article 35(1), the central authorities shall create the individual data records in the central system and the CIR as follows:

- (a) alphanumeric data to be entered into the central system and the CIR by the end of the period referred to in Article 35(2);
- (b) fingerprint data to be entered into the CIR within two years after the start of operations in accordance with Article 35(4).

▼B*Article 42***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.



ANNEX

**STANDARD INFORMATION REQUEST FORM AS REFERRED TO IN ARTICLE 17(1) OF
REGULATION (EU) 2019/816 IN ORDER TO OBTAIN INFORMATION ON WHICH MEMBER STATE,
IF ANY, HOLDS CRIMINAL RECORDS INFORMATION OF A THIRD-COUNTRY NATIONAL**

This form, which is available at www.eurojust.europa.eu in all 24 official languages of the institutions of the Union, should be addressed in one of those languages to ECRIS-TCN@eurojust.europa.eu

Requesting state or international organisation:

Name of state or international organisation:
Authority submitting the request:
Represented by (*name of person*):
Title:
Address:
Telephone number:
Email address:

Criminal proceedings for which the information is sought:

Domestic reference number:
Competent authority:
Type of crimes under investigation (*please mention relevant article(s) of criminal code*):
Other relevant information (*e.g. urgency of the request*):

Identity information of the person having the nationality of a third country in respect of whom information regarding the convicting Member State is sought:

NB: please provide as much available information as possible.

Surname (*family name*):
First name(s) (*given names*):
Date of birth:
Place of birth (*town and country*):
Nationality or nationalities:
Gender:
Previous name(s), if applicable:
Parents' names:
Identity number:
Type and number of the person's identification document(s):
Issuing authority of document(s):
Pseudonyms or aliases:
If fingerprint data are available, please provide these.

In case of multiple persons, please indicate them separately

A drop down panel would allow the insertion of additional subjects

Place

Date

(Electronic) signature and stamp:

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2019/816 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2019

establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty of the Functioning of the European Union, and in particular Article 82(1), second subparagraph, point (d) 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) The Union has set itself the objective of offering its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured. That objective should be achieved by means of, among others, appropriate measures to prevent and combat crime, including organised crime and terrorism.
- (2) That objective requires that information on convictions handed down in the Member States be taken into account outside the convicting Member State in the course of new criminal proceedings, as laid down in Council Framework Decision 2008/675/JHA ⁽²⁾, as well as in order to prevent new offences.
- (3) That objective presupposes the exchange of information extracted from criminal records between the competent authorities of the Member States. Such an exchange of information is organised and facilitated by the rules set out in Council Framework Decision 2009/315/JHA ⁽³⁾ and by the European Criminal Records Information System (ECRIS), established by Council Decision 2009/316/JHA ⁽⁴⁾.
- (4) The existing ECRIS legal framework, however, does not sufficiently address the particularities of requests concerning third-country nationals. Although it is already possible to exchange information on third-country nationals through ECRIS, there is no common Union procedure or mechanism in place to do so efficiently, rapidly and accurately.
- (5) Within the Union, information on third-country nationals is not gathered as it is for nationals of Member States — in the Member States of nationality — but only stored in the Member States where the convictions have been handed down. A complete overview of the criminal history of a third-country national can therefore be ascertained only if such information is requested from all Member States.

⁽¹⁾ Position of the European Parliament of 12 March 2019 (not yet published in the Official Journal) and decision of the Council of 9 April 2019.

⁽²⁾ Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ L 220, 15.8.2008, p. 32).

⁽³⁾ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23).

⁽⁴⁾ Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p. 33).

- (6) Such 'blanket requests' impose a disproportionate administrative burden on all Member States, including those not holding information on the particular third-country national. In practice, that burden deters Member States from requesting information on third-country nationals from other Member States, which seriously hinders the exchange of information between them, limiting their access to criminal records information to information stored in their national register. As a consequence, the risk of information exchange between Member States being inefficient and incomplete is increased, which in turn affects the level of security and safety provided to citizens and persons residing within the Union.
- (7) To improve the situation, a system should be established by which the central authority of a Member State can find out promptly and efficiently which other Member States hold criminal records information on a third-country national ('ECRIS-TCN'). The existing ECRIS framework could then be used to request the criminal records information from those Member States in accordance with Framework Decision 2009/315/JHA.
- (8) This Regulation should therefore lay down rules establishing a centralised system at the Union level containing personal data, and rules on the division of responsibilities between the Member State and the organisation responsible for the development and maintenance of the centralised system, as well as any specific data protection provisions needed to supplement the existing data protection arrangements and to provide for an adequate overall level of data protection, data security and protection of the fundamental rights of the persons concerned.
- (9) The objective of offering to citizens of the Union an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured, also requires complete information to be held on convictions of citizens of the Union who also hold the nationality of a third country. Given the possibility that those persons could present themselves as holding one or several nationalities, and that different convictions could be stored in the convicting Member State or in the Member State of nationality, it is necessary to include citizens of the Union who also hold the nationality of a third country within the scope of this Regulation. The exclusion of such persons would result in the information stored in ECRIS-TCN being incomplete. That would jeopardise the reliability of the system. However, since such persons hold Union citizenship, the conditions under which fingerprint data can be included in ECRIS-TCN in respect of those persons should be comparable to the conditions under which the fingerprint data of Union citizens are exchanged between Member States through ECRIS, which was established by Framework Decision 2009/315/JHA and Decision 2009/316/JHA. Therefore, in respect of citizens of the Union who also hold the nationality of a third country, fingerprint data should only be included in ECRIS-TCN where they have been collected in accordance with national law during criminal proceedings, it being understood that for such inclusion Member States should be able to use fingerprint data collected for purposes other than criminal proceedings, where such use is permitted under national law.
- (10) ECRIS-TCN should allow for processing of fingerprint data for the purpose of identifying the Member States in possession of criminal records information on a third-country national. It should also allow for processing of facial images in order to confirm his or her identity. It is essential that the entry and use of fingerprint data and facial images not exceed what is strictly necessary to achieve the aim, respect fundamental rights, as well as the best interests of children, and be in conformity with applicable Union data protection rules.
- (11) The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) established by Regulation (EU) 2018/1726 of the European Parliament and of the Council ⁽⁵⁾ should be entrusted with the task of developing and operating ECRIS-TCN, given its experience with managing other large scale systems in the area of justice and home affairs. Its mandate should be amended to reflect those new tasks.
- (12) eu-LISA should be equipped with the appropriate funding and staffing to meet its responsibilities under this Regulation.
- (13) Given the need to create close technical links between ECRIS-TCN and ECRIS, eu-LISA should also be entrusted with the task of further developing and maintaining the ECRIS reference implementation, and its mandate should be amended to reflect this.
- (14) Four Member States have developed their own national ECRIS implementation software in accordance with Decision 2009/316/JHA, and have been using it instead of the ECRIS reference implementation to exchange criminal records information. Given the particular features that those Member States have introduced in their systems for national use and the investments that they have made, they should be allowed to use their national ECRIS implementation software for the purposes of ECRIS-TCN as well, provided that the conditions set out in this Regulation are met.

⁽⁵⁾ Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

- (15) ECRIS-TCN should contain only the identity information of third-country nationals convicted by a criminal court within the Union. Such identity information should include alphanumeric and fingerprint data. It should also be possible for facial images to be included in as far as the law of the Member State where a conviction is handed down allows for the collection and storage of facial images of a convicted person.
- (16) The alphanumeric data to be entered by the Member States into the central system should include the surname (family name) and the first names (given names) of the convicted person, as well as, where such information is available to the central authority, any pseudonyms or aliases of that person. If differing personal data, such as a different spelling of a name in another alphabet, are known to the Member State concerned, it should be possible to enter such data into the central system as additional information.
- (17) The alphanumeric data should also include, as additional information, the identity number, or the type and number of the person's identification documents, as well as the name of the authority issuing those documents, where such information is available to the central authority. The Member State should seek to verify the authenticity of identification documents before entering the relevant information in the central system. In any case, given that such information could be unreliable, it should be used cautiously.
- (18) The central authorities should use ECRIS-TCN to identify the Member States holding criminal records information on a third-country national when criminal records information on that person is requested in the Member State concerned for the purposes of criminal proceedings against that person, or for the purposes referred to in this Regulation. While ECRIS-TCN should in principle be used in all such cases, the authority responsible for conducting the criminal proceedings should be able to decide that ECRIS-TCN should not be used when it would not be appropriate in the circumstances of the case, e.g. in certain types of urgent criminal proceedings, in cases of transit, when criminal records information has recently been obtained via ECRIS, or in respect of minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences.
- (19) Member States should also be able to use ECRIS-TCN for purposes other than those set out in this Regulation, if provided for under and in accordance with national law. However, in order to enhance the transparency of the use of ECRIS-TCN, Member States should notify such other purposes to the Commission, which should ensure publication of all the notifications in the *Official Journal of the European Union*.
- (20) It should also be possible for other authorities requesting criminal records information to decide that ECRIS-TCN should not be used when this would not be appropriate in the circumstances of the case, e.g. when certain standard administrative checks need to be carried out regarding the professional qualifications of a person, especially if it is known that criminal records information will not be requested from other Member States, irrespective of the result of the search in ECRIS-TCN. However, ECRIS-TCN should always be used when the request for criminal records information has been initiated by a person who asks for information on his or her own criminal record in accordance with Framework Decision 2009/315/JHA, or when it is made in order to obtain criminal records information in accordance with Directive 2011/93/EU of the European Parliament and of the Council ⁽⁶⁾.
- (21) Third-country nationals should have the right to obtain information in writing concerning their own criminal record in accordance with the law of the Member State where they request such information to be provided and in accordance with Framework Decision 2009/315/JHA. Before providing such information to a third-country national, the Member State concerned should query ECRIS-TCN.
- (22) Citizens of the Union who also hold the nationality of a third country will only be included in ECRIS-TCN if the competent authorities are aware that such persons hold the nationality of a third country. Where the competent authorities are not aware that citizens of the Union also hold the nationality of a third country, it is nevertheless possible that such persons have prior convictions as third-country nationals. In order to ensure that the competent authorities have a complete overview of criminal records, it should be possible to query ECRIS-TCN to verify whether, in respect of a citizen of the Union, any Member State holds criminal record information concerning this person as a third-country national.
- (23) In the event that there is a match between data recorded in the central system and those used for search by a Member State (hit), the identity information against which a hit was recorded should be provided together with the hit. The result of a search should be used by the central authorities only for the purpose of making a request through ECRIS or by the European Union Agency for Criminal Justice Cooperation (Eurojust) established by

⁽⁶⁾ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

Regulation (EU) 2018/1727 of the European Parliament and of the Council ⁽⁷⁾, the European Union Agency for Law Enforcement Cooperation (Europol) established by Regulation (EU) 2016/794 of the European Parliament and of the Council ⁽⁸⁾, and the European Public Prosecutor's Office (the 'EPPO') established by Council Regulation (EU) 2017/1939 ⁽⁹⁾, only for the purpose of making a request for conviction information as referred to in this Regulation.

- (24) In the first instance, facial images included in ECRIS-TCN should only be used for the purpose of confirming the identity of a third-country national in order to identify the Member States holding information on previous convictions of that third-country national. In the future, it should be possible for facial images to be used for automated biometric matching, provided that the technical and policy requirements to do so have been met. The Commission, taking into account necessity and proportionality, as well as the technical developments in the field of facial recognition software, should assess the availability and readiness of the required technology before adopting a delegated act concerning the use of facial images for the purpose of identifying third-country nationals in order to identify the Member States holding information on previous convictions concerning those persons.
- (25) The use of biometrics is necessary as it is the most reliable method of identifying third-country nationals within the territory of the Member States, who are often not in possession of documents or any other means of identification, as well as for more reliable matching of third-country nationals' data.
- (26) Member States should enter in the central system fingerprint data of convicted third-country nationals that have been collected in accordance with national law during criminal proceedings. In order to have as complete identity information as possible available in the central system, Member States should also be able to enter into the central system fingerprint data that have been collected for other purposes than criminal proceedings, where those fingerprint data are available for use in criminal proceedings in compliance with national law.
- (27) This Regulation should establish minimum criteria as regards the fingerprint data that Member States should include in the central system. Member States should be given the choice either to enter the fingerprint data of third-country nationals who have received a custodial sentence of at least 6 months, or to enter the fingerprint data of third-country nationals who have been convicted of a criminal offence which is punishable under the law of the Member State concerned by a custodial sentence of a maximum period of at least 12 months.
- (28) Member States should create records in ECRIS-TCN regarding convicted third-country nationals. This should, where possible, be done automatically and without undue delay after their conviction was entered into the national criminal records. Member States should, in accordance with this Regulation, enter into the central system alphanumeric and fingerprint data relating to convictions handed down after the date of the start of entry of data into the ECRIS-TCN. As from the same date, and any time thereafter, Member States should be able to enter facial images in the central system.
- (29) Member States should also, in accordance with this Regulation, create records in ECRIS-TCN regarding third-country nationals convicted prior to the date of start of entry of data, in order to ensure the maximum effectiveness of the system. However, for that purpose Member States should not be obliged to collect information which is not already in their criminal records prior to the date of start of entry of data. The fingerprint data of third-country nationals collected in connection with such prior convictions should be included only where they have been collected during criminal proceedings, and where the Member State concerned considers that they can be clearly matched with other identity information in criminal records.
- (30) Improving the exchange of information on convictions should assist Member States in their implementation of Framework Decision 2008/675/JHA, which obliges the Member States to take account of previous convictions in other Member States in the course of new criminal proceedings to the extent that previous national convictions are taken into account under national law.

⁽⁷⁾ 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 (OJ L 295, 21.11.2018, p. 138).

⁽⁸⁾ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

⁽⁹⁾ 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).

- (31) A hit indicated by ECRIS-TCN should not of itself be taken to mean that the third-country national concerned has been convicted in the Member States that are indicated. The existence of previous convictions should only be confirmed based on information received from the criminal records of the Member States concerned.
- (32) Notwithstanding the possibility of using the Union's financial programmes in accordance with the applicable rules, each Member State should bear its own costs arising from the implementation, administration, use and maintenance of its criminal records database and national fingerprints databases, and from the implementation, administration, use and maintenance of the technical alterations necessary to be able to use ECRIS-TCN, including their connections to the national central access point.
- (33) Eurojust, Europol and the EPPO should have access to ECRIS-TCN for the purpose of identifying the Member States holding criminal records information on a third-country national in order to support their statutory tasks. Eurojust should also have direct access to ECRIS-TCN for the purpose of carrying out its task under this Regulation of acting as a contact point for third countries and international organisations, without prejudice to the application of principles of judicial cooperation in criminal matters, including rules on mutual legal assistance. While the position of Member States who are not part of the enhanced cooperation on the establishment of the EPPO should be taken into account, the EPPO should not be refused access to conviction information on the sole ground that the Member State concerned is not part of that enhanced cooperation.
- (34) This Regulation establishes strict rules on access to ECRIS-TCN and the necessary safeguards, including the responsibility of the Member States in collecting and using the data. It also sets out how individuals may exercise their rights to compensation, access, rectification, erasure and redress, in particular the right to an effective remedy and the supervision of processing operations by public independent authorities. It therefore respects fundamental rights and freedoms enshrined, in particular, in the Charter of Fundamental Rights of the European Union, including the right to protection of personal data, the principle of equality before the law and the general prohibition of discrimination. In this regard, it also takes into account the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other human rights obligations under international law.
- (35) Directive (EU) 2016/680 of the European Parliament and of the Council ⁽¹⁰⁾ should apply to the processing of personal data by competent national authorities 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. Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹¹⁾ should apply to the processing of personal data by national authorities when such processing does not fall within the scope of Directive (EU) 2016/680. Coordinated supervision should be ensured in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽¹²⁾, which should also apply to the processing of personal data by eu-LISA.
- (36) In respect of prior convictions, the central authorities should enter alphanumeric data by the end of the period for entry of data under this Regulation, and fingerprint data within two years after the date of the start of operations of ECRIS-TCN. Member States should be able to enter all data at the same time, provided those time limits are met.
- (37) Rules should be laid down on the liability of the Member States, Eurojust, Europol, the EPPO and eu-LISA in respect of damage arising from any breach of this Regulation.
- (38) In order to improve identification of the Member States holding information on previous convictions of third-country nationals, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of supplementing this Regulation by providing for the use of facial images for the purpose of identifying third-country nationals in order to identify the Member States holding information on previous convictions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement

⁽¹⁰⁾ 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).

⁽¹¹⁾ Regulation (EU) 2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽¹²⁾ 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/EC (OJ L 295, 21.11.2018, p. 39).

of 13 April 2016 on Better Law-Making ⁽¹³⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (39) In order to ensure uniform conditions for the establishment and operational management of ECRIS-TCN, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and the Council ⁽¹⁴⁾.
- (40) Member States should take the necessary measures to comply with this Regulation as soon as possible so as to ensure the proper functioning of ECRIS-TCN, taking into account the time that eu-LISA needs to develop and implement ECRIS-TCN. However, Member States should have at least 36 months after the entry into force of this Regulation to take measures to comply with this Regulation.
- (41) Since the objective of this Regulation, namely to enable the rapid and efficient exchange of accurate criminal records information on third-country nationals, cannot be sufficiently achieved by the Member States, but can rather, by putting in place common rules, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
- (42) In accordance with Articles 1 and 2 of 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.
- (43) 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, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (44) In accordance with Article 3 and Article 4a(1) of Protocol No 21, the United Kingdom has notified its wish to take part in the adoption and application of this Regulation.
- (45) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁵⁾ and delivered an opinion on 12 December 2017 ⁽¹⁶⁾,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

General provisions

Article 1

Subject matter

This Regulation establishes:

- (a) a system to identify the Member States holding information on previous convictions of third-country nationals ('ECRIS-TCN');
- (b) the conditions under which ECRIS-TCN shall be used by the central authorities in order to obtain information on such previous convictions through the European Criminal Records Information System (ECRIS) established by Decision 2009/316/JHA, as well as the conditions under which Eurojust, Europol and the EPPO shall use ECRIS-TCN.

⁽¹³⁾ OJ L 123, 12.5.2016, p. 1.

⁽¹⁴⁾ Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁽¹⁵⁾ 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).

⁽¹⁶⁾ OJ C 55, 14.2.2018, p. 4.

*Article 2***Scope**

This Regulation applies to the processing of identity information of third-country nationals who have been subject to convictions in the Member States for the purpose of identifying the Member States where such convictions were handed down. With the exception of point (b)(ii) of Article 5(1), the provisions of this Regulation that apply to third-country nationals also apply to citizens of the Union who also hold the nationality of a third country and who have been subject to convictions in the Member States.

*Article 3***Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) 'conviction' means any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent that the decision is entered in the criminal records of the convicting Member State;
- (2) 'criminal proceedings' means the pre-trial stage, the trial stage and the execution of the conviction;
- (3) 'criminal record' means the national register or registers recording convictions in accordance with national law;
- (4) 'convicting Member State' means the Member State in which a conviction is handed down;
- (5) 'central authority' means an authority designated in accordance with Article 3(1) of Framework Decision 2009/315/JHA;
- (6) 'competent authorities' means the central authorities and Eurojust, Europol and the EPPO, which are competent to access or query ECRIS-TCN in accordance with this Regulation;
- (7) 'third-country national' means a person who is not a citizen of the Union within the meaning of Article 20(1) TFEU, or who is a stateless person or a person whose nationality is unknown;
- (8) 'central system' means the database or databases developed and maintained by eu-LISA which hold identity information on third-country nationals who have been subject to convictions in the Member States;
- (9) 'interface software' means the software hosted by the competent authorities allowing them to access the central system through the communication infrastructure referred to in point (d) of Article 4(1);
- (10) 'identity information' means alphanumeric data, fingerprint data and facial images that are used to establish a connection between these data and a natural person;
- (11) 'alphanumeric data' means data represented by letters, digits, special characters, spaces and punctuation marks;
- (12) 'fingerprint data' means the data relating to plain and rolled impressions of the fingerprints of each of a person's fingers;
- (13) 'facial image' means a digital image of a person's face;
- (14) 'hit' means a match or matches established by comparison between identity information recorded in the central system and the identity information used for a search;
- (15) 'national central access point' means the national connection point to the communication infrastructure referred to in point (d) of Article 4(1);
- (16) 'ECRIS reference implementation' means the software developed by the Commission and made available to the Member States for the exchange of criminal records information through ECRIS;
- (17) 'national supervisory authority' means an independent public authority which is established by a Member State pursuant to applicable Union data protection rules;
- (18) 'supervisory authorities' means the European Data Protection Supervisor and the national supervisory authorities.

*Article 4***Technical architecture of ECRIS-TCN**

1. ECRIS-TCN shall be composed of:
 - (a) a central system in which identity information on convicted third-country nationals is stored;
 - (b) a national central access point in each Member State;
 - (c) interface software enabling the connection of the competent authorities to the central system via the national central access points and the communication infrastructure referred to in point (d);
 - (d) a communication infrastructure between the central system and the national central access points.
2. The central system shall be hosted by eu-LISA at its technical sites.
3. The interface software shall be integrated with the ECRIS reference implementation. The Member States shall use the ECRIS reference implementation or, in the situation and under the conditions set out in paragraphs 4 to 8, the national ECRIS implementation software to query ECRIS-TCN and to send subsequent requests for criminal records information.
4. The Member States which use their national ECRIS implementation software shall be responsible for ensuring that their national ECRIS implementation software allows their national criminal records authorities to use ECRIS-TCN, with the exception of the Interface Software, in accordance with this Regulation. For that purpose, they shall, before the date of start of operations of ECRIS-TCN in accordance with Article 35(4), ensure that their national ECRIS implementation software functions in accordance with the protocols and technical specifications established in the implementing acts referred to in Article 10, and with any further technical requirements established by eu-LISA pursuant to this Regulation based on those implementing acts.
5. For as long as they do not use the ECRIS reference implementation, Member States which use their national ECRIS implementation software shall also ensure the implementation of any subsequent technical adaptations to their national ECRIS implementation software required by any changes to the technical specifications established in the implementing acts referred to in Article 10, or changes to any further technical requirements established by eu-LISA pursuant to this Regulation based on those implementing acts, without undue delay.
6. The Member States which use their national ECRIS implementation software shall bear all the costs associated with the implementation, maintenance and further development of their national ECRIS implementation software and its interconnection with ECRIS-TCN, with the exception of the interface software.
7. If a Member State which uses its national ECRIS implementation software is unable to comply with its obligations under this Article, it shall be obliged to use the ECRIS reference implementation, including the integrated interface software, to make use of ECRIS-TCN.
8. In view of the assessment to be carried out by the Commission pursuant to point (b) of Article 36(10), the Member States concerned shall provide the Commission with all necessary information.

*CHAPTER II****Entry and use of data by central authorities****Article 5***Data entry in ECRIS-TCN**

1. For each convicted third-country national, the central authority of the convicting Member State shall create a data record in the central system. The data record shall include:
 - (a) as concerns alphanumeric data:
 - (i) information to be included unless, in individual cases, such information is not known to the central authority (obligatory information):
 - surname (family name),
 - first names (given names),

- date of birth,
 - place of birth (town and country),
 - nationality or nationalities,
 - gender,
 - previous names, if applicable,
 - the code of the convicting Member State,
- (ii) information to be included if it has been entered in the criminal record (optional information):
- parents' names,
- (iii) information to be included if it is available to the central authority (additional information):
- identity number, or the type and number of the person's identification documents, as well as the name of the issuing authority,
 - pseudonyms or aliases;
- (b) as concerns fingerprint data:
- (i) fingerprint data that have been collected in accordance with national law during criminal proceedings;
- (ii) as a minimum, fingerprint data collected on the basis of either of the following criteria:
- where the third-country national has received a custodial sentence of at least 6 months;
 - or
 - where the third-country national has been convicted of a criminal offence which is punishable under the law of the Member State by a custodial sentence of a maximum period of at least 12 months.
2. The fingerprint data referred to in point (b) of paragraph 1 of this Article shall have the technical specifications for the quality, resolution and processing of fingerprint data provided for in the implementing act referred to in point (b) of Article 10(1). The reference number of the fingerprint data of the convicted person shall include the code of the convicting Member State.
3. The data record may also contain facial images of the convicted third-country national, if the law of the convicting Member State allows for the collection and storage of facial images of convicted persons.
4. The convicting Member State shall create the data record automatically, where possible, and without undue delay after the conviction has been entered into the criminal records.
5. The convicting Member States shall also create data records for convictions handed down prior to the date of start of entry of data in accordance with Article 35(1) to the extent that data related to convicted persons are stored in their national databases. In those cases, fingerprint data shall be included only where they have been collected during criminal proceedings in accordance with national law, and where they can be clearly matched with other identity information in criminal records.
6. In order to comply with the obligations set out in points (b)(i) and (ii) of paragraph 1, and in paragraph 5, Member States may use fingerprint data collected for purposes other than criminal proceedings, where such use is permitted under national law.

Article 6

Facial images

1. Until the entry into force of the delegated act provided for in paragraph 2, facial images may be used only to confirm the identity of a third-country national who has been identified as a result of an alphanumeric search or a search using fingerprint data.
2. The Commission is empowered to adopt delegated acts in accordance with Article 37 supplementing this Regulation concerning the use of facial images for the purpose of identifying third-country nationals in order to identify the Member States holding information on previous convictions concerning such persons, when it becomes technically possible. Before exercising this empowerment, the Commission, taking into account necessity and proportionality, as well as technical developments in the field of facial recognition software, shall assess the availability and readiness of the required technology.

*Article 7***Use of ECRIS-TCN for identifying the Member States holding criminal records information**

1. The central authorities shall use ECRIS-TCN to identify the Member States holding criminal records information on a third-country national in order to obtain information on previous convictions through ECRIS, when criminal records information on that person is requested in the Member State concerned for the purposes of criminal proceedings against that person, or for any of the following purposes, if provided for under and in accordance with national law:

- checking a person's own criminal record at his or her request,
- security clearance,
- obtaining a licence or permit,
- employment vetting,
- vetting for voluntary activities involving direct and regular contacts with children or vulnerable persons,
- visa, acquisition of citizenship and migration procedures, including asylum procedures, and
- checks in relation with public contracts and public examinations.

However, in specific cases other than those in which a third-country national asks the central authority for information on his or her own criminal record, or where the request is made in order to obtain criminal records information pursuant to Article 10(2) of Directive 2011/93/EU, the authority requesting criminal records information may decide that such use of ECRIS-TCN is not appropriate.

2. Any Member State which decides, if provided for under and in accordance with national law, to use ECRIS-TCN for purposes other than those set out in paragraph 1 in order to obtain information on previous convictions through ECRIS, shall, by the date of start of operations as referred to in Article 35(4), or any time thereafter, notify the Commission of such other purposes and any changes to such purposes. The Commission shall publish such notifications in the *Official Journal of the European Union* within 30 days of receipt of the notifications.

3. Eurojust, Europol and the EPPO are entitled to query ECRIS-TCN to identify the Member States holding criminal records information on a third-country national in accordance with Articles 14 to 18. However, they shall not enter, rectify or erase any data in ECRIS-TCN.

4. For the purposes referred to in paragraphs 1, 2 and 3, the competent authorities may also query ECRIS-TCN to verify whether, in respect of a citizen of the Union, any Member State holds criminal records information concerning this person as a third-country national.

5. When querying ECRIS-TCN, the competent authorities may use all or only some of the data referred to in Article 5(1). The minimum set of data that is required to query the system shall be specified in an implementing act adopted in accordance with point (g) of Article 10(1).

6. The competent authorities may also query ECRIS-TCN using facial images, provided that such functionality has been implemented in accordance with Article 6(2).

7. In the event of a hit, the central system shall automatically provide the competent authority with information on the Member States holding criminal records information on the third-country national, along with the associated reference numbers and any corresponding identity information. Such identity information shall only be used for the purpose of verifying the identity of the third-country national concerned. The result of a search in the central system may only be used for the purpose of making a request according to Article 6 of Framework Decision 2009/315/JHA or a request referred to in Article 17(3) of this Regulation.

8. In the event that there is no hit, the central system shall automatically inform the competent authority.

*CHAPTER III****Retention and modification of the data****Article 8***Retention period for data storage**

1. Each data record shall be stored in the central system for as long as the data related to the convictions of the person concerned are stored in the criminal records.

2. Upon expiry of the retention period referred to in paragraph 1, the central authority of the convicting Member State shall erase the data record, including any fingerprint data or facial images, from the central system. The erasure shall be done automatically, where possible, and in any event no later than one month after the expiry of the retention period.

Article 9

Modification and erasure of data

1. The Member States may modify or erase the data which they have entered into ECRIS-TCN.
2. Any modification of the information in the criminal records which led to the creation of a data record in accordance with Article 5 shall include identical modification of the information stored in that data record in the central system by the convicting Member State without undue delay.
3. If a convicting Member State has reason to believe that the data it has recorded in the central system are inaccurate or that data were processed in the central system in contravention of this Regulation, it shall:
 - (a) immediately launch a procedure for checking the accuracy of the data concerned or the lawfulness of its processing, as appropriate;
 - (b) if necessary, rectify the data or erase them from the central system without undue delay.
4. If a Member State other than the convicting Member State which entered the data has reason to believe that data recorded in the central system are inaccurate or that data were processed in the central system in contravention of this Regulation, it shall contact the central authority of the convicting Member State without undue delay.

The convicting Member State shall:

- (a) immediately launch a procedure for checking the accuracy of the data concerned or the lawfulness of its processing, as appropriate;
- (b) if necessary, rectify the data or erase them from the central system without undue delay;
- (c) inform the other Member State that the data have been rectified or erased, or of the reasons why the data have not been rectified or erased, without undue delay.

CHAPTER IV

Development, operation and responsibilities

Article 10

Adoption of implementing acts by the Commission

1. The Commission shall adopt the implementing acts necessary for the technical development and implementation of ECRIS-TCN as soon as possible, and in particular acts concerning:
 - (a) the technical specifications for the processing of the alphanumeric data;
 - (b) the technical specifications for the quality, resolution and processing of fingerprint data;
 - (c) the technical specifications of the interface software;
 - (d) the technical specifications for the quality, resolution and processing of facial images for the purposes of and under the conditions set out in Article 6;
 - (e) data quality, including a mechanism for and procedures to carry out data quality checks;
 - (f) entering the data in accordance with Article 5;
 - (g) accessing and querying ECRIS-TCN in accordance with Article 7;
 - (h) modifying and erasing the data in accordance with Articles 8 and 9;

- (i) keeping and accessing logs in accordance with Article 31;
 - (j) operation of the central repository and the data security and data protection rules applicable to the repository, in accordance with Article 32;
 - (k) providing statistics in accordance with Article 32;
 - (l) performance and availability requirements of ECRIS-TCN, including minimal specifications and requirements on the biometric performance of ECRIS-TCN in particular in terms of the required false positive identification rate and false negative identification rate.
2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 38(2).

Article 11

Development and operational management of ECRIS — TCN

1. eu-LISA shall be responsible for the development of ECRIS-TCN in accordance with the principle of data protection by design and by default. In addition, eu-LISA shall be responsible for the operational management of ECRIS-TCN. The development shall consist of the elaboration and implementation of the technical specifications, testing and overall project coordination.
2. eu-LISA shall also be responsible for the further development and maintenance of the ECRIS reference implementation.
3. eu-LISA shall define the design of the physical architecture of ECRIS-TCN including its technical specifications and evolution as regards the central system, the national central access point and the interface software. That design shall be adopted by its Management Board, subject to a favourable opinion of the Commission.
4. eu-LISA shall develop and implement ECRIS-TCN as soon as possible after the entry into force of this Regulation and following the adoption by the Commission of the implementing acts provided for in Article 10.
5. Prior to the design and development phase of ECRIS-TCN, the Management Board of eu-LISA shall establish a Programme Management Board composed of ten members.

The Programme Management Board shall be composed of eight members appointed by the Management Board, the Chair of the Advisory Group referred to in Article 39 and one member appointed by the Commission. The members appointed by the Management Board shall be elected only from those Member States which are fully bound under Union law by the legislative instruments governing ECRIS and which will participate in ECRIS-TCN. The Management Board shall ensure that the members it appoints to the Programme Management Board have the necessary experience and expertise in the development and management of IT systems supporting judicial and criminal records authorities.

eu-LISA shall participate in the work of the Programme Management Board. To that end, representatives of eu-LISA shall attend the meetings of the Programme Management Board in order to report on work regarding the design and development of ECRIS-TCN and on any other related work and activities.

The Programme Management Board shall meet at least once every three months, and more often when necessary. It shall ensure the adequate management of the design and development phase of ECRIS-TCN and shall ensure consistency between central and national ECRIS-TCN projects, and national ECRIS implementation software. The Programme Management Board shall submit written reports regularly and if possible every month to the Management Board of eu-LISA on the progress of the project. The Programme Management Board shall have no decision-making power nor any mandate to represent the members of the Management Board.

6. The Programme Management Board shall establish its rules of procedure which shall include in particular rules on:
 - (a) chairmanship;
 - (b) meeting venues;
 - (c) preparation of meetings;
 - (d) admission of experts to the meetings;
 - (e) communication plans ensuring that non-participating Members of the Management Board are kept fully informed.

7. The chairmanship of the Programme Management Board shall be held by a Member State which is fully bound under Union law by the legislative instruments governing ECRIS and the legislative instruments governing the development, establishment, operation and use of all the large-scale IT systems managed by eu-LISA.

8. All travel and subsistence expenses incurred by the members of the Programme Management Board shall be paid by eu-LISA. Article 10 of the eu-LISA Rules of Procedure shall apply *mutatis mutandis*. The Programme Management Board's secretariat shall be ensured by eu-LISA.

9. During the design and development phase, the Advisory Group referred to in Article 39 shall be composed of the national ECRIS-TCN project managers and chaired by eu-LISA. During the design and development phase it shall meet regularly, if possible at least once a month, until the start of operations of ECRIS-TCN. It shall report after each meeting to the Programme Management Board. It shall provide the technical expertise to support the tasks of the Programme Management Board and shall follow up on the state of preparation of the Member States.

10. In order to ensure the confidentiality and integrity of data stored in ECRIS-TCN at all times, eu-LISA shall, in cooperation with the Member States, provide for appropriate technical and organisational measures, taking into account the state of the art, the cost of implementation and the risks posed by the processing.

11. eu-LISA shall be responsible for the following tasks related to the communication infrastructure referred to in point (d) of Article 4(1):

- (a) supervision;
- (b) security;
- (c) the coordination of relations between the Member States and the provider of the communication infrastructure.

12. The Commission shall be responsible for all other tasks relating to the communication infrastructure referred to in point (d) of Article 4(1), in particular:

- (a) tasks relating to the implementation of the budget;
- (b) acquisition and renewal;
- (c) contractual matters.

13. eu-LISA shall develop and maintain a mechanism and procedures for carrying out quality checks on the data stored in ECRIS-TCN and shall provide regular reports to the Member States. eu-LISA shall provide regular reports to the Commission covering the issues encountered and the Member States concerned.

14. The operational management of ECRIS-TCN shall consist of all the tasks necessary to keep ECRIS-TCN operational in accordance with this Regulation, and in particular the maintenance work and technical developments necessary to ensure that ECRIS-TCN functions at a satisfactory level in accordance with the technical specifications.

15. eu-LISA shall perform tasks related to providing training on the technical use of ECRIS-TCN and the ECRIS reference implementation.

16. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁷⁾, eu-LISA shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to its entire staff required to work with data registered in the central system. That obligation shall also apply after such staff leave office or employment or after the termination of their activities.

Article 12

Responsibilities of the Member States

1. Each Member State shall be responsible for:

- (a) ensuring a secure connection between its national criminal records and fingerprints databases and the national central access point;
- (b) the development, operation and maintenance of the connection referred to in point (a);
- (c) ensuring a connection between its national systems and the ECRIS reference implementation;

⁽¹⁷⁾ OJ L 56, 4.3.1968, p. 1.

- (d) the management of and arrangements for access of duly authorised staff of the central authorities to ECRIS-TCN in accordance with this Regulation and for establishing and regularly updating a list of such staff and the profiles referred to in point (g) of Article 19(3).
2. Each Member State shall give the staff of its central authority who have a right to access ECRIS-TCN appropriate training covering, in particular, data security and data protection rules and applicable fundamental rights, before authorising them to process data stored in the central system.

Article 13

Responsibility for the use of data

1. In accordance with applicable Union data protection rules, each Member State shall ensure that the data recorded in ECRIS-TCN are processed lawfully, and in particular that:
- (a) only duly authorised staff have access to the data for the performance of their tasks;
 - (b) the data are collected lawfully in a manner that fully respects the human dignity and fundamental rights of the third-country national;
 - (c) the data are entered into ECRIS-TCN lawfully;
 - (d) the data are accurate and up-to-date when they are entered into ECRIS-TCN.
2. eu-LISA shall ensure that ECRIS-TCN is operated in accordance with this Regulation, with the delegated act referred to in Article 6(2) and with the implementing acts referred to in Article 10, as well as in accordance with Regulation (EU) 2018/1725. In particular, eu-LISA shall take the necessary measures to ensure the security of the central system and the communication infrastructure referred to in point (d) of Article 4(1), without prejudice to the responsibilities of each Member State.
3. eu-LISA shall inform the European Parliament, the Council and the Commission as well as the European Data Protection Supervisor as soon as possible of the measures it takes pursuant to paragraph 2 in view of the start of operations of ECRIS-TCN.
4. The Commission shall make the information referred to in paragraph 3 available to the Member States and to the public through a regularly updated public website.

Article 14

Access for Eurojust, Europol, and the EPPO

1. Eurojust shall have direct access to ECRIS-TCN for the purpose of the implementation of Article 17, as well as for fulfilling its tasks under Article 2 of Regulation (EU) 2018/1727, in order to identify the Member States holding information on previous convictions of third-country nationals.
2. Europol shall have direct access to ECRIS-TCN for the purpose of fulfilling its tasks under points (a) to (e) and (h) of Article 4(1) of Regulation (EU) 2016/794, in order to identify the Member States holding information on previous convictions of third-country nationals.
3. The EPPO shall have direct access to ECRIS-TCN for the purpose of fulfilling its tasks under Article 4 of Regulation (EU) 2017/1939, in order to identify the Member States holding information on previous convictions of third-country nationals.
4. Following a hit indicating the Member States holding criminal records information on a third-country national, Eurojust, Europol, and the EPPO may use their respective contacts with the national authorities of those Member States to request the criminal records information in the manner provided for in their respective founding acts.

Article 15

Access by authorised staff of Eurojust, Europol and the EPPO

Eurojust, Europol and the EPPO shall be responsible for the management of and arrangements for access of duly authorised staff to ECRIS-TCN in accordance with this Regulation and for establishing and regularly updating a list of such staff and their profiles.

*Article 16***Responsibilities of Eurojust, Europol and the EPPO**

Eurojust, Europol and the EPPO shall:

- (a) establish the technical means to connect to ECRIS-TCN and be responsible for maintaining that connection;
- (b) provide appropriate training covering, in particular, data security and data protection rules and applicable fundamental rights to those members of their staff who have a right to access ECRIS-TCN before authorising them to process data stored in the central system;
- (c) ensure that the personal data processed by them under this Regulation is protected in accordance with the applicable data protection rules.

*Article 17***Contact point for third countries and international organisations**

1. Third countries and international organisations may, for the purposes of criminal proceedings, address requests for information on which Member States, if any, hold criminal records information on a third-country national to Eurojust. To that end, they shall use the standard form set out in the Annex to this Regulation.
2. When Eurojust receives a request under paragraph 1, it shall use ECRIS-TCN to identify which Member States, if any, hold criminal records information on the third-country national concerned.
3. If there is a hit, Eurojust shall ask the Member State that holds criminal records information on the third-country national concerned whether it consents to Eurojust informing the third country or the international organisation of the name of the Member State concerned. Where that Member State gives its consent, Eurojust shall inform the third country or the international organisation of the name of that Member State, and of how it can introduce a request for extracts from the criminal records with that Member State in accordance with the applicable procedures.
4. In cases where there is no hit or where Eurojust cannot provide an answer in accordance with paragraph 3 to requests made under this Article, it shall inform the third country or international organisation concerned that it has completed the procedure, without providing any indication of whether criminal records information on the person concerned is held by one of the Member States.

*Article 18***Providing information to a third country, international organisation or private party**

Neither Eurojust, Europol, the EPPO nor any central authority shall transfer or make available to a third country, an international organisation or a private party information obtained from ECRIS-TCN concerning a third-country national. This Article shall be without prejudice to Article 17(3).

*Article 19***Data Security**

1. eu-LISA shall take the necessary measures to ensure the security of ECRIS-TCN, without prejudice to the responsibilities of each Member State, taking the security measures specified in paragraph 3 into consideration.
2. As regards the operation of ECRIS-TCN, eu-LISA shall take the necessary measures in order to achieve the objectives set out in paragraph 3, including the adoption of a security plan and a business continuity and disaster recovery plan, and to ensure that installed systems may, in case of interruption, be restored.
3. The Member States shall ensure the security of the data before and during the transmission to and receipt from the national central access point. In particular, each Member State shall:
 - (a) physically protect data, including by making contingency plans for the protection of infrastructure;
 - (b) deny unauthorised persons access to national installations in which the Member State carries out operations related to ECRIS-TCN;
 - (c) prevent the unauthorised reading, copying, modification or removal of data media;

- (d) prevent the unauthorised input of data and the unauthorised inspection, modification or erasure of stored personal data;
 - (e) prevent the unauthorised processing of data in ECRIS-TCN and any unauthorised modification or erasure of data processed in ECRIS-TCN;
 - (f) ensure that persons authorised to access ECRIS-TCN have access only to the data covered by their access authorisation, by means of individual user identities and confidential access modes only;
 - (g) ensure that all authorities with a right of access to ECRIS-TCN create profiles describing the functions and responsibilities of persons who are authorised to enter, rectify, erase, consult and search the data and make their profiles available to the national supervisory authorities without undue delay at their request;
 - (h) ensure that it is possible to verify and establish to which Union bodies, offices and agencies personal data may be transmitted using data communication equipment;
 - (i) ensure that it is possible to verify and establish what data have been processed in ECRIS-TCN, when, by whom and for what purpose;
 - (j) prevent the unauthorised reading, copying, modification or erasure of personal data during the transmission of personal data to or from ECRIS-TCN or during the transport of data media, in particular by means of appropriate encryption techniques;
 - (k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to self-monitoring and supervision to ensure compliance with this Regulation.
4. eu-LISA and the Member States shall cooperate in order to ensure a coherent data security approach based on a security risk management process encompassing the entire ECRIS-TCN.

Article 20

Liability

1. Any person who, or any Member State which, has suffered material or non-material damage as a result of an unlawful processing operation or any other act incompatible with this Regulation shall be entitled to receive compensation from:
- (a) the Member State which is responsible for the damage suffered; or
 - (b) eu-LISA, where eu-LISA has not complied with its obligations set out in this Regulation or in Regulation (EU) 2018/1725.

The Member State which is responsible for the damage suffered or eu-LISA, respectively, shall be exempted from liability, in whole or in part, if it proves that it is not responsible for the event which gave rise to the damage.

2. If any failure of a Member State, Eurojust, Europol, or the EPPO to comply with its obligations under this Regulation causes damage to ECRIS-TCN, that Member State, Eurojust, Europol, or the EPPO, respectively, shall be held liable for such damage, unless and insofar as eu-LISA or another Member State participating in ECRIS-TCN failed to take reasonable measures to prevent the damage from occurring or to minimise its impact.

3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the law of the defendant Member State. Claims for compensation against eu-LISA, Eurojust, Europol and the EPPO for the damage referred to in paragraphs 1 and 2 shall be governed by their respective founding acts.

Article 21

Self-monitoring

Member States shall ensure that each central authority takes the measures necessary to comply with this Regulation and cooperates, where necessary, with the supervisory authorities.

Article 22

Penalties

Any misuse of data entered in ECRIS-TCN shall be subject to penalties or disciplinary measures, in accordance with national or Union law, that are effective, proportionate and dissuasive.

CHAPTER V

Data protection rights and supervision*Article 23***Data controller and data processor**

1. Each central authority is to be considered as data controller in accordance with applicable Union data protection rules for the processing of the personal data by that central authority's Member State under this Regulation.
2. eu-LISA shall be considered as data processor in accordance with Regulation (EU) 2018/1725 as regards the personal data entered into the central system by the Member States.

*Article 24***Purpose of the processing of personal data**

1. The data entered into the central system shall only be processed for the purpose of the identification of the Member States holding the criminal records information on third-country nationals.
2. With the exception of duly authorised staff of Eurojust, Europol and the EPPO who have access to ECRIS-TCN for the purposes of this Regulation, access to ECRIS-TCN shall be reserved exclusively to duly authorised staff of the central authorities. Access shall be limited to the extent needed for the performance of the tasks in accordance with the purpose referred to in paragraph 1, and to what is necessary and proportionate to the objectives pursued.

*Article 25***Right of access, rectification, erasure and restriction of processing**

1. The requests of third-country nationals concerning the rights of access to personal data, to rectification and erasure and to restriction of processing of personal data which are set out in the applicable Union data protection rules may be addressed to the central authority of any Member State.
2. Where a request is made to a Member State other than the convicting Member State, the Member State to which the request has been made shall forward it to the convicting Member State without undue delay and in any event within 10 working days of receiving the request. Upon receipt of the request, the convicting Member State shall:
 - (a) immediately launch a procedure for checking the accuracy of the data concerned and the lawfulness of its processing in ECRIS-TCN; and
 - (b) respond to the Member State that forwarded the request without undue delay.
3. In the event that data recorded in ECRIS-TCN are inaccurate or have been processed unlawfully, the convicting Member State shall rectify or erase the data in accordance with Article 9. The convicting Member State or, where applicable, the Member State to which the request has been made shall confirm in writing to the person concerned without undue delay that action has been taken to rectify or erase data relating to that person. The convicting Member State shall also without undue delay inform any other Member State which has been a recipient of conviction information obtained as a result of a query of ECRIS-TCN of what action has been taken.
4. If the convicting Member State does not agree that data recorded in ECRIS-TCN are inaccurate or have been processed unlawfully, that Member State shall adopt an administrative or judicial decision explaining in writing to the person concerned why it is not prepared to rectify or erase data relating to him or her. Such cases may, where appropriate, be communicated to the national supervisory authority.
5. The Member State which has adopted the decision pursuant to paragraph 4 shall also provide the person concerned with information explaining the steps which that person can take if the explanation given pursuant to paragraph 4 is not acceptable to him or her. This shall include information on how to bring an action or a complaint before the competent authorities or courts of that Member State and any assistance, including from the national supervisory authorities, that is available in accordance with the national law of that Member State.

6. Any request made pursuant to paragraph 1 shall contain the information necessary to identify the person concerned. That information shall be used exclusively to enable the exercise of the rights referred to in paragraph 1 and shall be erased immediately afterwards.

7. Where paragraph 2 applies, the central authority to whom the request was addressed shall keep a written record that such a request was made and of how it was addressed and to which authority it was forwarded. Upon request from the national supervisory authority, the central authority shall make that record available to that national supervisory authority without delay. The central authority and the national supervisory authority shall erase such records three years after their creation.

Article 26

Cooperation to ensure respect for data protection rights

1. The central authorities shall cooperate with each other in order to ensure respect for the rights laid down in Article 25.

2. In each Member State, the national supervisory authority shall, upon request, provide information to the person concerned on how to exercise his or her right to rectify or erase data relating to him or to her, in accordance with the applicable Union data protection rules.

3. For the purposes of this Article, the national supervisory authority of the Member State which transmitted the data and the national supervisory authority of the Member State to which the request has been made shall cooperate with each other.

Article 27

Remedies

Any person shall have the right to lodge a complaint and the right to a legal remedy in the convicting Member State which refused the right of access to or the right of rectification or erasure of data relating to him or to her, referred to in Article 25 in accordance with national or Union law.

Article 28

Supervision by the national supervisory authorities

1. Each Member State shall ensure that the national supervisory authorities designated pursuant to applicable Union data protection rules shall monitor the lawfulness of the processing of personal data referred to in Articles 5 and 6 by the Member State concerned, including their transmission to and from ECRIS-TCN.

2. The national supervisory authority shall ensure that an audit of the data processing operations in the national criminal records and fingerprints databases related to the data exchange between those systems and ECRIS-TCN is carried out in accordance with relevant international auditing standards at least every three years from the date of the start of operations of ECRIS-TCN.

3. Member States shall ensure that their national supervisory authorities have sufficient resources to fulfil the tasks entrusted to them under this Regulation.

4. Each Member State shall supply any information requested by its national supervisory authorities and shall, in particular, provide them with information on the activities carried out in accordance with Articles 12, 13 and 19. Each Member State shall grant its national supervisory authorities access to its records pursuant to Article 25(7) and to its logs pursuant to Article 31(6) and allow them access at all times to all its ECRIS-TCN related premises.

Article 29

Supervision by the European Data Protection Supervisor

1. The European Data Protection Supervisor shall monitor that the personal data processing activities of eu-LISA concerning ECRIS-TCN are carried out in accordance with this Regulation.

2. The European Data Protection Supervisor shall ensure that an audit of eu-LISA's personal data processing activities is carried out in accordance with relevant international auditing standards at least every three years. A report of that audit shall be sent to the European Parliament, the Council, the Commission, eu-LISA and the supervisory authorities. eu-LISA shall be given an opportunity to make comments before the report is adopted.

3. eu-LISA shall supply information requested by the European Data Protection Supervisor, give him or her access to all documents and to its logs referred to in Article 31 and allow him or her access to all of its premises at any time.

Article 30

Cooperation among national supervisory authorities and the European Data Protection Supervisor

Coordinated supervision of ECRIS-TCN shall be ensured in accordance with Article 62 of Regulation (EU) 2018/1725.

Article 31

Keeping of logs

1. eu-LISA and the competent authorities shall ensure, in accordance with their respective responsibilities, that all data processing operations in ECRIS-TCN are logged in accordance with paragraph 2 for the purposes of checking the admissibility of requests, monitoring data integrity and security and the lawfulness of the data processing as well as for the purposes of self-monitoring.

2. The log shall show:

- (a) the purpose of the request for access to ECRIS-TCN data;
- (b) the data transmitted as referred to in Article 5;
- (c) the national file reference;
- (d) the date and exact time of the operation;
- (e) the data used for a query;
- (f) the identifying mark of the official who carried out the search.

3. The log of consultations and disclosures shall make it possible to establish the justification of such operations.

4. Logs shall be used only for monitoring the lawfulness of data processing and for ensuring data integrity and security. Only logs containing non-personal data may be used for the monitoring and evaluation referred to in Article 36. Those logs shall be protected by appropriate measures against unauthorised access and erased after three years, if they are no longer required for monitoring procedures which have already begun.

5. On request, eu-LISA shall make the logs of its processing operations available to the central authorities without undue delay.

6. The competent national supervisory authorities responsible for checking the admissibility of the requests and monitoring the lawfulness of the data processing and data integrity and security shall have access to logs at their request for the purpose of fulfilling their duties. On request, the central authorities shall make the logs of their processing operations available to the competent national supervisory authorities without undue delay.

CHAPTER VI

Final provisions

Article 32

Use of data for reporting and statistics

1. The duly authorised staff of eu-LISA, of the competent authorities and of the Commission shall have access to the data processed within ECRIS-TCN solely for the purposes of reporting and providing statistics, without allowing for individual identification.

2. For the purpose of paragraph 1, eu-LISA shall establish, implement and host a central repository at its technical sites containing the data referred to in paragraph 1 which, without allowing for individual identification, enables customisable reports and statistics to be obtained. Access to the central repository shall be granted by means of secured access with control of access and specific user profiles, solely for the purpose of reporting and statistics.

3. The procedures put in place by eu-LISA to monitor the functioning of ECRIS-TCN referred to in Article 36 as well as the ECRIS reference implementation shall include the possibility to produce regular statistics for monitoring purposes.

Every month eu-LISA shall submit to the Commission statistics relating to the recording, storage and exchange of information extracted from criminal records through ECRIS-TCN and the ECRIS reference implementation. eu-LISA shall ensure that it is not possible to identify individuals on the basis of those statistics. At the request of the Commission, eu-LISA shall provide it with statistics on specific aspects related to the implementation of this Regulation.

4. The Member States shall provide eu-LISA with the statistics necessary to fulfil its obligations referred to in this Article. They shall provide the Commission with statistics on the number of convicted third-country nationals, as well as the number of convictions of third-country nationals on their territory.

Article 33

Costs

1. The costs incurred in connection with the establishment and operation of the central system, the communication infrastructure referred to in point (d) of Article 4(1), the interface software and the ECRIS reference implementation shall be borne by the general budget of the Union.

2. The costs of connection of Eurojust, Europol and the EPPO to ECRIS-TCN shall be borne by their respective budgets.

3. Other costs shall be borne by the Member States, specifically the costs incurred by the connection of the existing national criminal records registers, fingerprints databases and the central authorities to ECRIS-TCN, as well as the costs of hosting the ECRIS reference implementation.

Article 34

Notifications

1. Each Member State shall notify eu-LISA of its central authority, or authorities, that has access to enter, rectify, erase, consult or search data, as well as of any change in this respect.

2. eu-LISA shall ensure publication of the list of central authorities notified by the Member States, both in the *Official Journal of the European Union* and on its website. When eu-LISA receives notification of a change to a Member State's central authority, it shall update the list without undue delay.

Article 35

Entry of data and start of operations

1. Once the Commission is satisfied that the following conditions are met, it shall determine the date from which the Member States shall start entering the data referred to in Article 5 into ECRIS-TCN:

- (a) the relevant implementing acts referred to in Article 10 have been adopted;
- (b) the Member States have validated the technical and legal arrangements to collect and transmit the data referred to in Article 5 to ECRIS-TCN and have notified them to the Commission;
- (c) eu-LISA has carried out a comprehensive test of ECRIS-TCN, in cooperation with the Member States, using anonymous test data.

2. When the Commission has determined the date of start of entry of data in accordance with paragraph 1, it shall communicate that date to the Member States. Within a period of two months following that date, the Member States shall enter the data referred to in Article 5 into ECRIS-TCN, taking account of Article 41(2).

3. After the end of the period referred to in paragraph 2, eu-LISA shall carry out a final test of ECRIS-TCN, in cooperation with the Member States.
4. When the test referred to in paragraph 3 has been successfully completed and eu-LISA considers that ECRIS-TCN is ready to start operations, it shall notify the Commission. The Commission shall inform the European Parliament and the Council of the results of the test and shall decide on the date on which ECRIS-TCN is to start operations.
5. The decision of the Commission on the date of the start of operations of ECRIS-TCN, as referred to in paragraph 4, shall be published in the *Official Journal of the European Union*.
6. The Member States shall start using ECRIS-TCN from the date determined by the Commission in accordance with paragraph 4.
7. When taking the decisions referred to in this Article, the Commission may specify different dates for the entry into ECRIS-TCN of alphanumeric data and fingerprint data as referred to in Article 5, as well as for the start of operations with respect to those different categories of data.

Article 36

Monitoring and evaluation

1. eu-LISA shall ensure that procedures are in place to monitor the development of ECRIS-TCN in light of objectives relating to planning and costs and to monitor the functioning of ECRIS-TCN and the ECRIS reference implementation in light of objectives relating to the technical output, cost-effectiveness, security and quality of service.
2. For the purposes of monitoring the functioning of ECRIS-TCN and its technical maintenance, eu-LISA shall have access to the necessary information relating to the data processing operations performed in ECRIS-TCN and in the ECRIS reference implementation.
3. By 12 December 2019 and every six months thereafter during the design and development phase, eu-LISA shall submit a report to the European Parliament and the Council on the state of play of the development of ECRIS-TCN and of the ECRIS reference implementation.
4. The report referred to in paragraph 3 shall include an overview of the current costs and the progress of the project, a financial impact assessment, and information on any technical problems and risks that may impact the overall costs of ECRIS-TCN to be borne by the general budget of the Union in accordance with Article 33.
5. In the event of substantial delays in the development process, eu-LISA shall inform the European Parliament and the Council as soon as possible of the reasons for these delays and of their impact in terms of time and finances.
6. Once the development of ECRIS-TCN and of the ECRIS reference implementation is finalised, eu-LISA shall submit a report to the European Parliament and to the Council explaining how the objectives, in particular relating to planning and costs, were achieved and justifying any divergences.
7. In the event of a technical upgrade of ECRIS-TCN which could result in substantial costs, eu-LISA shall inform the European Parliament and the Council.
8. Two years after the start of operations of ECRIS-TCN and every year thereafter, eu-LISA shall submit to the Commission a report on the technical functioning of ECRIS-TCN and of the ECRIS reference implementation, including their security, based in particular on the statistics on the functioning and use of ECRIS-TCN and on the exchange, through the ECRIS reference implementation, of information extracted from the criminal records.
9. Four years after the start of operations of ECRIS-TCN and every four years thereafter, the Commission shall conduct an overall evaluation of ECRIS-TCN and of the ECRIS reference implementation. The overall evaluation report established on this basis shall include an assessment of the application of this Regulation and an examination of results that have been achieved relative to the objectives that were set and of the impact on fundamental rights. The report shall also include an assessment of whether the underlying rationale for operating ECRIS-TCN continues to hold, of the appropriateness of the use of biometric data for the purposes of ECRIS-TCN, of the security of ECRIS-TCN and of any security implications for future operations. The evaluation shall include any necessary recommendations. The Commission shall transmit the report to the European Parliament, the Council, the European Data Protection Supervisor and the European Union Agency for Fundamental Rights.

10. In addition, the first overall evaluation as referred to in paragraph 9 shall include an assessment of:
- (a) the extent to which, on the basis of relevant statistical data and further information from the Member States, the inclusion in ECRIS-TCN of identity information of citizens of the Union who also hold the nationality of a third country has contributed to the achievement of the objectives of this Regulation;
 - (b) the possibility, for some Member States, to continue the use of national ECRIS implementation software, as referred to in Article 4;
 - (c) the entry of fingerprint data into ECRIS-TCN, in particular the application of the minimum criteria as referred to in point (b)(ii) of Article 5(1);
 - (d) the impact of ECRIS and of ECRIS-TCN on the protection of personal data.

The assessment may be accompanied, if necessary, by legislative proposals. Subsequent overall evaluations may include an assessment of any or all of those aspects.

11. The Member States, Eurojust, Europol and the EPPO shall provide eu-LISA and the Commission with the information necessary to draft the reports referred to in paragraphs 3, 8 and 9 according to the quantitative indicators predefined by the Commission or eu-LISA or both. That information shall not jeopardise working methods or include information that reveals sources, staff members or investigations.

12. Where relevant, the supervisory authorities shall provide eu-LISA and the Commission with the information necessary to draft the reports referred to in paragraph 9 according to the quantitative indicators predefined by the Commission or eu-LISA or both. That information shall not jeopardise working methods or include information that reveals sources, staff members or investigations.

13. eu-LISA shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 9.

Article 37

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 6(2) shall be conferred on the Commission for an indeterminate period of time from 11 June 2019.
3. The delegation of power referred to in Article 6(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 6(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 38

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 39

Advisory Group

eu-LISA shall establish an Advisory Group in order to obtain expertise related to ECRIS-TCN and the ECRIS reference implementation, in particular in the context of preparation of its annual work programme and its annual activity report. During the design and development phase, Article 11(9) shall apply.

Article 40

Amendments to Regulation (EU) 2018/1726

Regulation (EU) 2018/1726 is amended as follows:

- (1) In Article 1, paragraph 4 is replaced by the following:

‘4. The Agency shall be responsible for the preparation, development or operational management of the Entry/Exit System (EES), DubliNet, the European Travel Information and Authorisation System (ETIAS), ECRIS-TCN and the ECRIS reference implementation.’;

- (2) The following Article is inserted:

‘Article 8a

Tasks related to ECRIS-TCN and the ECRIS reference implementation

In relation to ECRIS-TCN and the ECRIS reference implementation, the Agency shall perform:

- (a) the tasks conferred on it by Regulation (EU) 2019/816 of the European Parliament and of the Council (*);
- (b) tasks relating to training on the technical use of ECRIS-TCN and the ECRIS reference implementation.

(*) Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System) and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1).’;

- (3) In Article 14, paragraph 1 is replaced by the following:

‘1. The Agency shall monitor developments in research relevant for the operational management of SIS II, VIS, Eurodac, the EES, ETIAS, DubliNet, ECRIS-TCN and other large-scale IT systems as referred to in Article 1(5).’;

- (4) In Article 19, paragraph 1 is amended as follows:

- (a) point (ee) is replaced by the following:

‘(ee) adopt the reports on the development of the EES pursuant to Article 72(2) of Regulation (EU) 2017/2226, the reports on the development of ETIAS pursuant to Article 92(2) of Regulation (EU) 2018/1240 and the reports on the development of ECRIS-TCN and of the ECRIS reference implementation pursuant to Article 36(3) of Regulation (EU) 2019/816;’;

- (b) point (ff) is replaced by the following:

‘(ff) adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively, of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and Article 17(3) of Decision 2008/633/JHA, of the EES pursuant to Article 72(4) of Regulation (EU) 2017/2226, of ETIAS pursuant to Article 92(4) of Regulation (EU) 2018/1240, and of ECRIS-TCN and of the ECRIS reference implementation pursuant to Article 36(8) of Regulation (EU) 2019/816;’;

(c) point (hh) is replaced by the following:

‘(hh) adopt formal comments on the European Data Protection Supervisor’s reports on the audits carried out pursuant to Article 45(2) of Regulation (EC) No 1987/2006, Article 42(2) of Regulation (EC) No 767/2008 and Article 31(2) of Regulation (EU) No 603/2013, Article 56(2) of Regulation (EU) 2017/2226, Article 67 of Regulation (EU) 2018/1240 and to Article 29(2) of Regulation (EU) 2019/816 and ensure appropriate follow-up of those audits;’

(d) the following point is inserted:

‘(lla) submit to the Commission statistics related to ECRIS-TCN and to the ECRIS reference implementation pursuant to the second subparagraph of Article 32(3) of Regulation (EU) 2019/816;’

(e) point (mm) is replaced by the following:

‘(mm) ensure annual publication of the list of competent authorities authorised to search directly the data contained in SIS II pursuant to Article 31(8) of Regulation (EC) No 1987/2006 and Article 46(8) of Decision 2007/533/JHA, together with the list of Offices of the national systems of SIS II (N.SIS II Offices) and SIRENE Bureaux pursuant to Article 7(3) of Regulation (EC) No 1987/2006 and Article 7(3) of Decision 2007/533/JHA respectively as well as the list of competent authorities pursuant to Article 65(2) of Regulation (EU) 2017/2226, the list of competent authorities pursuant to Article 87(2) of Regulation (EU) 2018/1240 and the list of central authorities pursuant to Article 34(2) of Regulation (EU) 2019/816;’

(5) In Article 22(4), the following subparagraph is inserted after the third subparagraph:

‘Eurojust, Europol and the EPPO may attend the meetings of the Management Board as observers when a question concerning ECRIS-TCN in relation to the application of Regulation (EU) 2019/816 is on the agenda.’

(6) In Article 24(3), point (p) is replaced by the following:

‘(p) establishing, without prejudice to Article 17 of the Staff Regulations of Officials, confidentiality requirements in order to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA, Article 26(9) of Regulation (EC) No 767/2008, Article 4(4) of Regulation (EU) No 603/2013, Article 37(4) of Regulation (EU) 2017/2226, Article 74(2) of Regulation (EU) No 2018/1240 and Article 11(16) of Regulation (EU) 2019/816;’

(7) In Article 27(1), the following point is inserted:

‘(da) ECRIS-TCN Advisory Group.’

Article 41

Implementation and transitional provisions

1. Member States shall take the necessary measures to comply with this Regulation as soon as possible so as to ensure the proper functioning of ECRIS-TCN.

2. For convictions handed down prior to the date of start of entry of data in accordance with Article 35(1), the central authorities shall create the individual data records in the central system as follows:

(a) alphanumeric data to be entered into the central system by the end of the period referred to in Article 35(2);

(b) fingerprint data to be entered into the central system within two years after the start of operations in accordance with Article 35(4).

Article 42

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 17 April 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA

ANNEX

STANDARD INFORMATION REQUEST FORM AS REFERRED TO IN ARTICLE 17(1) OF REGULATION (EU) 2019/816 IN ORDER TO OBTAIN INFORMATION ON WHICH MEMBER STATE, IF ANY, HOLDS CRIMINAL RECORDS INFORMATION OF A THIRD-COUNTRY NATIONAL

This form, which is available at www.eurojust.europa.eu in all 24 official languages of the institutions of the Union, should be addressed in one of those languages to ECRIS-TCN@eurojust.europa.eu

Requesting state or international organisation:

Name of state or international organisation:
 Authority submitting the request:
 Represented by (*name of person*):
 Title:
 Address:
 Telephone number:
 Email address:

Criminal proceedings for which the information is sought:

Domestic reference number:
 Competent authority:
 Type of crimes under investigation (*please mention relevant article(s) of criminal code*):
 Other relevant information (*e.g. urgency of the request*):

Identity information of the person having the nationality of a third country in respect of whom information regarding the convicting Member State is sought:

NB: please provide as much available information as possible.

Surname (*family name*):
 First name(s) (*given names*):
 Date of birth:
 Place of birth (*town and country*):
 Nationality or nationalities:
 Gender:
 Previous name(s), if applicable:
 Parents' names:
 Identity number:
 Type and number of the person's identification document(s):
 Issuing authority of document(s):
 Pseudonyms or aliases:
 If fingerprint data are available, please provide these.

In case of multiple persons, please indicate them separately

A drop down panel would allow the insertion of additional subjects

Place	
Date	

(Electronic) signature and stamp:

DIRECTIVE (EU) 2019/884 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 17 April 2019

amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/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 82(1), second subparagraph, point (d) 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) The Union has set itself the objective of offering its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured. That objective should be achieved by means of, among others, appropriate measures to prevent and combat crime, including organised crime and terrorism.
- (2) That objective requires that information on convictions handed down in the Member States be taken into account outside the convicting Member State in the course of new criminal proceedings, as laid down in Council Framework Decision 2008/675/JHA ⁽²⁾, as well as in order to prevent new offences.
- (3) That objective presupposes the exchange of information extracted from criminal records between the competent authorities of the Member States. Such an exchange of information is organised and facilitated by the rules set out in Council Framework Decision 2009/315/JHA ⁽³⁾ and by the European Criminal Records Information System (ECRIS), established in accordance with Council Decision 2009/316/JHA ⁽⁴⁾.
- (4) The existing ECRIS legal framework, however, does not sufficiently address the particularities of requests concerning third-country nationals. Although it is already possible to exchange information on third-country nationals through ECRIS, there is no common Union procedure or mechanism in place to do so efficiently, rapidly and accurately.
- (5) Within the Union, information on third-country nationals is not gathered as it is for nationals of Member States — in the Member States of nationality- but only stored in the Member States where the convictions have been handed down. A complete overview of the criminal history of a third-country national can therefore be ascertained only if such information is requested from all Member States.
- (6) Such 'blanket requests' impose a disproportionate administrative burden on all Member States, including those not holding information on the particular third-country national. In practice, that burden deters Member States from requesting information on third-country nationals from other Member States, which seriously hinders the exchange of information between them, limiting their access to criminal records information to information stored in their national register. As a consequence, the risk of information exchange between Member States being inefficient and incomplete is increased.

⁽¹⁾ Position of the European Parliament of 12 March 2019 (not yet published in the Official Journal) and decision of the Council of 9 April 2019.

⁽²⁾ Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ L 220, 15.8.2008, p. 32).

⁽³⁾ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23).

⁽⁴⁾ Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p. 33).

- (7) In order to improve the situation, the Commission submitted a proposal, which led to the adoption of Regulation (EU) 2019/816 of the European Parliament and of the Council ⁽⁵⁾, which establishes a centralised system at Union level containing the personal data of convicted third-country nationals allowing identification of the Member States holding information on their previous convictions ('ECRIS-TCN').
- (8) ECRIS-TCN will allow the central authority of a Member State to find out promptly and efficiently in which other Member States criminal records information on a third-country national is stored so that the existing ECRIS framework can be used to request the criminal records information from those Member States in accordance with Framework Decision 2009/315/JHA.
- (9) The exchange of information on criminal convictions is important in any strategy to combat crime and counter terrorism. It would contribute to the criminal justice response to radicalisation leading to terrorism and violent extremism if Member States used ECRIS to its full potential.
- (10) In order to increase the utility of information on convictions and disqualifications arising from convictions for sexual offences against children, Directive 2011/93/EU of the European Parliament and of the Council ⁽⁶⁾ laid down the obligation for Member States to take the necessary measures to ensure that for the purpose of recruiting a person for a post involving direct and regular contact with children, information concerning the existence of criminal convictions for sexual offences against children entered in the criminal records, or of any disqualifications arising from those criminal convictions, be transmitted in accordance with the procedures set out in Framework Decision 2009/315/JHA. The aim of that mechanism is to ensure that a person convicted of a sexual offence against children is not able to conceal that conviction or disqualification with a view to performing a professional activity involving direct and regular contact with children in another Member State.
- (11) This Directive aims to introduce the necessary modifications to Framework Decision 2009/315/JHA that will allow for an effective exchange of information on convictions of third-country nationals via ECRIS. It obliges Member States to take the necessary measures to ensure that convictions are accompanied by information on the nationality, or nationalities, of the convicted person, in so far as the Member States have such information at their disposal. It also introduces procedures for replying to requests for information, ensures that a criminal records extract requested by a third-country national is supplemented with information from other Member States, and provides for the technical changes necessary to make the information exchange system work.
- (12) Directive (EU) 2016/680 of the European Parliament and of the Council ⁽⁷⁾ should apply to the processing of personal data by competent national authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including safeguarding against and the prevention of threats to public security. Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽⁸⁾ should apply to the processing of personal data by national authorities when such processing does not fall within the scope of Directive (EU) 2016/680.
- (13) In order to ensure uniform conditions for the implementation of Framework Decision 2009/315/JHA, the principles of Decision 2009/316/JHA should be incorporated in that Framework Decision and implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and the Council ⁽⁹⁾.

⁽⁵⁾ Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1).

⁽⁶⁾ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

⁽⁷⁾ 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).

⁽⁸⁾ Regulation (EU) 2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽⁹⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (14) The common communication infrastructure used for the exchange of criminal records information should be the secured Trans European Services for Telematics between Administrations (sTESTA), any further development of it or any alternative secure network.
- (15) Notwithstanding the possibility of using the Union's financial programmes in accordance with the applicable rules, each Member State should bear its own costs arising from the implementation, administration, use and maintenance of its criminal records database, and from the implementation, administration, use and maintenance of the technical alterations needed to be able to use ECRIS.
- (16) This Directive respects fundamental rights and freedoms enshrined, in particular, in the Charter of Fundamental Rights of the European Union, including the right to protection of personal data, the rights to judicial and administrative redress, the principle of equality before the law, the right to a fair trial, the presumption of innocence and the general prohibition of discrimination. This Directive should be implemented in accordance with those rights and principles.
- (17) Since the objective of this Directive, namely to enable rapid and efficient exchange of accurate criminal records information on third-country nationals, cannot be sufficiently achieved by the Member States, but can rather, by putting in place common rules be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (18) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the Treaty on the Functioning of the European Union (TFEU), Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (19) 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, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (20) In accordance with Article 3 and Article 4a(1) of Protocol No 21, the United Kingdom has notified its wish to take part in the adoption and application of this Directive.
- (21) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁰⁾ and delivered an opinion on 13 April 2016 ⁽¹¹⁾.
- (22) Framework Decision 2009/315/JHA should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Framework Decision 2009/315/JHA

Framework Decision 2009/315/JHA is amended as follows:

- (1) Article 1 is replaced by the following:

'Article 1

Subject matter

This Framework Decision:

- (a) defines the conditions under which a convicting Member State shares information with other Member States on convictions;

⁽¹⁰⁾ 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).

⁽¹¹⁾ OJ C 186, 25.5.2016, p. 7.

- (b) defines obligations for the convicting Member State and for the Member State of the convicted person's nationality (the "Member State of the person's nationality"), and specifies the methods to be followed when replying to a request for information extracted from criminal records;
- (c) establishes a decentralised information technology system for the exchange of information on convictions based on the criminal records databases in each Member State, the European Criminal Records Information System (ECRIS).;

(2) in Article 2, the following points are added:

- '(d) "convicting Member State" means the Member State where a conviction is handed down;
- (e) "third-country national" means a person who is not a citizen of the Union within the meaning of Article 20(1) TFEU, or who is a stateless person or a person whose nationality is unknown;
- (f) "fingerprint data" means the data relating to plain and rolled impressions of the fingerprints of each of a person's fingers;
- (g) "facial image" means a digital image of a person's face;
- (h) "ECRIS reference implementation" means the software developed by the Commission and made available to the Member States for the exchange of criminal records information through ECRIS.';

(3) in Article 4, paragraph 1 is replaced by the following:

'1. Each convicting Member State shall take all the necessary measures to ensure that convictions handed down within its territory are accompanied by information on the nationality or nationalities of the convicted person if the person is a national of another Member State or a third-country national. Where a convicted person is of unknown nationality or stateless, the criminal record shall reflect this.';

(4) Article 6 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Where a national of one Member State asks the central authority of another Member State for information on his or her own criminal record, that central authority shall submit a request to the central authority of the Member State of the person's nationality for information and related data to be extracted from the criminal records and shall include such information and related data in the extract to be provided to the person concerned.';

(b) the following paragraph is inserted:

'3a. Where a third-country national asks the central authority of a Member State for information on his or her own criminal record, that central authority shall submit a request only to those central authorities of the Member States which hold information on the criminal record of that person for information and related data to be extracted from the criminal records and shall include such information and related data in the extract to be provided to the person concerned.';

(5) Article 7 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. Where information extracted from the criminal records on convictions handed down against a national of a Member State is requested under Article 6 from the central authority of a Member State other than the Member State of the person's nationality, the requested Member State shall transmit such information to the same extent as provided for in Article 13 of the European Convention on Mutual Assistance in Criminal Matters.';

(b) the following paragraph is inserted:

‘4a. Where information extracted from the criminal records on convictions handed down against a third-country national is requested under Article 6 for the purposes of criminal proceedings, the requested Member State shall transmit information on any conviction handed down in the requested Member State and entered in the criminal records and on any conviction handed down in third countries and subsequently transmitted to it and entered into the criminal records.

If such information is requested for any purpose other than that of criminal proceedings, paragraph 2 of this Article shall apply accordingly.’;

(6) in Article 8, paragraph 2 is replaced by the following:

‘2. Replies to the requests referred to in Article 6(2), (3) and (3a) shall be transmitted within twenty working days from the date the request was received.’;

(7) Article 9 is amended as follows:

(a) in paragraph 1, the words ‘Article 7(1) and (4)’ are replaced by ‘Article 7(1), (4) and (4a)’;

(b) in paragraph 2, the words ‘Article 7(2) and (4)’ are replaced by ‘Article 7(2), (4) and (4a)’;

(c) in paragraph 3, the words ‘Article 7(1), (2) and (4)’ are replaced by ‘Article 7(1), (2), (4) and (4a)’;

(8) Article 11 is amended as follows:

(a) in point (c) of the first subparagraph of paragraph 1, the following point is added:

‘(iv) facial image.’;

(b) paragraphs 3 to 7 are replaced by the following:

‘3. Central authorities of Member States shall transmit the following information electronically using ECRIS and a standardised format in accordance with the standards to be laid down in implementing acts:

(a) information referred to in Article 4;

(b) requests referred to in Article 6;

(c) replies referred to in Article 7; and

(d) other relevant information.

4. If the mode of transmission referred to in paragraph 3 is not available, central authorities of Member States shall transmit all information referred to in paragraph 3 by any means capable of producing a written record under conditions allowing the central authority of the receiving Member State to establish the authenticity of the information, taking the security of transmission into consideration.

If the mode of transmission referred to in paragraph 3 is not available for an extended period of time, the Member State concerned shall inform the other Member States and the Commission.

5. Each Member State shall carry out the technical alterations necessary for its use of the standardised format to electronically transmit all information as referred to in paragraph 3 to other Member States via ECRIS. Each Member State shall notify the Commission of the date from which it will be able to carry out such transmissions.’;

(9) the following Articles are inserted:

‘Article 11a

European Criminal Records Information System (ECRIS)

1. In order to exchange information extracted from criminal records in accordance with this Framework Decision electronically, a decentralised information technology system based on the criminal records databases in each Member State, the European Criminal Records Information System (ECRIS), is established. It is composed of the following elements:

- (a) ECRIS reference implementation;
- (b) a common communication infrastructure between central authorities that provides an encrypted network.

To ensure the confidentiality and integrity of criminal records information transmitted to other Member States, appropriate technical and organisational measures shall be used, taking into account the state of the art, the cost of implementation and the risks posed by the processing of information.

- 2. All criminal records data shall be stored solely in databases operated by the Member States.
- 3. The central authorities of the Member States shall not have direct access to the criminal records databases of other Member States.
- 4. The ECRIS reference implementation and databases storing, sending and receiving information extracted from criminal records shall operate under the responsibility of the Member State concerned. The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) established by Regulation (EU) 2018/1726 of the European Parliament and of the Council (*) shall support the Member States in accordance with its tasks as laid down in Regulation (EU) 2019/816 of the European Parliament and of the Council (**).
- 5. The common communication infrastructure shall be operated under the responsibility of the Commission. It shall fulfil the necessary security requirements and fully meet the needs of ECRIS.
- 6. eu-LISA shall provide, further develop and maintain the ECRIS reference implementation.
- 7. Each Member State shall bear its own costs arising from the implementation, administration, use and maintenance of its criminal records database and the installation and use of the ECRIS reference implementation.

The Commission shall bear the costs arising from the implementation, administration, use, maintenance and future development of the common communication infrastructure.

8. The Member States which use their national ECRIS implementation software in accordance with paragraphs 4 to 8 of Article 4 of Regulation (EU) 2019/816 may continue to use their national ECRIS implementation software instead of the ECRIS reference implementation, provided that they fulfil all the conditions set out in those paragraphs.

Article 11b

Implementing Acts

- 1. The Commission shall lay down the following in implementing acts:
 - (a) the standardised format referred to in Article 11(3), including as regards information on the offence giving rise to the conviction and information on the content of the conviction;
 - (b) the rules concerning the technical implementation of ECRIS and the exchange of fingerprint data;

(c) any other technical means of organising and facilitating exchanges of information on convictions between central authorities of Member States, including:

- (i) the means of facilitating the understanding and automatic translation of transmitted information;
- (ii) the means by which information may be exchanged electronically, particularly as regards the technical specifications to be used and, if need be, any applicable exchange procedures.

2. The implementing acts referred to in paragraph 1 of this Article shall be adopted in accordance with the examination procedure referred to in Article 12a(2).

(*) Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

(**) Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1).;

(10) the following Article is inserted:

‘Article 12a

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.;

(11) the following Article is inserted:

‘Article 13a

Reporting by the Commission and review

1. By 29 June 2023, the Commission shall submit a report on the application of this Framework Decision to the European Parliament and to the Council. The report shall assess the extent to which the Member States have taken the necessary measures to comply with this Framework Decision, including its technical implementation.

2. The report shall be accompanied, where appropriate, by relevant legislative proposals.

3. The Commission shall regularly publish a report concerning the exchange of information extracted from the criminal record through ECRIS and concerning the use of ECRIS-TCN based in particular on the statistics provided by eu-LISA and the Member States in accordance with Regulation (EU) 2019/816. The report shall be published for the first time one year after the report referred to in paragraph 1 is submitted.

4. The Commission report referred to in paragraph 3 shall cover in particular the level of exchange of information between Member States, including that relating to third-country nationals, as well as the purpose of requests and their respective number, including requests for purposes other than criminal proceedings, such as background checks and requests for information from the persons concerned on their own criminal record.’.

*Article 2***Replacement of Decision 2009/316/JHA**

Decision 2009/316/JHA is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for implementation of that Decision.

*Article 3***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 28 June 2022. They shall immediately communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Decision replaced by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. Member States shall carry out the technical alterations referred to in Article 11(5) of Framework Decision 2009/315/JHA, as amended by this Directive, by 28 June 2022.

*Article 4***Entry into force and application**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 2 shall apply from 28 June 2022.

*Article 5***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 17 April 2019.

For the European Parliament

The President

A. TAJANI

For the Council

The President

G. CIAMBA



COUNCIL FRAMEWORK DECISION

of 13 June 2002

**on the European arrest warrant and the surrender procedures
between Member States**

(2002/584/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a) and (b) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.
- (2) The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000 ⁽³⁾, addresses the matter of mutual enforcement of arrest warrants.
- (3) All or some Member States are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.
- (4) In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among Member States and form part of the Union *acquis*: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders ⁽⁴⁾ (regarding relations between the Member States which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union ⁽⁵⁾ and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union ⁽⁶⁾.
- (5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement

⁽¹⁾ OJ C 332 E, 27.11.2001, p. 305.

⁽²⁾ Opinion delivered on 9 January 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 12 E, 15.1.2001, p. 10.

⁽⁴⁾ OJ L 239, 22.9.2000, p. 19.

⁽⁵⁾ OJ C 78, 30.3.1995, p. 2.

⁽⁶⁾ OJ C 313, 13.10.1996, p. 12.

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of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

- (6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the 'cornerstone' of judicial cooperation.
- (7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.
- (8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.
- (9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.
- (10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.
- (11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.
- (12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union⁽¹⁾, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or 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.

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.

- (13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to

⁽¹⁾ OJ C 364, 18.12.2000, p. 1.

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the death penalty, torture or other inhuman or degrading treatment or punishment.

- (14) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Framework Decision should be protected in accordance with the principles of the said Convention,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1

GENERAL PRINCIPLES

Article 1

Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.
3. 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.

Article 2

Scope of the European arrest warrant

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.
2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:
 - 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,

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- 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.

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 on European Union (TEU), 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 34(3), whether the list should be extended or amended.

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3

Grounds for mandatory non-execution of the European arrest warrant

The judicial authority of the Member State of execution (hereinafter 'executing judicial authority') shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

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2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;
3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

*Article 4***Grounds for optional non-execution of the European arrest warrant**

The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;
2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;
3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;
4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;
5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;
7. where the European arrest warrant relates to offences which:
 - (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
 - (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

▼ **M1***Article 4a***Decisions rendered following a trial at which the person did not appear in person**

1. The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:

- (a) in due time:
 - (i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;
 - and
 - (ii) was informed that a decision may be handed down if he or she does not appear for the trial;
- or
- (b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;
- or
- (c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:
 - (i) expressly stated that he or she does not contest the decision;
 - or
 - (ii) did not request a retrial or appeal within the applicable time frame;
- or
- (d) was not personally served with the decision but:
 - (i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;
 - and
 - (ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.

2. In case the European arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions of paragraph 1(d) and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, he or she may, when being informed about the content of the European arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person sought. The request of the person

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sought shall neither delay the surrender procedure nor delay the decision to execute the European arrest warrant. The provision of the judgment to the person concerned is for information purposes only; it shall neither be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.

3. In case a person is surrendered under the conditions of paragraph (1)(d) and he or she has requested a retrial or appeal, the detention of that person awaiting such retrial or appeal shall, until these proceedings are finalised, be reviewed in accordance with the law of the issuing Member State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.

▼B*Article 5***Guarantees to be given by the issuing Member State in particular cases**

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

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2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;
3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

*Article 6***Determination of the competent judicial authorities**

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.
2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.
3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

*Article 7***Recourse to the central authority**

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

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2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

*Article 8***Content and form of the European arrest warrant**

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

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

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. 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.

CHAPTER 2

SURRENDER PROCEDURE*Article 9***Transmission of a European arrest warrant**

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.

2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information

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System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

*Article 10***Detailed procedures for transmitting a European arrest warrant**

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network ⁽¹⁾, in order to obtain that information from the executing Member State.
2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.
3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.
4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.
5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.
6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

*Article 11***Rights of a requested person**

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.
2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

*Article 12***Keeping the person in detention**

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the

⁽¹⁾ 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).

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executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

*Article 13***Consent to surrender**

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the 'speciality rule', referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.
2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.
3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.
4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

*Article 14***Hearing of the requested person**

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

*Article 15***Surrender decision**

1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.
2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.
3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

*Article 16***Decision in the event of multiple requests**

1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial

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authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2. The executing judicial authority may seek the advice of Eurojust⁽¹⁾ when making the choice referred to in paragraph 1.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.

*Article 17***Time limits and procedures for the decision to execute the European arrest warrant**

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

6. Reasons must be given for any refusal to execute a European arrest warrant.

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

*Article 18***Situation pending the decision**

1. Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

(a) either agree that the requested person should be heard according to Article 19;

⁽¹⁾ 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).

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- (b) or agree to the temporary transfer of the requested person.
2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.
 3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him or her as part of the surrender procedure.

*Article 19***Hearing the person pending the decision**

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.
2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.
3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

*Article 20***Privileges and immunities**

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

2. Where power to waive the privilege or immunity lies with an authority of the executing Member State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

*Article 21***Competing international obligations**

This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.



Article 22

Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

Article 23

Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.
2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.
3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.
4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.
5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 24

Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.
2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

Article 25

Transit

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:
 - (a) the identity and nationality of the person subject to the European arrest warrant;
 - (b) the existence of a European arrest warrant;

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- (c) the nature and legal classification of the offence;
- (d) the description of the circumstances of the offence, including the date and place.

Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the Member State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit Member State to serve the custodial sentence or detention order passed against him in the issuing Member State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.

3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.

4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply *mutatis mutandis*. In particular the expression 'European arrest warrant' shall be deemed to be replaced by 'extradition request'.

CHAPTER 3

EFFECTS OF THE SURRENDER

Article 26

Deduction of the period of detention served in the executing Member State

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

Article 27

Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

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2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) the offence is not punishable by a custodial sentence or detention order;
- (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
- (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;
- (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;
- (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
- (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

Article 28

Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European

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arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

- (a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;
- (b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;
- (c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

- (a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8 (1) and a translation as stated in Article 8(2);
- (b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;
- (c) the decision shall be taken no later than 30 days after receipt of the request;
- (d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

Article 29

Handing over of property

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:

- (a) may be required as evidence, or
- (b) has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.

4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be

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preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

*Article 30***Expenses**

1. Expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant shall be borne by that Member State.
2. All other expenses shall be borne by the issuing Member State.

CHAPTER 4

GENERAL AND FINAL PROVISIONS*Article 31***Relation to other legal instruments**

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

- (a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;
- (b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;
- (c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;
- (d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union;
- (e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

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Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Member States.

*Article 32***Transitional provision**

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the *Official Journal of the European Communities*. It may be withdrawn at any time.

*Article 33***Provisions concerning Austria and Gibraltar**

1. As long as Austria has not modified Article 12(1) of the ‘Auslieferungs- und Rechtshilfegesetz’ and, at the latest, until 31 December 2008, it may allow its executing judicial authorities to refuse the enforcement of a European arrest warrant if the requested person is an Austrian citizen and if the act for which the European arrest warrant has been issued is not punishable under Austrian law.

2. This Framework Decision shall apply to Gibraltar.

*Article 34***Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2003.

2. 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. When doing so, each Member State may indicate that it will apply immediately this Framework Decision in its relations with those Member States which have given the same notification.

The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to Article 7(2), Article 8(2), Article 13(4) and Article 25(2). It shall also have the information published in the *Official Journal of the European Communities*.

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3. On the basis of the information communicated by the General Secretariat of the Council, the Commission shall, by 31 December 2004 at the latest, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.

4. The Council shall in the second half of 2003 conduct a review, in particular of the practical application, of the provisions of this Framework Decision by the Member States as well as the functioning of the Schengen Information System.

*Article 35***Entry into force**

This Framework Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*ANNEX***EUROPEAN ARREST WARRANT ⁽¹⁾**

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

⁽¹⁾ This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.

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(a) Information regarding the identity of the requested person:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address:

Language(s) which the requested person understands (if known):

.....

Distinctive marks/description of the requested person:

.....

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:

Type:

2. Enforceable judgement:

.....

Reference:

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(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):

.....

2. Length of the custodial sentence or detention order imposed:

.....

Remaining sentence to be served:

.....

.....

►⁽¹⁾ (d) Indicate if the person appeared in person at the trial resulting in the decision:

1. ☐ Yes, the person appeared in person at the trial resulting in the decision.

2. ☐ No, the person did not appear in person at the trial resulting in the decision.

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

☐ 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

☐ 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

☐ 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

☐ 3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

☐ the person expressly stated that he or she does not contest this decision,

OR

☐ the person did not request a retrial or appeal within the applicable time frame;

OR

☐ 3.4. the person was not personally served with the decision, but

— the person will be personally served with this decision without delay after the surrender, and

— when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

— the person will be informed of the time frame within which he or she has to request a retrial or appeal, which will be ... days.

4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....

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(e) Offences:

This warrant relates to in total: offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

.....

I. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

- ☐ 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 European Communities' financial interests;
- ☐ laundering of the proceeds of crime;
- ☐ counterfeiting of currency, including 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.

II. Full descriptions of offence(s) not covered by section I above:

.....

▼B

(f) Other circumstances relevant to the case (optional information):

(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

.....

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):

.....

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

— the legal system of the issuing Member State allows for a review of the penalty or measure imposed — on request or at least after 20 years — aiming at a non-execution of such penalty or measure,

and/or

— the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:

Official name:

Name of its representative ⁽¹⁾:

.....

Post held (title/grade):

.....

File reference:

Address:

.....

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

Contact details of the person to contact to make necessary practical arrangements for the surrender:

.....

⁽¹⁾ In the different language versions a reference to the 'holder' of the judicial authority will be included.

▼B

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants:

Name of the central authority:

.....

Contact person, if applicable (title/grade and name):

.....

Address:

.....

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

Signature of the issuing judicial authority and/or its representative:

.....

Name:

Post held (title/grade):

Date:

Official stamp (if available)

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION

of 13 June 2002

on the European arrest warrant and the surrender procedures between Member States

(2002/584/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a) and (b) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

(2) The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000 ⁽³⁾, addresses the matter of mutual enforcement of arrest warrants.

(3) All or some Member States are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.

(4) In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among Member States and form part of the Union *acquis*: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders ⁽⁴⁾ (regarding relations between the Member States which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union ⁽⁵⁾ and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union ⁽⁶⁾.

(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the 'cornerstone' of judicial cooperation.

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and

⁽¹⁾ OJ C 332 E, 27.11.2001, p. 305.

⁽²⁾ Opinion delivered on 9 January 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 12 E, 15.1.2001, p. 10.

⁽⁴⁾ OJ L 239, 22.9.2000, p. 19.

⁽⁵⁾ OJ C 78, 30.3.1995, p. 2.

⁽⁶⁾ OJ C 313, 13.10.1996, p. 12.

can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

- (8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.
- (9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.
- (10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.
- (11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.
- (12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union⁽¹⁾, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or 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.

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.

- (13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.
- (14) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Framework Decision should be protected in accordance with the principles of the said Convention,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1

GENERAL PRINCIPLES

Article 1

Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.
3. 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.

Article 2

Scope of the European arrest warrant

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

⁽¹⁾ OJ C 364, 18.12.2000, p. 1.

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

- 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.

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 on European Union (TEU), 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 34(3), whether the list should be extended or amended.

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3

Grounds for mandatory non-execution of the European arrest warrant

The judicial authority of the Member State of execution (hereinafter 'executing judicial authority') shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;
2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 4

Grounds for optional non-execution of the European arrest warrant

The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;
2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;
3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;
4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;
5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;
7. where the European arrest warrant relates to offences which:
 - (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
 - (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

Article 5

Guarantees to be given by the issuing Member State in particular cases

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered *in absentia* and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia*, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment;
2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;
3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

Article 6

Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

Article 7

Recourse to the central authority

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

Article 8

Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

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

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. 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.

CHAPTER 2

SURRENDER PROCEDURE

Article 9

Transmission of a European arrest warrant

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.

2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10

Detailed procedures for transmitting a European arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network⁽¹⁾, in order to obtain that information from the executing Member State.

2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.

⁽¹⁾ 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).

3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.

4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.

5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.

6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

Article 11

Rights of a requested person

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

2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Article 12

Keeping the person in detention

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

Article 13

Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express

renunciation of entitlement to the 'speciality rule', referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 14

Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

Article 15

Surrender decision

1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

Article 16

Decision in the event of multiple requests

1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2. The executing judicial authority may seek the advice of Eurojust ⁽¹⁾ when making the choice referred to in paragraph 1.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.

Article 17

Time limits and procedures for the decision to execute the European arrest warrant

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in

paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

6. Reasons must be given for any refusal to execute a European arrest warrant.

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

Article 18

Situation pending the decision

1. Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

(a) either agree that the requested person should be heard according to Article 19;

(b) or agree to the temporary transfer of the requested person.

2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him or her as part of the surrender procedure.

Article 19

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.

⁽¹⁾ 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).

2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 20

Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

2. Where power to waive the privilege or immunity lies with an authority of the executing Member State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 21

Competing international obligations

This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 22

Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

Article 23

Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 24

Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.

2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested

person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

Article 25

Transit

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:

- (a) the identity and nationality of the person subject to the European arrest warrant;
- (b) the existence of a European arrest warrant;
- (c) the nature and legal classification of the offence;
- (d) the description of the circumstances of the offence, including the date and place.

Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the Member State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit Member State to serve the custodial sentence or detention order passed against him in the issuing Member State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.

3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.

4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply *mutatis mutandis*. In particular the expression 'European arrest warrant' shall be deemed to be replaced by 'extradition request'.

CHAPTER 3

EFFECTS OF THE SURRENDER

Article 26

Deduction of the period of detention served in the executing Member State

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

Article 27

Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) the offence is not punishable by a custodial sentence or detention order;

- (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
- (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;
- (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;
- (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
- (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

Article 28

Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant

may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

- (a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;
- (b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;
- (c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

- (a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);
- (b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;
- (c) the decision shall be taken no later than 30 days after receipt of the request;
- (d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

*Article 29***Handing over of property**

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:

- (a) may be required as evidence, or
- (b) has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.

4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

*Article 30***Expenses**

1. Expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant shall be borne by that Member State.

2. All other expenses shall be borne by the issuing Member State.

CHAPTER 4

GENERAL AND FINAL PROVISIONS*Article 31***Relation to other legal instruments**

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

- (a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its

second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

- (b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;
- (c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;
- (d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union;
- (e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Members States.

Article 32

Transitional provision

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the *Official Journal of the European Communities*. It may be withdrawn at any time.

Article 33

Provisions concerning Austria and Gibraltar

1. As long as Austria has not modified Article 12(1) of the 'Auslieferungs- und Rechtshilfegesetz' and, at the latest, until 31 December 2008, it may allow its executing judicial authorities to refuse the enforcement of a European arrest warrant if the requested person is an Austrian citizen and if the act for which the European arrest warrant has been issued is not punishable under Austrian law.

2. This Framework Decision shall apply to Gibraltar.

Article 34

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2003.

2. 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. When doing so, each Member State may indicate that it will apply immediately this Framework Decision in its relations with those Member States which have given the same notification.

The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to Article 7(2), Article 8(2), Article 13(4) and Article 25(2). It shall also have the information published in the *Official Journal of the European Communities*.

3. On the basis of the information communicated by the General Secretariat of the Council, the Commission shall, by 31 December 2004 at the latest, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.

4. The Council shall in the second half of 2003 conduct a review, in particular of the practical application, of the provisions of this Framework Decision by the Member States as well as the functioning of the Schengen Information System.

Article 35

Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Done at Luxembourg, 13 June 2002.

For the Council

The President

M. RAJOY BREY

ANNEX

EUROPEAN ARREST WARRANT ⁽¹⁾

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

⁽¹⁾ This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.

(a) Information regarding the identity of the requested person:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address:

Language(s) which the requested person understands (if known):

.....

Distinctive marks/description of the requested person:

.....

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:

Type:

2. Enforceable judgement:

.....

Reference:

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):

.....
.....

2. Length of the custodial sentence or detention order imposed:

.....

Remaining sentence to be served:

.....
.....

(d) Decision rendered in absentia and:

— the person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia,

or

— the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia but has the following legal guarantees after surrender (such guarantees can be given in advance)

Specify the legal guarantees

.....
.....
.....

(e) Offences:

This warrant relates to in total: offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

.....

I. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

- ☐ 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 European Communities' financial interests;
- ☐ laundering of the proceeds of crime;
- ☐ counterfeiting of currency, including 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.

II. Full descriptions of offence(s) not covered by section I above:

.....

(f) Other circumstances relevant to the case (optional information):

(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

.....

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):

.....

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

— the legal system of the issuing Member State allows for a review of the penalty or measure imposed — on request or at least after 20 years — aiming at a non-execution of such penalty or measure,

and/or

— the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:

Official name:

Name of its representative ⁽¹⁾:

.....

Post held (title/grade):

.....

File reference:

Address:

.....

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

Contact details of the person to contact to make necessary practical arrangements for the surrender:

.....

⁽¹⁾ In the different language versions a reference to the 'holder' of the judicial authority will be included.

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants:

Name of the central authority:

.....

Contact person, if applicable (title/grade and name):

.....

Address:

.....

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

Signature of the issuing judicial authority and/or its representative:

.....

Name:

Post held (title/grade):

Date:

Official stamp (if available)

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION 2003/577/JHA
of 22 July 2003
on the execution in the European Union of orders freezing property or evidence

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 ⁽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 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;

⁽¹⁾ OJ C 75, 7.3.2001, p. 3.

⁽²⁾ Opinion delivered on 11 June 2002 (not yet published in the Official Journal).

- (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.
 - 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.

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,

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⁽¹⁾, 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.

⁽¹⁾ Council Joint Action 98/428/JHA of 29 June 1998 on the Creation of the European Judicial Network (OJ L 191, 7.7.1998, p. 4).

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):

.....

.....

(b) The authority competent for the enforcement of the freezing order in the issuing State

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 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:

.....
.....
.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the freezing order was made:

.....
.....
.....

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 descriptions of offence(s) not covered by section 1 above:

.....
.....
.....

- (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):

.....

.....

- (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)



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 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:

⁽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.

▼B*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 ⁽¹⁾;
- (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

⁽¹⁾ 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).

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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 ⁽¹⁾ 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, *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

⁽¹⁾ 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).

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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,

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- 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;

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- (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;

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- (g) according to the certificate provided for in Article 4, the person concerned, 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/her right to contest the case and of the time limits for such a legal remedy;

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- (h) the financial penalty is below EUR 70 or the equivalent to that amount;

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- (i) according to the certificate provided for in Article 4, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:
 - (i) in due time:
 - either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,
 - and
 - was informed that a decision may be handed down if he or she does not appear for the trial;
 - or
 - (ii) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;
 - or
 - (iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:
 - expressly stated that he or she does not contest the decision,

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or

— did not request a retrial or appeal within the applicable time frame;

(j) according to the certificate provided for in Article 4, the person did not appear in person, unless the certificate states that the person, having been expressly informed about the proceedings and the possibility to appear in person in a trial, expressly waived his or her right to an oral hearing and has expressly indicated that he or she does not contest the case.

3. In the cases referred to in paragraphs 1 and 2(c), (g), (i) and (j), 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.

▼B*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

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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

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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.

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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*.



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)

.....

.....

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- (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):

▼B

(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) ⁽¹⁾:

Registered seat (if available) ⁽¹⁾:

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 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:

⁽¹⁾ 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.

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- ☐ (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;

▼B

- ☐ 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:

.....

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(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.
- ☐ (b) Yes, it has. It is confirmed that the person concerned was, 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

▼M1

3. Indicate if the person concerned appeared in person at the trial resulting in the decision:

1. ☐ Yes, the person appeared in person at the trial resulting in the decision.
2. ☐ No, the person did not appear in person at the trial resulting in the decision.

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

- ☐ 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

- ☐ 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

- ☐ 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

- ☐ 3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

- ☐ the person expressly stated that he or she does not contest this decision,

OR

- ☐ the person did not request a retrial or appeal within the applicable time frame;

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OR

- ☐ 3.4. the person, having been expressly informed about the proceedings and the possibility to appear in person in a trial, expressly waived his or her right to an oral hearing and has expressly indicated that he or she does not contest the case.

4. If you have ticked the box under points 3.1b, 3.2, 3.3 or 3.4 above, please provide information about how the relevant condition has been met:

.....

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4. Partial payment of the penalty

If any part of the penalty has already been paid to the issuing State, or, to the knowledge of the authority issuing the Certificate, to any other State, indicate the amount which has been paid:

.....

- (i) Alternative sanctions, including custodial sanctions

1. State whether the issuing State allows for the application by the executing State of alternative sanctions in case it is not possible to enforce the decision imposing a penalty, either totally or in part:

- ☐ yes
☐ no

2. If yes, state which sanctions may be applied (nature of the sanctions, maximum level of the sanctions):

- ☐ Custody. Maximum period:
☐ Community service (or equivalent). Maximum period
☐ Other sanctions. Description:

- (j) Other circumstances relevant to the case (optional information):

.....

- (k) The text of the decision imposing the financial penalty 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)

(Acts adopted pursuant to Title VI of the Treaty on European Union)

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 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);

⁽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.

- (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 ⁽¹⁾;
- (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.

⁽¹⁾ 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).

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 ⁽²⁾ 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, *ex officio*, transmit the decision to the competent authority and shall inform the competent authority in the issuing State accordingly.

⁽²⁾ 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).

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) ⁽¹⁾:

Registered seat (if available) ⁽¹⁾:

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 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)

⁽¹⁾ 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.

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.
- ☐ (b) Yes, it has. It is confirmed that the person concerned was, 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

3. Indicate if the person concerned appeared personally in the proceedings:

- ☐ (a) Yes, he or she did.
- ☐ (b) No, he or she did not. 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
- ☐ that the person has indicated that he or she does not contest the case

4. Partial payment of the penalty

If any part of the penalty has already been paid to the issuing State, or, to the knowledge of the authority issuing the Certificate, to any other State, indicate the amount which has been paid:

.....

(i) Alternative sanctions, including custodial sanctions

1. State whether the issuing State allows for the application by the executing State of alternative sanctions in case it is not possible to enforce the decision imposing a penalty, either totally or in part:

☐ yes

☐ no

2. If yes, state which sanctions may be applied (nature of the sanctions, maximum level of the sanctions):

☐ Custody. Maximum period:

☐ Community service (or equivalent). Maximum period

☐ Other sanctions. Description:

.....

(j) Other circumstances relevant to the case (optional information):

.....

.....

(k) The text of the decision imposing the financial penalty 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)



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 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

⁽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).

⁽³⁾ OJ L 182, 5.7.2001, p. 1.

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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 ⁽¹⁾.
- (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 ⁽²⁾. 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.
- (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

⁽¹⁾ OJ L 196, 2.8.2003, p. 45.

⁽²⁾ OJ L 68, 15.3.2005, p. 49.

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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

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- (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 ⁽¹⁾;
- (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 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

⁽¹⁾ 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).

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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

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- 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,

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- 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*;

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- (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;

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- (e) according to the certificate provided for in Article 4(2), the person did not appear in person at the trial resulting in the confiscation order, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:
 - (i) in due time:
 - either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the confiscation order, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,
 - and
 - was informed that such a confiscation order may be handed down if he or she does not appear for the trial;
 - or
 - (ii) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;
 - or
 - (iii) after being served with the confiscation order and being expressly informed of the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:
 - expressly stated that he or she does not contest the confiscation order,
 - or
 - did not request a retrial or appeal within the applicable time frame.

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- (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

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- 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

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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;

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- (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);

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- (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.

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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*.



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 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):

.....

.....

.....

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- (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.

☐ 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):

.....
.....

⁽¹⁾ OJ L 196, 2.8.2003, p. 45.



(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⁾:

Registered 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:

.....

Location of the property of the person/source of income (if not known, the last known location):

.....

⁽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.

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- ☐ (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):

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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 the 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;

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- ☐ 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.

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- 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

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(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):

(Acts adopted under Title VI of the Treaty on European Union)

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 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⁾.

⁽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).

⁽³⁾ OJ L 182, 5.7.2001, p. 1.

⁽⁴⁾ OJ L 196, 2.8.2003, p. 45.

- (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 ⁽¹⁾. 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.
- (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.

⁽¹⁾ OJ L 68, 15.3.2005, p. 49.

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 ⁽¹⁾;

⁽¹⁾ 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).

- (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 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 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):

.....

.....

.....

- (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.

☐ 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):

.....

.....

⁽¹⁾ OJ L 196, 2.8.2003, p. 45.

(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⁾:

Registered 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:

.....

Location of the property of the person/source of income (if not known, the last known location):

.....

⁽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.

- ☐ (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 the 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):

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2008/675/JHA

of 24 July 2008

on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31 and 34(2)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Whereas:

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. This objective requires that it be possible for information on convictions handed down in the Member States to be taken into account outside the convicting Member State, both in order to prevent new offences and in the course of new criminal proceedings.

(2) On 29 November 2000 the Council, in accordance with the conclusions of the Tampere European Council, adopted the programme of measures to implement the principle of mutual recognition of decisions in criminal matters ⁽²⁾, which provides for the 'adoption of one or more instruments establishing the principle that a court in one Member State must be able to take account of final criminal judgments rendered by the courts in other Member States for the purposes of assessing the offender's criminal record and establishing whether he has reoffended, and in order to determine the type of sentence applicable and the arrangements for enforcing it'.

(3) The purpose of this Framework Decision is to establish a minimum obligation for Member States to take into account convictions handed down in other Member States. Thus this Framework Decision should not prevent Member States from taking into account, in accordance with their law and when they have information available, for example, final decisions of administrative authorities whose decisions can be appealed against in the criminal courts establishing guilt of a criminal offence or an act punishable under national law by virtue of being an infringement of the rules of law.

(4) Some Member States attach effects to convictions handed down in other Member States, whereas others take account only of convictions handed down by their own courts.

(5) The principle that the Member States should attach to a conviction handed down in other Member States effects equivalent to those attached to a conviction handed down by their own courts in accordance with national law should be affirmed, whether those effects be regarded by national law as matters of fact or of procedural or substantive law. However, this Framework Decision does not seek to harmonise the consequences attached by the different national legislations to the existence of previous convictions, and the obligation to take into account previous convictions handed down in other Member States exists only to the extent that previous national convictions are taken into account under national law.

(6) In contrast to other instruments, this Framework Decision does not aim at the execution in one Member State of judicial decisions taken in other Member States, but rather aims at enabling consequences to be attached to a previous conviction handed down in one Member State in the course of new criminal proceedings in another Member State to the extent that such consequences are attached to previous national convictions under the law of that other Member State.

⁽¹⁾ Opinion of 27 September 2006 (not yet published in the Official Journal).

⁽²⁾ OJ C 12, 15.1.2001, p. 10.

Therefore this Framework Decision contains no obligation to take into account such previous convictions, for example, in cases where the information obtained under applicable instruments is not sufficient, where a national conviction would not have been possible regarding the act for which the previous conviction had been imposed or where the previously imposed sanction is unknown to the national legal system.

(7) The effects of a conviction handed down in another Member State should be equivalent to the effects of a national decision at the pre-trial stage of criminal proceedings, at the trial stage and at the time of execution of the sentence.

(8) Where, in the course of criminal proceedings in a Member State, information is available on a previous conviction in another Member State, it should as far as possible be avoided that the person concerned is treated less favourably than if the previous conviction had been a national conviction.

(9) Article 3(5) should be interpreted, *inter alia*, in line with recital 8, in such a manner that if the national court in the new criminal proceedings, when taking into account a previously imposed sentence handed down in another Member State, is of the opinion that imposing a certain level of sentence within the limits of national law would be disproportionately harsh on the offender, considering his or her circumstances, and if the purpose of the punishment can be achieved by a lower sentence, it may reduce the level of sentence accordingly, if doing so would have been possible in purely domestic cases.

(10) This Framework Decision is to replace the provisions of Article 56 of the European Convention of 28 May 1970 on the International Validity of Criminal Judgments, concerning the taking into consideration of criminal judgments, as between the Member States parties to that Convention.

(11) This Framework Decision respects the principle of subsidiarity provided for by Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community in so far as it aims to approximate the laws and regulations of the Member States, which cannot be done adequately by the Member States acting unilaterally and requires concerted action in the European Union. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty establishing the European Community, this Framework Decision does not go

beyond what is necessary in order to achieve that objective.

(12) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union.

(13) This Framework Decision respects the variety of domestic solutions and procedures required for taking into account a previous conviction handed down in another Member State. The exclusion of a possibility to review a previous conviction should not prevent a Member State from issuing a decision, if necessary, in order to attach the equivalent legal effects to such previous conviction. However, the procedures involved in issuing such a decision should not, in view of the time and procedures or formalities required, render it impossible to attach equivalent effects to a previous conviction handed down in another Member State.

(14) Interference with a judgment or its execution covers, *inter alia*, situations where, according to the national law of the second Member State, the sanction imposed in a previous judgment is to be absorbed by or included in another sanction, which is then to be effectively executed, to the extent that the first sentence has not already been executed or its execution has not been transferred to the second Member State,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Subject matter

1. The purpose of this Framework Decision is to determine the conditions under which, in the course of criminal proceedings in a Member State against a person, previous convictions handed down against the same person for different facts in other Member States, are taken into account.

2. This Framework Decision 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 'conviction' means any final decision of a criminal court establishing guilt of a criminal offence.

*Article 3***Taking into account, in the course of new criminal proceedings, a conviction handed down in another Member State**

1. Each Member State shall ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account to the extent previous national convictions are taken into account, and that equivalent legal effects are attached to them as to previous national convictions, in accordance with national law.

2. Paragraph 1 shall apply at the pre-trial stage, at the trial stage itself and at the time of execution of the conviction, in particular with regard to the applicable rules of procedure, including those relating to provisional detention, the definition of the offence, the type and level of the sentence, and the rules governing the execution of the decision.

3. The taking into account of previous convictions handed down in other Member States, as provided for in paragraph 1, shall not have the effect of interfering with, revoking or reviewing previous convictions or any decision relating to their execution by the Member State conducting the new proceedings.

4. In accordance with paragraph 3, paragraph 1 shall not apply to the extent that, had the previous conviction been a national conviction of the Member State conducting the new proceedings, the taking into account of the previous conviction would, according to the national law of that Member State, have had the effect of interfering with, revoking or reviewing the previous conviction or any decision relating to its execution.

5. If the offence for which the new proceedings being conducted was committed before the previous conviction had been handed down or fully executed, paragraphs 1 and 2 shall not have the effect of requiring Member States to apply their national rules on imposing sentences, where the application of those rules to foreign convictions would limit the judge in imposing a sentence in the new proceedings.

However, the Member States shall ensure that in such cases their courts can otherwise take into account previous convictions handed down in other Member States.

*Article 4***Relation to other legal instruments**

This Framework Decision shall replace Article 56 of the European Convention of 28 May 1970 on the International Validity of Criminal Judgments as between the Member States parties to that Convention, without prejudice to the application of that Article in relations between the Member States and third countries.

*Article 5***Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 15 August 2010.

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 imposed on them under this Framework Decision.

3. On the basis of that information the Commission shall, by 15 August 2011, present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

*Article 6***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 July 2008.

For the Council

The President

B. HORTEFEUX



COUNCIL FRAMEWORK DECISION 2008/909/JHA

of 27 November 2008

on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

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 Republic of Austria, the Republic of Finland and the Kingdom of Sweden,

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) 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 ⁽¹⁾, in which it called for an assessment of the need for modern mechanisms for the mutual recognition of final sentences involving deprivation of liberty (Measure 14) and for extended application of the principle of the transfer of sentenced persons to cover persons resident in a Member State (Measure 16).
- (3) The Hague Programme on strengthening freedom, security and justice in the European Union ⁽²⁾ requires Member States to complete the programme of measures, in particular in the field of enforcing final custodial sentences.
- (4) All the Member States have ratified the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The Additional Protocol to that Convention of 18 December 1997, which allows transfer without the person's consent, subject to certain conditions, has not been ratified by all the Member States. Neither instrument imposes any basic duty to take charge of sentenced persons for enforcement of a sentence or order.
- (5) Procedural rights in criminal proceedings are a crucial element for ensuring mutual confidence among the Member States in judicial cooperation. Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, enable recognition by the executing State of decisions taken by the issuing State's authorities. Therefore, a further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments should be envisaged, in particular where citizens of the Union were the subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State. Notwithstanding the need to provide the sentenced person with adequate safeguards, his or her involvement in the proceedings

⁽¹⁾ OJ C 12, 15.1.2001, p. 10.

⁽²⁾ OJ C 53, 3.3.2005, p. 1.

▼B

should no longer be dominant by requiring in all cases his or her consent to the forwarding of a judgment to another Member State for the purpose of its recognition and enforcement of the sentence imposed.

- (6) This Framework Decision should be implemented and applied in a manner which allows general principles of equality, fairness and reasonableness to be respected.
- (7) Article 4(1)(c) contains a discretionary provision which enables the judgment and the certificate to be forwarded, for example, to the Member State of nationality of the sentenced person, in cases other than those provided for in paragraphs 1(a) and (b) or to the Member State in which the sentenced person lives and has been legally residing continuously for at least five years and will retain a permanent right of residence there.
- (8) In cases referred to in Article 4(1)(c) the forwarding of the judgment and the certificate to the executing State is subject to consultations between the competent authorities of the issuing and the executing States, and the consent of the competent authority of the executing State. The competent authorities should take into account such elements as, for example, duration of the residence or other links to the executing State. In cases where the sentenced person could be transferred to a Member State and to a third country under national law or international instruments, the competent authorities of the issuing and executing States should, in consultations, consider whether enforcement in the executing State would enhance the aim of social rehabilitation better than enforcement in the third country.
- (9) Enforcement of the sentence in the executing State should enhance the possibility of social rehabilitation of the sentenced person. In the context of satisfying itself that the enforcement of the sentence by the executing State will serve the purpose of facilitating the social rehabilitation of the sentenced person, the competent authority of the issuing State should take into account such elements as, for example, the person's attachment to the executing State, whether he or she considers it the place of family, linguistic, cultural, social or economic and other links to the executing State.
- (10) The opinion of the sentenced person referred to in Article 6(3) may be useful mainly in applying Article 4(4). The words 'in particular' are intended to cover also cases where the opinion of the sentenced person would include information which might be of relevance in relation to the grounds for non-recognition and non-enforcement. Provisions of Articles 4(4) and 6(3) do not constitute a ground for refusal on social rehabilitation.
- (11) Poland needs more time than the other Member States to face the practical and material consequences of transfer of Polish citizens convicted in other Member States, especially in the light of an increased mobility of Polish citizens within the Union. For that reason, a temporary derogation of limited scope for a maximum period of five years should be foreseen.
- (12) This Framework Decision should also, *mutatis mutandis*, apply to the enforcement of sentences in the cases under Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States⁽¹⁾. This means, *inter alia*, that, without prejudice to that Framework Decision, the executing State could verify the existence of grounds for non-recognition and non-enforcement as provided in Article 9 of this Framework Decision, including the checking of double criminality to the extent that the executing State makes a declaration

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

▼B

under Article 7(4) of this Framework Decision, as a condition for recognising and enforcing the judgment with a view to considering whether to surrender the person or to enforce the sentence in cases pursuant to Article 4(6) of Framework Decision 2002/584/JHA.

- (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 should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for 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 on any one of those grounds.
- (14) This Framework Decision should 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 should be applied in accordance with the right of citizens of the Union to move and reside freely within the territory of the Member States conferred by Article 18 of the Treaty establishing European Community.
- (16) This Framework Decision should be applied in accordance with applicable Community legislation, including in particular Council Directive 2003/86/EC ⁽¹⁾, Council Directive 2003/109/EC ⁽²⁾ and Directive 2004/38/EC of the European Parliament and of the Council ⁽³⁾.
- (17) Where in this Framework Decision reference is made to the State in which the sentenced person 'lives', this indicates the place to which that person is attached based on habitual residence and on elements such as family, social or professional ties.
- (18) When applying Article 5(1), it should be possible to transmit a judgment or a certified copy thereof and a certificate to the competent authority in the executing State by any means which leaves a written record, for example e-mail and fax, under conditions allowing the executing State to establish authenticity.
- (19) In cases referred to in Article 9(1)(k), the executing State should consider the possibility of adapting the sentence in accordance with this Framework Decision before it refuses to recognise and enforce the sentence involving a measure other than a custodial sentence.
- (20) The ground for refusal provided for in Article 9(1)(k) may be applied also in cases where the person has not been found guilty of a criminal offence although the competent authority applied the measure involving the deprivation of liberty other than a custodial sentence as a consequence of a criminal offence.
- (21) The ground for refusal relating to territoriality should be applied only in exceptional cases and with a view to cooperating to the greatest extent possible under the provisions of this Framework Decision, while taking into account its purpose. Any decision to apply this ground for refusal, should be based on a case-by-case analysis and consultations between the competent authorities of the issuing and executing States.

⁽¹⁾ OJ L 251, 3.10.2003, p. 12.

⁽²⁾ OJ L 16, 23.1.2004, p. 44.

⁽³⁾ OJ L 158, 30.4.2004, p. 77.

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- (22) The time limit referred to in Article 12(2) should be implemented by the Member States in such a way that as a general rule, the final decision, including an appeal procedure is completed within a period of 90 days.
- (23) Article 18(1) states that, subject to the exceptions listed in paragraph 2, the specialty rule applies only where the person has been transferred to the executing State. It should therefore not be applicable where the person has not been transferred to the executing State, for example where the person has fled to the executing State,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Framework Decision:

- (a) ‘judgment’ shall mean a final decision or order of a court of the issuing State imposing a sentence on a natural person;
- (b) ‘sentence’ shall mean any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings;
- (c) ‘issuing State’ shall mean the Member State in which a judgment is delivered;
- (d) ‘executing State’ shall mean the Member State to which a judgment is forwarded for the purpose of its recognition and 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 in accordance with this Framework Decision, when that Member State is the issuing State or the executing State.
2. The General Secretariat of the Council shall make the information received available to all Member States and the Commission.

Article 3

Purpose and scope

1. The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.
2. This Framework Decision shall apply where the sentenced person is in the issuing State or in the executing State.
3. This Framework Decision shall apply only to the recognition of judgments and the enforcement of sentences within the meaning of this Framework Decision. The fact that, in addition to the sentence, a fine and/or a confiscation order has been imposed, which has not yet been paid, recovered or enforced, shall not prevent a judgment from being forwarded. The recognition and enforcement of such fines and confis-

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cation orders in another Member State shall be based on the instruments applicable between the Member States, in particular Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ⁽¹⁾ and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ⁽²⁾.

4. 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.

CHAPTER II

RECOGNITION OF JUDGMENTS AND ENFORCEMENT OF SENTENCES

*Article 4***Criteria for forwarding a judgment and a certificate to another Member State**

1. Provided that the sentenced person is in the issuing State or in the executing State, and provided that this person has given his or her consent where required under Article 6, a judgment, together with the certificate for which the standard form is given in Annex I, may be forwarded to one of the following Member States:

- (a) the Member State of nationality of the sentenced person in which he or she lives; or
- (b) the Member State of nationality, to which, while not being the Member State where he or she lives, the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment; or
- (c) any Member State other than a Member State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that Member State.

2. The forwarding of the judgment and the certificate may take place where the competent authority of the issuing State, where appropriate after consultations between the competent authorities of the issuing and the executing States, is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person.

3. Before forwarding the judgment and the certificate, the competent authority of the issuing State may consult, by any appropriate means, the competent authority of the executing State. Consultation shall be obligatory in the cases referred to in paragraph 1(c). In such cases the competent authority of the executing State shall promptly inform the issuing State of its decision whether or not to consent to the forwarding of the judgment.

4. During such consultation, the competent authority of the executing State may present the competent authority of the issuing State with a reasoned opinion, that enforcement of the sentence in the executing State would not serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into society.

Where there has been no consultation, such an opinion may be presented without delay after the transmission of the judgment and the certificate. The competent authority of the issuing State shall

⁽¹⁾ OJ L 76, 22.3.2005, p. 16.

⁽²⁾ OJ L 328, 24.11.2006, p. 59.

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consider such opinion and decide whether to withdraw the certificate or not.

5. The executing State may, on its own initiative, request the issuing State to forward the judgment together with the certificate. The sentenced person may also request the competent authorities of the issuing State or of the executing State to initiate a procedure for forwarding the judgment and the certificate under this Framework Decision. Requests made under this paragraph shall not create an obligation of the issuing State to forward the judgment together with the certificate.

6. In implementing this Framework Decision, Member States shall adopt measures, in particular taking into account the purpose of facilitating social rehabilitation of the sentenced person, constituting the basis on which their competent authorities have to take their decisions whether or not to consent to the forwarding of the judgment and the certificate in cases pursuant to paragraph 1(c).

7. Each Member State may, either on adoption of this Framework Decision or later, notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, its prior consent under paragraph 1(c) is not required for the forwarding of the judgment and the certificate:

- (a) if the sentenced person lives in and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that State, and/or
- (b) if the sentenced person is a national of the executing State in cases other than those provided for in paragraph 1(a) and (b).

In cases referred to in point (a), permanent right of residence shall mean that the person concerned:

- has a right of permanent residence in the respective Member State in accordance with the national law implementing Community legislation adopted on the basis of Article 18, 40, 44 and 52 of the Treaty establishing the European Community, or
- possesses a valid residence permit, as a permanent or long-term resident, for the respective Member State, in accordance with the national law implementing Community legislation adopted on the basis of Article 63 of the Treaty establishing the European Community, as regards Member States to which such Community legislation is applicable, or in accordance with national law, as regards Member States to which it is not.

Article 5

Forwarding of the judgment and the certificate

1. The judgment or a certified copy of it, together with the certificate, shall be forwarded, by the competent authority of the issuing State directly to the competent authority of 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 judgment, 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.

2. The certificate, shall be signed, and its content certified as accurate, by the competent authority of the issuing State.

3. The issuing State shall forward the judgment together with the certificate to only one executing State at any one time.

4. If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all

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necessary inquiries, including via the Contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA ⁽¹⁾, in order to obtain the information from the executing State.

5. When an authority of the executing State which receives a judgment together with a certificate has no competence to recognise it and take the necessary measures for its enforcement, it shall, *ex officio*, forward the judgment together with the certificate to the competent authority of the executing State and inform the competent authority of the issuing State accordingly.

Article 6

Opinion and notification of the sentenced person

1. Without prejudice to paragraph 2, a judgment together with a certificate may be forwarded to the executing State for the purpose of its recognition and enforcement of the sentence only with the consent of the sentenced person in accordance with the law of the issuing State.

2. The consent of the sentenced person shall not be required where the judgment together with the certificate is forwarded:

- (a) to the Member State of nationality in which the sentenced person lives;
- (b) to the Member State to which the sentenced person will be deported once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure consequential to the judgment;
- (c) to the Member State to which the sentenced person has fled or otherwise returned in view of the criminal proceedings pending against him or her in the issuing State or following the conviction in that issuing State.

3. In all cases where the sentenced person is still in the issuing State, he or she shall be given an opportunity to state his or her opinion orally or in writing. Where the issuing State considers it necessary in view of the sentenced person's age or his or her physical or mental condition, that opportunity shall be given to his or her legal representative.

The opinion of the sentenced person shall be taken into account when deciding the issue of forwarding the judgement together with the certificate. Where the person has availed him or her self of the opportunity provided in this paragraph, the opinion of the sentenced person shall be forwarded to the executing State, in particular with a view to Article 4 (4). If the sentenced person stated his or her opinion orally, the issuing State shall ensure that the written record of such statement is available to executing State.

4. The competent authority of the issuing State shall inform the sentenced person, in a language which he or she understands, that it has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Annex II. When the sentenced person is in the executing State at the time of that decision, that form shall be transmitted to the executing State which shall inform the sentenced person accordingly.

5. Paragraph 2(a) shall not apply to Poland as an issuing State and as an executing State in cases where the judgement was issued before the lapse of five years from 5 December 2011. Poland may at any time notify the General Secretariat of the Council that it will no longer avail itself of this derogation.

⁽¹⁾ OJ L 191, 7.7.1998, p. 4.



Article 7

Double criminality

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, 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 of the judgment and enforcement of the sentence imposed:

- 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 ⁽¹⁾,
- 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,

⁽¹⁾ OJ C 316, 27.11.1995, p. 49.

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- unlawful seizure of aircraft/ships,
- sabotage.

2. The Council may decide to add other categories of offences to the list provided for 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 Treaty on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 29 (5) of this Framework Decision, 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 of the judgment and enforcement of the sentence subject to the condition that it relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. Each Member State may, on adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council declare that it will not apply paragraph 1. Any such declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.

*Article 8***Recognition of the judgment and enforcement of the sentence**

1. The competent authority of the executing State shall recognise a judgment which has been forwarded in accordance with Article 4 and following the procedure under Article 5, and shall forthwith take all the necessary measures for the enforcement of the sentence, unless it decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9.

2. Where the sentence is incompatible with the law of the executing State in terms of its duration, the competent authority of the executing State may decide to adapt the sentence only where that sentence exceeds the maximum penalty provided for similar offences under its national law. The adapted sentence shall not be less than the maximum penalty provided for similar offences under the law of the executing State.

3. Where the sentence is incompatible with the law of the executing State in terms of its nature, the competent authority of the executing State may adapt it to the punishment or measure provided for under its own law for similar offences. Such a punishment or measure shall correspond as closely as possible to the sentence imposed in the issuing State and therefore the sentence shall not be converted into a pecuniary punishment.

4. The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration.

*Article 9***Grounds for non-recognition and non-enforcement**

1. The competent authority of the executing State may refuse to recognise the judgment and enforce the sentence, if:

- (a) the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a reasonable deadline set by the competent authority of the executing State;
- (b) the criteria set forth in Article 4(1) are not met;
- (c) enforcement of the sentence would be contrary to the principle of *ne bis in idem*;

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- (d) in a case referred to in Article 7(3) and, where the executing State has made a declaration under Article 7(4), in a case referred to in Article 7(1), the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of a judgment 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 type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;
- (e) the enforcement of the sentence is statute-barred according to the law of the executing State;
- (f) there is immunity under the law of the executing State, which makes it impossible to enforce the sentence;
- (g) the sentence has been imposed on a person who, under the law of the executing State, owing to his or her age, could not have been held criminally liable for the acts in respect of which the judgment was issued;
- (h) at the time the judgment was received by the competent authority of the executing State, less than six months of the sentence remain to be served;

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- (i) according to the certificate provided for in Article 4, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:
 - (i) in due time:
 - either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,
 - and
 - was informed that a decision may be handed down if he or she does not appear for the trial;
 - or
 - (ii) being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;
 - or
 - (iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:
 - expressly stated that he or she does not contest the decision,
 - or
 - did not request a retrial or appeal within the applicable time frame;

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- (j) the executing State, before a decision is taken in accordance with Article 12(1), makes a request, in accordance with Article 18(3), and the issuing State does not consent, in accordance with

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Article 18(2)(g), to the person concerned being prosecuted, sentenced or otherwise deprived of his or her liberty in the executing State for an offence committed prior to the transfer other than that for which the person was transferred;

- (k) the sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which, notwithstanding Article 8(3), cannot be executed by the executing State in accordance with its legal or health care system;
- (l) the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

2. Any decision under paragraph 1(l) in relation to offences committed partly within the territory of the executing State, or in a place equivalent to its territory, shall be taken by the competent authority of the executing State in exceptional circumstances and on a case-by-case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.

3. In the cases referred to in paragraph 1(a), (b), (c), (i), (k) and (l), before deciding not to recognise the judgment and enforce the sentence, the competent authority of the executing State shall consult the competent authority of the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay.

*Article 10***Partial recognition and enforcement**

1. If the competent authority of the executing State could consider recognition of the judgment and enforcement of the sentence in part, it may, before deciding to refuse recognition of the judgment and enforcement of the sentence in whole, consult the competent authority of the issuing State with a view to finding an agreement, as provided for in paragraph 2.

2. The competent authorities of the issuing and the executing States may agree, on a case-by-case basis, to the partial recognition and enforcement of a sentence in accordance with the conditions set out by them, provided such recognition and enforcement does not result in the aggravation of the duration of the sentence. In the absence of such agreement, the certificate shall be withdrawn.

*Article 11***Postponement of recognition of the judgment**

The recognition of the judgment may be postponed in the executing State where the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment, until such reasonable deadline set by the executing State for the certificate to be completed or corrected.

*Article 12***Decision on the enforcement of the sentence and time limits**

1. The competent authority in the executing State shall decide as quickly as possible whether to recognise the judgment and enforce the sentence and shall inform the issuing State thereof, including of any decision to adapt the sentence in accordance with Article 8(2) and (3).

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2. Unless a ground for postponement exists under Article 11 or Article 23(3), the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 90 days of receipt of the judgment and the certificate.

3. When in exceptional cases it is not practicable for the competent authority of the executing State to comply with the period provided for in paragraph 2, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the final decision to be taken.

*Article 13***Withdrawal of the certificate**

As long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate from that State, giving reasons for doing so. Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.

*Article 14***Provisional arrest**

Where the sentenced person is in the executing State, the executing State may, at the request of the issuing State, before the arrival of the judgment and the certificate, or before the decision to recognise the judgment and enforce the sentence, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise the judgment and enforce the sentence. The duration of the sentence shall not be aggravated as a result of any period spent in custody by reason of this provision.

*Article 15***Transfer of sentenced persons**

1. If the sentenced person is in the issuing State, he or she shall be transferred to the executing State at a time agreed between the competent authorities of the issuing and the executing States, and no later than 30 days after the final decision of the executing State on the recognition of the judgment and enforcement of the sentence has been taken.

2. If the transfer of the sentenced person within the period laid down in paragraph 1 is prevented by unforeseen circumstances, the competent authorities of the issuing and executing States shall immediately contact each other. Transfer shall take place as soon as these circumstances cease to exist. The competent authority of the issuing State shall immediately inform the competent authority of the executing State and agree on a new transfer date. In that event, transfer shall take place within 10 days of the new date thus agreed.

*Article 16***Transit**

1. Each Member State shall, in accordance with its law, permit the transit through its territory of a sentenced person who is being transferred to the executing State, provided that a copy of the certificate referred to in Article 4 has been forwarded to it by the issuing State together with the transit request. The transit request and the certificate may be transmitted by any means capable of producing a written record. Upon request of the Member State to permit transit, the issuing State shall provide a translation of the certificate into one of the languages, to be indicated in the request, which the Member State requested to permit transit accepts.

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2. When receiving a request to permit transit, the Member State requested to permit transit shall inform the issuing State if it cannot guarantee that the sentenced person will not be prosecuted, or, except as provided in paragraph 1, detained or otherwise subjected to any restriction of his or her liberty in its territory for any offence committed or sentence imposed before his or her departure from the territory of the issuing State. In such a case, the issuing State may withdraw its request.

3. The Member State requested to permit transit shall notify its decision, which shall be taken on a priority basis and not later than one week after having received the request, by the same procedure. Such a decision may be postponed until the translation has been transmitted to the Member State requested to permit transit, where such translation is required under paragraph 1.

4. The Member State requested to permit transit may hold the sentenced person in custody only for such time as transit through its territory requires.

5. A transit request shall not be required in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing State shall provide the information provided for in paragraph 1 within 72 hours.

*Article 17***Law governing enforcement**

1. The enforcement of a sentence shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraphs 2 and 3, be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

2. The competent authority of the executing State shall deduct the full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued from the total duration of the deprivation of liberty to be served.

3. The competent authority of the executing State shall, upon request, inform the competent authority of the issuing State of the applicable provisions on possible early or conditional release. The issuing State may agree to the application of such provisions or it may withdraw the certificate.

4. Member States may provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time.

*Article 18***Specialty**

1. A person transferred to the executing State pursuant to this Framework Decision shall not, subject to paragraph 2, be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed before his or her transfer other than that for which he or she was transferred.

2. Paragraph 1 shall not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the executing State has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) when the offence is not punishable by a custodial sentence or detention order;

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- (c) when the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
- (d) when the sentenced person could be liable to a penalty or a measure not involving deprivation of liberty, in particular a financial penalty or a measure *in lieu* thereof, even if the penalty or measure *in lieu* may give rise to a restriction of his or her personal liberty;
- (e) when the sentenced person consented to the transfer;
- (f) when the sentenced person, after his or her transfer, has expressly renounced entitlement to the specialty rule with regard to specific offences preceding his or her transfer. Renunciation shall be given before the competent judicial authorities of the executing State and shall be recorded in accordance with that State's national law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
- (g) for cases other than those mentioned under points (a) to (f), where the issuing State gives its consent in accordance with paragraph 3.

3. A request for consent shall be submitted to the competent authority of the issuing State, accompanied by the information mentioned in Article 8(1) of Framework Decision 2002/584/JHA and a translation as referred to in Article 8(2) thereof. Consent shall be given where there is an obligation to surrender the person under that Framework Decision. The decision shall be taken no later than 30 days after receipt of the request. For the situations mentioned in Article 5 of that Framework Decision, the executing State shall give the guarantees provided for therein.

*Article 19***Amnesty, pardon, review of judgment**

1. An amnesty or pardon may be granted by the issuing State and also by the executing State.
2. Only the issuing State may decide on applications for review of the judgment imposing the sentence to be enforced under this Framework Decision.

*Article 20***Information from the issuing State**

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 sentence ceases to be enforceable immediately or within a certain period of time.
2. The competent authority of the executing State shall terminate enforcement of the sentence as soon as it is informed by the competent authority of the issuing State of the decision or measure referred to in paragraph 1.

*Article 21***Information to be given by 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 forwarding of the judgment and the certificate to the competent authority responsible for its execution in accordance with Article 5(5);

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- (b) of the fact that it is in practice impossible to enforce the sentence because after transmission of the judgment and the certificate to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case there shall be no obligation on the executing State to enforce the sentence;
- (c) of the final decision to recognise the judgment and enforce the sentence together with the date of the decision;
- (d) of any decision not to recognise the judgment and enforce the sentence in accordance with Article 9, together with the reasons for the decision;
- (e) of any decision to adapt the sentence in accordance with Article 8 (2) or (3), together with the reasons for the decision;
- (f) of any decision not to enforce the sentence for the reasons referred to in Article 19(1) together with the reasons for the decision;
- (g) of the beginning and the end of the period of conditional release, where so indicated in the certificate by the issuing State;
- (h) of the sentenced person's escape from custody;
- (i) of the enforcement of the sentence as soon as it has been completed.

*Article 22***Consequences of the transfer of the sentenced person**

1. Subject to paragraph 2, the issuing State shall not proceed with the enforcement of the sentence once its enforcement in the executing State has begun.
2. The right to enforce the sentence shall revert to the issuing State upon its being informed by the executing State of the partial non-enforcement of the sentence pursuant to Article 21(h).

*Article 23***Languages**

1. The certificate shall be translated into the official language or one of the official languages of the executing State. Any Member State may, on adoption of this Framework Decision or later, 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 Union.
2. Subject to paragraph 3, no translation of the judgment shall be required.
3. Any Member State may, on adoption of this Framework Decision or later, in a declaration deposited with the General Secretariat of the Council state that it, as an executing State, may without delay after receiving the judgment and the certificate, request, in cases where it finds the content of the certificate insufficient to decide on the enforcement of the sentence, that the judgment or essential parts of it be accompanied by a translation into the official language or one of the official languages of the executing State or into one or more other official languages of the Institutions of the European Union. Such a request shall be made, after consultation, where necessary, to indicate the essential parts of the judgments to be translated, between the competent authorities of the issuing and the executing States.

The decision on recognition of the judgment and enforcement of the sentence may be postponed until the translation has been transmitted by the issuing State to the executing State or, where the executing State decides to translate the judgment at its own expenses, until the translation has been obtained.



Article 24

Costs

Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for the costs of the transfer of the sentenced person to the executing State and those arising exclusively in the sovereign territory of the issuing State.

Article 25

Enforcement of sentences following a European arrest warrant

Without prejudice to Framework Decision 2002/584/JHA, provisions of this Framework Decision shall apply, *mutatis mutandis* to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of that Framework Decision, or where, acting under Article 5(3) of that Framework Decision, it has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned.

CHAPTER III

FINAL PROVISIONS

Article 26

Relationship with other agreements and arrangements

1. Without prejudice to their application between Member States and third States and their transitional application according to Article 28, this Framework Decision shall, from 5 December 2011, replace the corresponding provisions of the following conventions applicable in relations between the Member States:

- The European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18 December 1997;
- The European Convention on the International Validity of Criminal Judgements of 28 May 1970;
- Title III, Chapter 5, of the Convention of 19 June 1990 implementing the Schengen Convention of 14 June 1985 on the gradual abolition of checks at common borders;
- The Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force after 27 November 2008, in so far as they allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sentences.

3. Member States may conclude bilateral or multilateral agreements or arrangements after 5 December 2008 in so far as such agreements or arrangements allow the provisions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sentences.

4. Member States shall by 5 March 2009, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Council and the Commission of any new agreement or

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arrangement as referred to in paragraph 3, within three months of signing it.

*Article 27***Territorial application**

This Framework Decision shall apply to Gibraltar.

*Article 28***Transitional provision**

1. Requests received before 5 December 2011 shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date shall be governed by the rules adopted by Member States pursuant to this Framework Decision.

2. However, any Member State may, on the adoption of this Framework Decision, make a declaration indicating that, in cases where the final judgment has been issued before the date it specifies, it will as an issuing and an executing State, continue to apply the existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011. If such a declaration is made, those instruments shall apply in such cases in relation to all other Member States irrespective of whether or not they have made the same declaration. The date in question may not be later than 5 December 2011. The said declaration shall be published in the *Official Journal of the European Union*. It may be withdrawn at any time.

*Article 29***Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 5 December 2011.

2. 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 by the Commission, the Council shall, no later than 5 December 2012, 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 the Member States and the Commission of the notifications or declarations made pursuant to Article 4(7) and Article 23(1) or (3).

4. Without prejudice to Article 35(7) of the Treaty on European Union, a Member State which has experienced repeated difficulties in the application of Article 25 of this Framework Decision, which have not been solved through bilateral consultations, shall inform the Council and the Commission of its difficulties. The Commission shall, on the basis of this information and any other information available to it, establish a report, accompanied by any initiatives it may deem appropriate, with a view to resolving these difficulties.

5. By 5 December 2013, 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 any report from the Commission and any initiative, review, in particular Article 25, with a view to considering whether it is to be replaced by more specific provisions.



Article 30

Entry into force

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.



ANNEX I

CERTIFICATE

referred to in Article 4 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ⁽¹⁾

(a) * Issuing State:
 * Executing State:

(b) The court which delivered the judgment imposing the sentence that became final:
 Official name:
 The judgment was delivered on (give date: dd-mm-yyyy):
 The judgment became final on (give date: dd-mm-yyyy):
 Reference number of the judgment (if available):

(c) Information related to the authority that may be contacted for any question related to the certificate:

- Type of authority: Please tick the relevant box:
☐ Central authority
☐ Court
☐ Other authority
- Contact details of the authority indicated under point (c) 1:
 Official name:

 Address:

 Tel.: (country code) (area/city code)
 Fax: (country code) (area/city code)
 E-mail address (if available):
- Languages in which it is possible to communicate with the authority:
- Contact details of person(s) to be contacted to obtain additional information for the purposes of enforcement of the judgment or agreement on the transfer procedures (name, title/grade, telephone No, fax, e-mail address), if different from 2:

⁽¹⁾ This certificate must be written in, or translated into, one of the official languages of the executing Member State or any other language accepted by that State.



(d) Information regarding the person on whom the sentence has been imposed:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if available):

Date of birth:

Place of birth:

Last known addresses/residences:

Language(s) which the person understands (if known):

.....

The sentenced person is:

☐ in the issuing State and is to be transferred to the executing State.

☐ in the executing State and enforcement is to take place in that State.

Additional information to be provided, if available and if appropriate:

1. Photo and fingerprints of the person, and/or contact details of the person to be contacted in order to obtain such information:

.....

2. Type and reference number of the sentenced person's identity card or passport:

.....

3. Type and reference number of the sentenced person's residence permit:

.....

4. Other relevant information about the sentenced person's family, social or professional ties to the executing State:

.....

.....

(e) Request for provisional arrest by the issuing State (where the sentenced person is in the executing State):

☐ The issuing State requests the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence.

☐ The issuing State has already requested the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence. Please provide the name of the authority in the executing State that has taken the decision on the request to arrest the person (If applicable and available):

.....

.....

.....



(f) Relation to any earlier European Arrest Warrant (EAW):

- ☐ An EAW has been issued for the purpose of the execution of a custodial sentence or detention order and the executing Member State undertakes to execute the sentence or detention order (Article 4(6) of the EAW Framework Decision).

Date of issue of the EAW and, if available, reference number:

.....

Name of the authority that issued the EAW:

Date of decision to undertake execution and, if available, reference number:

.....

Name of the authority that issued the decision to undertake execution of the sentence:

.....

- ☐ An EAW has been issued for the purpose of prosecution of a person who is a national or resident of the executing State and the executing State has surrendered the person under the condition that the person is to be returned to the executing State in order to serve there the custodial sentence or detention order passed against him or her in the issuing Member State (Article 5(3) of the EAW Framework Decision).

Date of the decision to surrender the person:

Name of the authority that issued the decision to surrender:

Reference number of the decision, if available:

Date of the surrender of the person, if available:

(g) Reasons for forwarding the judgment and the certificate (if you have filled in Box (f), there is no need to fill in this box):

The judgment and the certificate are forwarded to the executing State because the issuing authority is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person and:

- ☐ (a) The executing State is the State of nationality of the sentenced person in which he or she lives.
- ☐ (b) The executing State is the State of nationality of the sentenced person, to which the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment. If the expulsion or deportation order is not included in the judgment, please provide the name of the authority that issued the order, the date of issue, and, if available, the reference number:
- ☐ (c) The executing State is a State, other than a State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that State.
- ☐ (d) The executing State has given a notification under Article 4(7) of the Framework Decision, and:
- ☐ it is confirmed that, to the knowledge of the competent authority of the issuing State, the sentenced person lives and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that state, or
- ☐ it is confirmed that the sentenced person is a national of the executing State.



(h) Judgment imposing the sentence:

1. The judgment covers offences in total.

Summary of facts and a description of the circumstances in which the offence(s) was (were) committed, including time and place; and the nature of the involvement of the sentenced person:

.....

Nature and legal classification of the offence(s) and the applicable statutory provisions on the basis of which the judgment was made:

.....

2. To the extent that the offence(s) identified under point (h) 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State, which are punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years, please confirm 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.

3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2 or if the judgment and the certificate is forwarded to the Member State, which has declared that it will verify the double criminality (Article 7(4) of the Framework Decision), please give a full description of the offence(s) concerned:

.....

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(i) Status of the judgment imposing the sentence:

►⁽¹⁾ 1. Indicate if the person appeared in person at the trial resulting in the decision:

1. ☐ Yes, the person appeared in person at the trial resulting in the decision.
2. ☐ No, the person did not appear in person at the trial resulting in the decision.
3. If you have ticked the box under point 2, please confirm the existence of one of the following:

☐ 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

☐ 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

☐ 3.2. being aware of the scheduled trial the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

☐ 3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

☐ the person expressly stated that he or she does not contest this decision,

OR

☐ the person did not request a retrial or appeal within the applicable time frame.

4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....
 ◀

2. Details of the length of the sentence:

2.1. Total length of the sentence (in days):

2.2. The full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued (in days):

..... as per (...) (give date on which calculation was made: dd-mm-yyyy):

2.3. Number of days to be deducted from total length of the sentence for reasons other than the one referred to under 2.2 (e.g. amnesties, pardons or clemencies, etc. already granted with respect to the sentence): .. as per (give date on which calculation was made: dd-mm-yyyy): ...

2.4. Sentence expiry date in the issuing State:

☐ Not applicable, because the person is currently not in custody

☐ The person is currently in custody and the sentence, under the law of the issuing State, would be fully served by (give date: dd-mm-yyyy) ⁽¹⁾:

3. Type of sentence:

☐ custodial sentence

☐ measure involving deprivation of liberty (please specify):

.....

(j) Information related to early or conditional release:

1. Under the law of the issuing State the sentenced person is entitled to early or conditional release, having served:

☐ half the sentence

☐ two-thirds of the sentence

☐ another portion of the sentence (please indicate):

2. The competent authority of the issuing State requests to be informed of:

☐ The applicable provisions of the law of the executing State on early or conditional release of the sentenced person;

☐ The beginning and the end of the period of early or conditional release.

⁽¹⁾ Please insert here the date by which the sentence would be fully served (not taking into account the possibilities of any form of early and/or conditional release) if the person were to stay in the issuing State.



(k) Opinion of the sentenced person:

1. ☐ The sentenced person could not be heard because he/she is already in the executing State.
2. ☐ The sentenced person is in the issuing State and:
 - a. ☐ has requested the forwarding of the judgment and the certificate
 - ☐ consented to the forwarding of the judgment and the certificate
 - ☐ did not consent to the forwarding of the judgment and the certificate (state reasons given by the sentenced person):

 - b. ☐ Opinion of the sentenced person is attached.
☐ Opinion of the sentenced person was forwarded to the executing State on (give date: dd-mm-yyyy):

(l) Other circumstances relevant to the case (optional information):

.....

(m) Final information:

The text of the judgment(s) is (are) attached to the certificate ⁽¹⁾.

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)

⁽¹⁾ The competent authority of the issuing State must attach all judgments related to the case which are necessary to have all the information on the final sentence to be enforced. Any available translation of the judgment(s) may also be attached.

*ANNEX II***NOTIFICATION OF THE SENTENCED PERSON**

You are hereby notified of the decision of (competent authority of the issuing State) to forward the judgment of (competent court of the issuing State) dated (date of judgment) (reference number; if available) to (executing State) for the purpose of its recognition and enforcement of the sentence imposed therein in accordance with the national law implementing Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

The enforcement of the sentence will be governed by the law of (executing State). The authorities of that State will be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

The competent authority of (executing State) has to deduct the full period of deprivation of liberty already served in connection with the sentence from the total duration of deprivation of liberty to be served. An adaptation of the sentence by the competent authority of (executing State) may take place only if it is incompatible with the law of that State in terms of its duration or nature. The adapted sentence must not aggravate the sentence passed in (issuing State) by its nature or duration.

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2008/909/JHA

of 27 November 2008

on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

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 Republic of Austria, the Republic of Finland and the Kingdom of Sweden,

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) 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⁽¹⁾, in which it called for an assessment of the need for modern mechanisms for the mutual recognition of final sentences involving deprivation of liberty (Measure 14) and for extended application of the principle of the transfer of sentenced persons to cover persons resident in a Member State (Measure 16).
- (3) The Hague Programme on strengthening freedom, security and justice in the European Union⁽²⁾ requires Member States to complete the programme of measures, in particular in the field of enforcing final custodial sentences.
- (4) All the Member States have ratified the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The Additional Protocol to that Convention of 18 December 1997, which allows transfer without the person's consent, subject to certain conditions, has not been ratified by all the Member States. Neither instrument imposes any basic duty to take charge of sentenced persons for enforcement of a sentence or order.
- (5) Procedural rights in criminal proceedings are a crucial element for ensuring mutual confidence among the Member States in judicial cooperation. Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, enable recognition by the executing State of decisions taken by the issuing State's authorities. Therefore, a further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments should be envisaged, in particular where citizens of the Union were the subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State. Notwithstanding the need to provide the sentenced person with adequate safeguards, his or her involvement in the proceedings should no longer be dominant by requiring in all cases his or her consent to the forwarding of a judgment to another Member State for the purpose of its recognition and enforcement of the sentence imposed.

⁽¹⁾ OJ C 12, 15.1.2001, p. 10.

⁽²⁾ OJ C 53, 3.3.2005, p. 1.

- (6) This Framework Decision should be implemented and applied in a manner which allows general principles of equality, fairness and reasonableness to be respected.
- (7) Article 4(1)(c) contains a discretionary provision which enables the judgment and the certificate to be forwarded, for example, to the Member State of nationality of the sentenced person, in cases other than those provided for in paragraphs 1(a) and (b) or to the Member State in which the sentenced person lives and has been legally residing continuously for at least five years and will retain a permanent right of residence there.
- (8) In cases referred to in Article 4(1)(c) the forwarding of the judgment and the certificate to the executing State is subject to consultations between the competent authorities of the issuing and the executing States, and the consent of the competent authority of the executing State. The competent authorities should take into account such elements as, for example, duration of the residence or other links to the executing State. In cases where the sentenced person could be transferred to a Member State and to a third country under national law or international instruments, the competent authorities of the issuing and executing States should, in consultations, consider whether enforcement in the executing State would enhance the aim of social rehabilitation better than enforcement in the third country.
- (9) Enforcement of the sentence in the executing State should enhance the possibility of social rehabilitation of the sentenced person. In the context of satisfying itself that the enforcement of the sentence by the executing State will serve the purpose of facilitating the social rehabilitation of the sentenced person, the competent authority of the issuing State should take into account such elements as, for example, the person's attachment to the executing State, whether he or she considers it the place of family, linguistic, cultural, social or economic and other links to the executing State.
- (10) The opinion of the sentenced person referred to in Article 6(3) may be useful mainly in applying Article 4(4). The words 'in particular' are intended to cover also cases where the opinion of the sentenced person would include information which might be of relevance in relation to the grounds for non-recognition and non-enforcement. Provisions of Articles 4(4) and 6(3) do not constitute a ground for refusal on social rehabilitation.
- (11) Poland needs more time than the other Member States to face the practical and material consequences of transfer of Polish citizens convicted in other Member States, especially in the light of an increased mobility of Polish citizens within the Union. For that reason, a temporary derogation of limited scope for a maximum period of five years should be foreseen.
- (12) This Framework Decision should also, *mutatis mutandis*, apply to the enforcement of sentences in the cases under Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States⁽¹⁾. This means, *inter alia*, that, without prejudice to that Framework Decision, the executing State could verify the existence of grounds for non-recognition and non-enforcement as provided in Article 9 of this Framework Decision, including the checking of double criminality to the extent that the executing State makes a declaration under Article 7(4) of this Framework Decision, as a condition for recognising and enforcing the judgment with a view to considering whether to surrender the person or to enforce the sentence in cases pursuant to Article 4(6) of Framework Decision 2002/584/JHA.
- (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 should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for 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 on any one of those grounds.
- (14) This Framework Decision should 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.

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

(15) This Framework Decision should be applied in accordance with the right of citizens of the Union to move and reside freely within the territory of the Member States conferred by Article 18 of the Treaty establishing European Community.

(16) This Framework Decision should be applied in accordance with applicable Community legislation, including in particular Council Directive 2003/86/EC ⁽¹⁾, Council Directive 2003/109/EC ⁽²⁾ and Directive 2004/38/EC of the European Parliament and of the Council ⁽³⁾.

(17) Where in this Framework Decision reference is made to the State in which the sentenced person 'lives', this indicates the place to which that person is attached based on habitual residence and on elements such as family, social or professional ties.

(18) When applying Article 5(1), it should be possible to transmit a judgment or a certified copy thereof and a certificate to the competent authority in the executing State by any means which leaves a written record, for example e-mail and fax, under conditions allowing the executing State to establish authenticity.

(19) In cases referred to in Article 9(1)(k), the executing State should consider the possibility of adapting the sentence in accordance with this Framework Decision before it refuses to recognise and enforce the sentence involving a measure other than a custodial sentence.

(20) The ground for refusal provided for in Article 9(1)(k) may be applied also in cases where the person has not been found guilty of a criminal offence although the competent authority applied the measure involving the deprivation of liberty other than a custodial sentence as a consequence of a criminal offence.

(21) The ground for refusal relating to territoriality should be applied only in exceptional cases and with a view to cooperating to the greatest extent possible under the provisions of this Framework Decision, while taking into account its purpose. Any decision to apply this ground for refusal, should be based on a case-by-case analysis and consultations between the competent authorities of the issuing and executing States.

(22) The time limit referred to in Article 12(2) should be implemented by the Member States in such a way that

as a general rule, the final decision, including an appeal procedure is completed within a period of 90 days.

(23) Article 18(1) states that, subject to the exceptions listed in paragraph 2, the specialty rule applies only where the person has been transferred to the executing State. It should therefore not be applicable where the person has not been transferred to the executing State, for example where the person has fled to the executing State,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Framework Decision:

- (a) 'judgment' shall mean a final decision or order of a court of the issuing State imposing a sentence on a natural person;
- (b) 'sentence' shall mean any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings;
- (c) 'issuing State' shall mean the Member State in which a judgment is delivered;
- (d) 'executing State' shall mean the Member State to which a judgment is forwarded for the purpose of its recognition and 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 in accordance with this Framework Decision, when that Member State is the issuing State or the executing State.

2. The General Secretariat of the Council shall make the information received available to all Member States and the Commission.

⁽¹⁾ OJ L 251, 3.10.2003, p. 12.

⁽²⁾ OJ L 16, 23.1.2004, p. 44.

⁽³⁾ OJ L 158, 30.4.2004, p. 77.

Article 3

Purpose and scope

1. The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.

2. This Framework Decision shall apply where the sentenced person is in the issuing State or in the executing State.

3. This Framework Decision shall apply only to the recognition of judgments and the enforcement of sentences within the meaning of this Framework Decision. The fact that, in addition to the sentence, a fine and/or a confiscation order has been imposed, which has not yet been paid, recovered or enforced, shall not prevent a judgment from being forwarded. The recognition and enforcement of such fines and confiscation orders in another Member State shall be based on the instruments applicable between the Member States, in particular Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ⁽¹⁾ and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ⁽²⁾.

4. 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.

CHAPTER II

RECOGNITION OF JUDGMENTS AND ENFORCEMENT OF SENTENCES

Article 4

Criteria for forwarding a judgment and a certificate to another Member State

1. Provided that the sentenced person is in the issuing State or in the executing State, and provided that this person has given his or her consent where required under Article 6, a judgment, together with the certificate for which the standard form is given in Annex I, may be forwarded to one of the following Member States:

- (a) the Member State of nationality of the sentenced person in which he or she lives; or
- (b) the Member State of nationality, to which, while not being the Member State where he or she lives, the sentenced

person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment; or

- (c) any Member State other than a Member State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that Member State.

2. The forwarding of the judgment and the certificate may take place where the competent authority of the issuing State, where appropriate after consultations between the competent authorities of the issuing and the executing States, is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person.

3. Before forwarding the judgment and the certificate, the competent authority of the issuing State may consult, by any appropriate means, the competent authority of the executing State. Consultation shall be obligatory in the cases referred to in paragraph 1(c). In such cases the competent authority of the executing State shall promptly inform the issuing State of its decision whether or not to consent to the forwarding of the judgment.

4. During such consultation, the competent authority of the executing State may present the competent authority of the issuing State with a reasoned opinion, that enforcement of the sentence in the executing State would not serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into society.

Where there has been no consultation, such an opinion may be presented without delay after the transmission of the judgment and the certificate. The competent authority of the issuing State shall consider such opinion and decide whether to withdraw the certificate or not.

5. The executing State may, on its own initiative, request the issuing State to forward the judgment together with the certificate. The sentenced person may also request the competent authorities of the issuing State or of the executing State to initiate a procedure for forwarding the judgment and the certificate under this Framework Decision. Requests made under this paragraph shall not create an obligation of the issuing State to forward the judgment together with the certificate.

⁽¹⁾ OJ L 76, 22.3.2005, p. 16.

⁽²⁾ OJ L 328, 24.11.2006, p. 59.

6. In implementing this Framework Decision, Member States shall adopt measures, in particular taking into account the purpose of facilitating social rehabilitation of the sentenced person, constituting the basis on which their competent authorities have to take their decisions whether or not to consent to the forwarding of the judgment and the certificate in cases pursuant to paragraph 1(c).

7. Each Member State may, either on adoption of this Framework Decision or later, notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, its prior consent under paragraph 1(c) is not required for the forwarding of the judgment and the certificate:

- (a) if the sentenced person lives in and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that State, and/or
- (b) if the sentenced person is a national of the executing State in cases other than those provided for in paragraph 1(a) and (b).

In cases referred to in point (a), permanent right of residence shall mean that the person concerned:

- has a right of permanent residence in the respective Member State in accordance with the national law implementing Community legislation adopted on the basis of Article 18, 40, 44 and 52 of the Treaty establishing the European Community, or
- possesses a valid residence permit, as a permanent or long-term resident, for the respective Member State, in accordance with the national law implementing Community legislation adopted on the basis of Article 63 of the Treaty establishing the European Community, as regards Member States to which such Community legislation is applicable, or in accordance with national law, as regards Member States to which it is not.

Article 5

Forwarding of the judgment and the certificate

1. The judgment or a certified copy of it, together with the certificate, shall be forwarded, by the competent authority of the issuing State directly to the competent authority of 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 judgment, 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.

2. The certificate, shall be signed, and its content certified as accurate, by the competent authority of the issuing State.

3. The issuing State shall forward the judgment together with the certificate to only one executing State at any one time.

4. If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the Contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA ⁽¹⁾, in order to obtain the information from the executing State.

5. When an authority of the executing State which receives a judgment together with a certificate has no competence to recognise it and take the necessary measures for its enforcement, it shall, *ex officio*, forward the judgment together with the certificate to the competent authority of the executing State and inform the competent authority of the issuing State accordingly.

Article 6

Opinion and notification of the sentenced person

1. Without prejudice to paragraph 2, a judgment together with a certificate may be forwarded to the executing State for the purpose of its recognition and enforcement of the sentence only with the consent of the sentenced person in accordance with the law of the issuing State.

2. The consent of the sentenced person shall not be required where the judgment together with the certificate is forwarded:

- (a) to the Member State of nationality in which the sentenced person lives;
- (b) to the Member State to which the sentenced person will be deported once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure consequential to the judgment;

⁽¹⁾ OJ L 191, 7.7.1998, p. 4.

(c) to the Member State to which the sentenced person has fled or otherwise returned in view of the criminal proceedings pending against him or her in the issuing State or following the conviction in that issuing State.

3. In all cases where the sentenced person is still in the issuing State, he or she shall be given an opportunity to state his or her opinion orally or in writing. Where the issuing State considers it necessary in view of the sentenced person's age or his or her physical or mental condition, that opportunity shall be given to his or her legal representative.

The opinion of the sentenced person shall be taken into account when deciding the issue of forwarding the judgement together with the certificate. Where the person has availed him or her self of the opportunity provided in this paragraph, the opinion of the sentenced person shall be forwarded to the executing State, in particular with a view to Article 4(4). If the sentenced person stated his or her opinion orally, the issuing State shall ensure that the written record of such statement is available to executing State.

4. The competent authority of the issuing State shall inform the sentenced person, in a language which he or she understands, that it has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Annex II. When the sentenced person is in the executing State at the time of that decision, that form shall be transmitted to the executing State which shall inform the sentenced person accordingly.

5. Paragraph 2(a) shall not apply to Poland as an issuing State and as an executing State in cases where the judgement was issued before the lapse of five years from 5 December 2011. Poland may at any time notify the General Secretariat of the Council that it will no longer avail itself of this derogation.

Article 7

Double criminality

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, 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 of the judgment and enforcement of the sentence imposed:

- 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 ⁽¹⁾,
- 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,

⁽¹⁾ OJ C 316, 27.11.1995, p. 49.

- 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 provided for 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 Treaty on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 29(5) of this Framework Decision, 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 of the judgment and enforcement of the sentence subject to the condition that it relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. Each Member State may, on adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council declare that it will not apply paragraph 1.

Any such declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.

Article 8

Recognition of the judgment and enforcement of the sentence

1. The competent authority of the executing State shall recognise a judgment which has been forwarded in accordance with Article 4 and following the procedure under Article 5, and shall forthwith take all the necessary measures for the enforcement of the sentence, unless it decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9.

2. Where the sentence is incompatible with the law of the executing State in terms of its duration, the competent authority of the executing State may decide to adapt the sentence only where that sentence exceeds the maximum penalty provided for similar offences under its national law. The adapted sentence shall not be less than the maximum penalty provided for similar offences under the law of the executing State.

3. Where the sentence is incompatible with the law of the executing State in terms of its nature, the competent authority of the executing State may adapt it to the punishment or measure provided for under its own law for similar offences. Such a punishment or measure shall correspond as closely as possible to the sentence imposed in the issuing State and therefore the sentence shall not be converted into a pecuniary punishment.

4. The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration.

Article 9

Grounds for non-recognition and non-enforcement

1. The competent authority of the executing State may refuse to recognise the judgment and enforce the sentence, if:

- (a) the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a reasonable deadline set by the competent authority of the executing State;
- (b) the criteria set forth in Article 4(1) are not met;
- (c) enforcement of the sentence would be contrary to the principle of *ne bis in idem*;

- (d) in a case referred to in Article 7(3) and, where the executing State has made a declaration under Article 7(4), in a case referred to in Article 7(1), the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of a judgment 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 type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;
- (e) the enforcement of the sentence is statute-barred according to the law of the executing State;
- (f) there is immunity under the law of the executing State, which makes it impossible to enforce the sentence;
- (g) the sentence has been imposed on a person who, under the law of the executing State, owing to his or her age, could not have been held criminally liable for the acts in respect of which the judgment was issued;
- (h) at the time the judgment was received by the competent authority of the executing State, less than six months of the sentence remain to be served;
- (i) the judgment was rendered *in absentia*, unless the certificate states that the person was summoned personally or informed via a representative competent according to the national law of the issuing State of the time and place of the proceedings which resulted in the judgment being rendered *in absentia*, or that the person has indicated to a competent authority that he or she does not contest the case;
- (j) the executing State, before a decision is taken in accordance with Article 12(1), makes a request, in accordance with Article 18(3), and the issuing State does not consent, in accordance with Article 18(2)(g), to the person concerned being prosecuted, sentenced or otherwise deprived of his or her liberty in the executing State for an offence committed prior to the transfer other than that for which the person was transferred;
- (k) the sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which, notwithstanding Article 8(3), cannot be executed by the executing State in accordance with its legal or health care system;
- (l) the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

2. Any decision under paragraph 1(l) in relation to offences committed partly within the territory of the executing State, or in a place equivalent to its territory, shall be taken by the competent authority of the executing State in exceptional circumstances and on a case-by-case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.

3. In the cases referred to in paragraph 1(a), (b), (c), (i), (k) and (l), before deciding not to recognise the judgment and enforce the sentence, the competent authority of the executing State shall consult the competent authority of the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay.

Article 10

Partial recognition and enforcement

1. If the competent authority of the executing State could consider recognition of the judgment and enforcement of the sentence in part, it may, before deciding to refuse recognition of the judgment and enforcement of the sentence in whole, consult the competent authority of the issuing State with a view to finding an agreement, as provided for in paragraph 2.

2. The competent authorities of the issuing and the executing States may agree, on a case-by-case basis, to the partial recognition and enforcement of a sentence in accordance with the conditions set out by them, provided such recognition and enforcement does not result in the aggravation of the duration of the sentence. In the absence of such agreement, the certificate shall be withdrawn.

Article 11

Postponement of recognition of the judgment

The recognition of the judgment may be postponed in the executing State where the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment, until such reasonable deadline set by the executing State for the certificate to be completed or corrected.

Article 12

Decision on the enforcement of the sentence and time limits

1. The competent authority in the executing State shall decide as quickly as possible whether to recognise the judgment and enforce the sentence and shall inform the issuing State thereof, including of any decision to adapt the sentence in accordance with Article 8(2) and (3).

2. Unless a ground for postponement exists under Article 11 or Article 23(3), the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 90 days of receipt of the judgment and the certificate.

3. When in exceptional cases it is not practicable for the competent authority of the executing State to comply with the period provided for in paragraph 2, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the final decision to be taken.

Article 13

Withdrawal of the certificate

As long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate from that State, giving reasons for doing so. Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.

Article 14

Provisional arrest

Where the sentenced person is in the executing State, the executing State may, at the request of the issuing State, before the arrival of the judgment and the certificate, or before the decision to recognise the judgment and enforce the sentence, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise the judgment and enforce the sentence. The duration of the sentence shall not be aggravated as a result of any period spent in custody by reason of this provision.

Article 15

Transfer of sentenced persons

1. If the sentenced person is in the issuing State, he or she shall be transferred to the executing State at a time agreed between the competent authorities of the issuing and the executing States, and no later than 30 days after the final decision of the executing State on the recognition of the judgment and enforcement of the sentence has been taken.

2. If the transfer of the sentenced person within the period laid down in paragraph 1 is prevented by unforeseen circumstances, the competent authorities of the issuing and executing States shall immediately contact each other. Transfer shall take place as soon as these circumstances cease to exist. The competent authority of the issuing State shall immediately inform the competent authority of the executing State and

agree on a new transfer date. In that event, transfer shall take place within 10 days of the new date thus agreed.

Article 16

Transit

1. Each Member State shall, in accordance with its law, permit the transit through its territory of a sentenced person who is being transferred to the executing State, provided that a copy of the certificate referred to in Article 4 has been forwarded to it by the issuing State together with the transit request. The transit request and the certificate may be transmitted by any means capable of producing a written record. Upon request of the Member State to permit transit, the issuing State shall provide a translation of the certificate into one of the languages, to be indicated in the request, which the Member State requested to permit transit accepts.

2. When receiving a request to permit transit, the Member State requested to permit transit shall inform the issuing State if it cannot guarantee that the sentenced person will not be prosecuted, or, except as provided in paragraph 1, detained or otherwise subjected to any restriction of his or her liberty in its territory for any offence committed or sentence imposed before his or her departure from the territory of the issuing State. In such a case, the issuing State may withdraw its request.

3. The Member State requested to permit transit shall notify its decision, which shall be taken on a priority basis and not later than one week after having received the request, by the same procedure. Such a decision may be postponed until the translation has been transmitted to the Member State requested to permit transit, where such translation is required under paragraph 1.

4. The Member State requested to permit transit may hold the sentenced person in custody only for such time as transit through its territory requires.

5. A transit request shall not be required in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing State shall provide the information provided for in paragraph 1 within 72 hours.

Article 17

Law governing enforcement

1. The enforcement of a sentence shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraphs 2 and 3, be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

2. The competent authority of the executing State shall deduct the full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued from the total duration of the deprivation of liberty to be served.

3. The competent authority of the executing State shall, upon request, inform the competent authority of the issuing State of the applicable provisions on possible early or conditional release. The issuing State may agree to the application of such provisions or it may withdraw the certificate.

4. Member States may provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time.

Article 18

Specialty

1. A person transferred to the executing State pursuant to this Framework Decision shall not, subject to paragraph 2, be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed before his or her transfer other than that for which he or she was transferred.

2. Paragraph 1 shall not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the executing State has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) when the offence is not punishable by a custodial sentence or detention order;
- (c) when the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
- (d) when the sentenced person could be liable to a penalty or a measure not involving deprivation of liberty, in particular a financial penalty or a measure *in lieu* thereof, even if the penalty or measure *in lieu* may give rise to a restriction of his or her personal liberty;
- (e) when the sentenced person consented to the transfer;
- (f) when the sentenced person, after his or her transfer, has expressly renounced entitlement to the specialty rule with regard to specific offences preceding his or her transfer. Renunciation shall be given before the competent judicial authorities of the executing State and shall be recorded in accordance with that State's national law. The renunciation

shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

- (g) for cases other than those mentioned under points (a) to (f), where the issuing State gives its consent in accordance with paragraph 3.

3. A request for consent shall be submitted to the competent authority of the issuing State, accompanied by the information mentioned in Article 8(1) of Framework Decision 2002/584/JHA and a translation as referred to in Article 8(2) thereof. Consent shall be given where there is an obligation to surrender the person under that Framework Decision. The decision shall be taken no later than 30 days after receipt of the request. For the situations mentioned in Article 5 of that Framework Decision, the executing State shall give the guarantees provided for therein.

Article 19

Amnesty, pardon, review of judgment

- 1. An amnesty or pardon may be granted by the issuing State and also by the executing State.
- 2. Only the issuing State may decide on applications for review of the judgment imposing the sentence to be enforced under this Framework Decision.

Article 20

Information from the issuing State

- 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 sentence ceases to be enforceable immediately or within a certain period of time.
- 2. The competent authority of the executing State shall terminate enforcement of the sentence as soon as it is informed by the competent authority of the issuing State of the decision or measure referred to in paragraph 1.

Article 21

Information to be given by 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 forwarding of the judgment and the certificate to the competent authority responsible for its execution in accordance with Article 5(5);

- (b) of the fact that it is in practice impossible to enforce the sentence because after transmission of the judgment and the certificate to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case there shall be no obligation on the executing State to enforce the sentence;
- (c) of the final decision to recognise the judgment and enforce the sentence together with the date of the decision;
- (d) of any decision not to recognise the judgment and enforce the sentence in accordance with Article 9, together with the reasons for the decision;
- (e) of any decision to adapt the sentence in accordance with Article 8(2) or (3), together with the reasons for the decision;
- (f) of any decision not to enforce the sentence for the reasons referred to in Article 19(1) together with the reasons for the decision;
- (g) of the beginning and the end of the period of conditional release, where so indicated in the certificate by the issuing State;
- (h) of the sentenced person's escape from custody;
- (i) of the enforcement of the sentence as soon as it has been completed.

Article 22

Consequences of the transfer of the sentenced person

1. Subject to paragraph 2, the issuing State shall not proceed with the enforcement of the sentence once its enforcement in the executing State has begun.
2. The right to enforce the sentence shall revert to the issuing State upon its being informed by the executing State of the partial non-enforcement of the sentence pursuant to Article 21(h).

Article 23

Languages

1. The certificate shall be translated into the official language or one of the official languages of the executing State. Any Member State may, on adoption of this Framework Decision or later, state in a declaration deposited with the General Secre-

tariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Union.

2. Subject to paragraph 3, no translation of the judgment shall be required.

3. Any Member State may, on adoption of this Framework Decision or later, in a declaration deposited with the General Secretariat of the Council state that it, as an executing State, may without delay after receiving the judgment and the certificate, request, in cases where it finds the content of the certificate insufficient to decide on the enforcement of the sentence, that the judgment or essential parts of it be accompanied by a translation into the official language or one of the official languages of the executing State or into one or more other official languages of the Institutions of the European Union. Such a request shall be made, after consultation, where necessary, to indicate the essential parts of the judgments to be translated, between the competent authorities of the issuing and the executing States.

The decision on recognition of the judgment and enforcement of the sentence may be postponed until the translation has been transmitted by the issuing State to the executing State or, where the executing State decides to translate the judgment at its own expenses, until the translation has been obtained.

Article 24

Costs

Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for the costs of the transfer of the sentenced person to the executing State and those arising exclusively in the sovereign territory of the issuing State.

Article 25

Enforcement of sentences following a European arrest warrant

Without prejudice to Framework Decision 2002/584/JHA, provisions of this Framework Decision shall apply, *mutatis mutandis* to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of that Framework Decision, or where, acting under Article 5(3) of that Framework Decision, it has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned.

CHAPTER III

FINAL PROVISIONS

Article 26

Relationship with other agreements and arrangements

1. Without prejudice to their application between Member States and third States and their transitional application according to Article 28, this Framework Decision shall, from 5 December 2011, replace the corresponding provisions of the following conventions applicable in relations between the Member States:

- The European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18 December 1997;
- The European Convention on the International Validity of Criminal Judgements of 28 May 1970;
- Title III, Chapter 5, of the Convention of 19 June 1990 implementing the Schengen Convention of 14 June 1985 on the gradual abolition of checks at common borders;
- The Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991.

2. Member States may continue to apply bilateral or multi-lateral agreements or arrangements in force after 27 November 2008, in so far as they allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sentences.

3. Member States may conclude bilateral or multilateral agreements or arrangements after 5 December 2008 in so far as such agreements or arrangements allow the provisions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sentences.

4. Member States shall by 5 March 2009, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in paragraph 3, within three months of signing it.

Article 27

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 28

Transitional provision

1. Requests received before 5 December 2011 shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date shall be governed by the rules adopted by Member States pursuant to this Framework Decision.

2. However, any Member State may, on the adoption of this Framework Decision, make a declaration indicating that, in cases where the final judgment has been issued before the date it specifies, it will as an issuing and an executing State, continue to apply the existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011. If such a declaration is made, those instruments shall apply in such cases in relation to all other Member States irrespective of whether or not they have made the same declaration. The date in question may not be later than 5 December 2011. The said declaration shall be published in the *Official Journal of the European Union*. It may be withdrawn at any time.

Article 29

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 5 December 2011.

2. 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 by the Commission, the Council shall, no later than 5 December 2012, 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 the Member States and the Commission of the notifications or declarations made pursuant to Article 4(7) and Article 23(1) or (3).

4. Without prejudice to Article 35(7) of the Treaty on European Union, a Member State which has experienced repeated difficulties in the application of Article 25 of this Framework Decision, which have not been solved through bilateral consultations, shall inform the Council and the Commission of its difficulties. The Commission shall, on the basis of this information and any other information available to it, establish a report, accompanied by any initiatives it may deem appropriate, with a view to resolving these difficulties.

5. By 5 December 2013, 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 any report from the Commission and any initiative, review, in particular Article 25, with a view to considering whether it is to be replaced by more specific provisions.

Article 30

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, 27 November 2008.

For the Council

The President

M. ALLIOT-MARIE

ANNEX I

CERTIFICATE

referred to in Article 4 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ⁽¹⁾

(a) * Issuing State:
 * Executing State:

(b) The court which delivered the judgment imposing the sentence that became final:
 Official name:
 The judgment was delivered on (give date: dd-mm-yyyy):
 The judgment became final on (give date: dd-mm-yyyy):
 Reference number of the judgment (if available):

(c) Information related to the authority that may be contacted for any question related to the certificate:

- Type of authority: Please tick the relevant box:
☐ Central authority
☐ Court
☐ Other authority
- Contact details of the authority indicated under point (c) 1:
 Official name:

 Address:

 Tel.: (country code) (area/city code)
 Fax: (country code) (area/city code)
 E-mail address (if available):
- Languages in which it is possible to communicate with the authority:
- Contact details of person(s) to be contacted to obtain additional information for the purposes of enforcement of the judgment or agreement on the transfer procedures (name, title/grade, telephone No, fax, e-mail address), if different from 2:

⁽¹⁾ This certificate must be written in, or translated into, one of the official languages of the executing Member State or any other language accepted by that State.

(d) Information regarding the person on whom the sentence has been imposed:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if available):

Date of birth:

Place of birth:

Last known addresses/residences:

Language(s) which the person understands (if known):

.....

The sentenced person is:

☐ in the issuing State and is to be transferred to the executing State.☐ in the executing State and enforcement is to take place in that State.

Additional information to be provided, if available and if appropriate:

1. Photo and fingerprints of the person, and/or contact details of the person to be contacted in order to obtain such information:

.....

2. Type and reference number of the sentenced person's identity card or passport:

.....

3. Type and reference number of the sentenced person's residence permit:

.....

4. Other relevant information about the sentenced person's family, social or professional ties to the executing State:

.....

.....

(e) Request for provisional arrest by the issuing State (where the sentenced person is in the executing State):

☐ The issuing State requests the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence.☐ The issuing State has already requested the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence. Please provide the name of the authority in the executing State that has taken the decision on the request to arrest the person (if applicable and available):

.....

.....

.....

(f) Relation to any earlier European Arrest Warrant (EAW):

- ☐ An EAW has been issued for the purpose of the execution of a custodial sentence or detention order and the executing Member State undertakes to execute the sentence or detention order (Article 4(6) of the EAW Framework Decision).

Date of issue of the EAW and, if available, reference number:

.....

Name of the authority that issued the EAW:

Date of decision to undertake execution and, if available, reference number:

.....

Name of the authority that issued the decision to undertake execution of the sentence:

.....

- ☐ An EAW has been issued for the purpose of prosecution of a person who is a national or resident of the executing State and the executing State has surrendered the person under the condition that the person is to be returned to the executing State in order to serve there the custodial sentence or detention order passed against him or her in the issuing Member State (Article 5(3) of the EAW Framework Decision).

Date of the decision to surrender the person:

Name of the authority that issued the decision to surrender:

Reference number of the decision, if available:

Date of the surrender of the person, if available:

(g) Reasons for forwarding the judgment and the certificate (if you have filled in Box (f), there is no need to fill in this box):

The judgment and the certificate are forwarded to the executing State because the issuing authority is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person and:

- ☐ (a) The executing State is the State of nationality of the sentenced person in which he or she lives.
- ☐ (b) The executing State is the State of nationality of the sentenced person, to which the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment. If the expulsion or deportation order is not included in the judgment, please provide the name of the authority that issued the order, the date of issue, and, if available, the reference number:
- ☐ (c) The executing State is a State, other than a State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that State.
- ☐ (d) The executing State has given a notification under Article 4(7) of the Framework Decision, and:
- ☐ it is confirmed that, to the knowledge of the competent authority of the issuing State, the sentenced person lives and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that state, or
- ☐ it is confirmed that the sentenced person is a national of the executing State.

(h) Judgment imposing the sentence:

1. The judgment covers offences in total.

Summary of facts and a description of the circumstances in which the offence(s) was (were) committed, including time and place; and the nature of the involvement of the sentenced person:

.....

.....

.....

Nature and legal classification of the offence(s) and the applicable statutory provisions on the basis of which the judgment was made:

.....

.....

.....

2. To the extent that the offence(s) identified under point (h) 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State, which are punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years, please confirm 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.

3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2 or if the judgment and the certificate is forwarded to the Member State, which has declared that it will verify the double criminality (Article 7(4) of the Framework Decision), please give a full description of the offence(s) concerned:

.....

.....

.....

(i) Status of the judgment imposing the sentence:

1. Indicate if the judgement was rendered in absentia:

- ☐ No, it was not.
- ☐ Yes, it was; it is confirmed that:
- ☐ the person was informed in person, or via a representative competent according to the national law of the issuing State, of the time and place of the proceedings which led to the judgment in absentia or
- ☐ the person has indicated to a competent authority that he/she does not contest the decision.

2. Details of the length of the sentence:

2.1. Total length of the sentence (in days):

2.2. The full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued (in days):

..... as per (...) (give date on which calculation was made: dd-mm-yyyy):

2.3. Number of days to be deducted from total length of the sentence for reasons other than the one referred to under 2.2 (e.g. amnesties, pardons or clemencies, etc. already granted with respect to the sentence):
..... as per (give date on which calculation was made: dd-mm-yyyy):

2.4. Sentence expiry date in the issuing State:

- ☐ Not applicable, because the person is currently not in custody
- ☐ The person is currently in custody and the sentence, under the law of the issuing State, would be fully served by (give date: dd-mm-yyyy) ⁽¹⁾:

3. Type of sentence:

- ☐ custodial sentence
- ☐ measure involving deprivation of liberty (please specify):
-

(j) Information related to early or conditional release:

1. Under the law of the issuing State the sentenced person is entitled to early or conditional release, having served:

- ☐ half the sentence
- ☐ two-thirds of the sentence
- ☐ another portion of the sentence (please indicate):

2. The competent authority of the issuing State requests to be informed of:

- ☐ The applicable provisions of the law of the executing State on early or conditional release of the sentenced person;
- ☐ The beginning and the end of the period of early or conditional release.

⁽¹⁾ Please insert here the date by which the sentence would be fully served (not taking into account the possibilities of any form of early and/or conditional release) if the person were to stay in the issuing State.

(k) Opinion of the sentenced person:

1. ☐ The sentenced person could not be heard because he/she is already in the executing State.
2. ☐ The sentenced person is in the issuing State and:
- a. ☐ has requested the forwarding of the judgment and the certificate
- ☐ consented to the forwarding of the judgment and the certificate
- ☐ did not consent to the forwarding of the judgment and the certificate (state reasons given by the sentenced person):
-
-
- b. ☐ Opinion of the sentenced person is attached.
- ☐ Opinion of the sentenced person was forwarded to the executing State on (give date: dd-mm-yyyy):
-

(l) Other circumstances relevant to the case (optional information):

.....

.....

(m) Final information:

The text of the judgment(s) is (are) attached to the certificate ⁽¹⁾.

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)

⁽¹⁾ The competent authority of the issuing State must attach all judgments related to the case which are necessary to have all the information on the final sentence to be enforced. Any available translation of the judgment(s) may also be attached.

ANNEX II

NOTIFICATION OF THE SENTENCED PERSON

You are hereby notified of the decision of (competent authority of the issuing State) to forward the judgment of (competent court of the issuing State) dated (date of judgment) (reference number; if available) to (executing State) for the purpose of its recognition and enforcement of the sentence imposed therein in accordance with the national law implementing Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

The enforcement of the sentence will be governed by the law of (executing State). The authorities of that State will be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

The competent authority of (executing State) has to deduct the full period of deprivation of liberty already served in connection with the sentence from the total duration of deprivation of liberty to be served. An adaptation of the sentence by the competent authority of (executing State) may take place only if it is incompatible with the law of that State in terms of its duration or nature. The adapted sentence must not aggravate the sentence passed in (issuing State) by its nature or duration.



COUNCIL FRAMEWORK DECISION 2008/947/JHA

of 27 November 2008

on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(1)(a) and (c) and Article 34(2)(b) thereof,

Having regard to the initiative of the Federal Republic of Germany and of the French Republic ⁽¹⁾,

Having regard to the Opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) The European Union has set itself the objective of developing an area of freedom, security and justice. This presupposes that there is an understanding of freedom, security and justice on the part of the Member States which is identical in its essential elements and based on the principles of freedom, democracy, respect for human rights and fundamental freedoms, as well as the rule of law.
- (2) The aim of police and judicial cooperation in the European Union is to provide a high degree of security for all citizens. One of the cornerstones for this is the principle of mutual recognition of judicial decisions, established in the conclusions of the European Council meeting in Tampere on 15 and 16 October 1999 and reaffirmed in the Hague Programme of 4 and 5 November 2004 for strengthening freedom, security and justice in the European Union ⁽³⁾. In the programme of measures of 29 November 2000 adopted for the purpose of implementing the principle of mutual recognition of decisions in criminal matters, the Council pronounced itself in favour of cooperation in the area of suspended sentences and parole.
- (3) Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ⁽⁴⁾ concerns the mutual recognition and enforcement of custodial sentences or measures involving deprivation of liberty. Further common rules are required, in particular where a non-custodial sentence involving the supervision of probation measures or alternative sanctions has been imposed in respect of a person who does not have his lawful and ordinary residence in the State of conviction.
- (4) The Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders has been ratified by only 12 Member States, with, in some cases, numerous reservations. The present Framework Decision provides for a more effective instrument because it is based on the principle of mutual recognition and all Member States participate.
- (5) This Framework Decision respects fundamental rights and adheres to the principles recognised in Article 6 of the Treaty on European Union, which are also expressed in the Charter of Fundamental Rights of the European Union, especially in Chapter VI thereof. No provision of this Framework Decision should be

⁽¹⁾ OJ C 147, 30.6.2007, p. 1.

⁽²⁾ Opinion of 25 October 2007 (not yet published in the Official Journal).

⁽³⁾ OJ C 53, 3.3.2005, p. 1.

⁽⁴⁾ OJ L 327, 5.12.2008, p. 27.

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interpreted as prohibiting refusal to recognise a judgment and/or supervise a probation measure or alternative sanction if there are objective reasons to believe that the probation measure or alternative sanction was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation or that this person might be disadvantaged for one of these reasons.

- (6) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to entitlement to due process, freedom of association, freedom of the press, freedom of expression in other media and freedom of religion.
- (7) The provisions of this Framework Decision should be applied in conformity with the right of the Union's citizens to move and reside freely within the territory of the Member States, pursuant to Article 18 of the Treaty establishing the European Community.
- (8) The aim of mutual recognition and supervision of suspended sentences, conditional sentences, alternative sanctions and decisions on conditional release is to enhance the prospects of the sentenced person's being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public.
- (9) There are several types of probation measures and alternative sanctions which are common among the Member States and which all Member States are in principle willing to supervise. The supervision of these types of measures and sanctions should be obligatory, subject to certain exceptions provided for in this Framework Decision. Member States may declare that, in addition, they are willing to supervise other types of probation measures and/or other types of alternative sanctions.
- (10) The probation measures and alternative sanctions that are, in principle, obligatory to supervise include, *inter alia*, orders relating to behaviour (such as an obligation to stop the consumption of alcohol), residence (such as an obligation to change residence for reasons of domestic violence), education and training (such as an obligation to follow a 'safe-driving course'), leisure activities (such as an obligation to cease playing or attending a certain sport) and limitations on or modalities of carrying out a professional activity (such as an obligation to seek a professional activity in a different working environment; this obligation does not include the supervision of compliance with any professional disqualifications imposed on the person as part of the sanction).
- (11) Where appropriate, electronic monitoring could be used with a view to supervising probation measures or alternative sanctions, in accordance with national law and procedures.
- (12) The Member State where the person concerned is sentenced may forward a judgment and, where applicable, a probation decision to the Member State where the sentenced person is lawfully and ordinarily resident with a view to the recognition thereof and to the supervision of probation measures or alternative sanctions contained therein.
- (13) The decision on whether to forward the judgment and, where applicable, the probation decision to another Member State should be taken in each individual case by the competent authority of the issuing Member State, taking into account, *inter alia*, the declarations made in accordance with Articles 5(4), 10(4) and 14(3).

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- (14) The judgment and, where applicable, the probation decision may also be forwarded to a Member State other than that where the sentenced person is residing, if the competent authority of that executing State, taking account of any conditions set out in the relevant declaration made by that State in accordance with this Framework Decision, consents to such forwarding. In particular, consent may be given, with a view to social rehabilitation, where the sentenced person, without losing his/her right of residence, intends to move to another Member State because he/she is granted an employment contract, if he/she is a family member of a lawful and ordinary resident person of that Member State, or if he/she intends to follow a study or training in that Member State, in accordance with Community law.

- (15) Member States should apply their own national law and procedures for the recognition of a judgment and, where applicable, a probation decision. In the case of a conditional sentence or alternative sanction where the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned, this could imply that having made the relevant declaration in accordance with this Framework Decision, Member States, when deciding to recognise, agree to supervise the probation measures or alternative sanctions concerned and to assume no other responsibility than just for taking the subsequent decisions consisting of the modification of obligations or instructions contained in the probation measure or alternative sanction, or modification of the duration of the probation period. Consequently, the recognition has, in such cases, no further effect than to enable the executing State to take those types of subsequent decisions.

- (16) A Member State may refuse to recognise a judgment and, where applicable, a probation decision, if the judgment concerned was issued against a person who has not been found guilty, such as in the case of a mentally ill person, and the judgment or, where applicable, the probation decision provides for medical/-therapeutic treatment which the executing State cannot supervise in respect of such persons under its national law.

- (17) The ground for refusal relating to territoriality should be applied only in exceptional cases and with a view to cooperating to the greatest extent possible under the provisions of this Framework Decision, while taking into account of the objectives thereof. Any decision to apply this ground for refusal should be based on a case-by-case analysis and on consultations between the competent authorities of the issuing and executing States.

- (18) If the probation measures or alternative sanctions include community service, then the executing State should be entitled to refuse to recognise the judgment and, where applicable, the probation decision if the community service would normally be completed in less than six months.

- (19) The form of the certificate is drafted in such a way so that essential elements of the judgment and, where applicable, of the probation decision are comprised in the certificate, which should be translated into the official language or one of the official languages of the executing State. The certificate should assist the competent authorities in the executing State in taking decisions under this Framework Decision, including decisions on recognition and assumption of responsibility for supervision of probation measures and alternative sanctions, decisions on adaptation of probation measures and alternative sanctions, and subsequent decisions in case, notably, of non-compliance with a probation measure or alternative sanction.

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- (20) In view of the principle of mutual recognition, on which this Framework Decision is based, issuing and executing Member States should promote direct contact between their competent authorities in the application of this Framework Decision.
- (21) All Member States should ensure that sentenced persons, in respect of whom decisions under this Framework Decision are taken, are subject to a set of legal rights and remedies in accordance with their national law, regardless of whether the competent authorities designated to take decisions under this Framework Decision are of a judicial or a non-judicial nature.
- (22) All subsequent decisions relating to a suspended sentence, a conditional sentence or an alternative sanction which result in the imposition of a custodial sentence or measure involving deprivation of liberty should be taken by a judicial authority.
- (23) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, personal data processed when implementing this Framework Decision should be protected in accordance with the principles laid down in that Convention.
- (24) Since the objectives of this Framework Decision, namely facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions in case of offenders who do not live in the State of conviction, cannot be sufficiently achieved by the Member States themselves in view of the cross-border nature of the situations involved and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community as applied by the second paragraph of Article 2 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty establishing the European Community, this Framework Decision does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Objectives and scope

1. This Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the State of conviction. With a view to achieving these objectives, this Framework Decision lays down rules according to which a Member State, other than the Member State in which the person concerned has been sentenced, recognises judgments and, where applicable, probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes all other decisions relating to that judgment, unless otherwise provided for in this Framework Decision.
2. This Framework Decision shall apply only to:
 - (a) the recognition of judgments and, where applicable, probation decisions;
 - (b) the transfer of responsibility for the supervision of probation measures and alternative sanctions;

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(c) all other decisions related to those under (a) and (b);
as described and provided for in this Framework Decision.

3. This Framework Decision shall not apply to:

- (a) the execution of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of Framework Decision 2008/909/JHA;
- (b) recognition and execution of financial penalties and confiscation orders which fall within the scope of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ⁽¹⁾ and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ⁽²⁾.

4. 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.

Article 2

Definitions

For the purposes of this Framework Decision:

1. 'judgment' shall mean a final decision or order of a court of the issuing State, establishing that a natural person has committed a criminal offence and imposing:
 - (a) a custodial sentence or measure involving deprivation of liberty, if a conditional release has been granted on the basis of that judgment or by a subsequent probation decision;
 - (b) a suspended sentence;
 - (c) a conditional sentence;
 - (d) an alternative sanction;
2. 'suspended sentence' shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;
3. 'conditional sentence' shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;
4. 'alternative sanction' shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction;
5. 'probation decision' shall mean a judgment or a final decision of a competent authority of the issuing State taken on the basis of such judgment:
 - (a) granting a conditional release; or
 - (b) imposing probation measures;

⁽¹⁾ OJ L 76, 22.3.2005, p. 16.

⁽²⁾ OJ L 328, 24.11.2006, p. 59.

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6. ‘conditional release’ shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures;
7. ‘probation measures’ shall mean obligations and instructions imposed by a competent authority on a natural person, in accordance with the national law of the issuing State, in connection with a suspended sentence, a conditional sentence or a conditional release;
8. ‘issuing State’ shall mean the Member State in which a judgment is delivered;
9. ‘executing State’ shall mean the Member State in which the probation measures and alternative sanctions are supervised following a decision in accordance with Article 8.

*Article 3***Designation of competent authorities**

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State.
2. Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures.
3. If a decision under Article 14(1)(b) or (c) is taken by a competent authority other than a court, the Member States shall ensure that, upon request of the person concerned, such decision may be reviewed by a court or by another independent court-like body.
4. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

*Article 4***Types of probation measures and alternative sanctions**

1. This Framework Decision shall apply to the following probation measures or alternative sanctions:
 - (a) an obligation for the sentenced person to inform a specific authority of any change of residence or working place;
 - (b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
 - (c) an obligation containing limitations on leaving the territory of the executing State;
 - (d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;
 - (e) an obligation to report at specified times to a specific authority;
 - (f) an obligation to avoid contact with specific persons;
 - (g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;

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- (h) an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation;
- (i) an obligation to carry out community service;
- (j) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;
- (k) an obligation to undergo therapeutic treatment or treatment for addiction.

2. Each Member State shall notify the General Secretariat of the Council, when implementing this Framework Decision, which probation measures and alternative sanctions, apart from those referred to in paragraph 1, it is prepared to supervise. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

*Article 5***Criteria for forwarding a judgment and, where applicable, a probation decision**

1. The competent authority of the issuing State may forward a judgment and, where applicable, a probation decision to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing, in cases where the sentenced person has returned or wants to return to that State.
2. The competent authority of the issuing State may, upon request of the sentenced person, forward the judgment and, where applicable, the probation decision to a competent authority of a Member State other than the Member State in which the sentenced person is lawfully and ordinarily residing, on condition that this latter authority has consented to such forwarding.
3. When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a judgment and, where applicable, a probation decision under paragraph 2.
4. Each Member State shall make a declaration to the General Secretariat of the Council of the determination made under paragraph 3. Member States may modify such a declaration at any time. The General Secretariat shall make the information received available to all Member States and to the Commission.

*Article 6***Procedure for forwarding a judgment and, where applicable, a probation decision**

1. When, in application of Article 5(1) or (2), the competent authority of the issuing State forwards a judgment and, where applicable, a probation decision to another Member State, it shall ensure that it is accompanied by a certificate, the standard form for which is set out in Annex I.
2. The judgment and, where applicable, the probation decision, together with the certificate referred to in paragraph 1, shall be forwarded by the competent authority of the issuing State directly to the competent authority of the executing State by any means which leaves a written record under conditions allowing the executing State to establish their authenticity. The original of the judgment and, where applicable, the probation decision, or certified copies thereof, as well as the original of the certificate, shall be sent to the competent authority of

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the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.

3. The certificate referred to in paragraph 1 shall be signed and its content certified as accurate by the competent authority of the issuing State.

4. Apart from the measures and sanctions referred to in Article 4(1), the certificate referred to in paragraph 1 of this Article shall include only such measures or sanctions as notified by the executing State in accordance with Article 4(2).

5. The competent authority of the issuing State shall forward the judgment and, where applicable, the probation decision, together with the certificate referred to in paragraph 1 only to one executing State at any one time.

6. If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network created by Council Joint Action 98/428/JHA ⁽¹⁾, in order to obtain the information from the executing State.

7. When an authority of the executing State which receives a judgment and, where applicable, a probation decision, together with the certificate referred to in paragraph 1, has no competence to recognise it and take the ensuing necessary measures for the supervision of the probation measure or alternative sanction, it shall, *ex officio*, forward it to the competent authority and shall without delay inform the competent authority of the issuing State accordingly by any means which leaves a written record.

Article 7

Consequences for the issuing State

1. Once the competent authority of the executing State has recognised the judgment and, where applicable, the probation decision forwarded to it and has informed the competent authority of the issuing State of such recognition, the issuing State shall no longer have competence in relation to the supervision of the probation measures or alternative sanctions imposed, nor to take subsequent measures referred to in Article 14(1).

2. The competence referred to in paragraph 1 shall revert to the issuing State:

- (a) as soon as its competent authority has notified withdrawal of the certificate referred to in Article 6(1), pursuant to Article 9(4), to the competent authority of the executing State;
- (b) in cases referred to in Article 14(3) in combination with 14(5); and
- (c) in cases referred to in Article 20.

Article 8

Decision of the executing State

1. The competent authority of the executing State shall recognise the judgment and, where applicable, the probation decision forwarded in accordance with Article 5 and following the procedure laid down in Article 6 and shall without delay take all necessary measures for the supervision of the probation measures or alternative sanctions, unless it decides to invoke one of the grounds for refusing recognition and supervision referred to in Article 11.

⁽¹⁾ OJ L 191, 7.7.1998, p. 4.

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2. The competent authority of the executing State may postpone the decision on recognition of the judgment and, where applicable, the probation decision in the situation where the certificate referred to in Article 6(1) is incomplete or obviously does not correspond to the judgment or, where applicable, the probation decision, until such reasonable deadline set for the certificate to be completed or corrected.

*Article 9***Adaptation of the probation measures or alternative sanctions**

1. If the nature or duration of the relevant probation measure or alternative sanction, or the duration of the probation period, are incompatible with the law of the executing State, the competent authority of that State may adapt them in line with the nature and duration of the probation measures and alternative sanctions, or duration of the probation period, which apply, under the law of the executing State, to equivalent offences. The adapted probation measure, alternative sanction or duration of the probation period shall correspond as far as possible to that imposed in the issuing State.

2. Where the probation measure, the alternative sanction or the probation period has been adapted because its duration exceeds the maximum duration provided for under the law of the executing State, the duration of the adapted probation measure, alternative sanction or probation period shall not be below the maximum duration provided for equivalent offences under the law of the executing State.

3. The adapted probation measure, alternative sanction or probation period shall not be more severe or longer than the probation measure, alternative sanction or probation period which was originally imposed.

4. Following receipt of the information referred to in Articles 16(2) or 18(5), the competent authority of the issuing State may decide to withdraw the certificate referred to in Article 6(1) provided that supervision in the executing State has not yet begun. In such cases, the decision shall be taken and communicated as soon as possible and within ten days of the receipt of the information.

*Article 10***Double criminality**

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, 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 of the judgment and, where applicable, the probation decision and to supervision of probation measures and alternative sanctions:

- 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,

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- 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 ⁽¹⁾,
- 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 provided for in paragraph 1 of this Article at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 26(1) of this Framework Decision, 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 of the judgment and, where applicable, the probation decision and the supervision of probation measures and of alternative sanctions subject to the condition that the judgment relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. Each Member State may, on the adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council, declare that it will not apply paragraph 1. Any such

⁽¹⁾ OJ C 316, 27.11.1995, p. 49.

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declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.

*Article 11***Grounds for refusing recognition and supervision**

1. The competent authority of the executing State may refuse to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures or alternative sanctions if:

- (a) the certificate referred to in Article 6(1) is incomplete or manifestly does not correspond to the judgment or to the probation decision and has not been completed or corrected within a reasonable period set by the competent authority of the executing State;
- (b) the criteria set forth in Articles 5(1), 5(2) or 6(4) are not met;
- (c) recognition of the judgment and assumption of responsibility for supervising probation measures or alternative sanctions would be contrary to the principle of *ne bis in idem*;
- (d) in a case referred to in Article 10(3) and, where the executing State has made a declaration under Article 10(4), in a case referred to in Article 10(1), the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of the judgment or, where applicable, the probation decision may not be refused on the grounds that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes or duties, customs and exchange regulations as the law of the issuing State;
- (e) the enforcement of the sentence is statute-barred according to the law of the executing State and relates to an act which falls within its competence according to that law;
- (f) there is immunity under the law of the executing State, which makes it impossible to supervise probation measures or alternative sanctions;
- (g) under the law of the executing State, the sentenced person cannot, owing to his or her age, be held criminally liable for the acts in respect of which the judgment was issued;

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- (h) according to the certificate provided for in Article 6, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:
 - (i) in due time:
 - either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,
 - and
 - was informed that a decision may be handed down if he or she does not appear for the trial;
 - or
 - (ii) being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person

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concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

- (iii) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

- expressly stated that he or she does not contest the decision,

or

- did not request a retrial or appeal within the applicable time frame;

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- (i) the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which, notwithstanding Article 9, the executing State is unable to supervise in view of its legal or health-care system;
- (j) the probation measure or alternative sanction is of less than six months' duration; or
- (k) the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

2. Any decision under paragraph 1(k) in relation to offences committed partly within the territory of the executing State, or in a place equivalent to its territory, shall be taken by the competent authority of the executing State only in exceptional circumstances and on a case-by case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.

3. In the cases referred to in paragraph 1(a), (b), (c), (h), (i), (j) and (k), before deciding not to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures and alternative sanctions, the competent authority of the executing State shall communicate, by appropriate means, with the competent authority of the issuing State and shall, as necessary, ask it to supply all additional information required without delay.

4. Where the competent authority of the executing State has decided to invoke a ground for refusal referred to in paragraph 1 of this Article, in particular the grounds referred to under paragraph 1(d) or (k), it may nevertheless, in agreement with the competent authority of the issuing State, decide to supervise the probation measures or alternative sanctions that are imposed in the judgment and, where applicable, the probation decision forwarded to it, without assuming the responsibility for taking any of the decisions referred to in Article 14(1)(a), (b) and (c).

*Article 12***Time limit**

1. The competent authority of the executing State shall decide as soon as possible, and within 60 days of receipt of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1), whether or not to recognise the judgment and, where applicable, the probation decision and assume responsibility for supervising the probation measures or alternative sanctions. It shall

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immediately inform the competent authority of the issuing State, by any means which leaves a written record, of its decision.

2. When in exceptional circumstances it is not possible for the competent authority of the executing State to comply with the time limit provided for in paragraph 1, it shall immediately inform the competent authority of the issuing State by any means, giving the reasons for the delay and indicating the estimated time needed for the final decision to be taken.

*Article 13***Governing law**

1. The supervision and application of probation measures and alternative sanctions shall be governed by the law of the executing State.

2. The competent authority of the executing State may supervise an obligation as referred to in Article 4(1)(h) by requiring the sentenced person to provide proof of compliance with an obligation to compensate for the prejudice caused by the offence.

*Article 14***Jurisdiction to take all subsequent decisions and governing law**

1. The competent authority of the executing State shall have jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence.

Such subsequent decisions include notably:

- (a) the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period;
- (b) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release; and
- (c) the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence.

2. The law of the executing State shall apply to decisions taken pursuant to paragraph 1 and to all subsequent consequences of the judgment including, where applicable, the enforcement and, if necessary, the adaptation of the custodial sentence or measure involving deprivation of liberty.

3. Each Member State may, at the time of adoption of this Framework Decision or at a later stage, declare that as an executing State it will refuse to assume the responsibility provided for in paragraph 1(b) and (c) in cases or categories of cases to be specified by that Member State, in particular:

- (a) in cases relating to an alternative sanction, where the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned;
- (b) in cases relating to a conditional sentence;
- (c) in cases where the judgment relates to acts which do not constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. When a Member State makes use of any of the possibilities referred to in paragraph 3, the competent authority of the executing

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State shall transfer jurisdiction back to the competent authority of the issuing State in case of non-compliance with a probation measure or alternative sanction if the competent authority of the executing State is of the view that a subsequent decision as referred to in paragraph 1(b) or (c) needs to be taken.

5. In the cases referred to in paragraph 3 of this Article, the obligation to recognise the judgment and, where applicable, the probation decision, as well as the obligation to take without delay all necessary measures for the supervision of the probation measures or alternative sanctions, as referred to in Article 8(1), shall not be affected.

6. Declarations as mentioned in paragraph 3 shall be made by notification to the General Secretariat of the Council. Any such declaration may be withdrawn at any time. The declarations and withdrawals mentioned in this Article shall be published in the *Official Journal of the European Union*.

Article 15

Consultations between competent authorities

Where and whenever it is felt appropriate, competent authorities of the issuing State and of the executing State may consult each other with a view to facilitating the smooth and efficient application of this Framework Decision.

Article 16

Obligations of the authorities involved where the executing State has jurisdiction for subsequent decisions

1. 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, of all decisions on the:

- (a) modification of the probation measure or alternative sanction;
- (b) revocation of the suspension of the execution of the judgment or revocation of the decision on conditional release;
- (c) enforcement of a custodial sentence or measure involving deprivation of liberty, because of non-compliance with a probation measure or alternative sanction;
- (d) lapsing of the probation measure or alternative sanction.

2. If so requested by the competent authority of the issuing State, the competent authority of the executing State shall inform it of the maximum duration of deprivation of liberty that is foreseen in the national law of the executing State for the offence which gave rise to the judgment and that could be imposed on the sentenced person in case of breach of the probation measure or alternative sanction. This information shall be provided immediately after reception of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1).

3. The competent authority of the issuing State shall immediately inform the competent authority of the executing State, by any means which leaves a written record, of any circumstances or findings which, in its opinion, could entail one or more of the decisions referred to in paragraph 1(a), (b) or (c) being taken.



Article 17

Obligations of the authorities involved where the issuing State has jurisdiction for subsequent decisions

1. If the competent authority of the issuing State has jurisdiction for the subsequent decisions mentioned in Article 14(1) pursuant to the application of Article 14(3), the competent authority of the executing State shall immediately notify it of:

- (a) any finding which is likely to result in revocation of the suspension of the execution of the judgment or revocation of the decision on conditional release;
- (b) any finding which is likely to result in the imposition of a custodial sentence or measure involving deprivation of liberty;
- (c) all further facts and circumstances which the competent authority of the issuing State requests to be provided and which are essential in order to allow it to take subsequent decisions in accordance with its national law.

2. When a Member State has made use of the possibility referred to in Article 11(4), the competent authority of that State shall inform the competent authority of the issuing State in case of non-compliance by the sentenced person with a probation measure or alternative sanction.

3. Notice of the findings mentioned in paragraph 1(a) and (b) and in paragraph 2 shall be given using the standard form set out in Annex II. Notice of the facts and circumstances mentioned in paragraph 1(c) shall be given by any means which leaves a written record, including, where possible, through the form set out in Annex II.

4. If, under the national law of the issuing State, the sentenced person must be given a judicial hearing before a decision is taken on the imposition of a sentence, this requirement may be met by following *mutatis mutandis* the procedure contained in instruments of international or European Union law that provide the possibility of using video links for hearing persons.

5. The competent authority of the issuing State shall without delay inform the competent authority of the executing State of all decisions on:

- (a) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release;
- (b) the enforcement of the custodial sentence or measure involving deprivation of liberty, where such measure is contained in the judgment;
- (c) the imposition of a custodial sentence or measure involving deprivation of liberty, where such measure is not contained in the judgment;
- (d) the lapsing of the probation measure or alternative sanction.

Article 18

Information from the executing State in all cases

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 of:

- 1. the transmission of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1) to the competent authority responsible for its recognition and for taking the ensuing measures for the supervision of the probation measures or alternative sanctions in accordance with Article 6(7);

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2. the fact that it is in practice impossible to supervise the probation measures or alternative sanctions for the reason that, after transmission of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1) to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case the executing State shall be under no obligation to supervise the probation measures or alternative sanctions;
3. the final decision to recognise the judgment and, where applicable, the probation decision and to assume responsibility for supervising the probation measures or alternative sanctions;
4. any decision not to recognise the judgment and, where applicable, the probation decision and to assume responsibility for supervising the probation measures or alternative sanctions in accordance with Article 11, together with the reasons for the decision;
5. any decision to adapt the probation measures or alternative sanctions in accordance with Article 9, together with the reasons for the decision;
6. any decision on amnesty or pardon which leads to not supervising the probation measures or alternative sanctions for the reasons referred to in Article 19(1), together, where applicable, with the reasons for the decision.

*Article 19***Amnesty, pardon, review of judgment**

1. An amnesty or pardon may be granted by the issuing State and also by the executing State.
2. Only the issuing State may decide on applications for review of the judgment which forms the basis for the probation measures or alternative sanctions to be supervised under this Framework Decision.

*Article 20***End of jurisdiction of the executing State**

1. If the sentenced person absconds or no longer has a lawful and ordinary residence in the executing State, the competent authority of the executing State may transfer the jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State.
2. If new criminal proceedings against the person concerned are taking place in the issuing State, the competent authority of the issuing State may request the competent authority of the executing State to transfer jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State. In such a case, the competent authority of the executing State may transfer jurisdiction back to the competent authority of the issuing State.
3. When, in application of this Article, jurisdiction is transferred back to the issuing State, the competent authority of that State shall resume jurisdiction. For the further supervision of the probation measures or alternative sanctions, the competent authority of the issuing State shall take account of the duration and degree of compliance with the probation measures or alternative sanctions in the executing State, as well as of any decisions taken by the executing State in accordance with Article 16(1).



Article 21

Languages

The certificate referred to in Article 6(1) shall be translated into the official language or one of the official languages of the executing State. Any Member State may, on adoption of this Framework Decision or later, 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 Union.

Article 22

Costs

Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

Article 23

Relationship with other agreements and arrangements

1. This Framework Decision shall, in relations between the Member States, from 6 December 2011, replace the corresponding provisions of the Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.
2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force after 6 December 2008, in so far as they allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the supervision of probation measures and alternative sanctions.
3. Member States may conclude bilateral or multilateral agreements or arrangements after 6 December 2008, in so far as such agreements or arrangements allow the provisions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the supervision of probation measures and alternative sanctions.
4. Member States shall, by 6 March 2009, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in paragraph 3, within three months of signing it.

Article 24

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 25

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 6 December 2011.
2. 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.

*Article 26***Review**

1. By 6 December 2014, the Commission shall draw up a report on the basis of the information received from Member States under Article 25(2).
2. On the basis of this report, the Council shall assess:
 - (a) the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision; and
 - (b) the application of this Framework Decision.
3. The report shall be accompanied, if necessary, by legislative proposals.

*Article 27***Entry into force**

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.



ANNEX I

CERTIFICATE

referred to in Article 6 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ⁽¹⁾

(a) Issuing State:
Executing State:

(b) Court which issued the judgment imposing a suspended sentence, conditional sentence or alternative sanction
Official name:
Please indicate whether any additional information concerning the judgment is to be obtained from:
☐ the court specified above
☐ the central authority; if you ticked this box, please provide the official name of this central authority:
☐ another competent authority; if you ticked this box, please provide the official name of this authority:
Contact details of the court/central authority/other competent authority
Address:
Tel. (country code) (area/city code)
Fax (country code) (area/city code)
Details of the person(s) to be contacted
Surname:
Forename(s):
Position (title/grade):
Tel. (country code) (area/city code)
Fax (country code) (area/city code)
E-mail (if any):
Languages that may be used for communication:

(c) Authority which issued the probation decision (where applicable)
Official name:
Please indicate whether any additional information concerning the probation decision is to be obtained from:
☐ the authority specified above
☐ the central authority; if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b):
☐ another competent authority; if you ticked this box, please provide the official name of this authority:
Contact details of the authority, the central authority or other competent authority, if this information has not yet been provided under point (b)
Address:
Tel. (country code) (area/city code)
Fax (country code) (area/city code)
Details of the person(s) to be contacted
Surname:
Forename(s):
Position (title/grade):
Tel. (country code) (area/city code)
Fax (country code) (area/city code)
E-mail (if any):
Languages that may be used for communication:

⁽¹⁾ This certificate must be written in, or translated into, the official language or one of the official languages of the executing Member State, or any other official language of the institutions of the European Union that is accepted by that State.



(d) Competent authority for supervision of the probation measures or alternative sanctions

Authority which has competence in the issuing State for supervising the probation measures or alternative sanctions:

- ☐ the court/authority referred to in point (b)
- ☐ the authority referred to in point (c)
- ☐ another authority (please provide its official name):

Please indicate which authority is to be contacted if any additional information is to be obtained for the purposes of supervising the probation measures or alternative sanctions:

- ☐ the authority specified above
- ☐ the central authority; if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b) or (c):

Contact details of the authority, or of the central authority if this information has not yet been provided under point (b) or (c)

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(e) Information regarding the natural person in respect of whom the judgment and, where applicable, the probation decision has been issued

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Last known addresses/residences (if any):

- in the issuing State:
- in the executing State:
- elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

- Type and number of the identity document(s) of the sentenced person (ID card, passport):
- Type and number of the residence permit of the sentenced person in the executing State:

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- (f) Information regarding the Member State to which the judgment and, where applicable, the probation decision, together with the certificate are being forwarded

The judgment and, where applicable, the probation decision, together with the certificate are being forwarded to the executing State indicated in point (a) for the following reason:

- ☐ the sentenced person has his/her lawful and ordinary residence in the executing State and has returned or wants to return to that State
- ☐ the sentenced person has moved or intends to move to the executing State for the following reason(s) (please tick the relevant box):
- ☐ the sentenced person has been granted an employment contract in the executing State;
- ☐ the sentenced person is a family member of a lawful and ordinary resident person of the executing State;
- ☐ the sentenced person intends to follow a study or training in the executing State;
- ☐ other reason (please specify):

- (g) Indications regarding the judgment and, where applicable, the probation decision

The judgment was issued on (date: DD-MM-YYYY):

Where applicable, the probation decision was issued on (date: DD-MM-YYYY):

The judgment became final on (date: DD-MM-YYYY):

Where applicable, the probation decision became final on (date: DD-MM-YYYY):

The execution of the judgment started on (if different from the date on which the judgment became final) (date: DD-MM-YYYY):

Where applicable, the execution of the probation decision started on (if different from the date on which the probation decision became final) (date: DD-MM-YYYY):

File reference of the judgment (if available):

Where applicable, file reference of the probation decision (if available):

1. The judgment covers in total: offences.

Summary of the facts and description of the circumstances in which the offence(s) was (were) committed, including the time and place, and the nature of the involvement of the sentenced person:

Nature and legal classification of the offence(s) and applicable statutory provisions on the basis of which the judgment was issued:

2. If the offence(s) referred to in point 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State which are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least three years, please confirm 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 of currency, including of the euro
- ☐ computer-related crime
- ☐ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties

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- ☐ 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

3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2 or if the judgment and, where applicable, the probation decision, as well as the certificate are forwarded to a Member State, which has declared that it will verify the double criminality (Article 10(4) of the Framework Decision), please give a full description of the offence(s) concerned:

- ⁽¹⁾ (h) Indicate if the person appeared in person at the trial resulting in the decision:
1. ☐ Yes, the person appeared in person at the trial resulting in the decision.
 2. ☐ No, the person did not appear in person at the trial resulting in the decision.
 3. If you have ticked the box under point 2, please confirm the existence of one of the following:
 - ☐ 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;
 - OR
 - ☐ 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;
 - OR
 - ☐ 3.2. being aware of the scheduled trial the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;
 - OR
 - ☐ 3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and
 - ☐ the person expressly stated that he or she does not contest this decision,
 - OR
 - ☐ the person did not request a retrial or appeal within the applicable time frame.
 4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....
 ◀



(i) Indications regarding the nature of the sentence imposed by the judgment or, where applicable, the probation decision

1. This certificate is related to a:

- ☐ suspended sentence (= custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed)
- ☐ conditional sentence:
 - ☐ the imposition of a sentence has been conditionally deferred by imposing one or more probation measures
 - ☐ one or more probation measures have been imposed instead of a custodial sentence or measure involving deprivation of liberty
- ☐ alternative sanction:
 - ☐ the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned
 - ☐ the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned
- ☐ conditional release (= early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served)

2. Additional information

2.1. The sentenced person was in pre-trial detention during the following period:

2.2. The person was serving a custodial sentence or measure involving deprivation of liberty during the following period (to be filled in only in case of conditional release):

2.3. In case of a suspended sentence

- duration of the custodial period imposed that was conditionally suspended:
- duration of the period of suspension:

2.4. If known, length of deprivation of liberty to be served upon

- revocation of suspension of the execution of the judgment;
- revocation of the decision on conditional release; or
- breach of the alternative sanction (if the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of such a breach):

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(j) Indications regarding the duration and nature of the probation measure(s) or alternative sanction(s)

1. Total duration of the supervision of the probation measure(s) or alternative sanction(s):
2. Where applicable, duration of each individual obligation imposed as part of the probation measure(s) or alternative sanction(s):
3. Duration of the total probation period (if different from the duration indicated under point 1:
4. Nature of the probation measure(s) or alternative sanction(s) (it is possible to tick multiple boxes):
 - ☐ an obligation for the sentenced person to inform a specific authority of any change of residence or working place
 - ☐ an obligation not to enter certain localities, places or defined areas in the issuing or executing State
 - ☐ an obligation containing limitations on leaving the territory of the executing State
 - ☐ instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
 - ☐ an obligation to report at specified times to a specific authority
 - ☐ an obligation to avoid contact with specific persons
 - ☐ an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
 - ☐ an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation
 - ☐ an obligation to carry out community service
 - ☐ an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
 - ☐ an obligation to undergo therapeutic treatment or treatment for addiction
 - ☐ other measures that the executing State is prepared to supervise in accordance with a notification under Article 4(2) of the Framework Decision
5. Please provide a detailed description of the probation measure(s) or alternative sanction(s) indicated under 4:
6. Please tick the following box if relevant probation reports are available:
 - ☐ If you ticked this box, please indicate in which language(s) these reports are drawn up ⁽¹⁾:

(k) Other circumstances relevant to the case, including relevant information on previous convictions or specific reasons for the imposition of the probation measure(s) or alternative sanction(s) (optional information):

The text of the judgment and, where applicable, the probation decision is attached to the certificate.

Signature of the authority issuing the certificate and/or of its representative to confirm the accuracy of the content of the certificate:

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

⁽¹⁾ The issuing State is not obliged to provide translations of these reports.



ANNEX II

FORM

referred to in Article 17 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

REPORT OF A BREACH OF A PROBATION MEASURE OR ALTERNATIVE SANCTION, OR OF ANY OTHER FINDINGS

(a) Details of the identity of the person subject to supervision:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the judgment and, where applicable, the probation decision concerning the suspended sentence, conditional sentence, alternative sanction or conditional release:

Judgment issued on:

File reference (if any):

Where applicable, probation decision issued on:

File reference (if any):

Court which issued the judgment

Official name:

Address:

Where applicable, authority which issued the probation decision

Official name:

Address:

Certificate issued on:

Authority which issued the certificate:

File reference (if any):

(c) Details of the authority responsible for supervising the probation measure(s) or alternative sanction(s):

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. (country code) (area code)

Fax (country code) (area code)

E-mail:

▼B**(d) Probation measure(s) or alternative sanction(s):**

The person referred to in (a) is in breach of the following obligation(s) or instruction(s):

- ☐ an obligation for the sentenced person to inform a specific authority of any change of residence or working place
- ☐ an obligation not to enter certain localities, places or defined areas in the issuing or executing State
- ☐ an obligation containing limitations on leaving the territory of the executing State
- ☐ instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
- ☐ an obligation to report at specified times to a specific authority
- ☐ an obligation to avoid contact with specific persons
- ☐ an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
- ☐ an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation
- ☐ an obligation to carry out community service
- ☐ an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
- ☐ an obligation to undergo therapeutic treatment or treatment for addiction
- ☐ other measures:

(e) Description of the breach(es) (place, date and specific circumstances):**(f) Other findings (if any)**

Description of the findings:

(g) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2008/947/JHA

of 27 November 2008

**on the application of the principle of mutual recognition to judgments and probation decisions with
a view to the supervision of probation measures and alternative sanctions**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(1)(a) and (c) and Article 34(2)(b) thereof,

Having regard to the initiative of the Federal Republic of Germany and of the French Republic ⁽¹⁾,

Having regard to the Opinion of the European Parliament ⁽²⁾,

Whereas:

(1) The European Union has set itself the objective of developing an area of freedom, security and justice. This presupposes that there is an understanding of freedom, security and justice on the part of the Member States which is identical in its essential elements and based on the principles of freedom, democracy, respect for human rights and fundamental freedoms, as well as the rule of law.

(2) The aim of police and judicial cooperation in the European Union is to provide a high degree of security for all citizens. One of the cornerstones for this is the

principle of mutual recognition of judicial decisions, established in the conclusions of the European Council meeting in Tampere on 15 and 16 October 1999 and reaffirmed in the Hague Programme of 4 and 5 November 2004 for strengthening freedom, security and justice in the European Union ⁽³⁾. In the programme of measures of 29 November 2000 adopted for the purpose of implementing the principle of mutual recognition of decisions in criminal matters, the Council pronounced itself in favour of cooperation in the area of suspended sentences and parole.

(3) Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ⁽⁴⁾ concerns the mutual recognition and enforcement of custodial sentences or measures involving deprivation of liberty. Further common rules are required, in particular where a non-custodial sentence involving the supervision of probation measures or alternative sanctions has been imposed in respect of a person who does not have his lawful and ordinary residence in the State of conviction.

(4) The Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders has been ratified by only 12 Member States, with, in some cases, numerous reservations. The present Framework Decision provides for a more effective instrument because it is based on the principle of mutual recognition and all Member States participate.

⁽¹⁾ OJ C 147, 30.6.2007, p. 1.

⁽²⁾ Opinion of 25 October 2007 (not yet published in the Official Journal).

⁽³⁾ OJ C 53, 3.3.2005, p. 1.

⁽⁴⁾ OJ L 327, 5.12.2008, p. 27.

- (5) This Framework Decision respects fundamental rights and adheres to the principles recognised in Article 6 of the Treaty on European Union, which are also expressed in the Charter of Fundamental Rights of the European Union, especially in Chapter VI thereof. No provision of this Framework Decision should be interpreted as prohibiting refusal to recognise a judgment and/or supervise a probation measure or alternative sanction if there are objective reasons to believe that the probation measure or alternative sanction was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation or that this person might be disadvantaged for one of these reasons.
- (6) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to entitlement to due process, freedom of association, freedom of the press, freedom of expression in other media and freedom of religion.
- (7) The provisions of this Framework Decision should be applied in conformity with the right of the Union's citizens to move and reside freely within the territory of the Member States, pursuant to Article 18 of the Treaty establishing the European Community.
- (8) The aim of mutual recognition and supervision of suspended sentences, conditional sentences, alternative sanctions and decisions on conditional release is to enhance the prospects of the sentenced person's being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public.
- (9) There are several types of probation measures and alternative sanctions which are common among the Member States and which all Member States are in principle willing to supervise. The supervision of these types of measures and sanctions should be obligatory, subject to certain exceptions provided for in this Framework Decision. Member States may declare that, in addition, they are willing to supervise other types of probation measures and/or other types of alternative sanctions.
- (10) The probation measures and alternative sanctions that are, in principle, obligatory to supervise include, *inter alia*, orders relating to behaviour (such as an obligation to stop the consumption of alcohol), residence (such as an obligation to change residence for reasons of domestic violence), education and training (such as an obligation to follow a 'safe-driving course'), leisure activities (such as an obligation to cease playing or attending a certain sport) and limitations on or modalities of carrying out a professional activity (such as an obligation to seek a professional activity in a different working environment; this obligation does not include the supervision of compliance with any professional disqualifications imposed on the person as part of the sanction).
- (11) Where appropriate, electronic monitoring could be used with a view to supervising probation measures or alternative sanctions, in accordance with national law and procedures.
- (12) The Member State where the person concerned is sentenced may forward a judgment and, where applicable, a probation decision to the Member State where the sentenced person is lawfully and ordinarily resident with a view to the recognition thereof and to the supervision of probation measures or alternative sanctions contained therein.
- (13) The decision on whether to forward the judgment and, where applicable, the probation decision to another Member State should be taken in each individual case by the competent authority of the issuing Member State, taking into account, *inter alia*, the declarations made in accordance with Articles 5(4), 10(4) and 14(3).
- (14) The judgment and, where applicable, the probation decision may also be forwarded to a Member State other than that where the sentenced person is residing, if the competent authority of that executing State, taking account of any conditions set out in the relevant declaration made by that State in accordance with this Framework Decision, consents to such forwarding. In particular, consent may be given, with a view to social rehabilitation, where the sentenced person, without losing his/her right of residence, intends to move to another Member State because he/she is granted an employment contract, if he/she is a family member of a lawful and ordinary resident person of that Member State, or if he/she intends to follow a study or training in that Member State, in accordance with Community law.
- (15) Member States should apply their own national law and procedures for the recognition of a judgment and, where applicable, a probation decision. In the case of a conditional sentence or alternative sanction where the

judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned, this could imply that having made the relevant declaration in accordance with this Framework Decision, Member States, when deciding to recognise, agree to supervise the probation measures or alternative sanctions concerned and to assume no other responsibility than just for taking the subsequent decisions consisting of the modification of obligations or instructions contained in the probation measure or alternative sanction, or modification of the duration of the probation period. Consequently, the recognition has, in such cases, no further effect than to enable the executing State to take those types of subsequent decisions.

- (16) A Member State may refuse to recognise a judgment and, where applicable, a probation decision, if the judgment concerned was issued against a person who has not been found guilty, such as in the case of a mentally ill person, and the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which the executing State cannot supervise in respect of such persons under its national law.
- (17) The ground for refusal relating to territoriality should be applied only in exceptional cases and with a view to cooperating to the greatest extent possible under the provisions of this Framework Decision, while taking into account of the objectives thereof. Any decision to apply this ground for refusal should be based on a case-by-case analysis and on consultations between the competent authorities of the issuing and executing States.
- (18) If the probation measures or alternative sanctions include community service, then the executing State should be entitled to refuse to recognise the judgment and, where applicable, the probation decision if the community service would normally be completed in less than six months.
- (19) The form of the certificate is drafted in such a way so that essential elements of the judgment and, where applicable, of the probation decision are comprised in the certificate, which should be translated into the official language or one of the official languages of the executing State. The certificate should assist the competent authorities in the executing State in taking decisions under this Framework Decision, including decisions on recognition and assumption of responsibility for supervision of probation measures and alternative sanctions, decisions on adaptation of probation

measures and alternative sanctions, and subsequent decisions in case, notably, of non-compliance with a probation measure or alternative sanction.

- (20) In view of the principle of mutual recognition, on which this Framework Decision is based, issuing and executing Member States should promote direct contact between their competent authorities in the application of this Framework Decision.
- (21) All Member States should ensure that sentenced persons, in respect of whom decisions under this Framework Decision are taken, are subject to a set of legal rights and remedies in accordance with their national law, regardless of whether the competent authorities designated to take decisions under this Framework Decision are of a judicial or a non-judicial nature.
- (22) All subsequent decisions relating to a suspended sentence, a conditional sentence or an alternative sanction which result in the imposition of a custodial sentence or measure involving deprivation of liberty should be taken by a judicial authority.
- (23) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, personal data processed when implementing this Framework Decision should be protected in accordance with the principles laid down in that Convention.
- (24) Since the objectives of this Framework Decision, namely facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions in case of offenders who do not live in the State of conviction, cannot be sufficiently achieved by the Member States themselves in view of the cross-border nature of the situations involved and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community as applied by the second paragraph of Article 2 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty establishing the European Community, this Framework Decision does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Objectives and scope

1. This Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the State of conviction. With a view to achieving these objectives, this Framework Decision lays down rules according to which a Member State, other than the Member State in which the person concerned has been sentenced, recognises judgments and, where applicable, probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes all other decisions relating to that judgment, unless otherwise provided for in this Framework Decision.

2. This Framework Decision shall apply only to:

- (a) the recognition of judgments and, where applicable, probation decisions;
- (b) the transfer of responsibility for the supervision of probation measures and alternative sanctions;
- (c) all other decisions related to those under (a) and (b);

as described and provided for in this Framework Decision.

3. This Framework Decision shall not apply to:

- (a) the execution of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of Framework Decision 2008/909/JHA;
- (b) recognition and execution of financial penalties and confiscation orders which fall within the scope of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ⁽¹⁾ and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ⁽²⁾.

4. 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.

Article 2

Definitions

For the purposes of this Framework Decision:

1. 'judgment' shall mean a final decision or order of a court of the issuing State, establishing that a natural person has committed a criminal offence and imposing:

- (a) a custodial sentence or measure involving deprivation of liberty, if a conditional release has been granted on the basis of that judgment or by a subsequent probation decision;

- (b) a suspended sentence;

- (c) a conditional sentence;

- (d) an alternative sanction;

2. 'suspended sentence' shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

3. 'conditional sentence' shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

4. 'alternative sanction' shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction;

5. 'probation decision' shall mean a judgment or a final decision of a competent authority of the issuing State taken on the basis of such judgment:

- (a) granting a conditional release; or

- (b) imposing probation measures;

⁽¹⁾ OJ L 76, 22.3.2005, p. 16.

⁽²⁾ OJ L 328, 24.11.2006, p. 59.

6. 'conditional release' shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures;
7. 'probation measures' shall mean obligations and instructions imposed by a competent authority on a natural person, in accordance with the national law of the issuing State, in connection with a suspended sentence, a conditional sentence or a conditional release;
8. 'issuing State' shall mean the Member State in which a judgment is delivered;
9. 'executing State' shall mean the Member State in which the probation measures and alternative sanctions are supervised following a decision in accordance with Article 8.
- (b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
 - (c) an obligation containing limitations on leaving the territory of the executing State;
 - (d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;
 - (e) an obligation to report at specified times to a specific authority;
 - (f) an obligation to avoid contact with specific persons;
 - (g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;
 - (h) an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation;
 - (i) an obligation to carry out community service;
 - (j) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;
 - (k) an obligation to undergo therapeutic treatment or treatment for addiction.

Article 3

Designation of competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State.
 2. Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures.
 3. If a decision under Article 14(1)(b) or (c) is taken by a competent authority other than a court, the Member States shall ensure that, upon request of the person concerned, such decision may be reviewed by a court or by another independent court-like body.
 4. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.
2. Each Member State shall notify the General Secretariat of the Council, when implementing this Framework Decision, which probation measures and alternative sanctions, apart from those referred to in paragraph 1, it is prepared to supervise. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

Article 4

Types of probation measures and alternative sanctions

1. This Framework Decision shall apply to the following probation measures or alternative sanctions:
 - (a) an obligation for the sentenced person to inform a specific authority of any change of residence or working place;

Article 5

Criteria for forwarding a judgment and, where applicable, a probation decision

1. The competent authority of the issuing State may forward a judgment and, where applicable, a probation decision to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing, in cases where the sentenced person has returned or wants to return to that State.

2. The competent authority of the issuing State may, upon request of the sentenced person, forward the judgment and, where applicable, the probation decision to a competent authority of a Member State other than the Member State in which the sentenced person is lawfully and ordinarily residing, on condition that this latter authority has consented to such forwarding.

3. When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a judgment and, where applicable, a probation decision under paragraph 2.

4. Each Member State shall make a declaration to the General Secretariat of the Council of the determination made under paragraph 3. Member States may modify such a declaration at any time. The General Secretariat shall make the information received available to all Member States and to the Commission.

Article 6

Procedure for forwarding a judgment and, where applicable, a probation decision

1. When, in application of Article 5(1) or (2), the competent authority of the issuing State forwards a judgment and, where applicable, a probation decision to another Member State, it shall ensure that it is accompanied by a certificate, the standard form for which is set out in Annex I.

2. The judgment and, where applicable, the probation decision, together with the certificate referred to in paragraph 1, shall be forwarded by the competent authority of the issuing State directly to the competent authority of the executing State by any means which leaves a written record under conditions allowing the executing State to establish their authenticity. The original of the judgment and, where applicable, the probation decision, or certified copies thereof, as well as the original of the certificate, shall be sent to the competent authority of the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.

3. The certificate referred to in paragraph 1 shall be signed and its content certified as accurate by the competent authority of the issuing State.

4. Apart from the measures and sanctions referred to in Article 4(1), the certificate referred to in paragraph 1 of this

Article shall include only such measures or sanctions as notified by the executing State in accordance with Article 4(2).

5. The competent authority of the issuing State shall forward the judgment and, where applicable, the probation decision, together with the certificate referred to in paragraph 1 only to one executing State at any one time.

6. If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network created by Council Joint Action 98/428/JHA ⁽¹⁾, in order to obtain the information from the executing State.

7. When an authority of the executing State which receives a judgment and, where applicable, a probation decision, together with the certificate referred to in paragraph 1, has no competence to recognise it and take the ensuing necessary measures for the supervision of the probation measure or alternative sanction, it shall, *ex officio*, forward it to the competent authority and shall without delay inform the competent authority of the issuing State accordingly by any means which leaves a written record.

Article 7

Consequences for the issuing State

1. Once the competent authority of the executing State has recognised the judgment and, where applicable, the probation decision forwarded to it and has informed the competent authority of the issuing State of such recognition, the issuing State shall no longer have competence in relation to the supervision of the probation measures or alternative sanctions imposed, nor to take subsequent measures referred to in Article 14(1).

2. The competence referred to in paragraph 1 shall revert to the issuing State:

(a) as soon as its competent authority has notified withdrawal of the certificate referred to in Article 6(1), pursuant to Article 9(4), to the competent authority of the executing State;

(b) in cases referred to in Article 14(3) in combination with 14(5); and

(c) in cases referred to in Article 20.

⁽¹⁾ OJ L 191, 7.7.1998, p. 4.

*Article 8***Decision of the executing State**

1. The competent authority of the executing State shall recognise the judgment and, where applicable, the probation decision forwarded in accordance with Article 5 and following the procedure laid down in Article 6 and shall without delay take all necessary measures for the supervision of the probation measures or alternative sanctions, unless it decides to invoke one of the grounds for refusing recognition and supervision referred to in Article 11.

2. The competent authority of the executing State may postpone the decision on recognition of the judgment and, where applicable, the probation decision in the situation where the certificate referred to in Article 6(1) is incomplete or obviously does not correspond to the judgment or, where applicable, the probation decision, until such reasonable deadline set for the certificate to be completed or corrected.

*Article 9***Adaptation of the probation measures or alternative sanctions**

1. If the nature or duration of the relevant probation measure or alternative sanction, or the duration of the probation period, are incompatible with the law of the executing State, the competent authority of that State may adapt them in line with the nature and duration of the probation measures and alternative sanctions, or duration of the probation period, which apply, under the law of the executing State, to equivalent offences. The adapted probation measure, alternative sanction or duration of the probation period shall correspond as far as possible to that imposed in the issuing State.

2. Where the probation measure, the alternative sanction or the probation period has been adapted because its duration exceeds the maximum duration provided for under the law of the executing State, the duration of the adapted probation measure, alternative sanction or probation period shall not be below the maximum duration provided for equivalent offences under the law of the executing State.

3. The adapted probation measure, alternative sanction or probation period shall not be more severe or longer than the probation measure, alternative sanction or probation period which was originally imposed.

4. Following receipt of the information referred to in Articles 16(2) or 18(5), the competent authority of the issuing State may decide to withdraw the certificate referred to in Article 6(1) provided that supervision in the executing State has not yet begun. In such cases, the decision shall be taken and communicated as soon as possible and within ten days of the receipt of the information.

*Article 10***Double criminality**

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, 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 of the judgment and, where applicable, the probation decision and to supervision of probation measures and alternative sanctions:

- 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 ⁽¹⁾,
- 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,

⁽¹⁾ OJ C 316, 27.11.1995, p. 49.

- 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 provided for in paragraph 1 of this Article at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 26(1) of this Framework Decision, 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 of the judgment and, where applicable, the probation decision and the supervision of probation measures and of alternative sanctions subject to the

condition that the judgment relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. Each Member State may, on the adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council, declare that it will not apply paragraph 1. Any such declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.

Article 11

Grounds for refusing recognition and supervision

1. The competent authority of the executing State may refuse to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures or alternative sanctions if:

- (a) the certificate referred to in Article 6(1) is incomplete or manifestly does not correspond to the judgment or to the probation decision and has not been completed or corrected within a reasonable period set by the competent authority of the executing State;
- (b) the criteria set forth in Articles 5(1), 5(2) or 6(4) are not met;
- (c) recognition of the judgment and assumption of responsibility for supervising probation measures or alternative sanctions would be contrary to the principle of *ne bis in idem*;
- (d) in a case referred to in Article 10(3) and, where the executing State has made a declaration under Article 10(4), in a case referred to in Article 10(1), the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of the judgment or, where applicable, the probation decision may not be refused on the grounds that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes or duties, customs and exchange regulations as the law of the issuing State;
- (e) the enforcement of the sentence is statute-barred according to the law of the executing State and relates to an act which falls within its competence according to that law;
- (f) there is immunity under the law of the executing State, which makes it impossible to supervise probation measures or alternative sanctions;

- (g) under the law of the executing State, the sentenced person cannot, owing to his or her age, be held criminally liable for the acts in respect of which the judgment was issued;
- (h) the judgment was rendered *in absentia*, unless the certificate states that the person was summoned personally or informed via a representative competent according to the national law of the issuing State of the time and place of the proceedings which resulted in the judgment being rendered *in absentia*, or that the person has indicated to a competent authority that he or she does not contest the case;
- (i) the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which, notwithstanding Article 9, the executing State is unable to supervise in view of its legal or health-care system;
- (j) the probation measure or alternative sanction is of less than six months' duration; or
- (k) the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

2. Any decision under paragraph 1(k) in relation to offences committed partly within the territory of the executing State, or in a place equivalent to its territory, shall be taken by the competent authority of the executing State only in exceptional circumstances and on a case-by case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.

3. In the cases referred to in paragraph 1(a), (b), (c), (h), (i), (j) and (k), before deciding not to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures and alternative sanctions, the competent authority of the executing State shall communicate, by appropriate means, with the competent authority of the issuing State and shall, as necessary, ask it to supply all additional information required without delay.

4. Where the competent authority of the executing State has decided to invoke a ground for refusal referred to in paragraph 1 of this Article, in particular the grounds referred to under paragraph 1(d) or (k), it may nevertheless, in agreement with the competent authority of the issuing State, decide to supervise the probation measures or alternative sanctions that are imposed in the judgment and, where applicable, the probation decision forwarded to it, without assuming the responsibility for taking any of the decisions referred to in Article 14(1)(a), (b) and (c).

Article 12

Time limit

1. The competent authority of the executing State shall decide as soon as possible, and within 60 days of receipt of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1), whether or not to recognise the judgment and, where applicable, the probation decision and assume responsibility for supervising the probation measures or alternative sanctions. It shall immediately inform the competent authority of the issuing State, by any means which leaves a written record, of its decision.

2. When in exceptional circumstances it is not possible for the competent authority of the executing State to comply with the time limit provided for in paragraph 1, it shall immediately inform the competent authority of the issuing State by any means, giving the reasons for the delay and indicating the estimated time needed for the final decision to be taken.

Article 13

Governing law

1. The supervision and application of probation measures and alternative sanctions shall be governed by the law of the executing State.

2. The competent authority of the executing State may supervise an obligation as referred to in Article 4(1)(h) by requiring the sentenced person to provide proof of compliance with an obligation to compensate for the prejudice caused by the offence.

Article 14

Jurisdiction to take all subsequent decisions and governing law

1. The competent authority of the executing State shall have jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence.

Such subsequent decisions include notably:

- (a) the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period;

(b) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release; and

(c) the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence.

2. The law of the executing State shall apply to decisions taken pursuant to paragraph 1 and to all subsequent consequences of the judgment including, where applicable, the enforcement and, if necessary, the adaptation of the custodial sentence or measure involving deprivation of liberty.

3. Each Member State may, at the time of adoption of this Framework Decision or at a later stage, declare that as an executing State it will refuse to assume the responsibility provided for in paragraph 1(b) and (c) in cases or categories of cases to be specified by that Member State, in particular:

(a) in cases relating to an alternative sanction, where the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned;

(b) in cases relating to a conditional sentence;

(c) in cases where the judgment relates to acts which do not constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. When a Member State makes use of any of the possibilities referred to in paragraph 3, the competent authority of the executing State shall transfer jurisdiction back to the competent authority of the issuing State in case of non-compliance with a probation measure or alternative sanction if the competent authority of the executing State is of the view that a subsequent decision as referred to in paragraph 1(b) or (c) needs to be taken.

5. In the cases referred to in paragraph 3 of this Article, the obligation to recognise the judgment and, where applicable, the probation decision, as well as the obligation to take without delay all necessary measures for the supervision of the probation measures or alternative sanctions, as referred to in Article 8(1), shall not be affected.

6. Declarations as mentioned in paragraph 3 shall be made by notification to the General Secretariat of the Council. Any such declaration may be withdrawn at any time. The

declarations and withdrawals mentioned in this Article shall be published in the *Official Journal of the European Union*.

Article 15

Consultations between competent authorities

Where and whenever it is felt appropriate, competent authorities of the issuing State and of the executing State may consult each other with a view to facilitating the smooth and efficient application of this Framework Decision.

Article 16

Obligations of the authorities involved where the executing State has jurisdiction for subsequent decisions

1. 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, of all decisions on the:

(a) modification of the probation measure or alternative sanction;

(b) revocation of the suspension of the execution of the judgment or revocation of the decision on conditional release;

(c) enforcement of a custodial sentence or measure involving deprivation of liberty, because of non-compliance with a probation measure or alternative sanction;

(d) lapsing of the probation measure or alternative sanction.

2. If so requested by the competent authority of the issuing State, the competent authority of the executing State shall inform it of the maximum duration of deprivation of liberty that is foreseen in the national law of the executing State for the offence which gave rise to the judgment and that could be imposed on the sentenced person in case of breach of the probation measure or alternative sanction. This information shall be provided immediately after reception of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1).

3. The competent authority of the issuing State shall immediately inform the competent authority of the executing State, by any means which leaves a written record, of any circumstances or findings which, in its opinion, could entail one or more of the decisions referred to in paragraph 1(a), (b) or (c) being taken.

Article 17

Obligations of the authorities involved where the issuing State has jurisdiction for subsequent decisions

1. If the competent authority of the issuing State has jurisdiction for the subsequent decisions mentioned in Article 14(1) pursuant to the application of Article 14(3), the competent authority of the executing State shall immediately notify it of:

(a) any finding which is likely to result in revocation of the suspension of the execution of the judgment or revocation of the decision on conditional release;

(b) any finding which is likely to result in the imposition of a custodial sentence or measure involving deprivation of liberty;

(c) all further facts and circumstances which the competent authority of the issuing State requests to be provided and which are essential in order to allow it to take subsequent decisions in accordance with its national law.

2. When a Member State has made use of the possibility referred to in Article 11(4), the competent authority of that State shall inform the competent authority of the issuing State in case of non-compliance by the sentenced person with a probation measure or alternative sanction.

3. Notice of the findings mentioned in paragraph 1(a) and (b) and in paragraph 2 shall be given using the standard form set out in Annex II. Notice of the facts and circumstances mentioned in paragraph 1(c) shall be given by any means which leaves a written record, including, where possible, through the form set out in Annex II.

4. If, under the national law of the issuing State, the sentenced person must be given a judicial hearing before a decision is taken on the imposition of a sentence, this requirement may be met by following *mutatis mutandis* the procedure contained in instruments of international or European Union law that provide the possibility of using video links for hearing persons.

5. The competent authority of the issuing State shall without delay inform the competent authority of the executing State of all decisions on:

(a) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release;

(b) the enforcement of the custodial sentence or measure involving deprivation of liberty, where such measure is contained in the judgment;

(c) the imposition of a custodial sentence or measure involving deprivation of liberty, where such measure is not contained in the judgment;

(d) the lapsing of the probation measure or alternative sanction.

Article 18

Information from the executing State in all cases

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 of:

1. the transmission of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1) to the competent authority responsible for its recognition and for taking the ensuing measures for the supervision of the probation measures or alternative sanctions in accordance with Article 6(7);

2. the fact that it is in practice impossible to supervise the probation measures or alternative sanctions for the reason that, after transmission of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1) to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case the executing State shall be under no obligation to supervise the probation measures or alternative sanctions;

3. the final decision to recognise the judgment and, where applicable, the probation decision and to assume responsibility for supervising the probation measures or alternative sanctions;

4. any decision not to recognise the judgment and, where applicable, the probation decision and to assume responsibility for supervising the probation measures or alternative sanctions in accordance with Article 11, together with the reasons for the decision;

5. any decision to adapt the probation measures or alternative sanctions in accordance with Article 9, together with the reasons for the decision;

6. any decision on amnesty or pardon which leads to not supervising the probation measures or alternative sanctions for the reasons referred to in Article 19(1), together, where applicable, with the reasons for the decision.

*Article 19***Amnesty, pardon, review of judgment**

1. An amnesty or pardon may be granted by the issuing State and also by the executing State.

2. Only the issuing State may decide on applications for review of the judgment which forms the basis for the probation measures or alternative sanctions to be supervised under this Framework Decision.

*Article 20***End of jurisdiction of the executing State**

1. If the sentenced person absconds or no longer has a lawful and ordinary residence in the executing State, the competent authority of the executing State may transfer the jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State.

2. If new criminal proceedings against the person concerned are taking place in the issuing State, the competent authority of the issuing State may request the competent authority of the executing State to transfer jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State. In such a case, the competent authority of the executing State may transfer jurisdiction back to the competent authority of the issuing State.

3. When, in application of this Article, jurisdiction is transferred back to the issuing State, the competent authority of that State shall resume jurisdiction. For the further supervision of the probation measures or alternative sanctions, the competent authority of the issuing State shall take account of the duration and degree of compliance with the probation measures or alternative sanctions in the executing State, as well as of any decisions taken by the executing State in accordance with Article 16(1).

*Article 21***Languages**

The certificate referred to in Article 6(1) shall be translated into the official language or one of the official languages of the executing State. Any Member State may, on adoption of this Framework Decision or later, 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 Union.

*Article 22***Costs**

Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

*Article 23***Relationship with other agreements and arrangements**

1. This Framework Decision shall, in relations between the Member States, from 6 December 2011, replace the corresponding provisions of the Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.

2. Member States may continue to apply bilateral or multi-lateral agreements or arrangements in force after 6 December 2008, in so far as they allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the supervision of probation measures and alternative sanctions.

3. Member States may conclude bilateral or multilateral agreements or arrangements after 6 December 2008, in so far as such agreements or arrangements allow the provisions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the supervision of probation measures and alternative sanctions.

4. Member States shall, by 6 March 2009, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in paragraph 3, within three months of signing it.

*Article 24***Territorial application**

This Framework Decision shall apply to Gibraltar.

*Article 25***Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 6 December 2011.

2. 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.

Article 26

Review

1. By 6 December 2014, the Commission shall draw up a report on the basis of the information received from Member States under Article 25(2).

2. On the basis of this report, the Council shall assess:

(a) the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision; and

(b) the application of this Framework Decision.

3. The report shall be accompanied, if necessary, by legislative proposals.

Article 27

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, 27 November 2008.

For the Council

The President

M. ALLIOT-MARIE

ANNEX I

CERTIFICATE

referred to in Article 6 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ⁽¹⁾

(a) Issuing State:

Executing State:

(b) Court which issued the judgment imposing a suspended sentence, conditional sentence or alternative sanction

Official name:

Please indicate whether any additional information concerning the judgment is to be obtained from:

☐ the court specified above

☐ the central authority; if you ticked this box, please provide the official name of this central authority:

☐ another competent authority; if you ticked this box, please provide the official name of this authority:

Contact details of the court/central authority/other competent authority

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(c) Authority which issued the probation decision (where applicable)

Official name:

Please indicate whether any additional information concerning the probation decision is to be obtained from:

☐ the authority specified above

☐ the central authority; if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b):

☐ another competent authority; if you ticked this box, please provide the official name of this authority:

Contact details of the authority, the central authority or other competent authority, if this information has not yet been provided under point (b)

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

⁽¹⁾ This certificate must be written in, or translated into, the official language or one of the official languages of the executing Member State, or any other official language of the institutions of the European Union that is accepted by that State.

(d) Competent authority for supervision of the probation measures or alternative sanctions

Authority which has competence in the issuing State for supervising the probation measures or alternative sanctions:

- ☐ the court/authority referred to in point (b)
- ☐ the authority referred to in point (c)
- ☐ another authority (please provide its official name):

Please indicate which authority is to be contacted if any additional information is to be obtained for the purposes of supervising the probation measures or alternative sanctions:

- ☐ the authority specified above
- ☐ the central authority; if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b) or (c):

Contact details of the authority, or of the central authority if this information has not yet been provided under point (b) or (c)

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(e) Information regarding the natural person in respect of whom the judgment and, where applicable, the probation decision has been issued

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Last known addresses/residences (if any):

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

- Type and number of the identity document(s) of the sentenced person (ID card, passport):
- Type and number of the residence permit of the sentenced person in the executing State:

- (f) Information regarding the Member State to which the judgment and, where applicable, the probation decision, together with the certificate are being forwarded

The judgment and, where applicable, the probation decision, together with the certificate are being forwarded to the executing State indicated in point (a) for the following reason:

- ☐ the sentenced person has his/her lawful and ordinary residence in the executing State and has returned or wants to return to that State
- ☐ the sentenced person has moved or intends to move to the executing State for the following reason(s) (please tick the relevant box):
- ☐ the sentenced person has been granted an employment contract in the executing State;
- ☐ the sentenced person is a family member of a lawful and ordinary resident person of the executing State;
- ☐ the sentenced person intends to follow a study or training in the executing State;
- ☐ other reason (please specify):

- (g) Indications regarding the judgment and, where applicable, the probation decision

The judgment was issued on (date: DD-MM-YYYY):

Where applicable, the probation decision was issued on (date: DD-MM-YYYY):

The judgment became final on (date: DD-MM-YYYY):

Where applicable, the probation decision became final on (date: DD-MM-YYYY):

The execution of the judgment started on (if different from the date on which the judgment became final) (date: DD-MM-YYYY):

Where applicable, the execution of the probation decision started on (if different from the date on which the probation decision became final) (date: DD-MM-YYYY):

File reference of the judgment (if available):

Where applicable, file reference of the probation decision (if available):

1. The judgment covers in total: offences.

Summary of the facts and description of the circumstances in which the offence(s) was (were) committed, including the time and place, and the nature of the involvement of the sentenced person:

Nature and legal classification of the offence(s) and applicable statutory provisions on the basis of which the judgment was issued:

2. If the offence(s) referred to in point 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State which are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least three years, please confirm 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 of 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

3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2 or if the judgment and, where applicable, the probation decision, as well as the certificate are forwarded to a Member State, which has declared that it will verify the double criminality (Article 10(4) of the Framework Decision), please give a full description of the offence(s) concerned:

(h) Information regarding the status of the judgment

Please indicate whether the sentenced person appeared in person in the proceedings which resulted in the judgment:

- ☐ Yes, the person appeared.
- ☐ No, the person did not appear. It is confirmed that:
 - ☐ the person was summoned personally or informed via a representative competent according to the national law of the issuing State of the time and place of the proceedings which resulted in the judgment being rendered *in absentia*; or
 - ☐ the person has indicated to a competent authority that he or she does not contest the case.

(i) Indications regarding the nature of the sentence imposed by the judgment or, where applicable, the probation decision

1. This certificate is related to a:

- ☐ suspended sentence (= custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed)
- ☐ conditional sentence:
 - ☐ the imposition of a sentence has been conditionally deferred by imposing one or more probation measures
 - ☐ one or more probation measures have been imposed instead of a custodial sentence or measure involving deprivation of liberty
- ☐ alternative sanction:
 - ☐ the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned
 - ☐ the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned
- ☐ conditional release (= early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served)

2. Additional information

2.1. The sentenced person was in pre-trial detention during the following period:

2.2. The person was serving a custodial sentence or measure involving deprivation of liberty during the following period (to be filled in only in case of conditional release):

2.3. In case of a suspended sentence

- duration of the custodial period imposed that was conditionally suspended:
- duration of the period of suspension:

2.4. If known, length of deprivation of liberty to be served upon

- revocation of suspension of the execution of the judgment;
- revocation of the decision on conditional release; or
- breach of the alternative sanction (if the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of such a breach):

- (j) Indications regarding the duration and nature of the probation measure(s) or alternative sanction(s)
1. Total duration of the supervision of the probation measure(s) or alternative sanction(s):
 2. Where applicable, duration of each individual obligation imposed as part of the probation measure(s) or alternative sanction(s):
 3. Duration of the total probation period (if different from the duration indicated under point 1):
 4. Nature of the probation measure(s) or alternative sanction(s) (it is possible to tick multiple boxes):
 - ☐ an obligation for the sentenced person to inform a specific authority of any change of residence or working place
 - ☐ an obligation not to enter certain localities, places or defined areas in the issuing or executing State
 - ☐ an obligation containing limitations on leaving the territory of the executing State
 - ☐ instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
 - ☐ an obligation to report at specified times to a specific authority
 - ☐ an obligation to avoid contact with specific persons
 - ☐ an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
 - ☐ an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation
 - ☐ an obligation to carry out community service
 - ☐ an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
 - ☐ an obligation to undergo therapeutic treatment or treatment for addiction
 - ☐ other measures that the executing State is prepared to supervise in accordance with a notification under Article 4(2) of the Framework Decision
 5. Please provide a detailed description of the probation measure(s) or alternative sanction(s) indicated under 4:
 6. Please tick the following box if relevant probation reports are available:
 - ☐ If you ticked this box, please indicate in which language(s) these reports are drawn up ⁽¹⁾:

- (k) Other circumstances relevant to the case, including relevant information on previous convictions or specific reasons for the imposition of the probation measure(s) or alternative sanction(s) (optional information):
- The text of the judgment and, where applicable, the probation decision is attached to the certificate.
- Signature of the authority issuing the certificate and/or of its representative to confirm the accuracy of the content of the certificate:
- Name:
- Position (title/grade):
- Date:
- File reference (if any):
- (Where appropriate) Official stamp:

⁽¹⁾ The issuing State is not obliged to provide translations of these reports.

ANNEX II

FORM

referred to in Article 17 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

REPORT OF A BREACH OF A PROBATION MEASURE OR ALTERNATIVE SANCTION, OR OF ANY OTHER FINDINGS

(a) Details of the identity of the person subject to supervision:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the judgment and, where applicable, the probation decision concerning the suspended sentence, conditional sentence, alternative sanction or conditional release:

Judgment issued on:

File reference (if any):

Where applicable, probation decision issued on:

File reference (if any):

Court which issued the judgment

Official name:

Address:

Where applicable, authority which issued the probation decision

Official name:

Address:

Certificate issued on:

Authority which issued the certificate:

File reference (if any):

(c) Details of the authority responsible for supervising the probation measure(s) or alternative sanction(s):

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. (country code) (area code)

Fax (country code) (area code)

E-mail:

(d) Probation measure(s) or alternative sanction(s):

The person referred to in (a) is in breach of the following obligation(s) or instruction(s):

- ☐ an obligation for the sentenced person to inform a specific authority of any change of residence or working place
- ☐ an obligation not to enter certain localities, places or defined areas in the issuing or executing State
- ☐ an obligation containing limitations on leaving the territory of the executing State
- ☐ instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
- ☐ an obligation to report at specified times to a specific authority
- ☐ an obligation to avoid contact with specific persons
- ☐ an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
- ☐ an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation
- ☐ an obligation to carry out community service
- ☐ an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
- ☐ an obligation to undergo therapeutic treatment or treatment for addiction
- ☐ other measures:

(e) Description of the breach(es) (place, date and specific circumstances):

(f) Other findings (if any)

Description of the findings:

(g) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2009/299/JHA

of 26 February 2009

amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial

THE COUNCIL OF THE EUROPEAN UNION,

concerned did not appear in person. This diversity could complicate the work of the practitioner and hamper judicial cooperation.

Having regard to the Treaty on European Union, and in particular Article 31(1)(a) and Article 34(2)(b) thereof,

Having regard to the initiative of the Republic of Slovenia, the French Republic, the Czech Republic, the Kingdom of Sweden, the Slovak Republic, the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany ⁽¹⁾,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The right of an accused person to appear in person at the trial is included in the right to a fair trial provided for in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights. The Court has also declared that the right of the accused person to appear in person at the trial is not absolute and that under certain conditions the accused person may, of his or her own free will, expressly or tacitly but unequivocally, waive that right.

(2) The various Framework Decisions implementing the principle of mutual recognition of final judicial decisions do not deal consistently with the issue of decisions rendered following a trial at which the person

(3) Solutions provided by these Framework Decisions are not satisfactory as regards cases where the person could not be informed of the proceedings. Framework Decisions 2005/214/JHA on the application of the principle of mutual recognition to financial penalties ⁽²⁾, 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders ⁽³⁾, 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ⁽⁴⁾ and 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ⁽⁵⁾ allow the executing authority to refuse the execution of such judgments. Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States ⁽⁶⁾ allows the executing authority to require the issuing authority to give an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present when the judgment is given. The adequacy of such an assurance is a matter to be decided by the executing authority, and it is therefore difficult to know exactly when execution may be refused.

⁽²⁾ Framework Decision of 24 February 2005 (OJ L 76, 22.3.2005, p. 16).

⁽³⁾ Framework Decision of 6 October 2006 (OJ L 328, 24.11.2006, p. 59).

⁽⁴⁾ Framework Decision of 27 November 2008 (OJ L 327, 5.12.2008, p. 27).

⁽⁵⁾ Framework Decision of 27 November 2008 (OJ L 337, 16.12.2008, p. 102).

⁽⁶⁾ Framework Decision of 13 June 2002 (OJ L 190, 18.7.2002, p. 1).

⁽¹⁾ OJ C 52, 26.2.2008, p. 1.

- (4) It is therefore necessary to provide clear and common grounds for non-recognition of decisions rendered following a trial at which the person concerned did not appear in person. This Framework Decision is aimed at refining the definition of such common grounds allowing the executing authority to execute the decision despite the absence of the person at the trial, while fully respecting the person's right of defence. This Framework Decision is not designed to regulate the forms and methods, including procedural requirements, that are used to achieve the results specified in this Framework Decision, which are a matter for the national laws of the Member States.
- (5) Such changes require amendment of the existing Framework Decisions implementing the principle of mutual recognition of final judicial decisions. The new provisions should also serve as a basis for future instruments in this field.
- (6) The provisions of this Framework Decision amending other Framework Decisions set conditions under which the recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused. These are alternative conditions; when one of the conditions is satisfied, the issuing authority, by completing the corresponding section of the European arrest warrant or of the relevant certificate under the other Framework Decisions, gives the assurance that the requirements have been or will be met, which should be sufficient for the purpose of the execution of the decision on the basis of the principle of mutual recognition.
- (7) The recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused if either he or she was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or if he or she actually received, by other means, official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial. In this context, it is understood that the person should have received such information 'in due time', meaning sufficiently in time to allow him or her to participate in the trial and to effectively exercise his or her right of defence.
- (8) The right to a fair trial of an accused person is guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights. This right includes the right of the person concerned to appear in person at the trial. In order to exercise this right, the person concerned needs to be aware of the scheduled trial. Under this Framework Decision, the person's awareness of the trial should be ensured by each Member State in accordance with its national law, it being understood that this must comply with the requirements of that Convention. In accordance with the case law of the European Court of Human Rights, when considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention could, where appropriate, also be paid to the diligence exercised by the person concerned in order to receive information addressed to him or her.
- (9) The scheduled date of a trial may for practical reasons initially be expressed as several possible dates within a short period of time.
- (10) The recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused where the person concerned, being aware of the scheduled trial, was defended at the trial by a legal counsellor to whom he or she had given a mandate to do so, ensuring that legal assistance is practical and effective. In this context, it should not matter whether the legal counsellor was chosen, appointed and paid by the person concerned, or whether this legal counsellor was appointed and paid by the State, it being understood that the person concerned should deliberately have chosen to be represented by a legal counsellor instead of appearing in person at the trial. The appointment of the legal counsellor and related issues are a matter of national law.
- (11) Common solutions concerning grounds for non-recognition in the relevant existing Framework Decisions should take into account the diversity of situations with regard to the right of the person concerned to a retrial or an appeal. Such a retrial, or appeal, is aimed at guaranteeing the rights of the defence and is characterised by the following elements: the person concerned has the right to be present, the merits of the case, including fresh evidence are re-examined, and the proceedings can lead to the original decision being reversed.
- (12) The right to a retrial or appeal should be guaranteed when the decision has already been served as well as, in the case of the European arrest warrant, when it had not yet been served, but will be served without delay after the surrender. The latter case refers to a situation where the authorities failed in their attempt to contact the person, in particular because he or she sought to evade justice.

- (13) In case a European arrest warrant is issued for the purpose of executing a custodial sentence or detention order and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, nor has been served with the judgment, this person should, following a request in the executing Member State, receive a copy of the judgment for information purposes only. The issuing and executing judicial authorities should, where appropriate, consult each other on the need and existing possibilities to provide the person concerned with a translation of the judgment, or of essential parts thereof, in a language that the person understands. Such provision of the judgment should neither delay the surrender procedure nor delay the decision to execute the European arrest warrant.
- (14) This Framework Decision is limited to refining the definition of grounds for non-recognition in instruments implementing the principle of mutual recognition. Therefore, provisions such as those relating to the right to a retrial have a scope which is limited to the definition of these grounds for non-recognition. They are not designed to harmonise national legislation. This Framework Decision is without prejudice to future instruments of the European Union designed to approximate the laws of the Member States in the field of criminal law.
- (15) The grounds for non-recognition are optional. However, the discretion of Member States for transposing these grounds into national law is particularly governed by the right to a fair trial, while taking into account the overall objective of this Framework Decision to enhance the procedural rights of persons and to facilitate judicial cooperation in criminal matters,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Objectives and scope

1. The objectives of this Framework Decision are to enhance the procedural rights of persons subject to criminal proceedings, to facilitate judicial cooperation in criminal matters and, in particular, to improve mutual recognition of judicial decisions between Member States.
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, including the right of defence of persons subject to criminal proceedings, and any obligations incumbent upon judicial authorities in this respect shall remain unaffected.

3. This Framework Decision establishes common rules for the recognition and/or execution of judicial decisions in one Member State (the executing Member State) issued by another Member State (the issuing Member State) following proceedings at which the person concerned was not present, pursuant to the provisions of Article 5(1) of Framework Decision 2002/584/JHA, of Article 7(2)(g) of Framework Decision 2005/214/JHA, of Article 8(2)(e) of Framework Decision 2006/783/JHA, of Article 9(1)(i) of Framework Decision 2008/909/JHA and of Article 11(1)(h) of Framework Decision 2008/947/JHA.

Article 2

Amendments to Framework Decision 2002/584/JHA

Framework Decision 2002/584/JHA is hereby amended as follows:

1. the following Article shall be inserted:

'Article 4a

Decisions rendered following a trial at which the person did not appear in person

1. The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:

- (a) in due time:

- (i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;

and

- (ii) was informed that a decision may be handed down if he or she does not appear for the trial;

or

- (b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

(i) expressly stated that he or she does not contest the decision;

or

(ii) did not request a retrial or appeal within the applicable time frame;

or

(d) was not personally served with the decision but:

(i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;

and

(ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.

2. In case the European arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions of paragraph 1(d) and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, he or she may, when being informed about the content of the European arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person sought. The request of the person sought shall neither delay the surrender procedure nor delay the decision to execute the European arrest warrant. The provision of the judgment to the person concerned is for information purposes only; it shall neither be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.

3. In case a person is surrendered under the conditions of paragraph 1(d) and he or she has requested a retrial or appeal, the detention of that person awaiting such retrial or appeal shall, until these proceedings are finalised, be reviewed in accordance with the law of the issuing Member State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.;

2. in Article 5, paragraph 1 shall be deleted;

3. in the Annex (EUROPEAN ARREST WARRANT), point (d) shall be replaced by the following:

'(d) Indicate if the person appeared in person at the trial resulting in the decision:

1. ☐ Yes, the person appeared in person at the trial resulting in the decision.

2. ☐ No, the person did not appear in person at the trial resulting in the decision.

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

☐ 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

☐ 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

- ☐ 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

- ☐ 3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

☐ the person expressly stated that he or she does not contest this decision,

OR

☐ the person did not request a retrial or appeal within the applicable time frame;

OR

- ☐ 3.4. the person was not personally served with the decision, but
- the person will be personally served with this decision without delay after the surrender, and
 - when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and
 - the person will be informed of the time frame within which he or she has to request a retrial or appeal, which will be ... days.

4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....

Article 3

Amendments to Framework Decision 2005/214/JHA

Framework Decision 2005/214/JHA is hereby amended as follows:

1. Article 7(2) is hereby amended as follows:

- (a) point (g) shall be replaced by the following:

‘(g) according to the certificate provided for in Article 4, the person concerned, 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/her right to contest the case and of the time limits for such a legal remedy’;

- (b) the following points shall be added:

‘(i) according to the certificate provided for in Article 4, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

(i) in due time:

— either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,

and

— was informed that a decision may be handed down if he or she does not appear for the trial;

or

(ii) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

— expressly stated that he or she does not contest the decision,

or

— did not request a retrial or appeal within the applicable time frame;

(j) according to the certificate provided for in Article 4, the person did not appear in person, unless the certificate states that the person, having been expressly informed about the proceedings and the possibility to appear in person in a trial, expressly waived his or her right to an oral hearing and has expressly indicated that he or she does not contest the case.’;

2. Article 7(3) shall be replaced by the following:

‘3. In the cases referred to in paragraphs 1 and 2(c), (g), (i) and (j), 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.’;

3. in point (h) of the Annex (CERTIFICATE), point 3 is replaced by the following:

‘3. Indicate if the person concerned appeared in person at the trial resulting in the decision:

1. ☐ Yes, the person appeared in person at the trial resulting in the decision.

2. ☐ No, the person did not appear in person at the trial resulting in the decision.

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

☐ 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

- ☐ 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

- ☐ 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

- ☐ 3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

☐ the person expressly stated that he or she does not contest this decision,

OR

☐ the person did not request a retrial or appeal within the applicable time frame;

OR

- ☐ 3.4. the person, having been expressly informed about the proceedings and the possibility to appear in person in a trial, expressly waived his or her right to an oral hearing and has expressly indicated that he or she does not contest the case.

4. If you have ticked the box under points 3.1b, 3.2, 3.3 or 3.4 above, please provide information about how the relevant condition has been met:

.....

Article 4

Amendments to Framework Decision 2006/783/JHA

Framework Decision 2006/783/JHA is hereby amended as follows:

1. in Article 8(2), point (e) shall be replaced by the following:

‘(e) according to the certificate provided for in Article 4(2), the person did not appear in person at the trial resulting in the confiscation order, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

(i) in due time:

— either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the confiscation order, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,

and

- was informed that such a confiscation order may be handed down if he or she does not appear for the trial;

or

- (ii) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

- (iii) after being served with the confiscation order and being expressly informed of the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

- expressly stated that he or she does not contest the confiscation order,

or

- did not request a retrial or appeal within the applicable time frame.;

2. in the Annex (CERTIFICATE), point (j) shall be replaced by the following:

‘(j) Proceedings resulting in the confiscation order

Indicate if the person appeared in person at the trial resulting in the confiscation order:

1. ☐ Yes, the person appeared in person at the trial resulting in the confiscation order.
2. ☐ No, the person did not appear in person at the trial resulting in the confiscation order.
3. If you have ticked the box under point 2, please confirm the existence of one of the following:

- ☐ 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the confiscation order and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

- ☐ 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the confiscation order, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

- ☐ 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

- ☐ 3.3. the person was served with the confiscation order on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

☐ the person expressly stated that he or she does not contest the decision,

OR

☐ the person did not request a retrial or appeal within the applicable time frame.

4. If you have ticked the box under points 3.1b, 3.2, 3.3 or 3.4 above, please provide information about how the relevant condition has been met:

.....

Article 5

Amendments to Framework Decision 2008/909/JHA

Framework Decision 2008/909/JHA is hereby amended as follows:

1. in Article 9(1), point (i) shall be replaced by the following:

'(i) according to the certificate provided for in Article 4, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

(i) in due time:

— either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,

and

— was informed that a decision may be handed down if he or she does not appear for the trial;

or

(ii) being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

— expressly stated that he or she does not contest the decision,

or

— did not request a retrial or appeal within the applicable time frame.’;

2. in point (i) of Annex I (CERTIFICATE), point 1 shall be replaced by the following:

‘1. Indicate if the person appeared in person at the trial resulting in the decision:

1. ☐ Yes, the person appeared in person at the trial resulting in the decision.

2. ☐ No, the person did not appear in person at the trial resulting in the decision.

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

☐ 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

☐ 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

☐ 3.2. being aware of the scheduled trial the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

☐ 3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

☐ the person expressly stated that he or she does not contest this decision,

OR

☐ the person did not request a retrial or appeal within the applicable time frame.

4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....

.....’

Article 6

Amendments to Framework Decision 2008/947/JHA

Framework Decision 2008/947/JHA is hereby amended as follows:

1. in Article 11(1), point (h) shall be replaced by the following:

‘(h) according to the certificate provided for in Article 6, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

(i) in due time:

— either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,

and

— was informed that a decision may be handed down if he or she does not appear for the trial;

or

(ii) being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(iii) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

— expressly stated that he or she does not contest the decision,

or

— did not request a retrial or appeal within the applicable time frame.’;

2. in Annex I (CERTIFICATE), point (h) shall be replaced by the following:

‘(h) Indicate if the person appeared in person at the trial resulting in the decision:

1. ☐ Yes, the person appeared in person at the trial resulting in the decision.

2. ☐ No, the person did not appear in person at the trial resulting in the decision.

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

☐ 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR ☐ 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial; OR ☐ 3.2. being aware of the scheduled trial the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial; OR ☐ 3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and ☐ the person expressly stated that he or she does not contest this decision, OR ☐ the person did not request a retrial or appeal within the applicable time frame. 4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

*Article 7***Territorial application**

This Framework Decision shall apply to Gibraltar.

of decisions rendered in the absence of the person concerned at the trial.

*Article 8***Implementation and transitional provisions**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 28 March 2011.

2. This Framework Decision shall apply as from the date mentioned in paragraph 1 to the recognition and enforcement

3. If a Member State has declared, on the adoption of this Framework Decision, to have serious reasons to assume that it will not be able to comply with the provisions of this Framework Decision by the date referred to in paragraph 1, this Framework Decision shall apply as from 1 January 2014 at the latest to the recognition and enforcement of decisions, rendered in the absence of the person concerned at the trial which are issued by the competent authorities of that Member State. Any other Member State may require that the Member State having made such a declaration shall apply the relevant provisions of the Framework Decisions referred to in Articles 2, 3, 4, 5 and 6 in the versions in which they were adopted originally to the recognition and enforcement of decisions, rendered in the absence of the person concerned at the trial, which were issued by such other Member State.

4. Until the dates mentioned in paragraphs 1 and 3, the relevant provisions of the Framework Decisions referred to in Articles 2, 3, 4, 5 and 6 shall continue to apply in the versions in which they were adopted originally.

5. A declaration made in accordance with paragraph 3 shall be published in the *Official Journal of the European Union*. It may be withdrawn at any time.

6. 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.

Article 9

Review

1. By 28 March 2014, the Commission shall draw up a report on the basis of the information received from the Member States pursuant to Article 8(6).

2. On the basis of the report referred to in paragraph 1, the Council shall assess:

(a) the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision; and

(b) the application of this Framework Decision.

3. The report referred to in paragraph 1 shall be accompanied, where necessary, by legislative proposals.

Article 10

Entry into force

This Framework Decision shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 26 February 2009.

For the Council

The President

I. LANGER

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2009/829/JHA

of 23 October 2009

on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(1)(a) and (c) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) According to the Conclusions of the European Council meeting in Tampere on 15 and 16 October 1999, and in particular point 36 thereof, the principle of mutual recognition should apply to pre-trial orders. The programme of measures to implement the principle of mutual recognition in criminal matters addresses mutual recognition of supervision measures in its measure 10.
- (3) The measures provided for in this Framework Decision should aim at enhancing the protection of the general public through enabling a person resident in one Member State, but subject to criminal proceedings in a second Member State, to be supervised by the authorities in the State in which he or she is resident whilst awaiting trial. As a consequence, the present Framework Decision

has as its objective the monitoring of a defendants' movements in the light of the overriding objective of protecting the general public and the risk posed to the public by the existing regime, which provides only two alternatives: provisional detention or unsupervised movement. The measures will therefore give further effect to the right of law-abiding citizens to live in safety and security.

- (4) The measures provided for in this Framework Decision should also aim at enhancing the right to liberty and the presumption of innocence in the European Union and at ensuring cooperation between Member States when a person is subject to obligations or supervision pending a court decision. As a consequence, the present Framework Decision has as its objective the promotion, where appropriate, of the use of non-custodial measures as an alternative to provisional detention, even where, according to the law of the Member State concerned, a provisional detention could not be imposed *ab initio*.
- (5) As regards the detention of persons subject to criminal proceedings, there is a risk of different treatment between those who are resident in the trial state and those who are not: a non-resident risks being remanded in custody pending trial even where, in similar circumstances, a resident would not. In a common European area of justice without internal borders, it is necessary to take action to ensure that a person subject to criminal proceedings who is not resident in the trial state is not treated any differently from a person subject to criminal proceedings who is so resident.
- (6) The certificate, which should be forwarded together with the decision on supervision measures to the competent authority of the executing State, should specify the address where the person concerned will stay in the executing State, as well as any other relevant information which might facilitate the monitoring of the supervision measures in the executing State.

⁽¹⁾ Opinion not yet published in the Official Journal.

- (7) The competent authority in the executing State should inform the competent authority in the issuing State of the maximum length of time, if any, during which the supervision measures could be monitored in the executing State. In Member States in which the supervision measures have to be periodically renewed, this maximum length of time has to be understood as the total length of time after which it is legally not possible anymore to renew the supervision measures.
- (8) Any request by the competent authority in the executing State for confirmation of the necessity to prolong the monitoring of supervision measures should be without prejudice to the law of the issuing State, which applies to the decision on renewal, review and withdrawal of the decision on supervision measures. Such a request for confirmation should not oblige the competent authority in the issuing State to take a new decision to prolong the monitoring of supervision measures.
- (9) The competent authority in the issuing State should have jurisdiction to take all subsequent decisions relating to a decision on supervision measures, including ordering a provisional detention. Such provisional detention might, in particular, be ordered following a breach of the supervision measures or a failure to comply with a summons to attend any hearing or trial in the course of criminal proceedings.
- (10) In order to avoid unnecessary costs and difficulties in relation to the transfer of a person subject to criminal proceedings for the purposes of a hearing or a trial, Member States should be allowed to use telephone- and videoconferences.
- (11) Where appropriate, electronic monitoring could be used for monitoring supervision measures in accordance with national law and procedures.
- (12) This Framework Decision should make it possible that supervision measures imposed on the person concerned are monitored in the executing State, while ensuring the due course of justice and, in particular, that the person concerned will be available to stand trial. In case the person concerned does not return to the issuing State voluntarily, he or she may be surrendered to the issuing State in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States⁽¹⁾ (hereinafter referred to as the 'Framework Decision on the European Arrest Warrant').
- (13) While this Framework Decision covers all crimes and is not restricted to particular types or levels of crime, supervision measures should generally be applied in case of less serious offences. Therefore all the provisions of the Framework Decision on the European Arrest Warrant, except Article 2(1) thereof, should apply in the situation when the competent authority in the executing State has to decide on the surrender of the person concerned. As a consequence, also Article 5(2) and (3) of the Framework Decision on the European Arrest Warrant should apply in that situation.
- (14) Costs relating to the travel of the person concerned between the executing and issuing States in connection with the monitoring of supervision measures or for the purpose of attending any hearing are not regulated by this Framework Decision. The possibility, in particular for the issuing State, to bear all or part of such costs is a matter governed by national law.
- (15) Since the objective of this Framework Decision, namely the mutual recognition of decisions on supervision measures in the course of criminal proceedings, cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in that Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.
- (16) This Framework Decision respects fundamental rights and observes the principles recognised, in particular, by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union. Nothing in this Framework Decision should be interpreted as prohibiting refusal to recognise a decision on supervision measures if there are objective indications that it was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political convictions or sexual orientation or that this person might be disadvantaged for one of these reasons.
- (17) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to entitlement to due process, freedom of association, freedom of the press, freedom of expression in other media and freedom of religion.
- (18) The provisions of this Framework Decision should be applied in conformity with the right of the Union's citizens to move and reside freely within the territory of the Member States, pursuant to Article 18 of the Treaty establishing the European Community.

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

- (19) Personal data processed when implementing this Framework Decision should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ⁽¹⁾ and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Subject matter

This Framework Decision lays down rules according to which one Member State recognises a decision on supervision measures issued in another Member State as an alternative to provisional detention, monitors the supervision measures imposed on a natural person and surrenders the person concerned to the issuing State in case of breach of these measures.

Article 2

Objectives

1. The objectives of this Framework Decision are:
 - (a) to ensure the due course of justice and, in particular, that the person concerned will be available to stand trial;
 - (b) to promote, where appropriate, the use, in the course of criminal proceedings, of non-custodial measures for persons who are not resident in the Member State where the proceedings are taking place;
 - (c) to improve the protection of victims and of the general public.
2. This Framework Decision does not confer any right on a person to the use, in the course of criminal proceedings, of a non-custodial measure as an alternative to custody. This is a matter governed by the law and procedures of the Member State where the criminal proceedings are taking place.

Article 3

Protection of law and order and the safeguarding of internal security

This Framework Decision is without prejudice to the exercise of the responsibilities incumbent upon Member States with regard to the protection of victims, the general public and the safeguarding of internal security, in accordance with Article 33 of the Treaty on European Union.

⁽¹⁾ OJ L 350, 30.12.2008, p. 60.

Article 4

Definitions

For the purposes of this Framework Decision:

- (a) 'decision on supervision measures' means an enforceable decision taken in the course of criminal proceedings by a competent authority of the issuing State in accordance with its national law and procedures and imposing on a natural person, as an alternative to provisional detention, one or more supervision measures;
- (b) 'supervision measures' means obligations and instructions imposed on a natural person, in accordance with the national law and procedures of the issuing State;
- (c) 'issuing State' means the Member State in which a decision on supervision measures has been issued;
- (d) 'executing State' means the Member State in which the supervision measures are monitored.

Article 5

Fundamental rights

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.

Article 6

Designation of competent authorities

1. Each Member State shall inform the General Secretariat of the Council which judicial authority or authorities under its national law are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State.
2. As an exception to paragraph 1 and without prejudice to paragraph 3, Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures.
3. Decisions referred to under Article 18(1)(c) shall be taken by a competent judicial authority.
4. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

*Article 7***Recourse to a central authority**

1. Each Member State may designate a central authority or, where its legal system so provides, more than one central authority to assist its competent authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of decisions on supervision measures, together with the certificates referred to in Article 10, as well as for all other official correspondence relating thereto. As a consequence, all communications, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the central authority(ies) of the Member State concerned.

3. Member States wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

*Article 8***Types of supervision measures**

1. This Framework Decision shall apply to the following supervision measures:

- (a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
- (b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- (c) an obligation to remain at a specified place, where applicable during specified times;
- (d) an obligation containing limitations on leaving the territory of the executing State;
- (e) an obligation to report at specified times to a specific authority;
- (f) an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.

2. Each Member State shall notify the General Secretariat of the Council, when transposing this Framework Decision or at a

later stage, which supervision measures, apart from those referred to in paragraph 1, it is prepared to monitor. These measures may include in particular:

- (a) an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;
- (b) an obligation not to drive a vehicle;
- (c) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;
- (d) an obligation to undergo therapeutic treatment or treatment for addiction;
- (e) an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed.

3. The General Secretariat of the Council shall make the information received under this Article available to all Member States and to the Commission.

*Article 9***Criteria relating to the Member State to which the decision on supervision measures may be forwarded**

1. A decision on supervision measures may be forwarded to the competent authority of the Member State in which the person is lawfully and ordinarily residing, in cases where the person, having been informed about the measures concerned, consents to return to that State.

2. The competent authority in the issuing State may, upon request of the person, forward the decision on supervision measures to the competent authority of a Member State other than the Member State in which the person is lawfully and ordinarily residing, on condition that the latter authority has consented to such forwarding.

3. When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a decision on supervision measures in cases pursuant to paragraph 2.

4. Each Member State shall make a statement to the General Secretariat of the Council of the determination made under paragraph 3. Member States may modify such a statement at any time. The General Secretariat shall make the information received available to all Member States and to the Commission.

Article 10

Procedure for forwarding a decision on supervision measures together with the certificate

1. When, in application of Article 9(1) or (2), the competent authority of the issuing State forwards a decision on supervision measures to another Member State, it shall ensure that it is accompanied by a certificate, the standard form of which is set out in Annex I.

2. The decision on supervision measures or a certified copy of it, together with the certificate, shall be forwarded 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 their authenticity. The original of the decision on supervision measures, 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.

3. The certificate shall be signed, and its content certified as accurate, by the competent authority in the issuing State.

4. The certificate referred to in paragraph 1 of this Article shall include, apart from the measures referred to in Article 8(1), only such measures as notified by the executing State in accordance with Article 8(2).

5. The competent authority in the issuing State shall specify:

(a) where applicable, the length of time to which the decision on supervision measures applies and whether a renewal of this decision is possible;

and

(b) on an indicative basis, the provisional length of time for which the monitoring of the supervision measures is likely to be needed, taking into account all the circumstances of the case that are known when the decision on supervision measures is forwarded.

6. The competent authority in the issuing State shall forward the decision on supervision measures together with the certificate only to one executing State at any one time.

7. 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 set up by Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network⁽¹⁾, in order to obtain the information from the executing State.

⁽¹⁾ OJ L 191, 7.7.1998, p. 4.

8. When an authority in the executing State which receives a decision on supervision measures together with a certificate has no competence to recognise that decision, this authority shall, ex officio, forward the decision together with the certificate to the competent authority.

Article 11

Competence over the monitoring of the supervision measures

1. As long as the competent authority of the executing State has not recognised the decision on supervision measures forwarded to it and has not informed the competent authority of the issuing State of such recognition, the competent authority of the issuing State shall remain competent in relation to the monitoring of the supervision measures imposed.

2. If competence for monitoring the supervision measures has been transferred to the competent authority of the executing State, such competence shall revert back to the competent authority of the issuing State:

(a) where the person concerned has established his/her lawful and ordinary residence in a State other than the executing State;

(b) as soon as the competent authority in the issuing State has notified withdrawal of the certificate referred to in Article 10(1), pursuant to Article 13(3), to the competent authority of the executing State;

(c) where the competent authority in the issuing State has modified the supervision measures and the competent authority in the executing State, in application of Article 18(4)(b), has refused to monitor the modified supervision measures because they do not fall within the types of supervision measures referred to in Article 8(1) and/or within those notified by the executing State concerned in accordance with Article 8(2);

(d) when the period of time referred to in Article 20(2)(b) has elapsed;

(e) where the competent authority in the executing State has decided to stop monitoring the supervision measures and has informed the competent authority in the issuing State thereof, in application of Article 23.

3. In cases referred to in paragraph 2, the competent authorities of the issuing and executing States shall consult each other so as to avoid, as far as possible, any discontinuance in the monitoring of the supervision measures.

*Article 12***Decision in the executing State**

1. The competent authority in the executing State shall, as soon as possible and in any case within 20 working days of receipt of the decision on supervision measures and certificate, recognise the decision on supervision measures forwarded in accordance with Article 9 and following the procedure laid down in Article 10 and without delay take all necessary measures for monitoring the supervision measures, unless it decides to invoke one of the grounds for non-recognition referred to in Article 15.

2. If a legal remedy has been introduced against the decision referred to in paragraph 1, the time limit for recognition of the decision on supervision measures shall be extended by another 20 working days.

3. If it is not possible, in exceptional circumstances, for the competent authority in the executing State to comply with the time limits laid down in paragraphs 1 and 2, it shall immediately inform the competent authority in the issuing State, by any means of its choosing, giving reasons for the delay and indicating how long it expects to take to issue a final decision.

4. The competent authority may postpone the decision on recognition of the decision on supervision measures where the certificate provided for in Article 10 is incomplete or obviously does not correspond to the decision on supervision measures, until such reasonable time limit set for the certificate to be completed or corrected.

*Article 13***Adaptation of the supervision measures**

1. If the nature of the supervision measures is incompatible with the law of the executing State, the competent authority in that Member State may adapt them in line with the types of supervision measures which apply, under the law of the executing State, to equivalent offences. The adapted supervision measure shall correspond as far as possible to that imposed in the issuing State.

2. The adapted supervision measure shall not be more severe than the supervision measure which was originally imposed.

3. Following receipt of information referred to in Article 20(2)(b) or (f), the competent authority in the issuing State may decide to withdraw the certificate as long as monitoring in the executing State has not yet begun. In any case, such a decision shall be taken and communicated as soon as possible and within ten days of the receipt of the relevant notification at the latest.

*Article 14***Double criminality**

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, 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 of the decision on supervision measures:

- 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 ⁽¹⁾,
- 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,

⁽¹⁾ OJ C 316, 27.11.1995, p. 49.

- 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 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 Treaty on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 27 of this Framework Decision, 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 of the decision on supervision measures subject to the condition that the decision relates to acts which also constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.

4. Member States may, for constitutional reasons, on the adoption of this Framework Decision, by a declaration notified to the General Secretariat of the Council, declare that they will not apply paragraph 1 in respect of some or all of the offences referred to in that paragraph. Any such declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.

Article 15

Grounds for non-recognition

1. The competent authority in the executing State may refuse to recognise the decision on supervision measures if:

- (a) the certificate referred to in Article 10 is incomplete or obviously does not correspond to the decision on supervision measures and is not completed or corrected within a reasonable period set by the competent authority in the executing State;
- (b) the criteria laid down in Article 9(1), 9(2) or 10(4) are not met;
- (c) recognition of the decision on supervision measures would contravene the *ne bis in idem* principle;
- (d) the decision on supervision measures relates, in the cases referred to in Article 14(3) and, where the executing State has made a declaration under Article 14(4), in the cases referred to in Article 14(1), to an act which would not constitute an offence under the law of the executing State; in tax, customs and currency matters, however, execution of the decision may not be refused on the grounds that the law of the executing State does not prescribe any taxes of the same kind or does not contain any tax, customs or currency provisions of the same kind as the law of the issuing State;
- (e) the criminal prosecution is statute-barred under the law of the executing State and relates to an act which falls within the competence of the executing State under its national law;
- (f) there is immunity under the law of the executing State, which makes it impossible to monitor supervision measures;
- (g) under the law of the executing State, the person cannot, because of his age, be held criminally responsible for the act on which the decision on supervision measures is based;
- (h) it would, in case of breach of the supervision measures, have to refuse to surrender the person concerned in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States⁽¹⁾ (hereinafter referred to as the 'Framework Decision on the European Arrest Warrant').

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

2. In the cases referred to in paragraph 1(a), (b) and (c), before deciding not to recognise the decision on supervision measures, the competent authority in the executing State shall communicate, by appropriate means, with the competent authority in the issuing State and, as necessary, request the latter to supply without delay all additional information required.

3. Where the competent authority in the executing State is of the opinion that the recognition of a decision on supervision measures could be refused on the basis of paragraph 1 under (h), but it is nevertheless willing to recognise the decision on supervision measures and monitor the supervision measures contained therein, it shall inform the competent authority in the issuing State thereof providing the reasons for the possible refusal. In such a case, the competent authority in the issuing State may decide to withdraw the certificate in accordance with the second sentence of Article 13(3). If the competent authority in the issuing State does not withdraw the certificate, the competent authority in the executing State may recognise the decision on supervision measures and monitor the supervision measures contained therein, it being understood that the person concerned might not be surrendered on the basis of a European Arrest Warrant.

Article 16

Law governing supervision

The monitoring of supervision measures shall be governed by the law of the executing State.

Article 17

Continuation of the monitoring of supervision measures

Where the time period referred to in Article 20(2)(b) is due to expire and the supervision measures are still needed, the competent authority in the issuing State may request the competent authority in the executing State to extend the monitoring of the supervision measures, in view of the circumstances of the case at hand and the foreseeable consequences for the person if Article 11(2)(d) would apply. The competent authority in the issuing State shall indicate the period of time for which such an extension is likely to be needed.

The competent authority in the executing State shall decide on this request in accordance with its national law, indicating, where appropriate, the maximum duration of the extension. In these cases, Article 18(3) may apply.

Article 18

Competence to take all subsequent decisions and governing law

1. Without prejudice to Article 3, the competent authority in the issuing State shall have jurisdiction to take all subsequent

decisions relating to a decision on supervision measures. Such subsequent decisions include notably:

- (a) renewal, review and withdrawal of the decision on supervision measures;
- (b) modification of the supervision measures;
- (c) issuing an arrest warrant or any other enforceable judicial decision having the same effect.

2. The law of the issuing State shall apply to decisions taken pursuant to paragraph 1.

3. Where required by its national law, a competent authority in the executing State may decide to use the procedure of recognition set out in this Framework Decision in order to give effect to decisions referred to in paragraph 1(a) and (b) in its national legal system. Such a recognition shall not lead to a new examination of the grounds of non-recognition.

4. If the competent authority in the issuing State has modified the supervision measures in accordance with paragraph 1(b), the competent authority in the executing State may:

- (a) adapt these modified measures in application of Article 13, in case the nature of the modified supervision measures is incompatible with the law of the executing State;

or

- (b) refuse to monitor the modified supervision measures if these measures do not fall within the types of supervision measures referred to in Article 8(1) and/or within those notified by the executing State concerned in accordance with Article 8(2).

5. The jurisdiction of the competent authority in the issuing State pursuant to paragraph 1 is without prejudice to proceedings that may be initiated in the executing State against the person concerned in relation with criminal offences committed by him/her other than those on which the decision on supervision measures is based.

Article 19

Obligations of the authorities involved

1. At any time during the monitoring of the supervision measures, the competent authority in the executing State may invite the competent authority in the issuing State to provide information as to whether the monitoring of the measures is still needed in the circumstances of the particular case at hand. The competent authority in the issuing State shall, without delay, reply to such an invitation, where appropriate by taking a subsequent decision referred to in Article 18(1).

2. Before the expiry of the period referred to in Article 10(5), the competent authority in the issuing State shall specify, ex officio or at the request of the competent authority in the executing State, for which additional period, if any, it expects that the monitoring of the measures is still needed.

3. The competent authority in the executing State shall immediately notify the competent authority in the issuing State of any breach of a supervision measure, and any other finding which could result in taking any subsequent decision referred to in Article 18(1). Notice shall be given using the standard form set out in Annex II.

4. With a view to hearing the person concerned, the procedure and conditions contained in instruments of international and European Union law that provide for the possibility of using telephone- and videoconferences for hearing persons may be used *mutatis mutandis*, in particular where the legislation of the issuing State provides that a judicial hearing must be held before a decision referred to in Article 18(1) is taken.

5. The competent authority in the issuing State shall immediately inform the competent authority in the executing State of any decision referred to in Article 18(1) and of the fact that a legal remedy has been introduced against a decision on supervision measures.

6. If the certificate relating to the decision on supervision measures has been withdrawn, the competent authority of the executing State shall end the measures ordered as soon as it has been duly notified by the competent authority of the issuing State.

Article 20

Information from the executing State

1. The authority in the executing State which has received a decision on supervision measures, which it has no competence to recognise, together with a certificate, shall inform the competent authority in the issuing State to which authority it has forwarded this decision, together with the certificate, in accordance with Article 10(8).

2. The competent authority in the executing State shall, without delay, inform the competent authority in the issuing State by any means which leaves a written record:

- (a) of any change of residence of the person concerned;
- (b) of the maximum length of time during which the supervision measures can be monitored in the executing State, in case the law of the executing State provides such a maximum;

- (c) of the fact that it is in practice impossible to monitor the supervision measures for the reason that, after transmission of the decision on supervision measures and the certificate to the executing State, the person cannot be found in the territory of the executing State, in which case there shall be no obligation of the executing State to monitor the supervision measures;
- (d) of the fact that a legal remedy has been introduced against a decision to recognise a decision on supervision measures;
- (e) of the final decision to recognise the decision on supervision measures and take all necessary measures for the monitoring of the supervision measures;
- (f) of any decision to adapt the supervision measures in accordance with Article 13;
- (g) of any decision not to recognise the decision on supervision measures and to assume responsibility for monitoring of the supervision measures in accordance with Article 15, together with the reasons for the decision.

Article 21

Surrender of the person

1. If the competent authority of the issuing State has issued an arrest warrant or any other enforceable judicial decision having the same effect, the person shall be surrendered in accordance with the Framework Decision on the European Arrest Warrant.

2. In this context, Article 2(1) of the Framework Decision on the European Arrest Warrant may not be invoked by the competent authority of the executing State to refuse to surrender the person.

3. Each Member State may notify the General Secretariat of the Council, when transposing this Framework Decision or at a later stage, that it will also apply Article 2(1) of the Framework Decision on the European Arrest Warrant in deciding on the surrender of the person concerned to the issuing State.

4. The General Secretariat of the Council shall make the information received under paragraph 3 available to all Member States and to the Commission.

Article 22

Consultations

1. Unless impracticable, the competent authorities of the issuing State and of the executing State shall consult each other:

- (a) during the preparation, or, at least, before forwarding a decision on supervision measures together with the certificate referred to in Article 10;

(b) to facilitate the smooth and efficient monitoring of the supervision measures;

(c) where the person has committed a serious breach of the supervision measures imposed.

2. The competent authority in the issuing State shall take due account of any indications communicated by the competent authority of the executing State on the risk that the person concerned might pose to victims and to the general public.

3. In application of paragraph 1, the competent authorities of the issuing State and of the executing State shall exchange all useful information, including:

(a) information allowing verification of the identity and place of residence of the person concerned;

(b) relevant information extracted from criminal records in accordance with applicable legislative instruments.

Article 23

Unanswered notices

1. Where the competent authority in the executing State has transmitted several notices referred to in Article 19(3) in respect of the same person to the competent authority in the issuing State, without this latter authority having taken any subsequent decision referred to in Article 18(1), the competent authority in the executing State may invite the competent authority in the issuing State to take such a decision, giving it a reasonable time limit to do so.

2. If the competent authority in the issuing State does not act within the time limit indicated by the competent authority in the executing State, the latter authority may decide to stop monitoring the supervision measures. In such case, it shall inform the competent authority in the issuing State of its decision, and the competence for the monitoring of the supervision measures shall revert back to the competent authority in the issuing State in application of Article 11(2).

3. Where the law of the executing State requires a periodic confirmation of the necessity to prolong the monitoring of the supervision measures, the competent authority in the executing State may request the competent authority in the issuing State to provide such confirmation, giving it a reasonable time limit to reply to such a request. In case the competent authority in the issuing State does not answer within the time limit concerned, the competent authority in the executing State may send a new request to the competent authority in the issuing State, giving it a reasonable time limit to reply to such a request and indicating that it may decide to stop monitoring the supervision measures if no reply is received within that time limit. Where the competent authority in the executing State does not receive a reply to such a new request within the time limit set, it may act in accordance with paragraph 2.

Article 24

Languages

Certificates shall 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 European Union.

Article 25

Costs

Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

Article 26

Relation to other agreements and arrangements

1. In so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the mutual recognition of decisions on supervision measures, Member States may:

(a) continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision enters into force;

(b) conclude bilateral or multilateral agreements or arrangements after this Framework Decision has entered into force.

2. The agreements and arrangements referred to in paragraph 1 shall in no case affect relations with Member States which are not parties to them.

3. Member States shall, by 1 March 2010, notify the Commission and the Council of the existing agreements and arrangements referred to in paragraph 1(a) which they wish to continue applying.

4. Member States shall also notify the Commission and the Council of any new agreement or arrangement as referred to in paragraph 1(b), within three months of signing any such arrangement or agreement.

Article 27

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 1 December 2012.

2. By the same date Member States shall transmit to 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.

Article 28

Report

1. By 1 December 2013 the Commission shall draw up a report on the basis of the information received from Member States under Article 27(2).

2. On the basis of this report, the Council shall assess:

(a) the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision; and

(b) the application of this Framework Decision.

3. The report shall be accompanied, if necessary, by legislative proposals.

Article 29

Entry into force

This Framework Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 23 October 2009.

For the Council

The President

T. BILLSTRÖM

ANNEX I

CERTIFICATE

referred to in Article 10 of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ⁽¹⁾

(a) Issuing State:

Executing State:

(b) Authority which issued the decision on supervision measures:

Official name:

Please indicate whether any additional information concerning the decision on supervision measures is to be obtained from:

☐ the authority specified above

☐ the central authority; if you ticked this box, please provide the official name of this central authority:

☐ another competent authority; if you ticked this box, please provide the official name of this authority:

Contact details of the issuing authority/central authority/other competent authority

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

⁽¹⁾ This certificate must be written in, or translated into, the official language or one of the official languages of the executing Member State, or any other official language of the Institutions of the European Union that is accepted by that State.

- (c) Please indicate which authority is to be contacted if any additional information is to be obtained for the purposes of monitoring the supervision measures:

☐ the authority referred to in point (b)

☐ another authority; if you ticked this box, please provide the official name of this authority:

Contact details of the authority, if this information has not yet been provided under point (b)

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

- (d) Information regarding the natural person in respect of whom the decision on supervision measures has been issued:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

— Type and number of the identity document(s) of the person (ID card, passport):

— Type and number of the residence permit of the person in the executing State:

- (e) Information regarding the Member State to which the decision on supervision measures, together with the certificate are being forwarded

The decision on supervision measures, together with the certificate are being forwarded to the executing State indicated in point (a) for the following reason:

☐ the person concerned has his/her lawful and ordinary residence in the executing State and, having been informed about the measures concerned, consents to return to that State

☐ the person concerned has requested to forward the decision on supervision measures to the Member State other than that in which the person is lawfully and ordinarily residing, for the following reason(s):

- (f) Indications regarding the decision on supervision measures:

The decision was issued on (date: DD-MM-YYYY):

The decision became enforceable on (date: DD-MM-YYYY):

If, at the time of transmission of this certificate, a legal remedy has been introduced against the decision on supervision measures, please tick this box ☐

File reference of the decision (if available):

The person concerned was in provisional detention during the following period (where applicable):

1. The decision covers in total: alleged offences.

Summary of the facts and description of the circumstances in which the alleged offence(s) was (were) committed, including the time and place, and the nature of the involvement of the person concerned:

Nature and legal classification of the alleged offence(s) and applicable statutory provisions on the basis of which the decision was issued:

2. If the alleged offence(s) referred to in point 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State which are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least three years, please confirm 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 of currency, including 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

3. To the extent that the alleged offence(s) identified under point 1 is (are) not covered by point 2 or if the decision, as well as the certificate are forwarded to a Member State, which has declared that it will verify the double criminality (Article 14(4) of the Framework Decision), please give a full description of the alleged offence(s) concerned:

(g) Indications regarding the duration and nature of the supervision measure(s)

1. Length of time to which the decision on supervision measures applies and whether a renewal of this decision is possible (where applicable):

2. Provisional length of time for which the monitoring of the supervision measures is likely to be needed, taking into account all the circumstances of the case that are known when the decision on supervision measures is forwarded (indicative information)

3. Nature of the supervision measure(s) (it is possible to tick multiple boxes):

☐ an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;

☐ an obligation not to enter certain localities, places or defined areas in the issuing or executing State;

☐ an obligation to remain at a specified place, where applicable during specified times;

☐ an obligation containing limitations on leaving the territory of the executing State;

☐ an obligation to report at specified times to a specific authority;

☐ an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed;

☐ other measures that the executing State is prepared to supervise in accordance with a notification under Article 8(2) of the Framework Decision:

If you ticked the box regarding 'other measures', please specify which measure is concerned by ticking the appropriate box(es):

☐ an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;

☐ an obligation not to drive a vehicle;

☐ an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;

☐ an obligation to undergo therapeutic treatment or treatment for addiction;

☐ an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed;

☐ other measure (please specify):

4. Please provide a detailed description of the supervision measure(s) indicated under 3:

(h) Other circumstances relevant to the case, including specific reasons for the imposition of the supervision measure(s) (optional information):

The text of the decision is attached to the certificate.

Signature of the authority issuing the certificate and/or of its representative to confirm the accuracy of the content of the certificate:

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

ANNEX II

FORM

referred to in Article 19 of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

REPORT OF A BREACH OF A SUPERVISION MEASURE AND/OR ANY OTHER FINDINGS WHICH COULD RESULT IN
TAKING ANY SUBSEQUENT DECISION

(a) Details of the identity of the person subject to supervision:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the decision on supervision measure(s):

Decision issued on:

File reference (if any):

Authority which issued the decision

Official name:

Address:

Certificate issued on:

Authority which issued the certificate:

File reference (if any):

(c) Details of the authority responsible for monitoring the supervision measure(s):

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. (country code) (area code)

Fax (country code) (area code)

E-mail:

Languages that may be used for communication:

(d) Breach of supervision measure(s) and/or other findings which could result in taking any subsequent decision:

The person referred to in (a) is in breach of the following supervision measure(s):

- ☐ an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
- ☐ an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- ☐ an obligation to remain at a specified place, where applicable during specified times;
- ☐ an obligation containing limitations on leaving the territory of the executing State;
- ☐ an obligation to report at specified times to a specific authority;
- ☐ an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.
- ☐ other measures (please specify):

Description of the breach(es) (place, date and specific circumstances):

— other findings which could result in taking any subsequent decision

Description of the findings:

(e) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

Languages that may be used for communication:

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

DECLARATION BY GERMANY

'The Federal Republic of Germany hereby gives notification, pursuant to Article 14(4) of the Council Framework Decision on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, that it will not apply Article 14(1) in respect of all of the offences referred to in that paragraph.'

This declaration will be published in the *Official Journal of the European Union*.

DECLARATION BY POLAND

'Pursuant to Article 14(4) of the EU Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, the Republic of Poland declares that it will not apply paragraph (1) of the aforementioned Article 14 in respect of all of the offences referred to in that paragraph.'

This declaration will be published in the *Official Journal of the European Union*.

DECLARATION BY HUNGARY

'Pursuant to Article 14(4) of the EU Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, the Republic of Hungary declares that it will not apply paragraph (1) of Article 14 of the above Framework Decision in respect of the offences referred to in that paragraph.'

This declaration will be published in the *Official Journal of the European Union*.

Referring to the 'constitutional reasons' mentioned in Article 14(4), Hungary provided the following explanation:

'Following the ratification of the Lisbon Treaty, Hungary amended its Constitution in order to comply with the obligations referred to therein, including the necessity not to apply the double criminality condition in criminal matters. This constitutional provision will enter into force at the same time as the Lisbon Treaty. Nevertheless, until the entry into force of the Treaty, double criminality remains an important constitutional issue and — as a constitutional principle enshrined by Article 57 of the Constitution — cannot be, shall not be disregarded. Therefore, Article 14(1) of the Framework Decision shall not be applied to any of the offences listed (or as formulated by the relevant article: shall not be applied "in respect of all of the offences").'

DECLARATION BY LITHUANIA

'Pursuant to Article 14(4) of the Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, the Republic of Lithuania declares that for constitutional reasons it will not apply Article 14(1) in respect of any of the offences referred to therein.'

This declaration will be published in the *Official Journal of the European Union*.

DIRECTIVES

DIRECTIVE 2011/99/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2011

on the European protection order

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 82(1)(a) and (d) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Hungary, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) Article 82(1) of the Treaty on the Functioning of the European Union (TFEU) provides that judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions.
- (3) According to the Stockholm Programme — An open and secure Europe serving and protecting citizens ⁽²⁾, mutual

recognition should extend to all types of judgments and decisions of a judicial nature, which may, depending on the legal system, be either criminal or administrative. It also calls on the Commission and the Member States to examine how to improve legislation and practical support measures for the protection of victims. The programme also points out that victims of crime can be offered special protection measures which should be effective within the Union. This Directive forms part of a coherent and comprehensive set of measures on victims' rights.

- (4) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women calls on Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures and calls on the Union to guarantee the right to assistance and support for all victims of violence. The resolution of the European Parliament of 10 February 2010 on equality between women and men in the European Union 2009 endorses the proposal to introduce the European protection order for victims.

- (5) In its Resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, the Council stated that action should be taken at the level of the Union in order to strengthen the rights and protection of victims of crime and called on the Commission to present appropriate proposals to that end. In this framework, a mechanism should be created to ensure mutual recognition among Member States of decisions concerning protection measures for victims of crime. According to that Resolution, this Directive, which concerns the mutual recognition of protection measures taken in criminal matters, should be complemented by an appropriate mechanism concerning measures taken in civil matters.

⁽¹⁾ Position of the European Parliament of 14 December 2010 (not yet published in the Official Journal) and position of the Council at first reading of 24 November 2011 (not yet published in the Official Journal). Position of the European Parliament of 13 December 2011 (not yet published in the Official Journal).

⁽²⁾ OJ C 115, 4.5.2010, p. 1.

- (6) In a common area of justice without internal borders, it is necessary to ensure that the protection provided to a natural person in one Member State is maintained and

continued in any other Member State to which the person moves or has moved. It should also be ensured that the legitimate exercise by citizens of the Union of their right to move and reside freely within the territory of Member States, in accordance with Article 3(2) of the Treaty on European Union (TEU) and Article 21 TFEU, does not result in a loss of their protection.

(7) In order to attain these objectives, this Directive should set out rules whereby the protection stemming from certain protection measures adopted according to the law of one Member State ('the issuing State') can be extended to another Member State in which the protected person decides to reside or stay ('the executing State').

(8) This Directive takes account of the different legal traditions of the Member States as well as the fact that effective protection can be provided by means of protection orders issued by an authority other than a criminal court. This Directive does not create obligations to modify national systems for adopting protection measures nor does it create obligations to introduce or amend a criminal law system for executing a European protection order.

(9) This Directive applies to protection measures which aim specifically to protect a person against a criminal act of another person which may, in any way, endanger that person's life or physical, psychological and sexual integrity, for example by preventing any form of harassment, as well as that person's dignity or personal liberty, for example by preventing abductions, stalking and other forms of indirect coercion, and which aim to prevent new criminal acts or to reduce the consequences of previous criminal acts. These personal rights of the protected person correspond to fundamental values recognised and upheld in all Member States. However, a Member State is not obliged to issue a European protection order on the basis of a criminal measure which does not serve specifically to protect a person, but primarily serves other aims, for example the social rehabilitation of the offender. It is important to underline that this Directive applies to protection measures which aim to protect all victims and not only the victims of gender violence, taking into account the specificities of each type of crime concerned.

(10) This Directive applies to protection measures adopted in criminal matters, and does not therefore cover protection measures adopted in civil matters. For a protection measure to be executable in accordance with this Directive, it is not necessary for a criminal offence to have been established by a final decision. Nor is the criminal, administrative or civil nature of the authority adopting a protection measure relevant. This Directive

does not oblige Member States to amend their national law to enable them to adopt protection measures in the context of criminal proceedings.

(11) This Directive is intended to apply to protection measures adopted in favour of victims, or possible victims, of crimes. This Directive should not therefore apply to measures adopted with a view to witness protection.

(12) If a protection measure, as defined in this Directive, is adopted for the protection of a relative of the main protected person, a European protection order may also be requested by and issued in respect of that relative, subject to the conditions laid down in this Directive.

(13) Any request for the issuing of a European protection order should be treated with appropriate speed, taking into account the specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the executing State and, where possible, the degree of risk for the protected person.

(14) Where information is to be provided under this Directive to the protected person or to the person causing danger, this information should also, where relevant, be provided to the guardian or the representative of the person concerned. Due attention should also be paid to the need for the protected person, the person causing danger or the guardian or representative in the proceedings, to receive the information provided for by this Directive, in a language that that person understands.

(15) In the procedures for the issuing and recognition of a European protection order, competent authorities should give appropriate consideration to the needs of victims, including particularly vulnerable persons, such as minors or persons with disabilities.

(16) For the application of this Directive, a protection measure may have been imposed following a judgment within the meaning of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions⁽¹⁾, or following a decision on supervision measures within the meaning of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the

⁽¹⁾ OJ L 337, 16.12.2008, p. 102.

principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention⁽¹⁾. If a decision was adopted in the issuing State on the basis of one of those Framework Decisions, the recognition procedure should be followed accordingly in the executing State. This, however, should not exclude the possibility to transfer a European protection order to a Member State other than the State executing decisions based on those Framework Decisions.

- (17) In accordance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, the person causing danger should be provided, either during the procedure leading to the adoption of a protection measure or before issuing a European protection order, with the possibility of being heard and challenging the protection measure.
- (18) In order to prevent a crime being committed against the victim in the executing State, that State should have the legal means for recognising the decision previously adopted in the issuing State in favour of the victim, while also avoiding the need for the victim to start new proceedings or to produce evidence in the executing State again, as if the issuing State had not adopted the decision. The recognition of the European protection order by the executing State implies, *inter alia*, that the competent authority of that State, subject to the limitations set out in this Directive, accepts the existence and validity of the protection measure adopted in the issuing State, acknowledges the factual situation described in the European protection order, and agrees that protection should be provided and should continue to be provided in accordance with its national law.
- (19) This Directive contains an exhaustive list of prohibitions and restrictions which, when imposed in the issuing State and included in the European protection order, should be recognised and enforced in the executing State, subject to the limitations set out in this Directive. Other types of protection measures may exist at national level, such as, if provided by national law, the obligation on the person causing danger to remain in a specified place. Such measures may be imposed in the issuing State in the framework of the procedure leading to the adoption of one of the protection measures which, according to this Directive, may be the basis for a European protection order.
- (20) Since, in the Member States, different kinds of authorities (civil, criminal or administrative) are competent to adopt and enforce protection measures, it is appropriate to provide a high degree of flexibility in the cooperation mechanism between the Member States under this Directive. Therefore, the competent authority in the

executing State is not required in all cases to take the same protection measure as those which were adopted in the issuing State, and has a degree of discretion to adopt any measure which it deems adequate and appropriate under its national law in a similar case in order to provide continued protection to the protected person in the light of the protection measure adopted in the issuing State as described in the European protection order.

- (21) The prohibitions or restrictions to which this Directive applies include, among others, measures aimed at limiting personal or remote contacts between the protected person and the person causing danger, for example by imposing certain conditions on such contacts or imposing restrictions on the contents of communications.
- (22) The competent authority of the executing State should inform the person causing danger, the competent authority of the issuing State and the protected person of any measure adopted on the basis of the European protection order. In the notification to the person causing danger, due regard should be taken of the interest of the protected person in not having that person's address or other contact details disclosed. Such details should be excluded from the notification, provided that the address or other contact details are not included in the prohibition or restriction imposed as an enforcement measure on the person causing danger.
- (23) When the competent authority in the issuing State withdraws the European protection order, the competent authority in the executing State should discontinue the measures which it has adopted in order to enforce the European protection order, it being understood that the competent authority in the executing State may — autonomously, and in accordance with its national law — adopt any protection measure under its national law in order to protect the person concerned.
- (24) Given that this Directive deals with situations in which the protected person moves to another Member State, issuing or executing a European protection order should not imply any transfer to the executing State of powers relating to principal, suspended, alternative, conditional or secondary penalties, or relating to security measures imposed on the person causing danger, if the latter continues to reside in the State that adopted the protection measure.
- (25) Where appropriate, it should be possible to use electronic means with a view to putting into practice the measures adopted in application of this Directive, in accordance with national laws and procedures.

⁽¹⁾ OJ L 294, 11.11.2009, p. 20.

- (26) In the context of cooperation among the authorities involved in ensuring the protection of the protected person, the competent authority of the executing State should communicate to the competent authority of the issuing State any breach of the measures adopted in the executing State with a view to executing the European protection order. This communication should enable the competent authority of the issuing State to promptly decide on any appropriate response with respect to the protection measure imposed in its State on the person causing danger. Such a response may comprise, where appropriate, the imposition of a custodial measure in substitution of the non-custodial measure that was originally adopted, for example, as an alternative to preventive detention or as a consequence of the conditional suspension of a penalty. It is understood that such a decision, since it does not impose *ex novo* a penalty in relation to a new criminal offence, does not interfere with the possibility that the executing State may, where applicable, impose penalties in the event of a breach of the measures adopted in order to execute the European protection order.
- (27) In view of the different legal traditions of the Member States, where no protection measure would be available in the executing State in a case similar to the factual situation described in the European protection order, the competent authority of the executing State should report any breach of the protection measure described in the European protection order of which it is aware to the competent authority of the issuing State.
- (28) In order to ensure the smooth application of this Directive in each particular case, the competent authorities of the issuing and the executing States should exercise their competencies in accordance with the provisions of this Directive, taking into account the principle of *ne bis in idem*.
- (29) The protected person should not be required to sustain costs related to the recognition of the European protection order which are disproportionate to a similar national case. When implementing this Directive, Member States should ensure that, after recognition of the European protection order, the protected person is not required to initiate further national proceedings to obtain from the competent authority of the executing State, as a direct consequence of the recognition of the European protection order, a decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person.
- (30) Bearing in mind the principle of mutual recognition upon which this Directive is based, Member States should promote, to the widest extent possible, direct contact between the competent authorities when they apply this Directive.
- (31) Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States should consider requesting those responsible for the training of judges, prosecutors, police and judicial staff involved in the procedures aimed at issuing or recognising a European protection order to provide appropriate training with respect to the objectives of this Directive.
- (32) In order to facilitate the evaluation of the application of this Directive, Member States should communicate to the Commission relevant data related to the application of national procedures on the European protection order, at least with regard to the number of European protection orders requested, issued and/or recognised. In this respect, other types of data, such as, for example, the types of crimes concerned, would also be useful.
- (33) This Directive should contribute to the protection of persons who are in danger, thereby complementing, but not affecting, the instruments already in place in this field, such as Framework Decision 2008/947/JHA and Framework Decision 2009/829/JHA.
- (34) When a decision relating to a protection measure falls within the scope of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽¹⁾, Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility⁽²⁾, or the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children⁽³⁾, the recognition and enforcement of that decision should be carried out in accordance with the provisions of the relevant legal instrument.
- (35) Member States and the Commission should include information about the European protection order, where it is appropriate, in existing education and awareness-raising campaigns on the protection of victims of crime.
- (36) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters⁽⁴⁾ and with the principles laid down in the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

⁽¹⁾ OJ L 12, 16.1.2001, p. 1.

⁽²⁾ OJ L 338, 23.12.2003, p. 1.

⁽³⁾ OJ L 48, 21.2.2003, p. 3.

⁽⁴⁾ OJ L 350, 30.12.2008, p. 60.

- (37) This Directive should respect the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, in accordance with Article 6 TEU.
- (38) When implementing this Directive, Member States are encouraged to take into account the rights and principles enshrined in the 1979 United Nations Convention on the elimination of all forms of discrimination against women.
- (39) Since the objective of this Directive, namely to protect persons who are in danger, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, 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 Directive does not go beyond what is necessary in order to achieve that objective.
- (40) In accordance with Article 3 of the 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 Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Directive.
- (41) In accordance with Articles 1 and 2 of the 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 Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (42) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objective

This Directive sets out rules allowing a judicial or equivalent authority in a Member State, in which a protection measure has

been adopted with a view to protecting a person against a criminal act by another person which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity, to issue a European protection order enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State, following criminal conduct, or alleged criminal conduct, in accordance with the national law of the issuing State.

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:

- (1) 'European protection order' means a decision, taken by a judicial or equivalent authority of a Member State in relation to a protection measure, on the basis of which a judicial or equivalent authority of another Member State takes any appropriate measure or measures under its own national law with a view to continuing the protection of the protected person;
- (2) 'protection measure' means a decision in criminal matters adopted in the issuing State in accordance with its national law and procedures by which one or more of the prohibitions or restrictions referred to in Article 5 are imposed on a person causing danger in order to protect a protected person against a criminal act which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity;
- (3) 'protected person' means a natural person who is the object of the protection resulting from a protection measure adopted by the issuing State;
- (4) 'person causing danger' means the natural person on whom one or more of the prohibitions or restrictions referred to in Article 5 have been imposed;
- (5) 'issuing State' means the Member State in which a protection measure has been adopted that constitutes the basis for issuing a European protection order;
- (6) 'executing State' means the Member State to which a European protection order has been forwarded with a view to its recognition;
- (7) 'State of supervision' means the Member State to which a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has been transferred.

*Article 3***Designation of competent authorities**

1. Each Member State shall inform the Commission which judicial or equivalent authority or authorities are competent under its national law to issue a European protection order and to recognise such an order, in accordance with this Directive, when that Member State is the issuing State or the executing State.

2. The Commission shall make the information received available to all Member States. Member States shall inform the Commission of any change to the information referred to in paragraph 1.

*Article 4***Recourse to a central authority**

1. Each Member State may designate a central authority or, where its legal system so provides, more than one central authority, to assist its competent authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority or authorities responsible for the administrative transmission and reception of any European protection order, as well as for all other official correspondence relating thereto. As a consequence, all communications, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the designated central authority or authorities of the Member State concerned.

3. Member States wishing to make use of the possibilities referred to in this Article shall communicate to the Commission information relating to the designated central authority or authorities. These indications shall be binding upon all the authorities of the issuing State.

*Article 5***Need for an existing protection measure under national law**

A European protection order may only be issued when a protection measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following prohibitions or restrictions:

- (a) a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
- (b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or

- (c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.

*Article 6***Issuing of a European protection order**

1. A European protection order may be issued when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, inter alia, the length of the period or periods that the protected person intends to stay in the executing State and the seriousness of the need for protection.

2. A judicial or equivalent authority of the issuing State may issue a European protection order only at the request of the protected person and after verifying that the protection measure meets the requirements set out in Article 5.

3. The protected person may submit a request for the issuing of a European protection order either to the competent authority of the issuing State or to the competent authority of the executing State. If such a request is submitted in the executing State, its competent authority shall transfer this request as soon as possible to the competent authority of the issuing State.

4. Before issuing a European protection order, the person causing danger shall be given the right to be heard and the right to challenge the protection measure, if that person has not been granted these rights in the procedure leading to the adoption of the protection measure.

5. When a competent authority adopts a protection measure containing one or more of the prohibitions or restrictions referred to in Article 5, it shall inform the protected person in an appropriate way, in accordance with the procedures under its national law, about the possibility of requesting a European protection order in the case that that person decides to leave for another Member State, as well as of the basic conditions for such a request. The authority shall advise the protected person to submit an application before leaving the territory of the issuing State.

6. If the protected person has a guardian or representative, that guardian or representative may introduce the request referred to in paragraphs 2 and 3, on behalf of the protected person.

7. If the request to issue a European protection order is rejected, the competent authority of the issuing State shall inform the protected person of any applicable legal remedies that are available, under its national law, against such a decision.

Article 7

Form and content of the European protection order

The European protection order shall be issued in accordance with the form set out in Annex I to this Directive. It shall, in particular, contain the following information:

- (a) the identity and nationality of the protected person, as well as the identity and nationality of the guardian or representative if the protected person is a minor or is legally incapacitated;
- (b) the date from which the protected person intends to reside or stay in the executing State, and the period or periods of stay, if known;
- (c) the name, address, telephone and fax numbers and e-mail address of the competent authority of the issuing State;
- (d) identification (for example, through a number and date) of the legal act containing the protection measure on the basis of which the European protection order is issued;
- (e) a summary of the facts and circumstances which have led to the adoption of the protection measure in the issuing State;
- (f) the prohibitions or restrictions imposed, in the protection measure underlying the European protection order, on the person causing danger, their duration and the indication of the penalty, if any, in the event of the breach of any of the prohibitions or restrictions;
- (g) the use of a technical device, if any, that has been provided to the protected person or to the person causing danger as a means of enforcing the protection measure;
- (h) the identity and nationality of the person causing danger, as well as that person's contact details;
- (i) where such information is known by the competent authority of the issuing State without requiring further inquiry, whether the protected person and/or the person causing danger has been granted free legal aid in the issuing State;
- (j) a description, where appropriate, of other circumstances that could have an influence on the assessment of the danger that confronts the protected person;

(k) an express indication, where applicable, that a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has already been transferred to the State of supervision, when this is different from the State of execution of the European protection order, and the identification of the competent authority of that State for the enforcement of such a judgment or decision.

Article 8

Transmission procedure

1. Where the competent authority of the issuing State transmits the European protection order to the competent authority of the executing State, it shall do so by any means which leaves a written record so as to allow the competent authority of the executing State to establish its authenticity. All official communication shall also be made directly between those competent authorities.

2. If the competent authority of either the executing State or the issuing State is not known to the competent authority of the other State, the latter authority shall make all the relevant enquiries, including via the contact points of the European Judicial Network referred to in Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network ⁽¹⁾, the National Member of Eurojust or the National System for the coordination of Eurojust of its State, in order to obtain the necessary information.

3. When an authority of the executing State which receives a European protection order has no competence to recognise it, that authority shall, *ex officio*, forward the European protection order to the competent authority and shall, without delay, inform the competent authority of the issuing State accordingly by any means which leaves a written record.

Article 9

Measures in the executing State

1. Upon receipt of a European protection order transmitted in accordance with Article 8, the competent authority of the executing State shall, without undue delay, recognise that order and take a decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person, unless it decides to invoke one of the grounds for non-recognition referred to in Article 10. The executing State may apply, in accordance with its national law, criminal, administrative or civil measures.

⁽¹⁾ OJ L 348, 24.12.2008, p. 130.

2. The measure adopted by the competent authority of the executing State in accordance with paragraph 1, as well as any other measure taken on the basis of a subsequent decision as referred to in Article 11, shall, to the highest degree possible, correspond to the protection measure adopted in the issuing State.

3. The competent authority of the executing State shall inform the person causing danger, the competent authority of the issuing State and the protected person of any measures adopted in accordance with paragraph 1, as well as of the possible legal consequence of a breach of such measure provided for under national law and in accordance with Article 11(2). The address or other contact details of the protected person shall not be disclosed to the person causing danger unless such details are necessary in view of the enforcement of the measure adopted in accordance with paragraph 1.

4. If the competent authority in the executing State considers that the information transmitted with the European protection order in accordance with Article 7 is incomplete, it shall without delay inform the competent authority of the issuing State by any means which leaves a written record, assigning a reasonable period for it to provide the missing information.

Article 10

Grounds for non-recognition of a European protection order

1. The competent authority of the executing State may refuse to recognise a European protection order in the following circumstances:

- (a) the European protection order is not complete or has not been completed within the time limit set by the competent authority of the executing State;
- (b) the requirements set out in Article 5 have not been met;
- (c) the protection measure relates to an act that does not constitute a criminal offence under the law of the executing State;
- (d) the protection derives from the execution of a penalty or measure that, according to the law of the executing State, is covered by an amnesty and relates to an act or conduct which falls within its competence according to that law;
- (e) there is immunity conferred under the law of the executing State on the person causing danger, which makes it impossible to adopt measures on the basis of a European protection order;
- (f) criminal prosecution, against the person causing danger, for the act or the conduct in relation to which the protection measure has been adopted is statute-barred under the law of the executing State, when the act or the conduct falls within its competence under its national law;

(g) recognition of the European protection order would contravene the *ne bis in idem* principle;

(h) under the law of the executing State, the person causing danger cannot, because of that person's age, be held criminally responsible for the act or the conduct in relation to which the protection measure has been adopted;

(i) the protection measure relates to a criminal offence which, under the law of the executing State, is regarded as having been committed, wholly or for a major or essential part, within its territory.

2. Where the competent authority of the executing State refuses to recognise a European protection order in application of one of the grounds referred to in paragraph 1, it shall:

- (a) without undue delay, inform the issuing State and the protected person of this refusal and of the grounds relating thereto;
- (b) where appropriate, inform the protected person about the possibility of requesting the adoption of a protection measure in accordance with its national law;
- (c) inform the protected person of any applicable legal remedies that are available under its national law against such a decision.

Article 11

Governing law and competence in the executing State

1. The executing State shall be competent to adopt and to enforce measures in that State following the recognition of a European protection order. The law of the executing State shall apply to the adoption and enforcement of the decision provided for in Article 9(1), including rules on legal remedies against decisions adopted in the executing State relating to the European protection order.

2. In the event of a breach of one or more of the measures taken by the executing State following the recognition of a European protection order, the competent authority of the executing State shall, in accordance with paragraph 1, be competent to:

- (a) impose criminal penalties and take any other measure as a consequence of the breach, if that breach amounts to a criminal offence under the law of the executing State;

- (b) take any non-criminal decisions related to the breach;
- (c) take any urgent and provisional measure in order to put an end to the breach, pending, where appropriate, a subsequent decision by the issuing State.

3. If there is no available measure at national level in a similar case that could be taken in the executing State, the competent authority of the executing State shall report to the competent authority of the issuing State any breach of the protection measure described in the European protection order of which it is aware.

Article 12

Notification in the event of breach

The competent authority of the executing State shall notify the competent authority of the issuing State or of the State of supervision of any breach of the measure or measures taken on the basis of the European protection order. Notice shall be given using the standard form set out in Annex II.

Article 13

Competence in the issuing State

1. The competent authority of the issuing State shall have exclusive competence to take decisions relating to:

- (a) the renewal, review, modification, revocation and withdrawal of the protection measure and, consequently, of the European protection order;
- (b) the imposition of a custodial measure as a consequence of revocation of the protection measure, provided that the protection measure has been applied on the basis of a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or on the basis of a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA;

2. The law of the issuing State shall apply to decisions adopted in accordance with paragraph 1.

3. Where a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has already been transferred, or is transferred after the issuing of the European protection order, to another Member State, subsequent decisions, as provided for by those Framework Decisions, shall be taken in accordance with the relevant provisions of those Framework Decisions.

4. When the protection measure is contained in a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA which has been transferred or is transferred after the issuing of the European protection order to another Member State, and the competent authority of the State of supervision has made subsequent decisions affecting the obligations or instructions contained in the protection measure in accordance with Article 14 of that Framework Decision, the competent authority of the issuing State shall renew, review, modify, revoke or withdraw without delay the European protection order accordingly.

5. The competent authority of the issuing State shall inform the competent authority of the executing State without delay of any decision taken in accordance with paragraph 1 or 4.

6. If the competent authority in the issuing State has revoked or withdrawn the European protection order in accordance with point (a) of paragraph 1 or with paragraph 4, the competent authority in the executing State shall discontinue the measures adopted in accordance with Article 9(1) as soon as it has been duly notified by the competent authority of the issuing State.

7. If the competent authority in the issuing State has modified the European protection order in accordance with point (a) of paragraph 1 or with paragraph 4, the competent authority in the executing State shall, as appropriate:

- (a) modify the measures adopted on the basis of the European protection order, acting in accordance with Article 9; or
- (b) refuse to enforce the modified prohibition or restriction when it does not fall within the types of prohibitions or restrictions referred to in Article 5, or if the information transmitted with the European protection order in accordance with Article 7 is incomplete or has not been completed within the time limit set by the competent authority of the executing State in accordance with Article 9(4).

Article 14

Grounds for discontinuation of measures taken on the basis of a European protection order

1. The competent authority of the executing State may discontinue the measures taken in execution of a European protection order:

- (a) where there is clear indication that the protected person does not reside or stay in the territory of the executing State, or has definitively left that territory;
- (b) where, according to its national law, the maximum term of duration of the measures adopted in execution of the European protection order has expired;

(c) in the case referred to in Article 13(7)(b); or

(d) where a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, is transferred to the executing State after the recognition of the European protection order.

2. The competent authority of the executing State shall immediately inform the competent authority of the issuing State and, where possible, the protected person of such decision.

3. Before discontinuing measures in accordance with point (b) of paragraph 1 the competent authority of the executing State may invite the competent authority of the issuing State to provide information as to whether the protection provided for by the European protection order is still needed in the circumstances of the case in question. The competent authority of the issuing State shall, without delay, reply to such an invitation.

Article 15

Priority in recognition of a European protection order

A European protection order shall be recognised with the same priority which would be applicable in a similar national case, taking into consideration any specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the executing State and, where possible, the degree of risk for the protected person.

Article 16

Consultations between competent authorities

Where appropriate, the competent authorities of the issuing State and of the executing State may consult each other in order to facilitate the smooth and efficient application of this Directive.

Article 17

Languages

1. A European protection order shall be translated by the competent authority of the issuing State into the official language or one of the official languages of the executing State.

2. The form referred to in Article 12 shall be translated by the competent authority of the executing State into the official language or one of the official languages of the issuing State.

3. Any Member State may, either when this Directive is adopted or at a later date, state in a declaration that it shall deposit with the Commission that it will accept a translation in one or more other official languages of the Union.

Article 18

Costs

Costs resulting from the application of this Directive shall be borne by the executing State, in accordance with its national law, except for costs arising exclusively within the territory of the issuing State.

Article 19

Relationship with other agreements and arrangements

1. Member States may continue to apply bilateral or multi-lateral agreements or arrangements which are in force upon the entry into force of this Directive, in so far as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate further the procedures for taking protection measures.

2. Member States may conclude bilateral or multilateral agreements or arrangements after the entry into force of this Directive, in so far as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate the procedures for taking protection measures.

3. By 11 April 2012, Member States shall notify the Commission of the existing agreements and arrangements referred to in paragraph 1 which they wish to continue applying. Member States shall also notify the Commission of any new agreements or arrangements referred to in paragraph 2 within three months of the signing thereof.

Article 20

Relationship with other instruments

1. This Directive shall not affect the application of Regulation (EC) No 44/2001, Regulation (EC) No 2201/2003, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, or the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

2. This Directive shall not affect the application of Framework Decision 2008/947/JHA or Framework Decision 2009/829/JHA.

*Article 21***Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions to comply with this Directive by 11 January 2015. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 22***Data collection**

Member States shall, in order to facilitate the evaluation of the application of this Directive, communicate to the Commission relevant data related to the application of national procedures on the European protection order, at least on the number of European protection orders requested, issued and/or recognised.

*Article 23***Review**

By 11 January 2016, the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive. That report shall be accompanied, if necessary, by legislative proposals.

*Article 24***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 25***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 13 December 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

M. SZPUNAR

ANNEX I

EUROPEAN PROTECTION ORDER

referred to in Article 7 of

DIRECTIVE 2011/99/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 DECEMBER 2011
ON THE EUROPEAN PROTECTION ORDER**The information contained in this form is to be treated with appropriate confidentiality**

Issuing State: Executing State:
(a) Information regarding the protected person: Surname: Forename(s): Maiden or previous name, where applicable: Sex: Nationality: Identity number or social security number (if any): Date of birth: Place of birth: Addresses/residences: — in the issuing State: — in the executing State: — elsewhere: Language(s) understood (if known):
Has the protected person been granted free legal aid in the issuing State (if information is available without further enquiry)? ☐ Yes. ☐ No. ☐ Unknown. Where the protected person is a minor or is legally incapacitated, information regarding the person's guardian or representative: Surname: Forename(s): Maiden name or previous name, where applicable: Sex: Nationality: Office/Address:

(b) The protected person has decided to reside or already resides in the executing State, or has decided to stay or already stays in the executing State.

Date from which the protected person intends to reside or stay in the executing State (if known):

Period(s) of stay (if known):

(c) Have any technical devices been provided to the protected person or to the person causing danger to enforce the protection measure:

☐ Yes; please give a short summary of the devices used:

☐ No.

(d) Competent authority which issued the European protection order:

Official name:

Full address:

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

E-mail (if any):

Languages that may be used for communication:

(e) Identification of the protection measure on the basis of which the European protection order has been issued:

The protection measure was adopted on (date: DD-MM-YYYY):

The protection measure became enforceable on (date: DD-MM-YYYY):

File reference of the protection measure (if available):

Authority that adopted the protection measure:

(f) Summary of the facts and description of the circumstances — including, where applicable, the classification of the offence — which have led to the imposition of the protection measure mentioned under (e) above:

(g) Indications regarding the prohibition(s) or restriction(s) that have been imposed by the protection measure on the person causing danger:

— Nature of the prohibition(s) or restriction(s): (more than one box may be ticked):

☐ a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;

— if you ticked this box, please indicate precisely which localities, places or defined areas the person causing danger is prohibited from entering:

☐ a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;

— if you ticked this box, please provide any relevant details:

☐ a prohibition or regulation on approaching the protected person closer than a prescribed distance;

— if you ticked this box, please indicate precisely the distance which the person causing danger has to observe in respect of the protected person:

— Please indicate the length of time during which the abovementioned prohibition(s) or restriction(s) are imposed on the person causing danger:

— Indication of the penalty (if any) in the event of the breach of the prohibition or restriction:

(h) Information regarding the person causing danger on whom the prohibition(s) or restriction(s) mentioned under (g) have been imposed:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

— Type and number of the identity document(s) of the person (ID card, passport):

Has the person causing danger been granted free legal aid in the issuing State (if information is available without further enquiry)?

☐ Yes.

☐ No.

☐ Unknown.

(i) Other circumstances that could have an influence on the assessment of the danger that could affect the protected person (optional information):

(j) Other useful information (such as, where available and necessary, information on other States where protection measures have been previously adopted with respect to the same protected person):

(k) Please complete:

☐ a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, has already been transmitted to another Member State

— If you ticked this box, please provide the contact details of the competent authority to whom the judgment has been forwarded:

☐ a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA has already been transmitted to another Member State

— If you ticked this box, please provide the contact details of the competent authority to whom the decision on supervision measures has been forwarded:

Signature of the authority issuing the European protection order and/or of its representative to confirm the accuracy of the content of the order:

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

ANNEX II

FORM

referred to in Article 12 of

**DIRECTIVE 2011/99/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 DECEMBER 2011
ON THE EUROPEAN PROTECTION ORDER****NOTIFICATION OF A BREACH OF THE MEASURE TAKEN ON THE BASIS OF THE EUROPEAN
PROTECTION ORDER****The information contained in this form is to be treated with appropriate confidentiality**

(a) Details of the identity of the person causing danger:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the identity of the protected person:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(c) Details of the European protection order:

Order issued on:

File reference (if any):

Authority which issued the order:

Official name:

Address:

(d) Details of the authority responsible for the execution of the protection measure, if any, which was taken in the executing State in line with the European protection order:

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. No (country code) (area code) (number):

Fax No (country code) (area code) (number):

E-mail:

Languages that may be used for communication:

(e) Breach of the prohibition(s) or restriction(s) imposed by the competent authorities of the executing State following recognition of the European protection order and/or other findings which could result in taking any subsequent decision:

The breach concerns the following prohibition(s) or restriction(s) (more than one box may be ticked):

- ☐ a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
- ☐ a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;
- ☐ a prohibition or regulation on approaching the protected person closer than a prescribed distance;
- ☐ any other measure, corresponding to the protection measure at the basis of the European protection order, taken by the competent authorities of the executing State following recognition of the European protection order

Description of the breach(es) (place, date and specific circumstances):

In accordance with Article 11(2):

— measures taken in the executing State as a consequence of the breach:

— possible legal consequence of the breach in the executing State:

Other findings which could result in taking any subsequent decision

Description of the findings:

(f) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

E-mail:

Languages that may be used for communication:

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2014/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 3 April 2014
regarding the European Investigation Order in criminal matters

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 82 (1)(a) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia and the Kingdom of Sweden,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) Pursuant to Article 82(1) of the Treaty on the Functioning of the European Union (TFEU), judicial cooperation in criminal matters in the Union is to be based on the principle of mutual recognition of judgments and judicial decisions, which is, since the Tampere European Council of 15 and 16 October 1999, commonly referred to as a cornerstone of judicial cooperation in criminal matters within the Union.
- (3) Council Framework Decision 2003/577/JHA ⁽²⁾ addressed the need for immediate mutual recognition of orders to prevent the destruction, transformation, moving, transfer or disposal of evidence. However, since that instrument is restricted to the freezing phase, a freezing order needs to be accompanied by a separate request for the transfer of the evidence to the State issuing the order ('the issuing State') in accordance with the rules applicable to mutual assistance in criminal matters. This results in a two-step procedure detrimental to its efficiency. Moreover, this regime coexists with the traditional instruments of cooperation and is therefore seldom used in practice by the competent authorities.
- (4) Council Framework Decision 2008/978/JHA ⁽³⁾ concerning the European evidence warrant (EEW) was adopted to apply the principle of mutual recognition for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters. However, the EEW is only applicable to evidence which already exists and covers therefore a limited spectrum of judicial cooperation in criminal matters with respect to evidence. Because of its limited scope, competent authorities have been free to use the new regime or to use mutual legal assistance procedures which, in any case, remain applicable to evidence falling outside of the scope of the EEW.

⁽¹⁾ Position of the European Parliament of 27 February 2014 (not yet published in the Official Journal) and decision of the Council of 14 March 2014.

⁽²⁾ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45).

⁽³⁾ Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters (OJ L 350, 30.12.2008, p. 72).

- (5) Since the adoption of Framework Decisions 2003/577/JHA and 2008/978/JHA, it has become clear that the existing framework for the gathering of evidence is too fragmented and complicated. A new approach is therefore necessary.
- (6) In the Stockholm Programme adopted by the European Council of 10-11 December 2009, the European Council considered that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, should be further pursued. The European Council indicated that the existing instruments in this area constituted a fragmentary regime and that a new approach was needed, based on the principle of mutual recognition, but also taking into account the flexibility of the traditional system of mutual legal assistance. The European Council therefore called for a comprehensive system to replace all the existing instruments in this area, including Framework Decision 2008/978/JHA, covering as far as possible all types of evidence, containing time-limits for enforcement and limiting as far as possible the grounds for refusal.
- (7) This new approach is based on a single instrument called the European Investigation Order (EIO). An EIO is to be issued for the purpose of having one or several specific investigative measure(s) carried out in the State executing the EIO ('the executing State') with a view to gathering evidence. This includes the obtaining of evidence that is already in the possession of the executing authority.
- (8) The EIO should have a horizontal scope and therefore should apply to all investigative measures aimed at gathering evidence. However, the setting up of a joint investigation team and the gathering of evidence within such a team require specific rules which are better dealt with separately. Without prejudice to the application of this Directive, existing instruments should therefore continue to apply to this type of investigative measure.
- (9) This Directive should not apply to cross-border surveillance as referred to in the Convention implementing the Schengen Agreement ⁽¹⁾.
- (10) The EIO should focus on the investigative measure to be carried out. The issuing authority is best placed to decide, on the basis of its knowledge of the details of the investigation concerned, which investigative measure is to be used. However, the executing authority should, wherever possible, use another type of investigative measure if the indicated measure does not exist under its national law or would not be available in a similar domestic case. Availability should refer to occasions where the indicated investigative measure exists under the law of the executing State but is only lawfully available in certain situations, for example where the investigative measure can only be carried out for offences of a certain degree of seriousness, against persons for whom there is already a certain level of suspicion or with the consent of the person concerned. The executing authority may also have recourse to another type of investigative measure where it would achieve the same result as the investigative measure indicated in the EIO by means implying less interference with the fundamental rights of the person concerned.
- (11) The EIO should be chosen where the execution of an investigative measure seems proportionate, adequate and applicable to the case in hand. The issuing authority should therefore ascertain whether the evidence sought is necessary and proportionate for the purpose of the proceedings, whether the investigative measure chosen is necessary and proportionate for the gathering of the evidence concerned, and whether, by means of issuing the EIO, another Member State should be involved in the gathering of that evidence. The same assessment should be carried out in the validation procedure, where the validation of an EIO is required under this Directive. The execution of an EIO should not be refused on grounds other than those stated in this Directive. However the executing authority should be entitled to opt for a less intrusive investigative measure than the one indicated in an EIO if it makes it possible to achieve similar results.
- (12) When issuing an EIO the issuing authority should pay particular attention to ensuring full respect for the rights as enshrined in Article 48 of the Charter of Fundamental Rights of the European Union (the Charter). The presumption of innocence and the rights of defence in criminal proceedings are a cornerstone of the fundamental rights recognised in the Charter within the area of criminal justice. Any limitation of such rights by an investigative measure ordered in accordance with this Directive should fully conform to the requirements established in Article 52 of the Charter with regard to the necessity, proportionality and objectives that it should pursue, in particular the protection of the rights and freedoms of others.

⁽¹⁾ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).

- (13) With a view to ensuring the transmission of the EIO to the competent authority of the executing State, the issuing authority may make use of any possible or relevant means of transmission, for example the secure telecommunications system of the European Judicial Network, Eurojust, or other channels used by judicial or law enforcement authorities.
- (14) When making a declaration concerning the language regime, Member States are encouraged to include at least one language which is commonly used in the Union other than their official language(s).
- (15) This Directive should be implemented taking into account Directives 2010/64/EU ⁽¹⁾, 2012/13/EU ⁽²⁾, and 2013/48/EU ⁽³⁾ of the European Parliament and of the Council, which concern procedural rights in criminal proceedings.
- (16) Non-coercive measures could be, for example, such measures that do not infringe the right to privacy or the right to property, depending on national law.
- (17) The principle of *ne bis in idem* is a fundamental principle of law in the Union, as recognised by the Charter and developed by the case-law of the Court of Justice of the European Union. Therefore the executing authority should be entitled to refuse the execution of an EIO if its execution would be contrary to that principle. Given the preliminary nature of the proceedings underlying an EIO, its execution should not be subject to refusal where it is aimed to establish whether a possible conflict with the *ne bis in idem* principle exists, or where the issuing authority has provided assurances that the evidence transferred as a result of the execution of the EIO would not be used to prosecute or impose a sanction on a person whose case has been finally disposed of in another Member State for the same facts.
- (18) As in other mutual recognition instruments, this Directive does not have the effect of modifying the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union (TEU) and the Charter. In order to make this clear, a specific provision is inserted in the text.
- (19) The creation of an area of freedom, security and justice within the Union is based on mutual confidence and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights. However, that presumption is rebuttable. Consequently, if there are substantial grounds for believing that the execution of an investigative measure indicated in the EIO would result in a breach of a fundamental right of the person concerned and that the executing State would disregard its obligations concerning the protection of fundamental rights recognised in the Charter, the execution of the EIO should be refused.
- (20) It should be possible to refuse an EIO where its recognition or execution in the executing State would involve a breach of an immunity or privilege in that State. There is no common definition of what constitutes an immunity or privilege in Union law; the precise definition of these terms is therefore left to national law, which may include protections which apply to medical and legal professions, but should not be interpreted in a way to counter the obligation to abolish certain grounds for refusal as set out in the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union ⁽⁴⁾. This may also include, even though they are not necessarily considered as privilege or immunity, rules relating to freedom of the press and freedom of expression in other media.
- (21) Time limits are necessary to ensure quick, effective and consistent cooperation between the Member States in criminal matters. The decision on the recognition or execution, as well as the actual execution of the investigative measure, should be carried out with the same celerity and priority as for a similar domestic case. Time limits should be provided to ensure a decision or execution within reasonable time or to meet procedural constraints in the issuing State.

⁽¹⁾ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁽²⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁽³⁾ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

⁽⁴⁾ Protocol established by the Council 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 (OJ C 326, 21.11.2001, p. 2).

- (22) Legal remedies available against an EIO should be at least equal to those available in a domestic case against the investigative measure concerned. In accordance with their national law Member States should ensure the applicability of such legal remedies, including by informing in due time any interested party about the possibilities and modalities for seeking those legal remedies. In cases where objections against the EIO are submitted by an interested party in the executing State in respect of the substantive reasons for issuing the EIO, it is advisable that information about such challenge be transmitted to the issuing authority and that the interested party be informed accordingly.
- (23) The expenses incurred in the territory of the executing State for the execution of an EIO should be borne exclusively by that State. This arrangement complies with the general principle of mutual recognition. However, the execution of an EIO may incur exceptionally high costs on the executing State. Such exceptionally high costs may, for example, be complex experts' opinions or extensive police operations or surveillance activities over a long period of time. This should not impede the execution of the EIO and the issuing and executing authorities should seek to establish which costs are to be considered as exceptionally high. The issue of costs might become subject to consultations between the issuing State and the executing State and they are recommended to resolve this issue during the consultations stage. As a last resort, the issuing authority may decide to withdraw the EIO or to maintain it, and the part of the costs which are estimated exceptionally high by the executing State and absolutely necessary in the course of the proceedings, should be covered by the issuing State. The given mechanism should not constitute an additional ground for refusal, and in any event should not be abused in a way to delay or impede the execution of the EIO.
- (24) The EIO establishes a single regime for obtaining evidence. Additional rules are however necessary for certain types of investigative measures which should be indicated in the EIO, such as the temporary transfer of persons held in custody, hearing by video or telephone conference, obtaining of information related to bank accounts or banking transactions, controlled deliveries or covert investigations. Investigative measures implying a gathering of evidence in real time, continuously and over a certain period of time should be covered by the EIO, but, where necessary, practical arrangements should be agreed between the issuing State and the executing State in order to accommodate the differences existing in the national laws of those States.
- (25) This Directive sets out rules on carrying out, at all stages of criminal proceedings, including the trial phase, of an investigative measure, if needed with the participation of the person concerned with a view to collecting evidence. For example an EIO may be issued for the temporary transfer of that person to the issuing State or for the carrying out of a hearing by videoconference. However, where that person is to be transferred to another Member State for the purposes of prosecution, including bringing that person before a court for the purpose of the standing trial, a European Arrest Warrant (EAW) should be issued in accordance with Council Framework Decision 2002/584/JHA ⁽¹⁾.
- (26) With a view to the proportionate use of an EAW, the issuing authority should consider whether an EIO would be an effective and proportionate means of pursuing criminal proceedings. The issuing authority should consider, in particular, whether issuing an EIO for the hearing of a suspected or accused person by videoconference could serve as an effective alternative.
- (27) An EIO may be issued in order to obtain evidence concerning the accounts, of whatever nature, held in any bank or any non-banking financial institution by a person subject to criminal proceedings. This possibility is to be understood broadly as comprising not only suspected or accused persons but also any other person in respect of whom such information is found necessary by the competent authorities in the course of criminal proceedings.
- (28) Where in this Directive a reference is made to financial institutions, this term should be understood according to the relevant definition of Article 3 of Directive 2005/60/EC of the European Parliament and the Council ⁽²⁾.
- (29) When an EIO is issued to obtain 'details' of a specified account, 'details' should be understood to include at least the name and address of the account holder, details of any powers of attorney held over the account, and any other details or documents provided by the account holder when the account was opened and that are still held by the bank.

⁽¹⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

⁽²⁾ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

- (30) Possibilities to cooperate under this Directive on the interception of telecommunications should not be limited to the content of the telecommunications, but could also cover collection of traffic and location data associated with such telecommunications, allowing competent authorities to issue an EIO for the purpose of obtaining less intrusive data on telecommunications. An EIO issued to obtain historical traffic and location data related to telecommunications should be dealt with under the general regime related to the execution of the EIO and may be considered, depending on the national law of the executing State, as a coercive investigative measure.
- (31) Where several Member States are in a position to provide the necessary technical assistance, an EIO should be sent only to one of them and priority should be given to the Member State where the person concerned is located. Member States where the subject of the interception is located and from which no technical assistance is needed to carry out the interception should be notified thereof in accordance with this Directive. However, where the technical assistance may not be received from merely one Member State, an EIO may be transmitted to more than one executing State.
- (32) In an EIO containing the request for interception of telecommunications the issuing authority should provide the executing authority with sufficient information, such as details of the criminal conduct under investigation, in order to allow the executing authority to assess whether that investigative measure, would be authorised in a similar domestic case.
- (33) Member States should have regard to the importance of ensuring that technical assistance can be provided by a service provider operating publicly available telecommunications networks and services in the territory of the Member State concerned, in order to facilitate cooperation under this instrument in relation to the lawful interception of telecommunications.
- (34) This Directive, by virtue of its scope, deals with provisional measures only with a view to gathering evidence. In this respect, it should be underlined that any item, including financial assets, may be subject to various provisional measures in the course of criminal proceedings, not only with a view to gathering evidence but also with a view to confiscation. The distinction between the two objectives of provisional measures is not always obvious and the objective of the provisional measure may change in the course of the proceedings. For this reason, it is crucial to maintain a smooth relationship between the various instruments applicable in this field. Furthermore, for the same reason, the assessment of whether the item is to be used as evidence and therefore be the object of an EIO should be left to the issuing authority.
- (35) Where reference is made to mutual assistance in relevant international instruments, such as in conventions concluded within the Council of Europe, it should be understood that between the Member States bound by this Directive it takes precedence over those conventions.
- (36) The categories of offences listed in Annex D should be interpreted consistently with their interpretation under existing legal instruments on mutual recognition.
- (37) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽¹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the European Parliament and the Council consider the transmission of such documents to be justified.
- (38) Since the objective of this Directive, namely the mutual recognition of decisions taken to obtain evidence, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (39) This Directive respects the fundamental rights and observes the principles recognised by Article 6 of the TEU and in the Charter, notably Title VI thereof, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions in their respective fields of application. Nothing in

⁽¹⁾ OJ C 369, 17.12.2011, p. 14.

this Directive may be interpreted as prohibiting refusal to execute an EIO when there are reasons to believe, on the basis of objective elements, that the EIO has been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons.

- (40) The protection of natural persons in relation to the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them.
- (41) Member States should, in the application of this Directive, provide for transparent policies with regard to the processing of personal data and for the exercise of the rights of data subjects to legal remedies for the protection of their personal data.
- (42) Personal data obtained under this Directive should only be processed when necessary and should be proportionate to the purposes compatible with the prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. Only authorised persons should have access to information containing personal data which may be obtained through authentication processes.
- (43) In accordance with Article 3 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 the TFEU, the United Kingdom has notified its wish to take part in the adoption and application of this Directive.
- (44) 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 the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (45) In accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark annexed to the TEU and the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (46) The European Data Protection Supervisor delivered an opinion on 5 October 2010 ⁽¹⁾, based on Article 41(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

THE EUROPEAN INVESTIGATION ORDER

Article 1

The European Investigation Order and obligation to execute it

1. A European Investigation Order (EIO) is a judicial decision which has been issued or validated by a judicial authority of a Member State ('the issuing State') to have one or several specific investigative measure(s) carried out in another Member State ('the executing State') to obtain evidence in accordance with this Directive.

The EIO may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State.

⁽¹⁾ OJ C 355, 29.12.2010, p. 1.

⁽²⁾ 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).

2. Member States shall execute an EIO on the basis of the principle of mutual recognition and in accordance with this Directive.
3. The issuing of an EIO may be requested by a suspected or accused person, or by a lawyer on his behalf, within the framework of applicable defence rights in conformity with national criminal procedure.
4. This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.

Article 2

Definitions

For the purposes of this Directive the following definitions apply:

- (a) 'issuing State' means the Member State in which the EIO is issued;
- (b) 'executing State' means the Member State executing the EIO, in which the investigative measure is to be carried out;
- (c) 'issuing authority' means:
 - (i) a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or
 - (ii) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. In addition, before it is transmitted to the executing authority the EIO shall be validated, after examination of its conformity with the conditions for issuing an EIO under this Directive, in particular the conditions set out in Article 6.1, by a judge, court, investigating judge or a public prosecutor in the issuing State. Where the EIO has been validated by a judicial authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the EIO;
- (d) 'executing authority' means an authority having competence to recognise an EIO and ensure its execution in accordance with this Directive and the procedures applicable in a similar domestic case. Such procedures may require a court authorisation in the executing State where provided by its national law.

Article 3

Scope of the EIO

The EIO shall cover any investigative measure with the exception of the setting up of a joint investigation team and the gathering of evidence within such a team as provided in Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union ⁽¹⁾ ('the Convention') and in Council Framework Decision 2002/465/JHA ⁽²⁾, other than for the purposes of applying, respectively, Article 13(8) of the Convention and Article 1(8) of the Framework Decision.

Article 4

Types of proceedings for which the EIO can be issued

An EIO may be issued:

- (a) with respect to criminal proceedings that are brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State;
- (b) in proceedings brought by administrative authorities 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 and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters;

⁽¹⁾ Convention established by the Council 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 (OJ C 197, 12.7.2000, p. 3).

⁽²⁾ Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

- (c) in proceedings brought by judicial authorities 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, and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters; and
- (d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

Article 5

Content and form of the EIO

1. The EIO in the form set out in Annex A shall be completed, signed, and its content certified as accurate and correct by the issuing authority.

The EIO shall, in particular, contain the following information:

- (a) data about the issuing authority and, where applicable, the validating authority;
- (b) the object of and reasons for the EIO;
- (c) the necessary information available on the person(s) concerned;
- (d) a description of the criminal act, which is the subject of the investigation or proceedings, and the applicable provisions of the criminal law of the issuing State;
- (e) a description of the investigative measures(s) requested and the evidence to be obtained.

2. Each Member State shall indicate the language(s) which, among the official languages of the institutions of the Union and in addition to the official language(s) of the Member State concerned, may be used for completing or translating the EIO when the Member State concerned is the executing State.

3. The competent authority of the issuing State shall translate the EIO set out in Annex A into an official language of the executing State or any other language indicated by the executing State in accordance with paragraph 2 of this Article.

CHAPTER II

PROCEDURES AND SAFEGUARDS FOR THE ISSUING STATE

Article 6

Conditions for issuing and transmitting an EIO

1. The issuing authority may only issue an EIO where the following conditions have been met:
 - (a) the issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in Article 4 taking into account the rights of the suspected or accused person; and
 - (b) the investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case.
2. The conditions referred to in paragraph 1 shall be assessed by the issuing authority in each case.
3. Where the executing authority has reason to believe that the conditions referred to in paragraph 1 have not been met, it may consult the issuing authority on the importance of executing the EIO. After that consultation the issuing authority may decide to withdraw the EIO.

*Article 7***Transmission of the EIO**

1. The EIO completed in accordance with Article 5 shall be transmitted from the issuing authority to the executing authority by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.
2. Any further official communication shall be made directly between the issuing authority and the executing authority.
3. Without prejudice to Article 2(d), each Member State may designate a central authority or, where its legal system so provides, more than one central authority, to assist the competent authorities. A Member State may, if necessary due to the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and receipt of EIOs, as well as for other official correspondence relating to EIOs.
4. The issuing authority may transmit EIOs via the telecommunications system of the European Judicial Network (EJN), as set up by Council Joint Action. 98/428/JHA ⁽¹⁾.
5. If the identity of the executing authority is unknown, the issuing authority shall make all necessary inquiries, including via the EJN contact points, in order to obtain the information from the executing State.
6. Where the authority in the executing State which receives the EIO has no competence to recognise the EIO or to take the necessary measures for its execution, it shall, *ex officio*, transmit the EIO to the executing authority and so inform the issuing authority.
7. All difficulties concerning the transmission or authenticity of any document needed for the execution of the EIO shall be dealt with by direct contacts between the issuing authority and the executing authority involved or, where appropriate, with the involvement of the central authorities of the Member States.

*Article 8***EIO related to an earlier EIO**

1. Where an issuing authority issues an EIO which supplements an earlier EIO, it shall indicate this fact in the EIO in Section D of the form set out in Annex A.
2. If the issuing authority assists in the execution of the EIO in the executing State, in accordance with Article 9(4), it may, without prejudice to notifications made under Article 33(1)(c), address an EIO which supplements an earlier EIO directly to the executing authority, while present in that State.
3. The EIO which supplements an earlier EIO shall be certified in accordance with the first subparagraph of Article 5(1), and, where applicable, be validated in accordance with Article 2(c).

CHAPTER III

PROCEDURES AND SAFEGUARDS FOR THE EXECUTING STATE*Article 9***Recognition and execution**

1. The executing authority shall recognise an EIO, transmitted in accordance with this Directive, without any further formality being required, and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement provided for in this Directive.

⁽¹⁾ Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

2. The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in this Directive and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State.
3. Where an executing authority receives an EIO which has not been issued by an issuing authority as specified in Article 2(c), the executing authority shall return the EIO to the issuing State.
4. The issuing authority may request that one or more authorities of the issuing State assist in the execution of the EIO in support to the competent authorities of the executing State to the extent that the designated authorities of the issuing State would be able to assist in the execution of the investigative measures indicated in the EIO in a similar domestic case. The executing authority shall comply with this request provided that such assistance is not contrary to the fundamental principles of law of the executing State or does not harm its essential national security interests.
5. The authorities of the issuing State present in the executing State shall be bound by the law of the executing State during the execution of the EIO. They shall not have any law enforcement powers in the territory of the executing State, unless the execution of such powers in the territory of the executing State is in accordance with the law of the executing State and to the extent agreed between the issuing authority and the executing authority.
6. The issuing authority and executing authority may consult each other, by any appropriate means, with a view to facilitating the efficient application of this Article.

Article 10

Recourse to a different type of investigative measure

1. The executing authority shall have, wherever possible, recourse to an investigative measure other than that provided for in the EIO where:
 - (a) the investigative measure indicated in the EIO does not exist under the law of the executing State; or
 - (b) the investigative measure indicated in the EIO would not be available in a similar domestic case.
2. Without prejudice to Article 11, paragraph (1) does not apply to the following investigative measures, which always have to be available under the law of the executing State:
 - (a) the obtaining of information or evidence which is already in the possession of the executing authority and the information or evidence could have been obtained, in accordance with the law of the executing State, in the framework of criminal proceedings or for the purposes of the EIO;
 - (b) the obtaining of information contained in databases held by police or judicial authorities and directly accessible by the executing authority in the framework of criminal proceedings;
 - (c) the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the executing State;
 - (d) any non-coercive investigative measure as defined under the law of the executing State;
 - (e) the identification of persons holding a subscription of a specified phone number or IP address.
3. The executing authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO.
4. When the executing authority decides to avail itself of the possibility referred to in paragraphs 1 and 3, it shall first inform the issuing authority, which may decide to withdraw or supplement the EIO.
5. Where, in accordance with paragraph 1, the investigative measure indicated in the EIO does not exist under the law of the executing State or it would not be available in a similar domestic case and where there is no other investigative measure which would have the same result as the investigative measure requested, the executing authority shall notify the issuing authority that it has not been possible to provide the assistance requested.

Article 11

Grounds for non-recognition or non-execution

1. Without prejudice to Article 1(4), recognition or execution of an EIO may be refused in the executing State where:
 - (a) there is an immunity or a privilege under the law of the executing State which makes it impossible to execute the EIO or there are rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which make it impossible to execute the EIO;
 - (b) in a specific case the execution of the EIO would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;
 - (c) the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the investigative measure would not be authorised under the law of the executing State in a similar domestic case;
 - (d) the execution of the EIO would be contrary to the principle of *ne bis in idem*;
 - (e) the EIO relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the EIO is issued is not an offence in the executing State;
 - (f) there are substantial grounds to believe that the execution of the investigative measure indicated in the EIO would be incompatible with the executing State's obligations in accordance with Article 6 TEU and the Charter;
 - (g) the conduct for which the EIO has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex D, as indicated by the issuing authority in the EIO, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years; or
 - (h) the use of the investigative measure indicated in the EIO is restricted under the law of the executing State to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the EIO.
2. Paragraphs 1(g) and 1(h) do not apply to investigative measures referred to in Article 10(2).
3. Where the EIO concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution 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.
4. In the cases referred to in points (a), (b), (d), (e) and (f) of paragraph 1 before deciding not to recognise or not to execute an EIO, either in whole or in part the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.
5. In the case referred to in paragraph 1(a) and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.

Article 12

Time limits for recognition or execution

1. The decision on the recognition or execution shall be taken and the investigative measure shall be carried out with the same celerity and priority as for a similar domestic case and, in any case, within the time limits provided in this Article.
2. Where the issuing authority has indicated in the EIO that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline than those provided in this Article is necessary, or if the issuing authority has indicated in the EIO that the investigative measure must be carried out on a specific date, the executing authority shall take as full account as possible of this requirement.

3. The executing authority shall take the decision on the recognition or execution of the EIO as soon as possible and, without prejudice to paragraph 5, no later than 30 days after the receipt of the EIO by the competent executing authority.
4. Unless grounds for postponement under Article 15 exist or evidence mentioned in the investigative measure covered by the EIO is already in the possession of the executing State, the executing authority shall carry out the investigative measure without delay and without prejudice to paragraph 5, not later than 90 days following the taking of the decision referred to in paragraph 3.
5. If it is not practicable in a specific case for the competent executing authority to meet the time limit set out in paragraph 3 or the specific date set out in paragraph 2, it shall, without delay, inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time necessary for the decision to be taken. In such a case, the time limit laid down in paragraph 3 may be extended by a maximum of 30 days.
6. If it is not practicable in a specific case for the competent executing authority to meet the time limit set out in paragraph 4, it shall, without delay, inform the competent authority of the issuing State by any means, giving the reasons for the delay and it shall consult with the issuing authority on the appropriate timing to carry out the investigative measure.

Article 13

Transfer of evidence

1. The executing authority shall, without undue delay, transfer the evidence obtained or already in the possession of the competent authorities of the executing State as a result of the execution of the EIO to the issuing State.

Where requested in the EIO and if possible under the law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO in accordance with Article 9(4).

2. The transfer of the evidence may be suspended, pending a decision regarding a legal remedy, unless sufficient reasons are indicated in the EIO that an immediate transfer is essential for the proper conduct of its investigations or for the preservation of individual rights. However, the transfer of evidence shall be suspended if it would cause serious and irreversible damage to the person concerned.
3. When transferring the evidence obtained, the executing authority shall indicate whether it requires the evidence to be returned to the executing State as soon as it is no longer required in the issuing State.
4. Where the objects, documents, or data concerned are already relevant for other proceedings, the executing authority may, at the explicit request of and after consultations with the issuing authority, temporarily transfer the evidence on the condition that it be returned to the executing State as soon as it is no longer required in the issuing State or at any other time or occasion agreed between the competent authorities.

Article 14

Legal remedies

1. Member States shall ensure that legal remedies equivalent to those available in a similar domestic case, are applicable to the investigative measures indicated in the EIO.
2. The substantive reasons for issuing the EIO may be challenged only in an action brought in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.
3. Where it would not undermine the need to ensure confidentiality of an investigation under Article 19(1), the issuing authority and the executing authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking the legal remedies when these become applicable and in due time to ensure that they can be exercised effectively.

4. Member States shall ensure that the time-limits for seeking a legal remedy shall be the same as those that are provided for in similar domestic cases and are applied in a way that guarantees the possibility of the effective exercise of these legal remedies for the parties concerned.
5. The issuing authority and the executing authority shall inform each other about the legal remedies sought against the issuing, the recognition or the execution of an EIO.
6. A legal challenge shall not suspend the execution of the investigative measure, unless it is provided in similar domestic cases.
7. The issuing State shall take into account a successful challenge against the recognition or execution of an EIO in accordance with its own national law. Without prejudice to national procedural rules Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the EIO

Article 15

Grounds for postponement of recognition or execution

1. The recognition or execution of the EIO may be postponed in the executing State where:
 - (a) its execution might prejudice an on-going criminal investigation or prosecution, until such time as the executing State deems reasonable;
 - (b) the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose.
2. As soon as the ground for postponement has ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority by any means capable of producing a written record.

Article 16

Obligation to inform

1. The competent authority in the executing State which receives the EIO shall, without delay, and in any case within a week of the reception of an EIO, acknowledge reception of the EIO by completing and sending the form set out in Annex B.

Where a central authority has been designated in accordance with Article 7(3), this obligation is applicable both to the central authority and to the executing authority which receives the EIO from the central authority.

In the cases referred to in Article 7(6), this obligation applies both to the competent authority which initially received the EIO and to the executing authority to which the EIO is finally transmitted.

2. Without prejudice to Article 10(4) and (5) the executing authority shall inform the issuing authority immediately by any means:
 - (a) if it is impossible for the executing authority to take a decision on the recognition or execution due to the fact that the form provided for in Annex A is incomplete or manifestly incorrect;
 - (b) if the executing authority, in the course of the execution of the EIO, 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 EIO was issued, in order to enable the issuing authority to take further action in the specific case; or
 - (c) if the executing authority establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority in accordance with Article 9.

Upon request by the issuing authority, the information shall be confirmed without delay by any means capable of producing a written record.

3. Without prejudice to Article 10(4) and (5) the executing authority shall inform the issuing authority without delay by any means capable of producing a written record:
 - (a) of any decision taken pursuant to Articles 10 or 11;
 - (b) of any decision to postpone the execution or recognition of the EIO, the reasons for the postponement and, if possible, the expected duration of the postponement.

Article 17

Criminal liability regarding officials

When present in the territory of the executing State in the framework of the application of this Directive, officials from the issuing State shall be regarded as officials of the executing State with respect to offences committed against them or by them.

Article 18

Civil liability regarding officials

1. Where, in the framework of the application of this Directive, officials of a Member State are present in the territory of another Member State, the former Member State shall be liable for any damage caused by its officials 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 in full any sums the latter Member State 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 cases referred to in paragraph 1 from requesting reimbursement of damages it has sustained from another Member State.

Article 19

Confidentiality

1. Each Member State shall take the necessary measures to ensure that in the execution of an EIO the issuing authority and the executing authority take due account of the confidentiality of the investigation.
2. The executing authority shall, in accordance with its national law, guarantee the confidentiality of the facts and the substance of the EIO, except to the extent necessary to execute the investigative measure. If the executing authority cannot comply with the requirement of confidentiality, it shall notify the issuing authority without delay.
3. The issuing authority shall, in accordance with its national law and unless otherwise indicated by the executing authority, not disclose any evidence or information provided by the executing authority, except to the extent that its disclosure is necessary for the investigations or proceedings described in the EIO.
4. 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 issuing State in accordance with Articles 26 and 27 or that an investigation is being carried out.

*Article 20***Protection of personal data**

When implementing this Directive, Member States shall ensure that personal data are protected and may only be processed in accordance with Council Framework Decision 2008/977/JHA ⁽¹⁾ and the principles of the Council of Europe Convention for the protection of Individuals with regard to the Automatic Processing of Personal Data of 28 January 1981 and its Additional Protocol.

Access to such data shall be restricted, without prejudice to the rights of the data subject. Only authorised persons may have access to such data.

*Article 21***Costs**

1. Unless otherwise provided in this Directive, the executing State shall bear all costs undertaken on the territory of the executing State which are related to the execution of an EIO.

2. Where the executing authority considers that the costs for the execution of the EIO may be deemed exceptionally high, it may consult with the issuing authority on whether and how the costs could be shared or the EIO modified.

The executing authority shall inform the issuing authority in advance of the detailed specifications of the part of the costs deemed exceptionally high.

3. In exceptional situations where no agreement can be reached with regard to the costs referred to in paragraph 2, the issuing authority may decide to:

- (a) withdraw the EIO in whole or in part; or
- (b) keep the EIO, and bear the part of the costs deemed exceptionally high.

CHAPTER IV

SPECIFIC PROVISIONS FOR CERTAIN INVESTIGATIVE MEASURES*Article 22***Temporary transfer to the issuing State of persons held in custody for the purpose of carrying out an investigative measure**

1. An EIO may be issued for the temporary transfer of a person in custody in the executing State for the purpose of carrying out an investigative measure with a view to gathering evidence for which the presence of that person on the territory of the issuing State is required, provided that he shall be sent back within the period stipulated by the executing State.

2. In addition to the grounds for non-recognition or non-execution referred to in Article 11 the execution of the EIO may also be refused if:

- (a) the person in custody does not consent; or
- (b) the transfer is liable to prolong the detention of the person in custody.

3. Without prejudice to paragraph 2(a), where the executing State considers it necessary in view of the person's age or physical or mental condition, the opportunity to state the opinion on the temporary transfer shall be given to the legal representative of the person in custody.

⁽¹⁾ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

4. In cases referred to in paragraph 1, transit of the person in custody through the territory of a third Member State (the Member State of transit) shall be granted on application, accompanied by all necessary documents.
5. The practical arrangements regarding the temporary transfer of the person including the details of his custody conditions in the issuing State, and the dates by which he must be transferred from and returned to the territory of the executing State shall be agreed between the issuing State and the executing State, ensuring that the physical and mental condition of the person concerned, as well as the level of security required in the issuing State, are taken into account.
6. The transferred person shall remain in custody in the territory of the issuing State and, where applicable, in the territory of the Member State of transit, for the acts or convictions for which he has been kept in custody in the executing State, unless the executing State applies for his release.
7. The period of custody in the territory of the issuing 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 executing State.
8. Without prejudice to paragraph 6, a transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the issuing State for acts committed or convictions handed down before his departure from the territory of the executing State and which are not specified in the EIO.
9. The immunity referred to in paragraph 8 shall cease to exist if the transferred person, having had an opportunity to leave for a period of 15 consecutive days from the date when his presence is no longer required by the issuing authorities, has either:
 - (a) nevertheless remained in the territory; or
 - (b) having left it, has returned.
10. Costs resulting from the application of this Article shall be borne in accordance with Article 21, except for the costs arising from the transfer of the person to and from the issuing State which shall be borne by that State.

Article 23

Temporary transfer to the executing State of persons held in custody for the purpose of carrying out an investigative measure

1. An EIO may be issued for the temporary transfer of a person held in custody in the issuing State for the purpose of carrying out an investigative measure with a view to gathering evidence for which his presence on the territory of the executing State is required.
2. Paragraph 2(a) and paragraphs 3 to 9 of Article 22 are applicable *mutatis mutandis* to the temporary transfer under this Article.
3. Costs resulting from the application of this Article shall be borne in accordance with Article 21, except for the costs arising from the transfer of the person concerned to and from the executing State which shall be borne by the issuing State.

Article 24

Hearing by videoconference or other audiovisual transmission

1. Where a person is in the territory of the executing State and has to be heard as a witness or expert by the competent authorities of the issuing State, the issuing authority may issue an EIO in order to hear the witness or expert by videoconference or other audiovisual transmission in accordance with paragraphs 5 to 7.

The issuing authority may also issue an EIO for the purpose of hearing a suspected or accused person by videoconference or other audiovisual transmission.

2. In addition to the grounds for non-recognition or non-execution referred to in Article 11, execution of an EIO may be refused if either:

- (a) the suspected or accused person does not consent; or
- (b) the execution of such an investigative measure in a particular case would be contrary to the fundamental principles of the law of the executing State.

3. The issuing authority and the executing authority shall agree the practical arrangements. When agreeing such arrangements, the executing authority shall undertake to:

- (a) summon the witness or expert concerned, indicating the time and the venue of the hearing;
- (b) summon the suspected or accused persons to appear for the hearing in accordance with the detailed rules laid down in the law of the executing State and inform such persons about their rights under the law of the issuing State, in such a time as to allow them to exercise their rights of defence effectively;
- (c) ensure the identity of the person to be heard.

4. If in circumstances of a particular case the executing authority has no access to technical means for a hearing held by videoconference, such means may be made available to it by the issuing State by mutual agreement.

5. Where a hearing is held by videoconference or other audiovisual transmission, the following rules shall apply:

- (a) the competent authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identity of the person to be heard and respect for the fundamental principles of the law of the executing State.

If the executing authority is of the view that during the hearing the fundamental principles of the law of the executing State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;

- (b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the issuing State and the executing State;
- (c) the hearing shall be conducted directly by, or under the direction of, the competent authority of the issuing State in accordance with its own laws;
- (d) at the request of the issuing State or the person to be heard, the executing State shall ensure that the person to be heard is assisted by an interpreter, if necessary;
- (e) suspected or accused persons shall be informed in advance of the hearing of the procedural rights which would accrue to them, including the right not to testify, under the law of the executing State and the issuing State. Witnesses and experts may claim the right not to testify which would accrue to them under the law of either the executing or the issuing State and shall be informed about this right in advance of the hearing.

6. Without prejudice to any measures agreed for the protection of persons, on the conclusion of the hearing, the executing authority shall 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 executing 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 executing authority to the issuing authority.

7. Each Member State shall take the necessary measures to ensure that, where the person is being heard within its territory in accordance with this Article and refuses to testify when under an obligation to testify or does not testify the truth, its national law applies in the same way as if the hearing took place in a national procedure.

Article 25

Hearing by telephone conference

1. If a person is in the territory of one Member State and has to be heard as a witness or expert by competent authorities of another Member State, the issuing authority of the latter Member State may, where it is not appropriate or possible for the person to be heard to appear in its territory in person, and after having examined other suitable means, issue an EIO in order to hear a witness or expert by telephone conference as provided for in paragraph 2.
2. Unless otherwise agreed, Article 24(3), (5), (6) and (7) shall apply *mutatis mutandis* to hearings by telephone conference.

Article 26

Information on bank and other financial accounts

1. An EIO may be issued in order to determine whether any natural or legal person subject to the criminal proceedings concerned holds or controls one or more accounts, of whatever nature, in any bank located in the territory of the executing State, and if so, to obtain all the details of the identified accounts.
2. Each Member State shall take the measures necessary to enable it to provide the information referred to in paragraph 1 in accordance with the conditions under this Article.
3. The information referred to in paragraph 1 shall also, if requested in the EIO, include accounts for which the person subject to the criminal proceedings concerned has powers of attorney.
4. 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.
5. In the EIO the issuing authority shall indicate the reasons why it considers that the requested information is likely to be of substantial value for the purpose of the criminal proceedings concerned and on what grounds it presumes that banks in the executing State hold the account and, to the extent available, which banks may be involved. It shall also include in the EIO any information available which may facilitate its execution.
6. An EIO may also be issued to determine whether any natural or legal person subject to the criminal proceedings concerned holds one or more accounts, in any non-bank financial institution located on the territory of the executing State. Paragraphs 3 to 5 shall apply *mutatis mutandis*. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 11, the execution of the EIO may also be refused if the execution of the investigative measure would not be authorised in a similar domestic case.

Article 27

Information on banking and other financial operations

1. An EIO may be issued in order to obtain the details of specified bank accounts and of banking operations which have been carried out during a defined period through one or more accounts specified therein, including the details of any sending or recipient account.
2. Each Member State shall take the measures necessary to enable it to provide the information referred to in paragraph 1 in accordance with the conditions under this Article.
3. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank in which the account is held.

4. In the EIO the issuing authority shall indicate the reasons why it considers the requested information relevant for the purpose of the criminal proceedings concerned.

5. An EIO may also be issued with regard to the information provided for in paragraph 1 with reference to the financial operations conducted by non-banking financial institutions. Paragraphs 3 to 4 shall apply *mutatis mutandis*. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 11, the execution of the EIO may also be refused where the execution of the investigative measure would not be authorised in a similar domestic case.

Article 28

Investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time

1. When the EIO is issued for the purpose of executing an investigative measure requiring the gathering of evidence in real time, continuously and over a certain period of time, such as:

- (a) the monitoring of banking or other financial operations that are being carried out through one or more specified accounts;
- (b) the controlled deliveries on the territory of the executing State;

its execution may be refused, in addition to the grounds for non-recognition and non-execution referred to in Article 11, if the execution of the investigative measure concerned would not be authorised in a similar domestic case.

2. The practical arrangements regarding the investigative measure referred to in paragraph 1(b) and wherever else necessary shall be agreed between the issuing State and the executing State.

3. The issuing authority shall indicate in the EIO why it considers the information requested relevant for the purpose of the criminal proceedings concerned.

4. The right to act, to direct and to control operations related to the execution of an EIO referred to in paragraph 1 shall lie with the competent authorities of the executing State.

Article 29

Covert investigations

1. An EIO may be issued for the purpose of requesting the executing State to assist the issuing State in the conduct of investigations into crime by officers acting under covert or false identity ('covert investigations').

2. The issuing authority shall indicate in the EIO why it considers that the covert investigation is likely to be relevant for the purpose of the criminal proceedings. The decision on the recognition and execution of an EIO issued under this Article shall be taken in each individual case by the competent authorities of the executing State with due regard to its national law and procedures.

3. In addition to the grounds for non-recognition and non-execution referred to in Article 11, the executing authority may refuse to execute an EIO referred to in paragraph 1, where:

- (a) the execution of the covert investigation would not be authorised in a similar domestic case; or
- (b) it was not possible to reach an agreement on the arrangements for the covert investigations under paragraph 4.

4. Covert investigations shall take place in accordance with the national law and procedures of the Member State on the territory of which the covert investigation takes place. The right to act, to direct and to control the operation related to the covert investigation shall lie solely with the competent authorities of the executing State. 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 issuing State and the executing State with due regard to their national laws and procedures.

CHAPTER V

INTERCEPTION OF TELECOMMUNICATIONS*Article 30***Interception of telecommunications with technical assistance of another Member State**

1. An EIO may be issued for the interception of telecommunications in the Member State from which technical assistance is needed.
 2. Where more than one Member State is in a position to provide the complete necessary technical assistance for the same interception of telecommunications, the EIO shall be sent only to one of them. Priority shall always be given to the Member State where the subject of the interception is or will be located.
 3. An EIO referred to in paragraph 1 shall also contain the following information:
 - (a) information for the purpose of identifying the subject of the interception;
 - (b) the desired duration of the interception; and
 - (c) sufficient technical data, in particular the target identifier, to ensure that the EIO can be executed.
 4. The issuing authority shall indicate in the EIO the reasons why it considers the indicated investigative measure relevant for the purpose of the criminal proceedings concerned.
 5. In addition to the grounds for non-recognition or non-execution referred to in Article 11, the execution of an EIO referred to in paragraph 1 may also be refused where the investigative measure would not have been authorised in a similar domestic case. The executing State may make its consent subject to any conditions which would be observed in a similar domestic case.
 6. An EIO referred to in paragraph 1 may be executed by:
 - (a) transmitting telecommunications immediately to the issuing State; or
 - (b) intercepting, recording and subsequently transmitting the outcome of interception of telecommunications to the issuing State.
- The issuing authority and the executing authority shall consult each other with a view to agreeing on whether the interception is carried out in accordance with point (a) or (b).
7. When issuing an EIO referred to in paragraph 1 or during the interception, the issuing authority may, where it has a particular reason to do so, also request a transcription, decoding or decrypting of the recording subject to the agreement of the executing authority.
 8. Costs resulting from the application of this Article shall be borne in accordance with Article 21, except for the costs arising from the transcription, decoding and decrypting of the intercepted communications which shall be borne by the issuing State.

*Article 31***Notification of the Member State where the subject of the interception is located from which no technical assistance is needed**

1. Where, for the purpose of carrying out an investigative measure, the interception of telecommunications is authorised by the competent authority of one Member State (the 'intercepting Member State') and the communication address of the subject of the interception 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 notify the competent authority of the notified Member State of the interception:
 - (a) prior to the interception in cases where the competent authority of the intercepting Member State knows at the time of ordering the interception that the subject of the interception is or will be on the territory of the notified Member State;
 - (b) during the interception or after the interception has been carried out, immediately after it becomes aware that the subject of the interception is or has been during the interception, on the territory of the notified Member State.

2. The notification referred to in paragraph 1 shall be made by using the form set out in Annex C.
3. The competent authority of the notified Member States may, in case where the interception would not be authorised in a similar domestic case, notify, without delay and at the latest within 96 hours after the receipt of the notification referred to in paragraph 1, the competent authority of the intercepting Member State:
 - (a) that the interception may not be carried out or shall be terminated; and
 - (b) where necessary, that any material already intercepted while the subject of the interception was on its territory may not be used, or may only be used under conditions which it shall specify. The competent authority of the notified Member State shall inform the competent authority of the intercepting Member State of reasons justifying those conditions.
4. Article 5(2) shall be applicable *mutatis mutandis* for the notification referred to in paragraph 2.

CHAPTER VI

PROVISIONAL MEASURES

Article 32

Provisional measures

1. The issuing authority may issue an EIO in order to take any measure with a view to provisionally preventing the destruction, transformation, removal, transfer or disposal of an item that may be used as evidence.
2. The executing authority shall decide and communicate the decision on the provisional measure as soon as possible and, wherever practicable, within 24 hours of receipt of the EIO.
3. Where a provisional measure referred to in paragraph 1 is requested the issuing authority shall indicate in the EIO whether the evidence is to be transferred to the issuing State or is to remain in the executing State. The executing authority shall recognise and execute the EIO and transfer the evidence in accordance with the procedures laid down in this Directive.
4. Where, in accordance with paragraph 3, an EIO is accompanied by an instruction that the evidence shall remain in the executing State, the issuing authority shall indicate the date of lifting the provisional measure referred to in paragraph 1, or the estimated date for the submission of the request for the evidence to be transferred to the issuing State.
5. After consulting the issuing authority, the executing authority may, in accordance with its national law and practice, lay down appropriate conditions in light of the circumstances of the case to limit the period for which the provisional measure referred to in paragraph 1 is to be maintained. If, in accordance with those conditions, it envisages lifting the provisional measure, the executing authority shall inform the issuing authority, which shall be given the opportunity to submit its comments. The issuing authority shall forthwith notify the executing authority that the provisional measure referred to in paragraph 1 has been lifted.

CHAPTER VII

FINAL PROVISIONS

Article 33

Notifications

1. By 22 May 2017 each Member State shall notify the Commission of the following:
 - (a) the authority or authorities which, in accordance with its national law, are competent according to Article 2(c) and (d) when this Member State is the issuing State or the executing State;
 - (b) the languages accepted for an EIO, as referred to in Article 5(2);
 - (c) the information regarding the designated central authority or authorities if the Member State wishes to make use of the possibility under Article 7(3). This information shall be binding upon the authorities of the issuing State.

2. Each Member State may also provide the Commission the list of necessary documents it would require under Article 22(4).
3. Member States shall inform the Commission of any subsequent changes to the information referred to in paragraphs 1 and 2.
4. The Commission shall make the information received under this Article available to all the Member States and to the EJN. The EJN shall make the information available on the website referred to in Article 9 of the Council Decision 2008/976/JHA ⁽¹⁾.

Article 34

Relations to other legal instruments, agreements and arrangements

1. Without prejudice to their application between Member States and third States and their temporary application by virtue of Article 35, this Directive replaces, as from 22 May 2017, the corresponding provisions of the following conventions applicable between the Member States bound by this Directive:
 - (a) European Convention on Mutual Assistance in Criminal Matters of the Council of Europe of 20 April 1959, as well as its two additional protocols, and the bilateral agreements concluded pursuant to Article 26 thereof;
 - (b) Convention implementing the Schengen Agreement;
 - (c) Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its protocol.
2. Framework Decision 2008/978/JHA is hereby replaced for the Member States bound by this Directive. Provisions of Framework Decision 2003/577/JHA are replaced for Member States bound by this Directive as regards freezing of evidence.

For the Member States bound by this Directive, references to Framework Decision 2008/978/JHA and, as regards freezing of evidence, to Framework Decision 2003/577/JHA, shall be construed as references to this Directive.

3. In addition to this Directive, Member States may conclude or continue to apply bilateral or multilateral agreements or arrangements with other Member States after 22 May 2017 only insofar as these make it possible to further strengthen the aims of this Directive and contribute to simplifying or further facilitating the procedures for gathering evidence and provided that the level of safeguards set out in this Directive is respected.
4. Member States shall notify to the Commission by 22 May 2017 the existing agreements and arrangements referred to in paragraph 3 which they wish to continue to apply. Member States shall also notify the Commission within three months of the signing of any new agreement or arrangement referred to in paragraph 3.

Article 35

Transitional provisions

1. Mutual assistance requests received before 22 May 2017 shall continue to be governed by existing instruments relating to mutual assistance in criminal matters. Decisions to freeze evidence by virtue of Framework Decision 2003/577/JHA and received before 22 May 2017 shall also be governed by that Framework Decision.
2. Article 8(1) is applicable *mutatis mutandis* to the EIO following a decision of freezing taken under Framework Decision 2003/577/JHA.

⁽¹⁾ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

*Article 36***Transposition**

1. Member States shall take the necessary measures to comply with this Directive by 22 May 2017.
2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
3. By 22 May 2017, Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.

*Article 37***Report on the application**

No later than five years after 21 May 2014, the Commission shall present to the European Parliament and the Council a report on the application of this Directive, on the basis of both qualitative and quantitative information, including in particular, the evaluation of its impact on the cooperation in criminal matters and the protection of individuals, as well as the execution of the provisions on the interception of telecommunications in light of technical developments. The report shall be accompanied, if necessary, by proposals for amendments to this Directive.

*Article 38***Entry into force**

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

*Article 39***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 3 April 2014.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
D. KOURKOULAS

ANNEX A

EUROPEAN INVESTIGATION ORDER (EIO)

This EIO has been issued by a competent authority. The issuing authority certifies that the issuing of this EIO is necessary and proportionate for the purpose of the proceedings specified within it taking into account the rights of the suspected or accused person and that the investigative measures requested could have been ordered under the same conditions in a similar domestic case. I request that the investigative measure or measures specified below be carried out taking due account of the confidentiality of the investigation and that the evidence obtained as a result of the execution of the EIO be transferred.

SECTION A

Issuing State:

Executing State:

SECTION B: **Urgency**

Please indicate if there is any urgency due to

☐ Evidence being concealed or destroyed

☐ Imminent trial date

☐ Any other reason

Please specify below:

Time limits for execution of the EIO are laid down in Directive 2014/41/EU. However, if a shorter or specific time limit is necessary, please provide the date and explain the reason for this:

.....

SECTION C: Investigative measure(s) to be carried out

1. Describe the assistance/investigative measure(s) required AND indicate, if applicable, if it is one of the following investigative measures:

.....

☐ Obtaining information or evidence which is already in the possession of the executing authority

☐ Obtaining information contained in databases held by police or judicial authorities

☐ Hearing

☐ witness

☐ expert

☐ suspected or accused person

☐ victim

☐ third party

☐ Identification of persons holding a subscription of a specified phone number or IP address

☐ Temporary transfer of a person held in custody to the issuing State

☐ Temporary transfer of a person held in custody to the executing State

- ☐ Hearing by videoconference or other audiovisual transmission
- ☐ witness
 - ☐ expert
 - ☐ suspected or accused person
- ☐ Hearing by telephone conference
- ☐ witness
 - ☐ expert
- ☐ Information on bank and other financial accounts
- ☐ Information on banking and other financial operations
- ☐ Investigative measure implying the gathering of evidence in real time, continuously and over a certain period of time
- ☐ monitoring of banking or other financial operations
 - ☐ controlled deliveries
 - ☐ other
- ☐ Covert investigation
- ☐ Interception of telecommunications
- ☐ Provisional measure(s) to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence

SECTION D: Relation to an earlier EIO

Indicate whether this EIO supplements an earlier EIO. If applicable, provide information relevant to identify the previous EIO (the date of issue of the EIO, the authority to which it was transmitted and, if available, the date of transmission of the EIO, and reference numbers given by the issuing and executing authorities):

.....

.....

If relevant please indicate if an EIO has already been addressed to another Member State in the same case:

.....

SECTION E: Identity of the person concerned

1. State all information, as far as known, regarding the identity of the (i) natural or (ii) legal person(s) concerned by the investigative measure (if more than one person is concerned, please provide the information for each person):

(i) In the case of natural person(s)

Name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number:

Type and number of the identity document(s) (ID card, passport), if available:

.....

Date of birth:

Place of birth:

Residence and/or known address; if address not known, state the last known address:

.....

Language(s) which the person understands:

.....

(ii) In the case of legal person(s)

Name:

Form of legal person:

Shortened name, commonly used name or trading name, if applicable:

.....

Registered seat:

Registration number:

Address of the legal person:

Name of the legal person's representative:

Please describe the position the concerned person currently holds in the proceedings:

☐ suspected or accused person☐ victim☐ witness☐ expert☐ third party☐ other (please specify)

2. If different from the address above, please give the location where investigative measure is to be carried out:

.....

.....

3. Provide any other information that will assist with the execution of the EIO:

.....

.....

SECTION F: Type of proceedings for which the EIO is issued:

☐ (a) with respect to criminal proceedings brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State; or☐ (b) proceedings brought by administrative authorities 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, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters; or☐ (c) proceedings brought by judicial authorities 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, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;☐ (d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

SECTION G: Grounds for issuing the EIO

1. Summary of the facts

Set out the reasons why the EIO is issued, including a summary of the underlying facts, a description of offences charged or under investigation, the stage the investigation has reached, the reasons for any risk factors and any other relevant information.

.....

.....

.....

2. Nature and legal classification of the offence(s) for which the EIO is issued and the applicable statutory provision/code:

.....

.....

.....

3. Is the offence for which the EIO is issued punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years as defined by the law of the issuing State and included in the list of offences set out below? (please tick the relevant box)

- ☐ 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 Union 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

SECTION H: Additional requirements for certain measures

Fill out the sections relevant to the investigative measure(s) requested:

SECTION H1: Transfer of a person held in custody

(1) If a temporary transfer to the issuing State of a person held in custody for the purpose of the investigation is requested, please indicate whether the person consented to this measure:

☐ Yes ☐ No ☐ I request that the person's consent is sought

(2) If a temporary transfer to the executing State of a person held in custody for the purpose of investigation is requested, please indicate whether the person consented to this measure:

☐ Yes ☐ No

SECTION H2: Video or telephone conference or other audiovisual transmission

If hearing by videoconference or telephone conference or other audiovisual transmission is requested:

Please indicate the name of the authority that will conduct the hearing (contact details/language):

.....

Please indicate reasons for requesting this measure:

.....

☐ (a) hearing by videoconference or other audiovisual transmission:

☐ the suspected or accused person has given his/her consent

☐ (b) hearing by telephone conference

SECTION H3: Provisional measures

If a provisional measure to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence, is requested, please indicate whether:

☐ the item is to be transferred to the issuing State

☐ the item is to remain in the executing State; please indicate an estimated date:

for lifting of provisional measure:

for the submission of a subsequent request concerning the item:

SECTION H4: Information on bank and other financial accounts

(1) If information on bank accounts or other financial accounts that the person holds or controls is requested, please indicate, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings and on what grounds you presume that banks in the executing State hold the account:

☐ information on bank accounts that the person holds or in respect of which he or she has the power of attorney

☐ information on other financial accounts that the person holds or in respect of which he or she has the power of attorney

.....

.....

.....

.....

(2) If information on banking operations or other financial operations is requested, please indicate, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings:

- ☐ information on banking operations
☐ information on other financial operations

.....

Indicate the relevant period of time and the related accounts:

.....

SECTION H5: Investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time

If such investigative measure is requested please indicate the reasons why you consider the requested information relevant for the purpose of the criminal proceedings:

.....

SECTION H6: Covert investigations

If covert investigation is requested please indicate the reasons why you consider the investigative measure likely to be relevant for the purpose of the criminal proceedings:

.....

SECTION H7: Interception of telecommunications

(1) If interception of telecommunications is requested please indicate the reasons why you consider the investigative measure relevant for the purpose of the criminal proceedings:

.....

(2) Please provide following information:

(a) information for the purpose of identifying the subject of the interception:

.....

(b) the desired duration of the interception:

.....

(c) technical data (in particular the target identifier — such as mobile telephone, landline telephone, email address, internet connection), to ensure that the EIO can be executed:

.....

(3) Please indicate your preference concerning the method of execution:

- ☐ immediate transmission
☐ recording and subsequent transmission

Please indicate if you also require transcription, decoding or decrypting of the intercepted material (*):

.....

(*) Please be aware that the costs of any transcription, decoding or decrypting must be met by the issuing State.

SECTION I: Formalities and procedures requested for the execution

1. Tick and complete, if applicable

☐ It is requested that the executing authority comply with the following formalities and procedures (...):.....
.....

2. Tick and complete, if applicable

☐ It is requested that one or several officials of the issuing State assist in the execution of the EIO in support of the competent authorities of the executing State.

Contact details of the officials:

.....
.....

Languages that may be used for communication:

.....

SECTION J: Legal remedies

1. Please indicate if a legal remedy has already been sought against the issuing of an EIO, and if so please provide further details (description of the legal remedy, including necessary steps to take and deadlines):

.....
.....

2. Authority in the issuing State which can supply further information on procedures for seeking legal remedies in the issuing State and on whether legal assistance and interpretation and translation is available:

Name:

Contact person (if applicable):

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

SECTION K: Details of the authority which issued the EIO

Tick the type of authority which issued the EIO:

☐ judicial authority☐ (*) any other competent authority as defined by the law of the issuing State

(*) Please also complete section (L)

Name of authority:

.....

Name of representative/contact point:

.....

File No:

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

Languages in which it is possible to communicate with the issuing authority:

.....

If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the transfer of evidence:

Name/Title/Organisation:

Address:

E-mail/Contact Phone No:

Signature of the issuing authority and/or its representative certifying the content of the EIO as accurate and correct:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

SECTION L Details of the judicial authority which validated the EIO

Please indicate the type of judicial authority which has validated this EIO:

- ☐ (a) judge or court
☐ (b) investigating judge
☐ (c) public prosecutor

Official name of the validating authority:

.....

Name of its representative:

.....

Post held (title/grade):

.....

File no:

Address:

.....

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

Languages in which it is possible to communicate with the validating authority:

.....

Please indicate if the main contact point for the executing authority should be the:

- ☐ issuing authority
☐ validating authority

Signature and details of the validating authority

Name:

Post held (title/grade):

Date:

Official stamp (if available):

ANNEX B

CONFIRMATION OF THE RECEIPT OF AN EIO

This form has to be completed by the authority of the executing State which received the EIO referred to below.

(A) THE EIO CONCERNED

Authority which issued the EIO:

.....

File reference:.....

Date of issuing:.....

Date of receipt:

(B) THE AUTHORITY WHICH RECEIVED THE EIO ⁽¹⁾

Official name of the competent authority:

.....

Name of its representative:

.....

Post held (title/grade):

.....

Address:

.....

.....

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:.....

File reference:.....

Languages in which it is possible to communicate with the authority:

.....

(C) (WHERE APPLICABLE) THE COMPETENT AUTHORITY TO WHOM THE EIO IS TRANSMITTED BY THE AUTHORITY UNDER (B)

Official name of the authority:

.....

Name of its representative:

.....

Post held (title/grade):

.....

Address:

.....

.....

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:.....

Date of transmission:

File reference:.....

Language(s) that may be used for communication:

.....

⁽¹⁾ This section is to be completed by each authority which received the EIO. This obligation falls upon the authority competent to recognise and execute the EIO and, where applicable, upon the central authority or the authority which transmitted the EIO to the competent authority.

(D) ANY OTHER INFORMATION WHICH MAY BE RELEVANT FOR THE ISSUING AUTHORITY:

.....
.....
.....

(E) SIGNATURE AND DATE

Signature:

Date:

Official stamp (if available):

ANNEX C

NOTIFICATION

This form is used in order to notify a Member State about the interception of telecommunication that will be, is or has been carried out on its territory without its technical assistance. I hereby inform (notified Member State) of the interception.

(A) ⁽¹⁾ THE COMPETENT AUTHORITY

Official name of the competent authority of intercepting Member State:

.....

Name of its representative:

.....

Post held (title/grade):

.....

Address:

.....

.....

.....

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

File reference:

Date of issuing:

Languages in which it is possible to communicate with the authority:

.....

(B) INFORMATION CONCERNING THE INTERCEPTION

(I) Information about state of play: This notification takes place (please tick)

☐ prior to the interception

☐ during the interception

☐ after the interception

(II) The (anticipated) duration of the interception (as known to the issuing authority):

....., starting from

(III) Target of the interception: (telephone number, IP number or e-mail)

.....

(IV) Identity of the persons concerned

State all information, as far as they are known, regarding the identity of the (i) natural or (ii) legal person(s) against whom the proceedings are/may be/is taking place:

(i) In the case of natural person(s)

Name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number:

⁽¹⁾ The authority which is referred to here is the one which should be contacted in further correspondence with the issuing State.

Date of birth:

Place of birth:

Residence and/or known address; if address not known, state the last known address:

.....

Language(s) which the person understands:

.....

(ii) In the case of legal person(s)

Name:

Form of legal person:

Shortened name, commonly used name or trading name, if applicable:

.....

Registered seat:

Registration number:

Address of the legal person:

Name and contact details of the representative of the legal person:

(V) Information regarding the purpose of this interception:

State all information necessary, including a description of the case, legal classification of the offence(s) and the applicable statutory provision/code, in order to enable the notified authority to assess the following:

- ☐ whether the interception would be authorised in a similar domestic case; and whether the material obtained can be used in legal proceedings
- ☐ where the interception has already occurred, whether that material can be used in legal proceedings

.....

Please note that any objection to the interception or the use of already intercepted material must be made no later than 96 hours after the reception of this notification.

(C) SIGNATURE AND DATE

Signature:

Date:

Official stamp (if available):

ANNEX D

THE CATEGORIES OF OFFENCES REFERRED TO IN ARTICLE 11

- 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 Union 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.
-

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2018/1805 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 14 November 2018
on the mutual recognition of freezing orders and confiscation orders

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 82(1)(a) 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) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) Judicial cooperation in criminal matters in the Union is based on the principle of mutual recognition of judgments and judicial decisions, which has commonly been referred to as the cornerstone of judicial cooperation in criminal matters within the Union since the Tampere European Council of 15 and 16 October 1999.
- (3) The freezing and the confiscation of instrumentalities and proceeds of crime are among the most effective means of combatting crime. The Union is committed to ensuring more effective identification, confiscation and re-use of criminal assets in accordance with ‘The Stockholm programme — An open and secure Europe serving and protecting the citizens’ ⁽²⁾.
- (4) As crime is often transnational in nature, effective cross-border cooperation is essential in order to freeze and confiscate the instrumentalities and proceeds of crime.
- (5) The current Union legal framework in relation to the mutual recognition of freezing orders and confiscation orders is composed of Council Framework Decisions 2003/577/JHA ⁽³⁾ and 2006/783/JHA ⁽⁴⁾.
- (6) The Commission’s implementation reports on Framework Decisions 2003/577/JHA and 2006/783/JHA show that the existing regime for the mutual recognition of freezing orders and confiscation orders is not fully effective. Those Framework Decisions have not been implemented and applied uniformly in the Member States, which has led to insufficient mutual recognition and sub-optimal cross-border cooperation.

⁽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⁾ OJ C 115, 4.5.2010, p. 1.

⁽³⁾ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45).

⁽⁴⁾ Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59).

- (7) The Union legal framework on mutual recognition of freezing orders and confiscation orders has not kept up with recent legislative developments at Union and national levels. In particular, Directive 2014/42/EU of the European Parliament and of the Council ⁽¹⁾ establishes minimum rules on the freezing and the confiscation of property. Those minimum rules concern the confiscation of instrumentalities and proceeds of crime, including in the cases of illness or absconding of the suspect or accused person, where criminal proceedings have already been initiated regarding a criminal offence, extended confiscation and confiscation from a third party. Those minimum rules also concern the freezing of property with a view to possible subsequent confiscation. The types of freezing orders and confiscation orders covered by that Directive should also be included in the legal framework on mutual recognition.
- (8) When adopting Directive 2014/42/EU, the European Parliament and the Council stated in a declaration that an effective system of freezing and confiscation in the Union is inherently linked to the well-functioning mutual recognition of freezing orders and confiscation orders. Considering the need to put in place a comprehensive system for the freezing and confiscation of the instrumentalities and proceeds of crime in the Union, the European Parliament and the Council called on the Commission to present a legislative proposal on the mutual recognition of freezing orders and confiscation orders.
- (9) In its communication of 28 April 2015 entitled 'The European Agenda on Security', the Commission considered that judicial cooperation in criminal matters relies on effective cross-border instruments and that the mutual recognition of judgments and judicial decisions is a key element in the security framework. The Commission also recalled the need to improve the mutual recognition of freezing orders and confiscation orders.
- (10) In its communication of 2 February 2016 on an Action Plan for strengthening the fight against terrorist financing, the Commission highlighted the need to ensure that criminals who fund terrorism are deprived of their assets. The Commission stated that, in order to disrupt organised crime activities that finance terrorism, it is essential to deprive those criminals of the proceeds of crime. To that end, the Commission stated that it is necessary to ensure that all types of freezing orders and confiscation orders are enforced to the maximum extent possible throughout the Union by the application of the principle of mutual recognition.
- (11) In order to ensure the effective mutual recognition of freezing orders and confiscation orders, the rules on the recognition and execution of those orders should be established by a legally binding and directly applicable act of the Union.
- (12) It is important to facilitate the mutual recognition and execution of freezing orders and confiscation orders by establishing rules that oblige a Member State to recognise, without further formalities, the freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters and to execute those orders within its territory.
- (13) This Regulation should apply to all freezing orders and to all confiscation orders issued within the framework of proceedings in criminal matters. 'Proceedings in criminal matters' is an autonomous concept of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case law of the European Court of Human Rights. The term therefore covers all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence, not only orders covered by Directive 2014/42/EU. It also covers other types of order issued without a final conviction. While such orders might not exist in the legal system of a Member State, the Member State concerned should be able to recognise and execute such an order issued by another Member State. Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities. Freezing orders and confiscation orders that are issued within the framework of proceedings in civil or administrative matters should be excluded from the scope of this Regulation.
- (14) This Regulation should cover freezing orders and confiscation orders related to criminal offences covered by Directive 2014/42/EU, as well as freezing orders and confiscation orders related to other criminal offences. The criminal offences covered by this Regulation should therefore not be limited to particularly serious crimes that have a cross-border dimension, as Article 82 of the Treaty on the Functioning of the European Union (TFEU) does not require such a limitation for measures laying down rules and procedures for ensuring the mutual recognition of judgments in criminal matters.

⁽¹⁾ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

- (15) Cooperation between Member States, which is based on the principle of mutual recognition and the 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. Such cooperation also presupposes that the rights of persons who are affected by a freezing order or confiscation order should be preserved. Such affected persons, who can be natural persons or legal persons, should include the person against whom a freezing order or confiscation order was issued or the person who owns the property that is covered by that order, as well as any third parties whose rights in relation to that property are directly prejudiced by that order, including bona fide third parties. Whether such third parties are directly prejudiced by a freezing order or confiscation order, should be decided in accordance with the law of the executing State.
- (16) This Regulation does not modify the obligation to respect fundamental rights and legal principles enshrined in Article 6 of the Treaty on European Union (TEU).
- (17) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (the 'Charter') and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the 'ECHR'). This includes the principle that any discrimination based on any ground such as sex, racial or ethnic origin, religion, sexual orientation, nationality, language, political opinion, or disability is to be prohibited. This Regulation should be applied in accordance with those rights and principles.
- (18) The procedural rights set out in Directives 2010/64/EU ⁽¹⁾, 2012/13/EU ⁽²⁾, 2013/48/EU ⁽³⁾, (EU) 2016/343 ⁽⁴⁾, (EU) 2016/800 ⁽⁵⁾ and (EU) 2016/1919 ⁽⁶⁾ of the European Parliament and of the Council should apply, within the scope of those Directives, to criminal proceedings covered by this Regulation as regards the Member States bound by those Directives. In any case, the safeguards under the Charter should apply to all proceedings covered by this Regulation. In particular, the essential safeguards for criminal proceedings set out in the Charter should apply to proceedings in criminal matters that are not criminal proceedings but which are covered by this Regulation.
- (19) While the rules for the transmission, recognition and execution of freezing orders and confiscation orders should ensure the efficiency of the process of recovering criminal assets, fundamental rights are to be respected.
- (20) When assessing double criminality, the competent authority of the executing State should verify whether the factual elements underlying the criminal offence in question, as reflected in the freezing certificate or confiscation certificate submitted by the competent authority of the issuing State, would also, per se, be subject to a criminal penalty in the executing State if they were present in that State at the time of the decision on the recognition of the freezing order or confiscation order.
- (21) The issuing authority should ensure that, when issuing a freezing order or confiscation order, the principles of necessity and proportionality are respected. Under this Regulation, a freezing order or confiscation order should only be issued and transmitted to an executing authority in another Member State where it could have been issued and used in a solely domestic case. The issuing authority should be responsible for assessing the necessity and proportionality of such orders in each case as the recognition and execution of freezing orders and confiscation orders should not be refused on grounds other than those provided for in this Regulation.
- (22) In some cases, a freezing order may be issued by an authority, designated by the issuing State, which is competent in criminal matters to issue or execute the freezing order in accordance with national law, and which is not a judge, court or public prosecutor. In such cases, the freezing order should be validated by a judge, court or public prosecutor, before it is transmitted to the executing authority.

⁽¹⁾ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁽²⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁽³⁾ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

⁽⁴⁾ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

⁽⁵⁾ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

⁽⁶⁾ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).

- (23) Member States should be able to make a declaration stating that, when a freezing certificate or confiscation certificate is transmitted to them with a view to the recognition and execution of a freezing order or confiscation order, the issuing authority should transmit the original freezing order or confiscation order, or a certified copy thereof, together with the freezing certificate or confiscation certificate. Member States should inform the Commission where they make or withdraw such a declaration. The Commission should make such information available to all Member States and to the European Judicial Network (EJN) provided for by Council Decision 2008/976/JHA ⁽¹⁾. The EJN should make that information available on the website referred to in that Decision.
- (24) The issuing authority should transmit a freezing certificate or confiscation certificate, together with the freezing order or confiscation order, where applicable, either directly to the executing authority or to the central authority of the executing State, as applicable, by any means capable of producing a written record under conditions that allow the executing authority to establish authenticity of the certificate or order, such as registered mail or secured email. The issuing authority should be able to make use of any relevant channels or means of transmission, including the secure telecommunications system of the EJN, Eurojust, or other channels used by judicial authorities.
- (25) Where the issuing authority has reasonable grounds to believe that the person against whom a freezing order or confiscation order concerning an amount of money was issued has property or income in a Member State, it should transmit the freezing certificate or confiscation certificate that relates to the order to that Member State. On that basis, the certificate could, for example, be transmitted to the Member State in which the natural person against whom the order was issued is residing or, where that person has no permanent address, is habitually residing. Where the order is issued against a legal person, the certificate could be transmitted to the Member State in which the legal person is domiciled.
- (26) With a view to the administrative transmission and reception of certificates relating to freezing orders and confiscation orders, Member States should be able to designate one or more central authorities where necessary due to the structure of their internal legal systems. Such central authorities could also provide administrative support, play a coordination role and assist in the collection of statistics, thus facilitating and promoting the mutual recognition of freezing orders and confiscation orders.
- (27) Where a confiscation certificate that relates to a confiscation order concerning an amount of money is transmitted to more than one executing State, the issuing State should seek to avoid the situation whereby more property than necessary is confiscated and the total amount obtained from the execution of the order would exceed the maximum amount specified therein. To that end, the issuing authority should, inter alia, indicate in the confiscation certificate the value of assets, where known, in each executing State, so that the executing authorities can take account thereof, maintain the necessary contact and dialogue with the executing authorities on the property to be confiscated, and inform the relevant executing authority or authorities immediately if it considers that there could be a risk that confiscation in excess of the maximum amount might occur. Where appropriate, Eurojust could exercise a coordinating role within its remit in order to avoid excessive confiscation.
- (28) Member States should be encouraged to make a declaration stating that, as executing States, they would accept freezing certificates, confiscation certificates, or both, in one or more official languages of the Union other than their official languages.
- (29) The executing authority should recognise freezing orders and confiscation orders and should take the measures necessary for their execution. The decision on the recognition and execution of the freezing order or confiscation order should be taken, and the freezing or confiscation should be carried out, with the same speed and priority as for similar domestic cases. Time limits, which should be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council ⁽²⁾, should be set out in order to ensure a quick and efficient decision on the recognition of the freezing order or confiscation order and a quick and efficient execution thereof. As regards freezing orders, the executing authority should start taking the concrete measures necessary to execute such orders no later than 48 hours after the decision on the recognition and execution thereof has been taken.
- (30) In the execution of a freezing order, the issuing authority and the executing authority should take due account of the confidentiality of the investigation. In particular, the executing authority should guarantee the confidentiality of the facts and substance of the freezing order. This is without prejudice to the obligation to inform affected persons of the execution of a freezing order in accordance with this Regulation.

⁽¹⁾ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

⁽²⁾ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 on determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

- (31) The recognition and execution of a freezing order or confiscation order should not be refused on grounds other than those provided for in this Regulation. This Regulation should permit the executing authorities not to recognise or execute confiscation orders on the basis of the principle of *ne bis in idem*, on the basis of the rights of affected persons or on the basis of the right to be present at the trial.
- (32) This Regulation should permit executing authorities not to recognise or execute confiscation orders where the person against whom the confiscation order was issued did not appear in person at the trial that resulted in the confiscation order linked to a final conviction. This should only be a ground for non-recognition or non-execution where trials result in confiscation orders linked to a final conviction and not where proceedings result in non-conviction-based confiscation orders. However, in order for such a ground to be available, one or more hearings should be held. The ground should not be available if the relevant national procedural rules do not provide for a hearing. Such national procedural rules should comply with the Charter and with the ECHR, in particular with regard to the right to a fair trial. This is the case, for example, where the proceedings are conducted in a simplified manner following, solely or partially, a written procedure or a procedure in which no hearing is provided for.
- (33) It should be possible, in exceptional circumstances, not to recognise or execute a freezing order or confiscation order where such recognition or execution would prevent the executing State from applying its constitutional rules relating to freedom of the press or freedom of expression in other media.
- (34) The creation of an area of freedom, security and justice within the Union is based on mutual trust and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights. However, in exceptional situations, where there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of a freezing order or confiscation order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, the executing authority should be able to decide not to recognise and execute the order concerned. The fundamental rights that should be relevant in this respect are, in particular, the right to an effective remedy, the right to a fair trial and the right of defence. The right to property should, in principle, not be relevant because freezing and confiscation of assets necessarily imply an interference with a person's right to property and because the necessary safeguards in that respect are already provided for in Union law, including in this Regulation.
- (35) Before deciding not to recognise or execute a freezing order or confiscation order on the basis of any ground for non-recognition or non-execution, the executing authority should consult the issuing authority in order to obtain any necessary additional information.
- (36) When examining a request from the executing authority to limit the period during which the property should be frozen, the issuing authority should take into account all of the circumstances of the case, in particular whether the continuation of the freezing order could cause unjustified damage in the executing State. The executing authority is encouraged to consult with the issuing authority on this issue before making a formal request.
- (37) The issuing authority should inform the executing authority when an authority of the issuing State receives any sum of money which has been paid in respect of the confiscation order, it being understood that the executing State should only be informed if the amount paid in respect of the order impacts on the outstanding amount that is to be confiscated pursuant to the order.
- (38) It should be possible for the executing authority to postpone the execution of a freezing order or confiscation order, in particular where its execution might damage an ongoing criminal investigation. As soon as the grounds for postponement have ceased to exist, the executing authority should take the measures necessary for the execution of the order.
- (39) After the execution of a freezing order, and following the decision to recognise and execute a confiscation order, the executing authority should, in so far as possible, inform affected persons known to it of such execution or such decision. To that end, the executing authority should make every reasonable effort to identify the affected persons, verify how they can be reached and inform them of the execution of the freezing order or of the decision to recognise and execute the confiscation order. In carrying out that obligation, the executing authority could ask the issuing authority for assistance, for example where the affected persons appear to reside in the issuing State. The obligation under this Regulation for the executing authority to provide information to affected

persons is without prejudice to any obligation of the issuing authority to provide information to persons under the law of the issuing State, for example regarding the issue of a freezing order or regarding existing legal remedies under the law of the issuing State.

- (40) The issuing authority should be notified without delay if it is impossible to execute a freezing order or confiscation order. Such impossibility might arise because the property has already been confiscated, has disappeared, has been destroyed or cannot be found at the location indicated by the issuing authority, or because the location of the property has not been indicated in a sufficiently precise manner despite consultations between the executing authority and the issuing authority. In such circumstances, the executing authority should no longer be obliged to execute the order. However, if the executing authority subsequently obtains information that allows it to locate the property, it should be able to execute the order without a new certificate having to be transmitted in accordance with this Regulation.
- (41) Where the law of the executing State renders the execution of a freezing order or confiscation order legally impossible, the executing authority should contact the issuing authority in order to discuss the situation and to find a solution. Such a solution could consist in the issuing authority withdrawing the order concerned.
- (42) As soon as the execution of a confiscation order has been completed, the executing authority should inform the issuing authority of the results of the execution. Where practically possible, the executing authority should, at that time, also inform the issuing authority of the property or the amount of money that has been confiscated, and of other details that it considers relevant.
- (43) The execution of a freezing order or confiscation order should be governed by the law of the executing State and only the authorities of that State should be competent to decide on the procedures for execution. Where appropriate, the issuing and executing authority should be able to invite Eurojust or the EJN to provide assistance, within their remit, concerning issues relating to the execution of freezing orders and confiscation orders.
- (44) The proper operation of this Regulation presupposes close communication between the competent national authorities involved, in particular in cases of the simultaneous execution of a confiscation order in more than one Member State. The competent national authorities should therefore consult each other whenever necessary, directly or, where appropriate, via Eurojust or the EJN.
- (45) The victims' rights to compensation and restitution should not be prejudiced in cross-border cases. Rules for the disposal of frozen or confiscated property should give priority to the compensation of, and restitution of property to, victims. The notion of 'victim' is to be interpreted in accordance with the law of the issuing State, which should also be able to provide that a legal person could be a victim for the purpose of this Regulation. This Regulation should be without prejudice to rules on compensation and restitution of property to victims in national proceedings.
- (46) Where the executing authority is informed of a decision issued by the issuing authority or by another competent authority in the issuing State to restitute frozen property to the victim, the executing authority should take the necessary measures to ensure that the property concerned is frozen and restituted to the victim as soon as possible. The executing authority should be able to transfer the property to the issuing State, so that the latter would be able to restitute the property to the victim, or directly to the victim subject to the consent of the issuing State. The obligation to restitute frozen property to the victim should be subject to the following conditions: the victim's title to the property should not be contested, meaning that it is accepted that the victim is the rightful owner of the property and there are no serious claims putting that into question; the property should not be required as evidence in criminal proceedings in the executing State; and the rights of affected persons, in particular the rights of bona fide third parties, should not be prejudiced. The executing authority should restitute frozen property to the victim only where those conditions have been met. Where the executing authority considers that those conditions have not been met, it should consult with the issuing authority, for example to request any additional information or to discuss the situation, in order to find a solution. If no solution can be found, the executing authority should be able to decide not to restitute the frozen property to the victim.
- (47) Each Member State should consider establishing a national centralised office responsible for the management of frozen property, with a view to possible later confiscation, as well as for the management of confiscated property. Frozen property and confiscated property could be earmarked, as a matter of priority, for law enforcement and organised crime prevention projects and for other projects of public interest and social utility.

- (48) Each Member State should consider establishing a national fund to guarantee appropriate compensation for victims of crime, such as families of police officers and public servants killed or permanently disabled in the line of duty. Member States could earmark a portion of confiscated assets for that purpose.
- (49) Member States should not be able to claim from each other compensation for costs resulting from the application of this Regulation. However, where the executing State has incurred large or exceptional costs, for example because the property has been frozen for a considerable period of time, any proposal by the executing authority to share the costs should be considered by the issuing authority.
- (50) In order to be able to address identified problems in the future regarding the content of the certificates set out in the Annexes to this Regulation as quickly as possible, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amendments to those certificates. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽¹⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (51) Since the objective of this Regulation, namely the mutual recognition and execution of freezing orders and confiscation orders, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and its effects, 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.
- (52) Provisions of Framework Decision 2003/577/JHA have already been replaced by Directive 2014/41/EU of the European Parliament and of the Council ⁽²⁾ as regards the freezing of evidence for Member States bound by that Directive. Provisions of Framework Decision 2003/577/JHA as regards freezing of property should be replaced by this Regulation between Member States bound by it. Framework Decision 2006/783/JHA should also be replaced by this Regulation between Member States bound by it. The provisions of Framework Decision 2003/577/JHA as regards freezing of property, as well as the provisions of Framework Decision 2006/783/JHA, should therefore continue to apply not only between the Member States that are not bound by this Regulation but also between any Member State that is not bound by this Regulation and any Member State that is bound by this Regulation.
- (53) The legal form of this act should not constitute a precedent for future legal acts of the Union in the field of mutual recognition of judgments and judicial decisions in criminal matters. The choice of the legal form for future legal acts of the Union should be carefully assessed on a case-by-case basis taking into account, among other factors, the effectiveness of the legal act and the principles of proportionality and subsidiarity.
- (54) Member States should ensure that, in accordance with Council Decision 2007/845/JHA ⁽³⁾, their Asset Recovery Offices cooperate with each other to facilitate the tracing and identification of proceeds of crime and other crime-related property which may become the object of a freezing order or confiscation order.
- (55) In accordance with Article 3 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, the United Kingdom has notified its wish to take part in the adoption and application of this Regulation.
- (56) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (57) In accordance with Articles 1 and 2 of 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,

⁽¹⁾ OJ L 123, 12.5.2016, p. 1.

⁽²⁾ 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).

⁽³⁾ 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).

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT-MATTER, DEFINITIONS AND SCOPE

Article 1

Subject matter

1. This Regulation lays down the rules under which a Member State recognises and executes in its territory freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters.
2. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles enshrined in Article 6 TEU.
3. When issuing freezing orders or confiscation orders, issuing authorities shall ensure that the principles of necessity and proportionality are respected.
4. This Regulation does not apply to freezing orders and confiscation orders issued within the framework of proceedings in civil or administrative matters.

Article 2

Definitions

For the purpose of this Regulation, the following definitions apply:

- (1) 'freezing order' means a decision issued or validated by an issuing authority in order to prevent the destruction, transformation, removal, transfer or disposal of property with a view to the confiscation thereof;
- (2) 'confiscation order' means a final penalty or measure, imposed by a court following proceedings in relation to a criminal offence, resulting in the final deprivation of property of a natural or legal person;
- (3) 'property' means 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 issuing authority considers to be:
 - (a) the proceeds of a criminal offence, or its equivalent, whether the full amount of the value or only part of the value of such proceeds;
 - (b) the instrumentalities of a criminal offence, or the value of such instrumentalities;
 - (c) subject to confiscation through the application in the issuing State of any of the powers of confiscation provided for in Directive 2014/42/EU; or
 - (d) subject to confiscation under any other provisions relating to powers of confiscation, including confiscation without a final conviction, under the law of the issuing State, following proceedings in relation to a criminal offence;
- (4) 'proceeds' means any economic advantage derived directly or indirectly from a criminal offence, consisting of any form of property and including any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;
- (5) 'instrumentalities' means any property used or intended to be used, in any manner, wholly or partially, to commit a criminal offence;
- (6) 'issuing State' means the Member State in which a freezing order or confiscation order is issued;
- (7) 'executing State' means the Member State to which a freezing order or confiscation order is transmitted for the purpose of recognition and execution;
- (8) 'issuing authority' means:
 - (a) in respect of a freezing order:
 - (i) a judge, court, or public prosecutor competent in the case concerned; or

- (ii) another competent authority which is designated as such by the issuing State and which is competent in criminal matters to order the freezing of property or to execute a freezing order in accordance with national law. In addition, before it is transmitted to the executing authority, the freezing order shall be validated by a judge, court or public prosecutor in the issuing State after examining its conformity with the conditions for issuing such an order under this Regulation. Where the order has been validated by a judge, court or public prosecutor, that other competent authority may also be regarded as an issuing authority for the purposes of transmitting the order;
- (b) in respect of a confiscation order, an authority which is designated as such by the issuing State and which is competent in criminal matters to execute a confiscation order issued by a court in accordance with national law;
- (9) 'executing authority' means an authority that is competent to recognise a freezing order or confiscation order and to ensure its execution in accordance with this Regulation and the procedures applicable under national law for the freezing and confiscation of property; where such procedures require that a court register the order and authorise its execution, the executing authority includes the authority that is competent to request such registration and authorisation;
- (10) 'affected person' means the natural or legal person against whom a freezing order or confiscation order is issued, or the natural or legal person that owns the property that is covered by that order, as well as any third parties whose rights in relation to that property are directly prejudiced by that order under the law of the executing State.

Article 3

Criminal offences

1. Freezing orders or confiscation orders shall be executed without verification of the double criminality of the acts giving rise to such orders, where those acts are punishable in the issuing State by a custodial sentence of a maximum of at least three years and constitute one or more of the following criminal offences under the law of the issuing State:

- (1) participation in a criminal organisation;
- (2) terrorism;
- (3) trafficking in human beings;
- (4) sexual exploitation of children and child pornography;
- (5) illicit trafficking in narcotic drugs and psychotropic substances;
- (6) illicit trafficking in weapons, munitions and explosives;
- (7) corruption;
- (8) fraud, including fraud and other criminal offences affecting the Union's financial interests as defined in Directive (EU) 2017/1371 of the European Parliament and of the Council ⁽¹⁾;
- (9) laundering of the proceeds of crime;
- (10) counterfeiting currency, including the euro;
- (11) computer-related crime;
- (12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- (13) facilitation of unauthorised entry and residence;
- (14) murder or grievous bodily injury;
- (15) illicit trade in human organs and tissue;
- (16) kidnapping, illegal restraint or hostage-taking;
- (17) racism and xenophobia;
- (18) organised or armed robbery;
- (19) illicit trafficking in cultural goods, including antiques and works of art;

⁽¹⁾ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

- (20) swindling;
- (21) racketeering and extortion;
- (22) counterfeiting and piracy of products;
- (23) forgery of administrative documents and trafficking therein;
- (24) forgery of means of payment;
- (25) illicit trafficking in hormonal substances and other growth promoters;
- (26) illicit trafficking in nuclear or radioactive materials;
- (27) trafficking in stolen vehicles;
- (28) rape;
- (29) arson;
- (30) crimes within the jurisdiction of the International Criminal Court;
- (31) unlawful seizure of aircraft or ships;
- (32) sabotage.

2. For criminal offences other than those referred to in paragraph 1, the executing State may make the recognition and execution of a freezing order or confiscation order subject to the condition that the acts giving rise to the freezing order or confiscation order constitute a criminal offence under the law of the executing State, whatever its constituent elements or however it is described under the law of the issuing State.

CHAPTER II

TRANSMISSION, RECOGNITION AND EXECUTION OF FREEZING ORDERS

Article 4

Transmission of freezing orders

1. A freezing order shall be transmitted by means of a freezing certificate. The issuing authority shall transmit the freezing certificate provided for in Article 6 directly to the executing authority or, where applicable, to the central authority referred to in Article 24(2), by any means capable of producing a written record under conditions that allow the executing authority to establish the authenticity of the freezing certificate.

2. Member States may make a declaration stating that, when a freezing certificate is transmitted to them with a view to the recognition and execution of a freezing order, the issuing authority is to transmit the original freezing order or a certified copy thereof together with the freezing certificate. However, only the freezing certificate has to be translated, in accordance with Article 6(2).

3. Member States may make the declaration referred to in paragraph 2 prior to the date of application of this Regulation or at a later date. Member States may withdraw such a declaration at any time. Member States shall inform the Commission when they make or withdraw such a declaration. The Commission shall make such information available to all Member States and to the EJC.

4. As regards a freezing order concerning an amount of money, where the issuing authority has reasonable grounds to believe that the person against whom the freezing order was issued has property or income in a Member State, it shall transmit the freezing certificate to that Member State.

5. As regards a freezing order concerning specific items of property, where the issuing authority has reasonable grounds to believe that such items are located in a Member State, it shall transmit the freezing certificate to that Member State.

6. The freezing certificate shall:

- (a) be accompanied by a confiscation certificate transmitted in accordance with Article 14; or
- (b) contain an instruction that the property is to remain frozen in the executing State pending the transmission and execution of the confiscation order in accordance with Article 14, in which case the issuing authority shall indicate the estimated date of this transmission in the freezing certificate.

7. The issuing authority shall inform the executing authority if it is aware of any affected persons. The issuing authority shall also provide, upon request, the executing authority with any information relevant to any claim that such affected persons may have in relation to the property, including any information identifying those persons.

8. Where, despite the information having been made available in accordance with Article 24(3), the competent executing authority is unknown to the issuing authority, the issuing authority shall make all necessary inquiries, including through the contact points of the EJNI, in order to determine which authority is competent for the recognition and execution of the freezing order.

9. Where the authority in the executing State which receives a freezing certificate is not competent to recognise the freezing order or take the measures necessary for its execution, that authority shall immediately transmit the freezing certificate to the competent executing authority in its Member State and shall inform the issuing authority accordingly.

Article 5

Transmission of a freezing order to one or more executing States

1. A freezing certificate shall only be transmitted pursuant to Article 4 to one executing State at any one time, unless paragraph 2 or 3 of this Article applies.

2. Where a freezing order concerns specific items of property, the freezing certificate may be transmitted to more than one executing State at the same time where:

- (a) the issuing authority has reasonable grounds to believe that different items of property covered by the freezing order are located in different executing States; or
- (b) the freezing of a specific item of property covered by the freezing order would require action in more than one executing State.

3. Where a freezing order concerns an amount of money, the freezing certificate may be transmitted to more than one executing State at the same time where the issuing authority considers that there is a specific need to do so, in particular where the estimated value of the property which may be frozen in the issuing State and in any one executing State is not likely to be sufficient for the freezing of the full amount covered by the freezing order.

Article 6

Standard freezing certificate

1. In order to transmit a freezing order, the issuing authority shall complete the freezing certificate set out in Annex I, shall sign it and shall certify its content as being accurate and correct.

2. The issuing authority shall provide the executing authority with a translation of the freezing certificate in an official language of the executing State or in any other language that the executing State will accept in accordance with paragraph 3.

3. Any Member State may, at any time, state in a declaration submitted to the Commission that it will accept translations of freezing certificates in one or more official languages of the Union other than the official language or languages of that Member State. The Commission shall make the declarations available to all Member States and to the EJNI.

Article 7

Recognition and execution of freezing orders

1. The executing authority shall recognise a freezing order transmitted in accordance with Article 4 and shall take the measures necessary for its execution in the same way as for a domestic freezing order issued by an authority of the executing State, unless the executing authority invokes one of the grounds for non-recognition and non-execution provided for in Article 8 or one of the grounds for postponement provided for in Article 10.

2. The executing authority shall report to the issuing authority on the execution of the freezing order, including a description of the property frozen and, where available, providing an estimate of its value. Such reporting shall be carried out using any means capable of producing a written record, without undue delay once the executing authority has been informed that the freezing order has been executed.

*Article 8***Grounds for non-recognition and non-execution of freezing orders**

1. The executing authority may decide not to recognise or execute a freezing order only where:
 - (a) executing the freezing order would be contrary to the principle of *ne bis in idem*;
 - (b) there is a privilege or immunity under the law of the executing State that would prevent the freezing of the property concerned or there are rules on the determination or limitation of criminal liability that relate to the freedom of the press or the freedom of expression in other media that prevent the execution of the freezing order;
 - (c) the freezing certificate is incomplete or manifestly incorrect and has not been completed following the consultation referred to in paragraph 2;
 - (d) the freezing order relates to a criminal offence committed, wholly or partially, outside the territory of the issuing State and, wholly or partially, in the territory of the executing State and the conduct in connection with which the freezing order was issued does not constitute a criminal offence under the law of the executing State;
 - (e) in a case falling under Article 3(2), the conduct in connection with which the freezing order was issued does not constitute a criminal offence under the law of the executing State; however, in cases that involve taxes or duties or customs and exchange regulations, the recognition or execution of the freezing order shall not be refused on the grounds that the law of the executing State does not impose the same kind of taxes or duties or does not provide for the same type of rules as regards taxes and duties or the same type of customs and exchange regulations as the law of the issuing State;
 - (f) in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the freezing order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, in particular the right to an effective remedy, the right to a fair trial or the right of defence.
2. In any of the cases referred to in paragraph 1, before deciding not to recognise or execute the freezing order, whether wholly or partially, the executing authority shall consult the issuing authority by any appropriate means and where appropriate, shall request the issuing authority to supply any necessary information without delay.
3. Any decision not to recognise or execute the freezing order shall be taken without delay and notified immediately to the issuing authority by any means capable of producing a written record.
4. Where the executing authority has recognised a freezing order, but it becomes aware, during the execution thereof, that one of the grounds for non-recognition or non-execution applies, it shall immediately contact the issuing authority by any appropriate means in order to discuss the appropriate measures to take. On that basis, the issuing authority may decide to withdraw the freezing order. If, following such discussions, no solution has been reached, the executing authority may decide to stop the execution of the freezing order.

*Article 9***Time limits for recognition and execution of freezing orders**

1. The executing authority shall take the decision on the recognition and execution of the freezing order and execute that order without delay and with the same speed and priority as for a similar domestic case after the executing authority has received the freezing certificate.
2. Where the issuing authority has indicated in the freezing certificate that the execution of the freezing order is to be carried out on a specific date, the executing authority shall take as full account as possible thereof. Where the issuing authority has indicated that coordination is needed between the Member States involved, the executing authority and the issuing authority shall coordinate with each other in order to agree on the date of execution of the freezing order. Where no agreement can be reached, the executing authority shall decide on the date of execution of the freezing order, taking as full account as possible of the interests of the issuing authority.
3. Without prejudice to paragraph 5, where the issuing authority has stated in the freezing certificate that immediate freezing is necessary since there are legitimate grounds to believe that the property in question will imminently be removed or destroyed, or in view of any investigative or procedural needs in the issuing State, the executing authority shall decide on the recognition of the freezing order no later than 48 hours after it has been received by the executing authority. No later than 48 hours after such a decision has been taken, the executing authority shall take the concrete measures necessary to execute the order.

4. The executing authority shall communicate, without delay and by any means capable of producing a written record, the decision on the recognition and execution of the freezing order to the issuing authority.
5. Where it is not possible, in a specific case, to meet the time limits set out in paragraph 3, the executing authority shall immediately inform the issuing authority by any means, giving the reasons for which it was not possible to meet those time limits, and shall consult with the issuing authority on an appropriate schedule for the recognition or the execution of the freezing order.
6. The expiry of the time limits set out in paragraph 3 shall not relieve the executing authority of its obligation to take a decision on the recognition and execution of the freezing order, and to execute that order, without delay.

Article 10

Postponement of the execution of freezing orders

1. The executing authority may postpone the execution of a freezing order transmitted in accordance with Article 4 where:
 - (a) its execution might damage an ongoing criminal investigation, in which case the execution of the freezing order may be postponed until such time as the executing authority considers reasonable;
 - (b) the property is already the subject of an existing freezing order, in which case the execution of the freezing order may be postponed until that existing order is withdrawn; or
 - (c) the property is already subject to an existing order issued in the course of other proceedings in the executing State, in which case the execution of the freezing order may be postponed until that existing order is withdrawn; however, this point shall only apply where the existing order would have priority, under national law, over subsequent national freezing orders in criminal matters.
2. The executing authority shall, immediately and by any means capable of producing a written record, report to the issuing authority on the postponement of the execution of the freezing order, specifying the grounds for the postponement and, where possible, the expected duration of the postponement.
3. As soon as the grounds for postponement have ceased to exist, the executing authority shall immediately take the measures necessary for the execution of the freezing order and inform the issuing authority thereof by any means capable of producing a written record.

Article 11

Confidentiality

1. During the execution of a freezing order, the issuing authority and the executing authority shall take due account of the confidentiality of the investigation in the context of which the freezing order was issued.
2. Except to the extent necessary to execute the freezing order, the executing authority shall guarantee the confidentiality of the facts and substance of the freezing order in accordance with its national law. Without prejudice to paragraph 3 of this Article, as soon as the freezing order has been executed, the executing authority shall inform the affected persons thereof in accordance with Article 32.
3. To protect ongoing investigations, the issuing authority may request the executing authority to postpone informing affected persons of the execution of the freezing order under Article 32. As soon as it is no longer necessary to postpone informing affected persons in order to protect ongoing investigations, the issuing authority shall inform the executing authority accordingly so that the executing authority can inform the affected persons of the execution of the freezing order in accordance with Article 32.
4. If the executing authority cannot comply with the confidentiality obligations under this Article, it shall notify the issuing authority immediately and, where possible, prior to the execution of the freezing order.

Article 12

Duration of freezing orders

1. The property subject to a freezing order shall remain frozen in the executing State until the competent authority of that state has responded definitively to a confiscation order transmitted in accordance with Article 14 or until the issuing authority has informed the executing authority of any decision or measure that renders the order unenforceable or causes it to be withdrawn in accordance with Article 27(1).

2. The executing authority may, taking into account the circumstances of the case, make a reasoned request to the issuing authority to limit the period for which the property is to be frozen. Such a request, including any relevant supporting information, shall be transmitted by any means capable of producing a written record under conditions that allow the issuing authority to establish the authenticity of the request. When examining such a request, the issuing authority shall take all interests into account, including those of the executing authority. The issuing authority shall respond to the request as soon as possible. If the issuing authority does not agree to the limitation, it shall inform the executing authority of the reasons thereof. In such a case, the property shall remain frozen in accordance with paragraph 1. If the issuing authority does not respond within six weeks of receiving the request, the executing authority shall no longer be obliged to execute the freezing order.

Article 13

Impossibility to execute a freezing order

1. Where the executing authority considers that it is impossible to execute a freezing order, it shall notify the issuing authority thereof without delay.
2. Before notifying the issuing authority in accordance with paragraph 1, the executing authority, where appropriate, shall consult with the issuing authority.
3. The non-execution of a freezing order under this Article may only be justified where the property:
 - (a) has already been confiscated;
 - (b) has disappeared;
 - (c) has been destroyed;
 - (d) cannot be found in the location indicated on the freezing certificate; or
 - (e) cannot be found because its location has not been indicated in a sufficiently precise manner, despite the consultations referred to in paragraph 2.
4. As regards the situations under points (b), (d) and (e) of paragraph 3, where the executing authority subsequently obtains information that allows it to locate the property, the executing authority may execute the freezing order without a new freezing certificate having to be transmitted, provided that, prior to executing the freezing order, the executing authority has verified with the issuing authority that the freezing order is still valid.
5. Notwithstanding paragraph 3, where the issuing authority has indicated that property of equivalent value could be frozen, the executing authority shall not be required to execute the freezing order where one of the circumstances set out in paragraph 3 exists and there is no property of equivalent value that can be frozen.

CHAPTER III

TRANSMISSION, RECOGNITION AND EXECUTION OF CONFISCATION ORDERS

Article 14

Transmission of confiscation orders

1. A confiscation order shall be transmitted by means of a confiscation certificate. The issuing authority shall transmit the confiscation certificate provided for in Article 17 directly to the executing authority or, where applicable, to the central authority referred to in Article 24(2), by any means capable of producing a written record under conditions that allow the executing authority to establish the authenticity of the confiscation certificate.
2. Member States may make a declaration stating that, when a confiscation certificate is transmitted to them with a view to the recognition and execution of a confiscation order, the issuing authority is to transmit the original confiscation order or a certified copy thereof together with the confiscation certificate. However, only the confiscation certificate has to be translated, in accordance with Article 17(2).
3. Member States may make the declaration referred to in paragraph 2 prior to the date of application of this Regulation or at a later date. Member States may withdraw such a declaration at any time. Member States shall inform the Commission when they make or withdraw such a declaration. The Commission shall make such information available to all Member States and to the EJN.
4. As regards a confiscation order concerning an amount of money, where the issuing authority has reasonable grounds to believe that the person against whom the confiscation order was issued has property or income in a Member State, it shall transmit the confiscation certificate to that Member State.

5. As regards a confiscation order concerning specific items of property, where the issuing authority has reasonable grounds to believe that such items are located in a Member State, it shall transmit the confiscation certificate to that Member State.

6. The issuing authority shall inform the executing authority if it is aware of any affected persons. The issuing authority shall also, upon request, provide the executing authority with any information relevant to any claim that such affected persons may have in relation to the property, including any information identifying those persons.

7. Where, despite the information having been made available in accordance with Article 24(3), the competent executing authority is unknown to the issuing authority, the issuing authority shall make all necessary inquiries, including through the contact points of the EJN, in order to determine which authority is competent for the recognition and execution of the confiscation order.

8. Where the authority in the executing State which receives a confiscation certificate is not competent to recognise the confiscation order or to take the measures necessary for its execution, that authority shall immediately transmit the confiscation certificate to the competent executing authority in its Member State and shall inform the issuing authority accordingly.

Article 15

Transmission of a confiscation order to one or more executing States

1. A confiscation certificate shall only be transmitted, pursuant to Article 14, to one executing State at any one time, unless paragraph 2 or 3 of this Article applies.

2. Where a confiscation order concerns specific items of property, the confiscation certificate may be transmitted to more than one executing State at the same time where:

- (a) the issuing authority has reasonable grounds to believe that different items of property covered by the confiscation order are located in different executing States; or
- (b) the confiscation of a specific item of property covered by the confiscation order would require action in more than one executing State.

3. Where a confiscation order concerns an amount of money, the confiscation certificate may be transmitted to more than one executing State at the same time where the issuing authority considers that there is a specific need to do so, in particular where:

- (a) the property concerned has not been frozen under this Regulation; or
- (b) the estimated value of the property which may be confiscated in the issuing State and in any one executing State is not likely to be sufficient for the confiscation of the full amount covered by the confiscation order.

Article 16

Consequences of transmission of confiscation orders

1. The transmission of a confiscation order, in accordance with Articles 14 and 15, shall not restrict the right of the issuing State to execute the order.

2. The total amount obtained from the execution of a confiscation order concerning an amount of money shall not exceed the maximum amount specified in that order, regardless of whether that order was transmitted to one or to several executing States.

3. The issuing authority shall immediately inform the executing authority by any means capable of producing a written record where:

- (a) it considers that there is a risk that confiscation in excess of the maximum amount may occur, in particular on the basis of information received from the executing authority pursuant to point (b) of Article 21(1);
- (b) all or a part of the confiscation order has been executed in the issuing State or in a different executing State, in which case it shall specify the amount for which the confiscation order has not yet been executed; or
- (c) after the transmission of a confiscation certificate in accordance with Article 14, an authority of the issuing State receives any sum of money which has been paid in respect of the confiscation order.

Where point (a) of the first subparagraph applies, the issuing authority shall inform the executing authority as soon as possible when the risk referred to in that point ceases to exist.

*Article 17***Standard confiscation certificate**

1. In order to transmit a confiscation order, the issuing authority shall complete the confiscation certificate set out in Annex II, shall sign it and shall certify its content as being accurate and correct.
2. The issuing authority shall provide the executing authority with a translation of the confiscation certificate in an official language of the executing State or in any other language that the executing State will accept in accordance with paragraph 3.
3. Any Member State may, at any time, state in a declaration submitted to the Commission that it will accept translations of confiscation certificates in one or more official languages of the Union other than the official language or languages of that Member State. The Commission shall make the declarations available to all Member States and to the EJN.

*Article 18***Recognition and execution of confiscation orders**

1. The executing authority shall recognise a confiscation order transmitted in accordance with Article 14 and shall take the measures necessary for its execution in the same way as for a domestic confiscation order issued by an authority of the executing State, unless the executing authority invokes one of the grounds for non-recognition and non-execution provided for in Article 19 or one of the grounds for postponement provided for in Article 21.
2. Where a confiscation order concerns a specific item of property, the issuing authority and executing authority may, where the law of the issuing State so provides, agree that confiscation in the executing State can be carried out through the confiscation of a sum of money corresponding to the value of the property that was to be confiscated.
3. Where a confiscation order concerns an amount of money and the executing authority is unable to obtain payment of that amount, it shall execute the confiscation order in accordance with paragraph 1 on any item of property that is available for that purpose. Where necessary, the executing authority shall convert the amount of money to be confiscated into the currency of the executing State at the daily euro exchange rate as published in the C series of the Official Journal of the European Union for the date on which the confiscation order was issued.
4. Any part of the amount of money 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.
5. Where the issuing authority has issued a confiscation order but has not issued a freezing order, the executing authority may, as part of the measures provided for in paragraph 1, decide to freeze the property concerned of its own motion in accordance with its national law with a view to subsequent execution of the confiscation order. In such a case, the executing authority shall inform the issuing authority without delay and, where possible, prior to freezing the property concerned.
6. As soon as the execution of the confiscation order has been completed, the executing authority shall inform, by any means capable of producing a written record, the issuing authority of the results of the execution.

*Article 19***Grounds for non-recognition and non-execution of confiscation orders**

1. The executing authority may decide not to recognise or execute a confiscation order only where:
 - (a) executing the confiscation order would be contrary to the principle of ne bis in idem;
 - (b) there is a privilege or immunity under the law of the executing State that would prevent the confiscation of the property concerned or there are rules on the determination or limitation of criminal liability that relate to the freedom of the press or the freedom of expression in other media that prevent the execution of the confiscation order;
 - (c) the confiscation certificate is incomplete or manifestly incorrect and has not been completed following the consultation referred to in paragraph 2;

- (d) the confiscation order relates to a criminal offence committed, wholly or partially, outside the territory of the issuing State and, wholly or partially, in the territory of the executing State and the conduct in connection with which the confiscation order was issued does not constitute a criminal offence under the law of the executing State;
- (e) the rights of affected persons would make it impossible under the law of the executing State to execute the confiscation order, including where that impossibility is a consequence of the application of legal remedies in accordance with Article 33;
- (f) in a case falling under Article 3(2), the conduct in connection with which the confiscation order was issued does not constitute a criminal offence under the law of the executing State; however, in cases that involve taxes or duties or customs and exchange regulations, the recognition or execution of the confiscation order shall not be refused on the grounds that the law of the executing State does not impose the same kind of taxes or duties or does not provide for the same type of rules as regards taxes and duties or the same type of customs and exchange regulations as the law of the issuing State;
- (g) according to the confiscation certificate, the person against whom the confiscation order was issued did not appear in person at the trial that resulted in the confiscation order linked to a final conviction, unless the confiscation certificate states that, in accordance with further procedural requirements defined in the law of the issuing State, the person:
 - (i) was summoned in person in due time and was thereby informed of the scheduled date and place of the trial that resulted in the confiscation order, or actually received, by other means, official information of the scheduled date and place of that trial in such a manner that it was established unequivocally that that person was aware of the scheduled trial, and was informed in due time that such a confiscation order could be handed down if that person did not appear at the trial;
 - (ii) being aware of the scheduled trial, had given a mandate to a lawyer, who was either appointed by the person concerned or by the State, to defend that person at the trial and was actually defended by that lawyer at the trial; or
 - (iii) after having been served with the confiscation order and having been expressly informed of the right to a retrial or an appeal, in which the person would have the right to participate and which would allow a re-examination of the merits of the case including an examination of fresh evidence, and which could lead to the original confiscation order being reversed, expressly stated that he or she did not contest the confiscation order, or did not request a retrial or appeal within the applicable time limits;
- (h) in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the confiscation order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, in particular the right to an effective remedy, the right to a fair trial or the right of defence.

2. In any of the cases referred to in paragraph 1, before deciding not to recognise or execute the confiscation order, whether wholly or partially, the executing authority shall consult the issuing authority by any appropriate means and, where appropriate, shall request the issuing authority to supply any necessary information without delay.

3. Any decision not to recognise or execute the confiscation order shall be taken without delay and notified immediately to the issuing authority by any means capable of producing a written record.

Article 20

Time limits for recognition and execution of confiscation orders

1. The executing authority shall take the decision on the recognition and execution of the confiscation order without delay and, without prejudice to paragraph 4, no later than 45 days after the executing authority has received the confiscation certificate.

2. The executing authority shall communicate, without delay and by any means capable of producing a written record, the decision on the recognition and execution of the confiscation order to the issuing authority.

3. Unless grounds for postponement under Article 21 exist, the executing authority 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.

4. Where it is not possible, in a specific case, to meet the time limit set out in paragraph 1, the executing authority shall inform the issuing authority without delay by any means, giving the reasons for which it was not possible to meet that time limit, and shall consult with the issuing authority on an appropriate schedule for the recognition and execution of the confiscation order.

5. The expiry of the time limit set out in paragraph 1 shall not relieve the executing authority of its obligation to take a decision on the recognition and execution of the confiscation order, and to execute that order, without delay.

Article 21

Postponement of the execution of confiscation orders

1. The executing authority may postpone the recognition or execution of a confiscation order transmitted in accordance with Article 14 where:

- (a) its execution might damage an ongoing criminal investigation, in which case the execution of the confiscation order may be postponed until such time as the executing authority considers reasonable;
- (b) as regards a confiscation order concerning an amount of money, it considers that there is a risk that the total amount obtained from the execution of that confiscation order might considerably exceed the amount specified in the confiscation order because of the simultaneous execution of the confiscation order in more than one Member State;
- (c) the property is already the subject of ongoing confiscation proceedings in the executing State; or
- (d) a legal remedy as referred to in Article 33 has been invoked.

2. Notwithstanding Article 18(5), for as long as the execution of a confiscation order is postponed, the competent authority of the executing State shall 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 the execution of the confiscation order.

3. The executing authority shall, without delay and by any means capable of producing a written record, report to the issuing authority on the postponement of the execution of the confiscation order, specifying the grounds for the postponement and, where possible, the expected duration of the postponement.

4. As soon as the grounds for postponement have ceased to exist, the executing authority shall take, without delay, the measures necessary for the execution of the confiscation order and inform the issuing authority thereof by any means capable of producing a written record.

Article 22

Impossibility to execute a confiscation order

1. Where the executing authority considers that it is impossible to execute a confiscation order, it shall notify the issuing authority thereof without delay.

2. Before notifying the issuing authority in accordance with paragraph 1, the executing authority, where appropriate, shall consult with the issuing authority, taking into account also the possibilities provided for under Article 18(2) or (3).

3. The non-execution of a confiscation order under this Article may only be justified where the property:

- (a) has already been confiscated;
- (b) has disappeared;
- (c) has been destroyed;
- (d) cannot be found in the location indicated on the confiscation certificate; or
- (e) cannot be found because its location has not been indicated in a sufficiently precise manner, despite the consultations referred to in paragraph 2.

4. As regards the situations under points (b), (d) and (e) of paragraph 3, where the executing authority subsequently obtains information that allows it to locate the property, the executing authority may execute the confiscation order without a new confiscation certificate having to be transmitted, provided that, prior to executing the confiscation order, the executing authority has verified with the issuing authority that the confiscation order is still valid.

5. Notwithstanding paragraph 3, where the issuing authority has indicated that property of equivalent value could be confiscated, the executing authority shall not be required to execute the confiscation order where one of the circumstances set out in paragraph 3 exists and there is no property of equivalent value that can be confiscated.

CHAPTER IV

GENERAL PROVISIONS

*Article 23***Law governing execution**

1. The execution of the freezing order or confiscation order shall be governed by the law of the executing State and its authorities shall be solely competent to decide on the procedures for its execution and to determine all the measures relating thereto.
2. A freezing order or confiscation order issued against a legal person shall be executed even where the executing State does not recognise the principle of criminal liability of legal persons.
3. Notwithstanding Article 18(2) and (3), the executing State may not impose alternative measures to the freezing order transmitted pursuant to Article 4 or confiscation order transmitted pursuant to Article 14 without the consent of the issuing State.

*Article 24***Notification of the competent authorities**

1. By 19 December 2020, each Member State shall inform the Commission of the authority or authorities as defined in points (8) and (9) of Article 2 that are competent under its law in the cases where that Member State is, the issuing State or the executing State, respectively.
2. Where necessary, due to the structure of its internal legal system, each Member State may designate one or more central authorities to be responsible for the administrative transmission and reception of freezing certificates and confiscation certificates and for assisting its competent authorities. Each Member State shall inform the Commission of any such authority that it so designates.
3. The Commission shall make the information received under this Article available to all Member States and to the EJN.

*Article 25***Communication**

1. Where necessary, the issuing authority and the executing authority shall consult each other without delay to ensure the efficient application of this Regulation, using any appropriate means of communication.
2. All communications, including those intended to deal with difficulties concerning the transmission or authentication of any document needed for the execution of the freezing order or confiscation order, shall be made directly between the issuing authority and the executing authority and, where a Member State has designated a central authority in accordance with Article 24(2), shall be made, where appropriate, with the involvement of that central authority.

*Article 26***Multiple orders**

1. If the executing authority receives two or more freezing orders or confiscation orders from different Member States issued against the same person and that person does not have sufficient property in the executing State to satisfy all of the orders, or if the executing authority receives two or more freezing orders or confiscation orders in respect of the same specific item of property, the executing authority shall decide which of the orders to execute in accordance with the law of the executing State, without prejudice to the possibility of postponing the execution of a confiscation order in accordance with Article 21.
2. In taking its decision, the executing authority shall give priority to the interests of victims where possible. It shall also take all other relevant circumstances into account, including the following:
 - (a) whether the assets are already frozen;
 - (b) the dates of the respective orders and their dates of transmission;

- (c) the seriousness of the criminal offence concerned; and
- (d) the place where the criminal offence was committed.

Article 27

Termination of the execution of a freezing order or confiscation order

1. Where the freezing order or confiscation order can no longer be executed or is no longer valid, the issuing authority shall withdraw the freezing order or confiscation order without delay.
2. The issuing authority shall immediately inform the executing authority, by any means capable of producing a written record, of the withdrawal of a freezing order or confiscation order and of any decision or measure that causes a freezing order or confiscation order to be withdrawn.
3. The executing authority shall terminate the execution of the freezing order or confiscation order, in so far as the execution has not yet been completed, as soon as it has been informed by the issuing authority in accordance with paragraph 2. The executing authority shall send, without undue delay and by any means capable of producing a written record, a confirmation of the termination to the issuing State.

Article 28

Management and disposal of frozen and confiscated property

1. The management of frozen and confiscated property shall be governed by the law of the executing State.
2. The executing State shall manage the frozen or confiscated property with a view to preventing its depreciation in value. To that end, the executing State, having regard to Article 10 of Directive 2014/42/EU, shall be able to sell or transfer frozen property.
3. Frozen property and money obtained after selling such property in accordance with paragraph 2 shall remain in the executing State until a confiscation certificate has been transmitted and the confiscation order has been executed, without prejudice to the possibility of restituting property under Article 29.
4. The executing State shall not be required to sell or return specific items covered by a confiscation order, where those items constitute cultural objects, as defined in point (1) of Article 2 of Directive 2014/60/EU of the European Parliament and of the Council ⁽¹⁾. This Regulation shall not affect the obligation to return cultural objects under that Directive.

Article 29

Restitution of frozen property to the victim

1. Where the issuing authority or another competent authority of the issuing State has issued a decision, in accordance with its national law, to restitute frozen property to the victim, the issuing authority shall include information on that decision in the freezing certificate or communicate information on that decision to the executing authority at a later stage.
2. Where the executing authority has been informed of a decision to restitute frozen property to the victim as referred to in paragraph 1, it shall take the necessary measures to ensure that, where the property concerned has been frozen, that property is restituted as soon as possible to the victim, in accordance with the procedural rules of the executing State, where necessary via the issuing State, provided that:
 - (a) the victim's title to the property is not contested;
 - (b) the property is not required as evidence in criminal proceedings in the executing State; and
 - (c) the rights of affected persons are not prejudiced.

The executing authority shall inform the issuing authority where property is transferred directly to the victim.

3. Where the executing authority is not satisfied that the conditions of paragraph 2 have been met, it shall consult with the issuing authority without delay and by any appropriate means in order to find a solution. If no solution can be found, the executing authority may decide not to restitute the frozen property to the victim.

⁽¹⁾ Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (OJ L 159, 28.5.2014, p. 1).

*Article 30***Disposal of confiscated property or money obtained after selling such property**

1. Where the issuing authority or another competent authority of the issuing State has issued a decision, in accordance with its national law, either to restitute confiscated property to the victim or to compensate the victim, the issuing authority shall include information on that decision in the confiscation certificate or communicate, at a later stage, information on that decision to the executing authority.
2. Where the executing authority has been informed of a decision to restitute confiscated property to the victim as referred to in paragraph 1, it shall take the necessary measures to ensure that, where the property concerned has been confiscated, that property is restituted as soon as possible to the victim, where necessary via the issuing State. The executing authority shall inform the issuing authority where property is transferred directly to the victim.
3. Where it is not possible for the executing authority to restitute the property to the victim in accordance with paragraph 2, but money has been obtained as a result of the execution of a confiscation order in relation to that property, the corresponding sum shall be transferred to the victim for the purposes of restitution, where necessary via the issuing State. The executing authority shall inform the issuing authority where money is transferred directly to the victim. Any remaining property shall be disposed of in accordance with paragraph 7.
4. Where the executing authority has been informed of a decision to compensate the victim as referred to in paragraph 1, and money has been obtained as a result of the execution of a confiscation order, the corresponding sum, in so far as it does not exceed the amount indicated in the certificate, shall be transferred to the victim for the purposes of compensation, where necessary via the issuing State. The executing authority shall inform the issuing authority where money is transferred directly to the victim. Any remaining property shall be disposed of in accordance with paragraph 7.
5. Where proceedings to restitute property to, or compensate, the victim are pending in the issuing State, the issuing authority shall inform the executing authority accordingly. The executing State shall refrain from disposing of the confiscated property until the information on the decision to restitute property to, or compensate, the victim has been communicated to the executing authority, even in cases where the confiscation order has already been executed.
6. Without prejudice to paragraphs 1 to 5, property other than money that has been obtained as a result of the execution of the confiscation order shall be disposed of in accordance with the following rules:
 - (a) the property may be sold, in which case the proceeds of the sale are to be disposed of in accordance with paragraph 7;
 - (b) the property may be transferred to the issuing State provided that, where the confiscation order covers an amount of money, the issuing authority has given its consent to the transfer of property to the issuing State;
 - (c) subject to point (d), if it is not possible to apply point (a) or (b), the property may be disposed of in another way in accordance with the law of the executing State; or
 - (d) the property may be used for public interest or social purposes in the executing State in accordance with its law, subject to the consent of the issuing State.
7. Unless the confiscation order is accompanied by a decision to restitute property to the victim or to compensate the victim in accordance with paragraphs 1 to 5, or unless otherwise agreed by the Member States involved, the executing State shall dispose of the money obtained as a result of the execution of a confiscation order as follows:
 - (a) if the amount obtained from the execution of the confiscation order is equal to or less than EUR 10 000, the amount shall accrue to the executing State; or
 - (b) if the amount obtained from the execution of the confiscation order is more than EUR 10 000, 50 % of the amount shall be transferred by the executing State to the issuing State.

*Article 31***Costs**

1. Each Member State shall bear its own costs resulting from the application of this Regulation, without prejudice to the provisions relating to the disposal of confiscated property set out in Article 28.
2. The executing authority may submit a proposal to the issuing authority that the costs be shared where it appears, either before or after the execution of a freezing order or confiscation order, that the execution of the order would entail large or exceptional costs.

Such proposals shall be accompanied by a detailed breakdown of the costs incurred by the executing authority. Following such a proposal the issuing authority and the executing authority shall consult with each other. Where appropriate, Eurojust may facilitate such consultations.

The consultations, or at least the result thereof, shall be recorded by any means capable of producing a written record.

Article 32

Obligation to inform affected persons

1. Without prejudice to Article 11, following the execution of a freezing order or following the decision to recognise and execute a confiscation order, the executing authority shall inform, to the extent possible, the affected persons known to it of such execution and of such decision without delay, in accordance with procedures under its national law.
2. The information to be provided in accordance with paragraph 1 shall specify the name of the issuing authority and the legal remedies available under the law of the executing State. The information shall also specify, at least in a brief manner, the reasons for the order.
3. Where appropriate, the executing authority may ask the issuing authority for assistance in carrying out the tasks referred to in paragraph 1.

Article 33

Legal remedies in the executing State against the recognition and execution of a freezing order or confiscation order

1. Affected persons shall have the right to effective legal remedies in the executing State against the decision on the recognition and execution of freezing orders pursuant to Article 7 and confiscation orders pursuant to Article 18. The right to a legal remedy shall be invoked before a court in the executing State in accordance with its law. As regards confiscation orders, the invocation of a legal remedy may have suspensive effect where the law of the executing State so provides.
2. The substantive reasons for issuing the freezing order or confiscation order shall not be challenged before a court in the executing State.
3. The competent authority of the issuing State shall be informed of any legal remedy invoked in accordance with paragraph 1.
4. This Article is without prejudice to the application in the issuing State of safeguards and legal remedies in accordance with Article 8 of Directive 2014/42/EU.

Article 34

Reimbursement

1. Where the executing State is liable under its law for damage to an affected person resulting from the execution of a freezing order transmitted to it pursuant to Article 4 or confiscation order transmitted to it pursuant to Article 14, the issuing State shall reimburse the executing State for any damages paid to the affected person. However, where the issuing State can demonstrate to the executing State that the damage, or any part thereof, was exclusively due to the conduct of the executing State, the issuing and executing States shall agree between themselves on the amount to be reimbursed.
2. Paragraph 1 is without prejudice to the law of the Member States on claims by natural or legal persons for compensation for damage.

CHAPTER V

FINAL PROVISIONS

Article 35

Statistics

1. Member States shall regularly collect comprehensive statistics from the relevant authorities. They shall maintain those statistics and shall send them to the Commission each year. Those statistics shall include, in addition to the information referred to in Article 11(2) of Directive 2014/42/EU, the number of freezing orders and confiscation orders received by a Member State from other Member States that were recognised and executed, and the recognition and execution of which were refused.

2. Each year, Member States shall also send the following statistics to the Commission, where they are available at a central level in the Member State concerned:

- (a) the number of cases in which a victim was compensated or granted restitution of the property obtained by the execution of a confiscation order under this Regulation; and
- (b) the average period required for the execution of freezing orders and confiscation orders under this Regulation.

Article 36

Amendments to the certificate and the form

The Commission is empowered to adopt delegated acts in accordance with Article 37 concerning any amendment to the certificates set out in Annexes I and II. Such amendments shall be in accordance with this Regulation and shall not affect it.

Article 37

Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
- 2. The power to adopt delegated acts referred to in Article 36 shall be conferred on the Commission for an indeterminate period of time from 19 December 2020.
- 3. The delegation of power referred to in Article 36 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
- 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
- 5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
- 6. A delegated act adopted pursuant to Article 36 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 38

Reporting and review

By 20 December 2025, and every five years thereafter, the Commission shall submit a report to the European Parliament, to the Council and to the European Economic and Social Committee on the application of this Regulation, including on:

- (a) the possibility for Member States to make and withdraw declarations under Articles 4(2) and 14(2);
- (b) the interaction between the respect for fundamental rights and the mutual recognition of freezing orders and confiscation orders;
- (c) the application of Articles 28, 29 and 30 in relation to the management and disposal of frozen and confiscated property, the restitution of property to victims and the compensation of victims.

Article 39

Replacement

This Regulation replaces the provisions of Framework Decision 2003/577/JHA as regards the freezing of property between the Member States bound by this Regulation as from 19 December 2020.

This Regulation replaces Framework Decision 2006/783/JHA between the Member States bound by this Regulation as from 19 December 2020.

For the Member States bound by this Regulation, references to Framework Decision 2003/577/JHA as regards freezing of property and references to Framework Decision 2006/783/JHA shall be construed as references to this Regulation.

Article 40

Transitional provisions

1. This Regulation shall apply to freezing certificates and confiscation certificates transmitted on or after 19 December 2020.
2. Freezing certificates and confiscation certificates transmitted before 19 December 2020 shall continue to be governed by Framework Decisions 2003/577/JHA and 2006/783/JHA, between the Member States bound by this Regulation until the final execution of the freezing order or confiscation order.

Article 41

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 19 December 2020.

However, Article 24 shall apply from 18 December 2018.

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
The President
A. TAJANI

For the Council
The President
K. EDTSTADLER

ANNEX I

FREEZING CERTIFICATE

SECTION A:

Issuing State:

Issuing authority:

Validating authority (if applicable):

Executing State:

Executing authority (if known):

SECTION B: Urgency and/or requested date for execution

1. Please indicate the particular grounds for urgency:

- ☐ There are legitimate grounds to believe that the property in question will imminently be removed or destroyed, namely:

.....

.....

- ☐ Investigative or procedural needs in the issuing State, namely:

.....

.....

2. Date for execution:

- ☐ A specific date is requested, namely:

- ☐ Coordination needed between the Member States involved

Grounds for this request:

.....

.....

SECTION C: Affected person(s)

Identity of the person(s) against whom the freezing order is issued, or of the person(s) that owns/own the property that is covered by the freezing order (if more than one person is affected, please provide the information for each person):

1. Identification data

(i) In the case of natural person(s)

Name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number, if available:

Type and number of the identity document(s) (identity card or passport), if available:

.....

Date of birth:

Place of birth:

Residence and/or known address (if the address is not known, the last known address):

.....

Language(s) which the affected person understands

Please indicate the position of the affected person in the proceedings:

- ☐ person against whom the freezing order is directed

- ☐ person that owns the property that is covered by the freezing order

(ii) In the case of legal person(s)

Name:

Legal form:

Shortened name, commonly used name or trading name, if applicable:

Registered seat:

Registration number:

Address:

Name of the representative:

Please indicate the position of the affected person in the proceedings:

☐ person against whom the freezing order is directed☐ person that owns the property that is covered by the freezing order

2. If different from the address above, please give the location where the freezing order is to be executed:

.....

3. Third parties whose rights in relation to the property that is covered by the freezing order are directly prejudiced by the order (identity and grounds):

.....

.....

4. Provide any other information that will assist with the execution of the freezing order:

.....

SECTION D: Information on property to which the order relates

1. Please indicate if the order concerns:

☐ an amount of money☐ specific item(s) of property (corporeal or incorporeal, movable or immovable)☐ property of equivalent value (in the context of value-based confiscation)

2. If the order concerns an amount of money or property of equivalent value to that amount of money:

— The amount for execution in the executing State, in figures and words (indicate currency):

.....

— The total amount covered by the order, in figures and words (indicate currency):

.....

Additional information:

— Grounds for believing that the affected person has property/income in the executing State:

.....

— Description of the property/source of income of the affected person(when possible):

.....

— Exact location of the property/source of income of the affected person (if not known, the last known location):

.....

— Details of the bank account of the affected person (if known):

.....

3. If the order concerns specific item(s) of property or property of equivalent value to such property:

Grounds for the transmission of the order to the executing State:

☐ the specific item(s) of property is/are located in the executing State☐ the specific item(s) of property is/are registered in the executing State

- ☐ the issuing authority has reasonable grounds to believe that all or part of the specific item(s) of property covered by the order is/are located in the executing State.

Additional information:

- Grounds for believing that the specific item(s) of property is/are located in the executing State:

.....

- Description of the item of property:

.....

- Location of the item of property (if not known, the last known location):

.....

- Other relevant information (e.g. appointment of a judicial administrator):

.....

SECTION E: Grounds for issuing the freezing order

1. Summary of the facts

Set out the reasons why the freezing order is issued, including:

- summary of the facts, including a description of the criminal offence(s):

.....

- stage of the investigation:

.....

- grounds for freezing:

.....

- other relevant information:

.....

2. Nature and legal classification of the criminal offence(s) in relation to which the freezing order was issued and the applicable legal provision(s):

.....

.....

3. Is the criminal offence in relation to which the freezing order is issued punishable in the issuing State by a custodial sentence of a maximum of at least three years and included in the list of criminal offences set out below? (please tick the relevant box). Where the freezing order concerns several criminal offences, please indicate numbers in the list of criminal offences below (corresponding to the criminal offences as described under points 1 and 2 above).

- ☐ 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 fraud and other criminal offences affecting the Union's financial interests as defined in Directive (EU) 2017/1371
- ☐ laundering of the proceeds of crime
- ☐ counterfeiting currency, including 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 or grievous bodily injury
- ☐ illicit trade in human organs and tissue
- ☐ kidnapping, illegal restraint or 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 or ships
- ☐ sabotage

4. Any other relevant information (e.g. relation between the property and the criminal offence):

.....

SECTION F: Confidentiality of the order and/or request for specific formalities

☐ Need to maintain the information in the order confidential after execution:

.....

☐ Need for specific formalities at the time of execution:

.....

SECTION G: Where a freezing certificate has been transmitted to more than one executing State, provide the following information:

1. A freezing certificate has been transmitted to the following other executing State(s) (State and authority):

.....

.....

2. A freezing certificate has been transmitted to more than one executing State for the following reasons:

Where the freezing order concerns specific items of property:

- ☐ Different items of property covered by the order are believed to be located in different executing States
- ☐ The freezing of a specific item of property requires action in more than one executing State

Where the freezing order concerns an amount of money:

- ☐ The estimated value of the property which may be frozen in the issuing State and in any one executing State is not likely to be sufficient for the freezing of the full amount covered by the order
- ☐ Other specific needs:

.....

3. Value of assets, if known, in each executing State:

.....

4. Where the freezing of the specific item(s) of property requires action in more than one executing State, description of the action to be taken in the executing State:

.....

SECTION H: Relation to an earlier freezing order and/or other order(s) or request(s)

Please indicate whether this freezing order relates to an earlier order or request (e.g. freezing order, European Investigation Order, European arrest warrant or mutual legal assistance). If applicable, provide the following information relevant to identify the previous order or request:

— Type of the order/request:

.....

— Date of issue:

.....

— Authority to which the order/request was transmitted:

.....

— Reference number given by the issuing authority:

.....

— Reference number(s) given by the executing authority(ies):

.....

SECTION I: Confiscation

Please indicate whether:

☐ this freezing certificate is accompanied by a confiscation certificate issued in the issuing State (reference number of the confiscation certificate):

.....

☐ the property shall remain frozen in the executing State pending the transmission and execution of the confiscation order (estimated date for submission of the confiscation certificate, if possible):

.....

SECTION J: Alternative measures

1. Please indicate whether the issuing State allows for the application by the executing State of alternative measures where it is not possible to execute the freezing order, either wholly or partially:

☐ Yes

☐ No

2. If yes, state which measures may be applied:

.....

SECTION K: RESTITUTION OF FROZEN PROPERTY

1. Please indicate if a decision to reconstitute frozen property to the victim has been issued:

☐ Yes

☐ No

If yes, please specify the following concerning the decision to reconstitute frozen property to the victim:

Authority that issued the decision (official name):

.....

Date of the decision:

Reference number of the decision (if available):

Description of the property to be restituted:

Name of the victim:

Address of the victim:

If the victim's title to the property is contested, please provide details (persons contesting the title, reasons, etc.):

.....

If rights of affected persons could be prejudiced as a result of the restitution, please provide details (the affected persons, the rights that could be prejudiced, reasons, etc.):

.....

.....

2. Is a demand for restitution of frozen property to the victim pending in the issuing State?

☐ No

☐ Yes, the outcome will be communicated to the executing authority

The issuing authority shall be notified in case of direct transfer to the victim.

SECTION L: Legal remedies

Authority in the issuing State which can supply further information on procedures for seeking legal remedies in the issuing State and on whether legal assistance, interpretation and translation is available:

☐ The issuing authority (see Section M)

☐ The validating authority (see Section N)

☐ Other:

.....

SECTION M: Details of the issuing authority

Type of the issuing authority:

☐ judge, court, public prosecutor

☐ another competent authority designated by the issuing State

Name of the authority:

Name of the contact person:

Post held (title/grade):

File No:

Address:

Tel. No (country code) (area/city code):

Fax No (country code) (area/city code):

Email:

Languages in which it is possible to communicate with the issuing authority:

If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the execution of the order:

Name/Title/Organisation:

Address:

Email/Tel. No:

Signature of the issuing authority and/or its representative certifying the content of the freezing certificate as accurate and correct:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

SECTION N: Details of the authority which validated the freezing order

Please indicate the type of authority which has validated the freezing order, if applicable:

- ☐ judge or court
- ☐ public prosecutor

Name of the validating authority:

Name of the contact person:

Post held (title/grade):

File No:

Address:

Tel. No (country code) (area/city code):

Fax No (country code) (area/city code):

Email:

Languages in which it is possible to communicate with the validating authority:

Please indicate the main contact point for the executing authority:

- ☐ issuing authority
- ☐ validating authority

Signature and details of the validating authority and/or its representative:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

SECTION O: Central authority

Where a central authority has been made responsible for the administrative transmission and reception of freezing certificates in the issuing State, please indicate:

Name of the central authority:

Name of the contact person:

Post held (title/grade):

File No:

Address:

Tel. No (country code) (area/city code):

Fax No (country code) (area/city code):

Email:

SECTION P: Attachments

Please indicate any attachments to the certificate:

ANNEX II

CONFISCATION CERTIFICATE

SECTION A:

Issuing State:

Issuing authority:

Executing State:

Executing authority (if known):

SECTION B: Confiscation order

1. Court which issued the confiscation order (official name):
.....
2. Reference number of the confiscation order (if available):
.....
3. The confiscation order was issued on (date):
.....
4. The confiscation order became final on (date):
.....

SECTION C: Affected person(s)

Identity of the person(s) against whom the confiscation order is issued, or of the person(s) that owns/own the property that is covered by the confiscation order (if more than one person is affected, please provide the information for each person):

1. Identification data

(i) In the case of natural person(s)

Name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number, if available:

Type and number of the identity document(s) (identity card or passport), if available:
.....

Date of birth:

Place of birth:

Residence and/or known address (if address is not known, the last known address):
.....

Language(s) which the affected person understands:

Please indicate the position of the affected person in the proceedings:

☐ person against whom the confiscation order is directed

☐ person that owns the property that is covered by the confiscation order

(ii) In the case of legal person(s)

Name:

Legal form:

Shortened name, commonly used name or trading name, if applicable:

Registered seat:

Registration number:

Address:

Name of the representative:

Please indicate the position of the affected person in the proceedings:

- ☐ person against whom the confiscation order is directed
☐ person that owns the property that is covered by the confiscation order

2. If different from the address above, please give the location where the confiscation order is to be executed:

.....

3. Third parties whose rights in relation to the property that is covered by the confiscation order are directly prejudiced by the order (identity and grounds):

.....

.....

4. Provide any other information that will assist with the execution of the confiscation order:

.....

SECTION D: Information on property to which the order relates

1. The court has decided that the property:

- ☐ is the proceeds of a criminal offence, or its equivalent, whether the full amount of the value or only part of the value of such proceeds
☐ constitutes the instrumentalities of a criminal offence, or the value of such instrumentalities
☐ is subject to confiscation through the application in the issuing State of any of the powers of confiscation provided for in Directive 2014/42/EU (including extended confiscation)
☐ is subject to confiscation under any other provisions relating to powers of confiscation, including confiscation without a final conviction, under the law of the issuing State following proceedings in relation to a criminal offence

2. Please indicate if the order concerns:

- ☐ an amount of money
☐ specific item(s) of property (corporeal or incorporeal, movable or immovable)
☐ property of equivalent value (in the context of value-based confiscation)

3. If the order concerns an amount of money or property of equivalent value to that amount of money:

— The amount for execution in the executing State, in figures and words (indicate currency):

.....

— The total amount covered by the order, in figures and words (indicate currency):

.....

Additional information:

— Grounds for believing that the affected person has property/income in the executing State:

.....

— Description of the property/source of income of the affected person (when possible):

.....

— Exact location of the property/source of income of the affected person (if not known, the last known location):

.....

— Details of the bank account of the affected person (if known):

.....

4. If the order concerns specific item(s) of property or property of equivalent value to such property:
 Grounds for the transmission of the order to the executing State:
- ☐ the specific item(s) of property is/are located in the executing State
 - ☐ the specific item(s) of property is/are registered in the executing State
 - ☐ the issuing authority has reasonable grounds to believe that all or part of the specific item(s) of property covered by the order is/are located in the executing State.
- Additional information:
- Grounds for believing that the specific item(s) of property is/are located in the executing State:

 - Description of the item of property

 - Location of the item of property (if not known, the last known location):

 - Other relevant information (e.g. appointment of a judicial administrator):

5. Information on conversion and transfer of property
- If the order concerns a specific item of property, state whether it is provided for under the law of the issuing State that the confiscation in the executing State can be carried out through the confiscation of a sum of money corresponding to the value of the property to be confiscated:
- ☐ Yes
 - ☐ No

SECTION E: Freezing order

Please indicate whether:

- ☐ the confiscation order is accompanied by a freezing order issued in the issuing State (reference number of the freezing certificate):

- ☐ the property has been frozen in accordance with an earlier freezing order transmitted to the executing State
 - date of issue of the freezing order:
 - date of transmission of the freezing order:
 - the authority to which it was transmitted:
 - reference number given by the issuing authority:
 - reference number given by the executing authorities:

SECTION F: Grounds for issuing the confiscation order

1. Summary of the facts and the reasons why the confiscation order is issued, including a description of the criminal offence(s) and other relevant information:

2. Nature and legal classification of the criminal offence(s) in relation to which the confiscation order was issued and the applicable legal provision(s):

3. Is the criminal offence in relation to which the confiscation order is issued punishable in the issuing State by a custodial sentence of a maximum of at least three years and included in the list of criminal offences set out below? (please tick the relevant box). Where the confiscation order concerns several criminal offences, please indicate numbers in the list of criminal offences below (corresponding to the criminal offences as described under points 1 and 2 above).

- ☐ 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 fraud and other criminal offences affecting the Union's financial interests as defined in Directive (EU) 2017/1371
- ☐ laundering of the proceeds of crime
- ☐ counterfeiting currency, including 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 or grievous bodily injury
- ☐ illicit trade in human organs and tissue
- ☐ kidnapping, illegal restraint or 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 or ships
- ☐ sabotage

4. Any other relevant information (e.g. relation between the property and the criminal offence):

.....

SECTION G: Where a confiscation certificate has been transmitted to more than one executing State, provide the following information:

1. A confiscation certificate has been transmitted to the following other executing State(s) (State and authority):

.....

2. A confiscation certificate has been transmitted to more than one executing State for the following reasons:
Where the confiscation order concerns specific items of property:
- ☐ Different items of property covered by the order are believed to be located in different executing States
 - ☐ The confiscation of a specific item of property requires action in more than one executing State
- Where the confiscation order concerns an amount of money:
- ☐ The property concerned has not been frozen under Regulation (EU) 2018/1805
 - ☐ The estimated value of the property which may be confiscated in the issuing State and in any one executing State is not likely to be sufficient for the confiscation of the full amount covered by the order
 - ☐ Other specific needs:
.....
3. Value of assets, if known, in each executing State:
.....
.....
4. Where the confiscation of the specific item(s) of property requires action in more than one executing State, description of the action to be taken in the executing State:
.....

SECTION H: Proceedings resulting in the confiscation order

Please indicate if the person against whom the confiscation order was issued appeared in person at the trial that resulted in the confiscation order linked to a final conviction:

1. ☐ Yes, the person appeared in person at the trial.
2. ☐ No, the person did not appear in person at the trial
3. ☐ No, in accordance with national procedural rules there were no hearings held.
4. If you have ticked the box under point 2, please confirm the existence of one of the following:
 - 4.1a. ☐ the person was summoned in person on (day/month/year) ... and thereby informed of the scheduled date and place of the trial that resulted in the confiscation order and was informed that a confiscation order could be handed down if he or she does not appear at the trial
 - OR
 - 4.1b. ☐ the person was not summoned in person but actually received, by other means, official information of the scheduled date and place of the trial that resulted in the confiscation order, in such a manner that it was established unequivocally that he or she was aware of the scheduled trial, and was informed that a confiscation order may be handed down if he or she does not appear at the trial
 - OR
 - 4.2. ☐ being aware of the scheduled trial, the person had given a mandate to a lawyer, who was either appointed by the person concerned or by the state, to defend him or her at the trial, and was actually defended by that lawyer at the trial
 - OR
 - 4.3. ☐ the person was served with the confiscation order on (day/month/year) ... and was expressly informed about the right to a retrial or an appeal, in which he or she had the right to participate and which allowed a re-examination of the merits of the case including an examination of fresh evidence, and which could lead to the original confiscation order being reversed, and
 - ☐ the person expressly stated that he or she did not contest the confiscation order
 - OR
 - ☐ the person did not request a retrial or appeal within the applicable time limits

5. If you have ticked the box under points 4.1b, 4.2 or 4.3, please provide information about how the relevant condition has been met:

SECTION I: Alternative measures, including custodial sanctions

1. Please indicate 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 wholly or partially:
- ☐ Yes
- ☐ No
2. If yes, state which measures may be applied:
- ☐ Custody (maximum period):
- ☐ Community service (or equivalent) (maximum period):
- ☐ Other measures (description):

SECTION J: Decision to restitute property to, or compensate, the victim

1. Please indicate, where relevant:
- ☐ An issuing authority or another competent authority of the issuing State has issued a decision to compensate the victim with, or restitute to the victim, the following sum of money:
- ☐ An issuing authority or another competent authority of the issuing State has issued a decision to restitute the following property other than money to the victim:
- ☐ Proceedings to restitute property to, or compensate, the victim are pending in the issuing State and the outcome will be communicated to the executing authority
2. Details of the decision to restitute property to, or compensate, the victim:
- Authority that issued the decision (official name):
- Date of the decision:
- Date on which the decision became final:
- Reference number of the decision (if available):
- Description of the property to be restituted:
- Name of the victim:
- Address of the victim:
- The issuing authority shall be notified in case of direct transfer to the victim.

SECTION K: Details of the issuing authority

Name of authority:

Name of the contact person:

Post held (title/grade):

File No:

Address:

Tel. No (country code) (area/city code):

Fax No (country code) (area/city code):

Email:

Languages in which it is possible to communicate with the issuing authority:

If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the execution of the order or the transfer of the property:

.....
Name/Title/Organisation:

Address:

Email/Tel. No:

Signature of the issuing authority and/or its representative certifying the content of the confiscation certificate as accurate and correct:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

SECTION L: Central authority

Where a central authority has been made responsible for the administrative transmission and reception of confiscation certificates in the issuing State, please indicate:

Name of the central authority:

Name of the contact person:

Post held (title/grade):

File No:

Address:

Tel. No (country code) (area/city code):

Fax No (country code) (area/city code):

Email:

SECTION M: Payment details of the Issuing State

IBAN:

BIC:

Name of bank account holder:

SECTION N: Attachments

Please indicate any attachments to the certificate:

IV. APPROXIMATION OF PROCEDURAL LAW

COUNCIL DIRECTIVE 2004/80/EC
of 29 April 2004
relating to compensation to crime victims

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽³⁾,

Whereas:

- (1) One of the objectives of the European Community is to abolish, as between Member States, obstacles to the free movement of persons and services.
- (2) The Court of Justice held in the Cowan ⁽⁴⁾ Case that, when Community law guarantees to a natural person the freedom to go to another Member State, the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. Measures to facilitate compensation to victims of crimes should form part of the realisation of this objective.
- (3) At its meeting in Tampere on 15 and 16 October 1999, the European Council called for the drawing-up of minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and their rights to compensation for damages, including legal costs.
- (4) The Brussels European Council, meeting on 25 and 26 March 2004, in the Declaration on Combating Terrorism, called for the adoption of this Directive before 1 May 2004.
- (5) On 15 March 2001 the Council adopted Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. ⁽⁵⁾ This Decision, based on Title VI of the Treaty on the European Union, allows crime victims to claim compensation from the offender in the course of criminal proceedings.
- (6) Crime victims in the European Union should be entitled to fair and appropriate compensation for the injuries

they have suffered, regardless of where in the European Community the crime was committed

- (7) This Directive sets up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations, which should operate on the basis of Member States' schemes on compensation to victims of violent intentional crime, committed in their respective territories. Therefore, a compensation mechanism should be in place in all Member States.
- (8) Most Member States have already established such compensation schemes, some of them in fulfilment of their obligations under the European Convention of 24 November 1983 on the compensation of victims of violent crimes.
- (9) Since the measures contained in this Directive are necessary in order to attain objectives of the Community and the Treaty provides for no powers other than those in Article 308 thereof for the adoption of this Directive, that Article should be applied.
- (10) Crime victims will often not be able to obtain compensation from the offender, since the offender may lack the necessary means to satisfy a judgment on damages or because the offender cannot be identified or prosecuted.
- (11) A system of cooperation between the authorities of the Member States should be introduced to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim's residence.
- (12) This system should ensure that crime victims could always turn to an authority in their Member State of residence and should ease any practical and linguistic difficulties that occur in a cross-border situation.
- (13) The system should include the provisions necessary for allowing the crime victim to find the information needed to make the application and for allowing for efficient cooperation between the authorities involved.
- (14) This Directive respects the fundamental rights and observes the principles reaffirmed in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law.

⁽¹⁾ OJ C 45 E, 25.2.2003, p. 69.

⁽²⁾ Opinion delivered on 23 October 2003 (not yet published in the Official Journal).

⁽³⁾ OJ C 95, 23.4.2003, p. 40.

⁽⁴⁾ Case 186/87, European Court reports 1989, p. 195.

⁽⁵⁾ OJ L 82, 22.3.2001, p. 1.

- (15) Since the objective of facilitating access to compensation to victims of crimes of cross-border situations cannot be sufficiently achieved by the Member States because of the cross-border elements and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, 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 Directive does not go beyond what is necessary in order to achieve that objective.
- (16) The measures necessary for the implementation of the Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

ACCESS TO COMPENSATION IN CROSS-BORDER SITUATIONS

Article 1

Right to submit an application in the Member State of residence

Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State.

Article 2

Responsibility for paying compensation

Compensation shall be paid by the competent authority of the Member State on whose territory the crime was committed.

Article 3

Responsible authorities and administrative procedures

1. Member States shall establish or designate one or several authorities or any other bodies, hereinafter referred to as 'assisting authority or authorities', to be responsible for applying Article 1.
2. Member States shall establish or designate one or several authorities or any other bodies to be responsible for deciding upon applications for compensation, hereinafter referred to as 'deciding authority or authorities'.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

3. Member States shall endeavour to keep to a minimum the administrative formalities required of an applicant for compensation.

Article 4

Information to potential applicants

Member States shall ensure that potential applicants for compensation have access to essential information on the possibilities to apply for compensation, by any means Member States deem appropriate.

Article 5

Assistance to the applicant

1. The assisting authority shall provide the applicant with the information referred to in Article 4 and the required application forms, on the basis of the manual drawn up in accordance with Article 13(2).
2. The assisting authority shall, upon the request of the applicant, provide him or her with general guidance and information on how the application should be completed and what supporting documentation may be required.
3. The assisting authority shall not make any assessment of the application.

Article 6

Transmission of applications

1. The assisting authority shall transmit the application and any supporting documentation as quickly as possible to the deciding authority.
2. The assisting authority shall transmit the application using the standard form referred to in Article 14.
3. The language of the application and any supporting documentation shall be determined in accordance with Article 11(1).

Article 7

Receipt of applications

Upon receipt of an application transmitted in accordance with Article 6, the deciding authority shall send the following information as soon as possible to the assisting authority and to the applicant:

- (a) the contact person or the department responsible for handling the matter;
- (b) an acknowledgement of receipt of the application;
- (c) if possible, an indication of the approximate time by which a decision on the application will be made.

*Article 8***Requests for supplementary information**

The assisting authority shall if necessary provide general guidance to the applicant in meeting any request for supplementary information from the deciding authority.

It shall upon the request of the applicant subsequently transmit it as soon as possible directly to the deciding authority, enclosing, where appropriate, a list of any supporting documentation transmitted.

*Article 9***Hearing of the applicant**

1. If the deciding authority decides, in accordance with the law of its Member State, to hear the applicant or any other person such as a witness or an expert, it may contact the assisting authority for the purpose of arranging for:

- (a) the person(s) to be heard directly by the deciding authority, in accordance with the law of its Member State, through the use in particular of telephone- or video-conferencing; or
- (b) the person(s) to be heard by the assisting authority, in accordance with the law of its Member State, which will subsequently transmit a report of the hearing to the deciding authority.

2. The direct hearing in accordance with paragraph 1(a) may only take place in cooperation with the assisting authority and on a voluntary basis without the possibility of coercive measures being imposed by the deciding authority.

*Article 10***Communication of the decision**

The deciding authority shall send the decision on the application for compensation, by using the standard form referred to in Article 14, to the applicant and to the assisting authority, as soon as possible, in accordance with national law, after the decision has been taken.

*Article 11***Other provisions**

1. Information transmitted between the authorities pursuant to Articles 6 to 10 shall be expressed in:

- (a) the official languages or one of the languages of the Member State of the authority to which the information is sent, which corresponds to one of the languages of the Community institutions; or
- (b) another language of the Community institutions that that Member State has indicated it can accept;

with the exception of:

(i) the full text of decisions taken by the deciding authority, where the use of languages shall be governed by the law of its Member State;

(ii) reports drawn up following a hearing in accordance with Article 9(1)(b), where the use of languages shall be determined by the assisting authority, subject to the requirement that it corresponds to one of the languages of the Community institutions.

2. Services rendered by the assisting authority in accordance with Articles 1 to 10 shall not give rise to a claim for any reimbursement of charges or costs from the applicant or from the deciding authority.

3. Application forms and any other documentation transmitted in accordance with Articles 6 to 10 shall be exempted from authentication or any equivalent formality.

CHAPTER II

NATIONAL SCHEMES ON COMPENSATION*Article 12*

1. The rules on access to compensation in cross-border situations drawn up by this Directive shall operate on the basis of Member States' schemes on compensation to victims of violent intentional crime committed in their respective territories.

2. All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.

CHAPTER III

IMPLEMENTING PROVISIONS*Article 13***Information to be sent to the Commission and the manual**

1. Member States shall, no later than 1 July 2005, send to the Commission details of:

- (a) the list of authorities established or designated in accordance with Articles 3(1) and 3(2), including, where appropriate, information on the special and territorial jurisdiction of these authorities;
- (b) the language(s) referred to in Article 11(1)(a) which the authorities can accept for the purpose of applying Articles 6 to 10 and the official language or languages other than its own which is or are acceptable to it for the transmission of applications in accordance with Article 11(1)(b).

- (c) the information established in accordance with Article 4;
 - (d) the application forms for compensation;
- Member States shall inform the Commission of any subsequent changes to this information.

2. The Commission shall, in cooperation with the Member States establish and publish on the internet a manual containing the information provided by the Member States pursuant to paragraph 1. The Commission shall be responsible for arranging the necessary translations of the manual.

Article 14

Standard form for transmission of applications and decisions

Standard forms shall be established, at the latest by 31 October 2005, for the transmission of applications and decisions in accordance with the procedure referred to in Article 15(2).

Article 15

Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
3. The Committee shall adopt its Rules of Procedure.

Article 16

Central contact points

Member States shall appoint a central contact point for the purposes of:

- (a) assisting with the implementation of Article 13(2);
- (b) furthering close cooperation and exchange of information between the assisting and deciding authorities in the Member States; and
- (c) giving assistance and seeking solutions to any difficulties that may occur in the application of Articles 1 to 10.

The contact points shall meet regularly.

Article 17

More favourable provisions

This Directive shall not prevent Member States, in so far as such provisions are compatible with this Directive, from:

- (a) introducing or maintaining more favourable provisions for the benefit of victims of crime or any other persons affected by crime;
- (b) introducing or retaining provisions for the purpose of compensating victims of crime committed outside their

territory, or any other person affected by such a crime, subject to any conditions that Member States may specify for that purpose.

Article 18

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2006 at the latest, with the exception of Article 12(2), in which case the date of compliance shall be 1 July 2005. They shall forthwith inform the Commission thereof.

2. Member States may provide that the measures necessary to comply with this Directive shall apply only to applicants whose injuries result from crimes committed after 30 June 2005.

3. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

4. Member States shall communicate to the Commission the text of the main provisions of domestic law, which they adopt in the field governed by this Directive.

Article 19

Review

No later than by 1 January 2009, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive.

Article 20

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 21

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

I

(Resolutions, recommendations and opinions)

OPINIONS

COUNCIL

RESOLUTION OF THE COUNCIL

of 10 June 2011

on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings

(2011/C 187/01)

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

- (1) The active protection of victims of crime is a high priority for the European Union and its Member States. In the European Union, the Charter of Fundamental Rights (the 'Charter') and the Convention for the Protection of Human Rights and Fundamental Freedoms (the 'Convention'), to which all Member States are parties, calls on States to actively protect victims of crime.
- (2) The European Union has successfully established an area of freedom of movement and residence, from which citizens benefit by increasingly travelling, studying and working in countries other than that of their residence. However, the removal of internal borders and the increasing exercise of the rights to freedom of movement and residence have led as an inevitable consequence to an increase in the number of people who become victims of a criminal offence and become involved in criminal proceedings in a Member State other than that of their residence.
- (3) This calls for specific action in order to establish a common minimum standard of protection of victims of crime and their rights in criminal proceedings throughout the Union. Such action, which may include legislation as well as other measures, will enhance citizens' confidence that the European Union and its Member States will protect and guarantee their rights.
- (4) In the Stockholm programme — An open and secure Europe serving the citizen⁽¹⁾, the European Council stressed the importance to provide special support and legal protection to those who are most vulnerable or find themselves in particularly exposed situations, such as persons subjected to repeated violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents. In line with the Council conclusions on a strategy to ensure fulfilment of the rights of, and improve support for, persons who fall victims of crime⁽²⁾, the European Council has urged to take an integrated and coordinated approach to victims. As a step in responding to the Stockholm programme, the European Commission has proposed a package of measures on victims of crime including a Directive on the rights, support and protection of victims of crime⁽³⁾ as well as a Regulation on the mutual recognition of protection measures in civil matters⁽⁴⁾.
- (5) In the light of the considerable progress made pursuant to the Roadmap for strengthening procedural rights of the suspected or accused persons in criminal proceedings⁽⁵⁾, the Council considers that a similar approach should be adopted in the field of the protection of the victims of crime.

⁽¹⁾ OJ C 115, 4.5.2010, p. 1; see point 2.3.4.

⁽²⁾ Adopted at the 2969th Justice and Home Affairs Council meeting in Luxembourg, 23 October 2009.

⁽³⁾ 10610/11 DROIPEN 45 JUSTCIV 141 ENFOPOL 165 DATA-PROTECT 58 SOC 434 FREMP 59 CODEC 887 (COM(2011) 275 final of 18 May 2011).

⁽⁴⁾ 10613/11 JUSTCIV 143 COPEN 123 CODEC 889 (COM(2011) 276 final of 18 May 2011).

⁽⁵⁾ Resolution of the Council of 30 November 2009 (2009/C 295/01) (OJ C 295, 4.12.2009, p. 1).

- (6) Action in this field is specifically contemplated as part of the process to implement the principle of mutual recognition as founding principle of the creation of a true area of freedom, security and justice: indeed, Article 82(2)(c) TFEU provides that the Union may, by means of directives, establish minimum rules on the rights of victims of crime when necessary to facilitate mutual recognition of judgements and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension.
- (7) The question of the role of victims in criminal proceedings has been already addressed at the level of the Union through Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. However, more than 10 years have passed since the approval of that instrument, and the progress made in the creation of the area of freedom, security and justice, as well as the remaining issues of implementation in the area of victims' rights, require that the Union review and enhance the contents of the Framework Decision, also in the light of the Commission's findings with respect to the implementation and application of the instrument ⁽¹⁾.
- (8) Existing mechanisms to ensure that crime victims may be awarded fair and appropriate compensation for the damages suffered, such as that provided for by Council Directive 2004/80/EC of 29 April 2004 relating to crime victims, should also be reviewed and if necessary improved, in order to enhance their operability and contributing to complementing the instruments for the protection of victims.
- (9) In addition, a mechanism should be created to ensure mutual recognition among Member States of decisions concerning protection measures, along the lines drawn by the Commission proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters. This mechanism should complete the one envisaged by the Directive of the European Parliament and of the Council on the European protection order, concerning mutual recognition of protection measures adopted in criminal matters, currently under discussion. The provisions set out in both proposals should not establish obligations to modify national systems for protection measures, but leave it to the Member States to decide according to which system they may issue or execute protection measures.
- (10) Bearing in mind the importance and complexity of these issues, it seems appropriate to address them in a step-by-step approach, whilst ensuring overall consistency balance. By addressing future actions, one area at a time, focused attention can be paid to each individual measure, so as to enable problems to be identified and addressed in a way that will give added value to each measure.
- (11) Particular attention should be given to the process of implementation of legislative instruments in this field. Practical measures and best practices could be gathered in a non-binding legal instrument, such as a recommendation, in order to help and inspire Member States in the process of implementation.
- (12) In addressing the necessary measures for enhancing the protection of victims, due account should be taken of the principles such as those contained in Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe on assistance to crime victims. The Union should especially take into account the standards set out in the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted by the Committee of Ministers of the Council of Europe on 7 April 2011.
- (13) The list of measures in the Annex to this document should be considered indicative, addressing only a first group of measures to be dealt with as a matter of priority. Further measures, both legislative and non-legislative, as well as practical measures may be proposed in the future if deemed appropriate, also in the light of the on-going process of approval and implementation of the legal acts contemplated in this Roadmap,

HEREBY ADOPTS THE FOLLOWING RESOLUTION:

1. Action should be taken at the level of the European Union in order to strengthen the rights and protection of victims of crime, in particular in the course of criminal proceedings. Such action may include legislation as well as other measures.

⁽¹⁾ See Report from the Commission on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (COM(2004) 54 final/2 of 16 February 2004); Report from the Commission pursuant to Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) (COM(2009) 166 final of 20 April 2009); Impact Assessment accompanying the Commission proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime (SEC(2011) 780 final of 18 May 2011).

-
2. The Council welcomes the European Commission's proposal for a package of measures on victims of crime, and invites the Commission to submit proposals regarding the measures set out in the Roadmap.
 3. The Council endorses the 'Roadmap for strengthening the rights and protection of victims of crime' (hereinafter referred to as 'the Roadmap'), set out in the Annex to this Resolution, as the basis for future action. The measures included in the Roadmap, which could be complemented by other measures, should be given priority.
 4. The Council will examine all proposals presented in the context of the Roadmap and intends to deal with them as matters of priority.
 5. The Council will act in full cooperation with the European Parliament, in accordance with the applicable rules.
-

ANNEX

ROADMAP FOR STRENGTHENING THE RIGHTS AND PROTECTION OF VICTIMS, IN PARTICULAR IN CRIMINAL PROCEEDINGS

The order of the measures indicated below is indicative. Explanations provided in relation to each measure merely serve as an indication of the proposed action, and do not aim to regulate the precise scope and content of the measure concerned. This Roadmap supports and builds on the European Commission's proposals for a package of measures on victims of crime.

General principles

Action at the level of the Union directed at strengthening the rights and protection of victims should aim at introducing common minimum standards and at attaining, among others, the following general objectives:

1. establish adequate procedures and structures to respect the dignity, personal and psychological integrity as well as the privacy of the victim in criminal proceedings;
2. enhance the access to justice by victims of crime, also by fostering the role of victim support services;
3. design adequate procedures and structures aimed at preventing secondary and repeat victimisation;
4. encourage the provision of interpretation and translation for the victim within criminal proceedings;
5. where appropriate, encourage victims to participate actively in criminal proceedings;
6. strengthen the right of victims and of their legal counsel to receive timely information about the proceedings and their outcomes;
7. encourage the recourse to restorative justice and alternative dispute resolution methods taking into account the interest of the victim;
8. pay special attention to children, as part of the most vulnerable group of victims, and always keep in mind the best interest of the child;
9. ensure that Member States provide training, or encourage the provision of training, to all relevant professionals;
10. ensure that the victim may be awarded compensation as appropriate.

When fostering the rights of victims in criminal proceedings the Union shall be mindful of the fundamental elements of national criminal law systems and duly take into account the rights and interests of all parties involved, as well as the general aim of the criminal proceedings.

The pursuit of these objectives should comprise the measures set out below, as well as any other measure which may prove appropriate in the course of the implementation of existing legislation.

Measure A: A Directive replacing Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings

Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings was an important step in setting up a comprehensive approach to the protection of victims of crime in the EU. However, 10 years after its approval, it is necessary to revise and supplement the principles set out in the Framework Decision and to take significant steps forward in the level of protection of victims throughout the EU, in particular in the framework of criminal proceedings. To this end, the Commission has presented on 18 May 2011 a proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime. The Council commits itself to examining this proposal as a matter of priority, also in the light of the general principles set out above.

Measure B: Recommendation or recommendations on practical measures and best practices in relation to the Directive set out in Measure A

Once the comprehensive, binding legal instrument referred to under Measure A has been approved, the Commission is invited, as soon as practicable, to complement this with a proposal (or proposals) for a Recommendation which should act as guidance and a model for Member States to facilitate their implementation of the Directive, building on the

principles provided for by the Directive. This Recommendation should take stock of the existing best practices among Member States in the field of assistance and protection to victims of crime, building on them within the framework of the applicable legislative instruments.

The Recommendation should take into account the best practices on the question of the protection of victims, including those established by non-governmental organisations as well as those by institutions other than the European Union, such as the Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe on assistance to crime victims, and address areas such as those covered by Measure A.

Measure C: A Regulation on mutual recognition of protection measures for victims taken in civil matters

The Commission has presented, on 18 May 2011, a proposal for a Regulation on mutual recognition of protection measures in civil matters to complete the mechanism for mutual recognition envisaged in the Directive of the European Parliament and of the Council on the European Protection Order, currently under discussion. This Directive envisages to provide for mutual recognition of decisions taken in criminal matters by a judicial or equivalent authority to protect the victim of crime from further danger which might be caused by the alleged offender. A similar mechanism is envisaged for the mutual recognition of protection measures taken in civil matters. The Council commits itself to examining this proposal as a matter of priority, also in the light of the general principles set out above.

Measure D: Review of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

In the light of the conclusions drawn from its report on the application of Council Directive 2004/80/EC and any further analysis, the Commission is invited to review the Compensation Directive, in particular whether existing procedures for the victim to request compensation should be revised and simplified, and to present any appropriate legislative or non-legislative proposals in the area of compensation of victims of crime.

Measure E: Specific needs of victims

In the general legal act envisaged under Measure A general rules will be contained, applying to all victims of crimes who are in need of assistance, support and protection in relation to criminal proceedings relative to the crime to which they have fallen victim. This legal act will also contain general rules for all kinds of vulnerable victims.

Some victims have specific needs based on the type or on the circumstances of crime they are victim of, given the social, physical and psychological repercussions of these crimes, such as victims of trafficking in human beings, children victims of sexual exploitation, victims of terrorism and victims of organised crime. Their special needs could be addressed in specific legislation dealing with the fight against these types of crime.

On the other hand, some victims of crime are in need of special support and assistance due to their personal characteristics, to be evaluated on a case-by-case basis. In this respect, children should always be considered particularly vulnerable.

The Commission is invited, in the context of its control of the implementation of the legislative instruments mentioned above and any others addressing specific areas of crime, and after having evaluated their practical operation once the period for implementation has expired, to propose through recommendations practical measures and suggest best practices to provide guidance to Member States in the process of dealing with the specific needs of victims.

DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 25 October 2012****establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/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 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the mutual recognition of judicial decisions in civil and criminal matters.

(2) The Union is committed to the protection of, and to the establishment of minimum standards in regard to, victims of crime and the Council has adopted Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings ⁽⁴⁾. Under the Stockholm Programme – An open and secure Europe serving and protecting citizens ⁽⁵⁾, adopted by the European Council at its meeting on 10 and 11 December 2009, the Commission and the Member States were asked to examine how to improve legislation and practical support measures for the protection of victims, with particular attention paid to, support for and recognition of, all victims, including for victims of terrorism, as a priority.

(3) Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) provides for the establishment of minimum rules applicable in the Member States to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, in particular with regard to the rights of victims of crime.

(4) In its resolution of 10 June 2011 on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings ⁽⁶⁾ (‘the Budapest roadmap’), the Council stated that action should be taken at Union level in order to strengthen the rights of, support for, and protection of victims of crime. To that end and in accordance with that resolution, this Directive aims to revise and supplement the principles set out in Framework Decision 2001/220/JHA and to take significant steps forward in the level of protection of victims throughout the Union, in particular within the framework of criminal proceedings.

(5) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women ⁽⁷⁾ called on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures, and called on the Union to guarantee the right to assistance and support for all victims of violence.

(6) In its resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women ⁽⁸⁾ the European Parliament proposed a strategy to combat violence against women, domestic violence and female genital mutilation as a basis for future legislative criminal-law instruments against gender-based violence including a framework to fight violence against women (policy, prevention, protection, prosecution, provision and partnership) to be followed up by a Union action plan. International regulation within this area includes the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted on 18 December 1979, the CEDAW Committee’s recommendations and decisions, and the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted on 7 April 2011.

⁽¹⁾ OJ C 43, 15.2.2012, p. 39.

⁽²⁾ OJ C 113, 18.4.2012, p. 56.

⁽³⁾ Position of the European Parliament of 12 September 2012 (not yet published in the Official Journal) and decision of the Council of 4 October 2012.

⁽⁴⁾ OJ L 82, 22.3.2001, p. 1.

⁽⁵⁾ OJ C 115, 4.5.2010, p. 1.

⁽⁶⁾ OJ C 187, 28.6.2011, p. 1.

⁽⁷⁾ OJ C 285 E, 21.10.2010, p. 53.

⁽⁸⁾ OJ C 296 E, 2.10.2012, p. 26.

- (7) Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order ⁽¹⁾ establishes a mechanism for the mutual recognition of protection measures in criminal matters between Member States. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims ⁽²⁾ and Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography ⁽³⁾ address, inter alia, the specific needs of the particular categories of victims of human trafficking, child sexual abuse, sexual exploitation and child pornography.
- (8) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism ⁽⁴⁾ recognises that terrorism constitutes one of the most serious violations of the principles on which the Union is based, including the principle of democracy, and confirms that it constitutes, inter alia, a threat to the free exercise of human rights.
- (9) Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.
- (10) This Directive does not address the conditions of the residence of victims of crime in the territory of the Member States. Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality. Reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim.
- (11) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.
- (12) The rights set out in this Directive are without prejudice to the rights of the offender. The term 'offender' refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence.
- (13) This Directive applies in relation to criminal offences committed in the Union and to criminal proceedings that take place in the Union. It confers rights on victims of extra-territorial offences only in relation to criminal proceedings that take place in the Union. Complaints made to competent authorities outside the Union, such as embassies, do not trigger the obligations set out in this Directive.
- (14) In applying this Directive, children's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child adopted on 20 November 1989. Child victims should be considered and treated as the full bearers of rights set out in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views.
- (15) In applying this Directive, Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive, on an equal basis with others, including by facilitating the accessibility to premises where criminal proceedings are conducted and access to information.
- (16) Victims of terrorism have suffered attacks that are intended ultimately to harm society. They may therefore need special attention, support and protection due to the particular nature of the crime that has been committed against them. Victims of terrorism can be under significant public scrutiny and often need social recognition and respectful treatment by society. Member States should therefore take particular account of the needs of victims of terrorism, and should seek to protect their dignity and security.

⁽¹⁾ OJ L 338, 21.12.2011, p. 2.

⁽²⁾ OJ L 101, 15.4.2011, p. 1.

⁽³⁾ OJ L 335, 17.12.2011, p. 1.

⁽⁴⁾ OJ L 164, 22.6.2002, p. 3.

- (17) Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'. Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.
- (18) Where violence is committed in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss. Violence in close relationships is a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust. Victims of violence in close relationships may therefore be in need of special protection measures. Women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or as regards her right to residence.
- (19) A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them. It is possible that family members of victims are also harmed as a result of the crime. In particular, family members of a person whose death has been directly caused by a criminal offence could be harmed as a result of the crime. Such family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive. However, Member States should be able to establish procedures to limit the number of family members who can benefit from the rights set out in this Directive. In the case of a child, the child or, unless this is not in the best interests of the child, the holder of parental responsibility on behalf of the child, should be entitled to exercise the rights set out in this Directive. This Directive is without prejudice to any national administrative procedures required to establish that a person is a victim.
- (20) The role of victims in the criminal justice system and whether they can participate actively in criminal proceedings vary across Member States, depending on the national system, and is determined by one or more of the following criteria: whether the national system provides for a legal status as a party to criminal proceedings; whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness; and/or whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have the legal status of a party to the criminal proceedings. Member States should determine which of those criteria apply to determine the scope of rights set out in this Directive where there are references to the role of the victim in the relevant criminal justice system.
- (21) Information and advice provided by competent authorities, victim support services and restorative justice services should, as far as possible, be given by means of a range of media and in a manner which can be understood by the victim. Such information and advice should be provided in simple and accessible language. It should also be ensured that the victim can be understood during proceedings. In this respect, the victim's knowledge of the language used to provide information, age, maturity, intellectual and emotional capacity, literacy and any mental or physical impairment should be taken into account. Particular account should be taken of difficulties in understanding or communicating which may be due to a disability of some kind, such as hearing or speech impediments. Equally, limitations on a victim's ability to communicate information should be taken into account during criminal proceedings.
- (22) The moment when a complaint is made should, for the purposes of this Directive, be considered as falling within the context of the criminal proceedings. This should also include situations where authorities initiate criminal proceedings *ex officio* as a result of a criminal offence suffered by a victim.
- (23) Information about reimbursement of expenses should be provided, from the time of the first contact with a competent authority, for example in a leaflet stating the basic conditions for such reimbursement of expenses. Member States should not be required, at this early stage of the criminal proceedings, to decide on whether the victim concerned fulfils the conditions for reimbursement of expenses.

- (24) When reporting a crime, victims should receive a written acknowledgement of their complaint from the police, stating the basic elements of the crime, such as the type of crime, the time and place, and any damage or harm caused by the crime. This acknowledgement should include a file number and the time and place for reporting of the crime in order to serve as evidence that the crime has been reported, for example in relation to insurance claims.
- (25) Without prejudice to rules relating to limitation periods, the delayed reporting of a criminal offence due to fear of retaliation, humiliation or stigmatisation should not result in refusing acknowledgement of the victim's complaint.
- (26) When providing information, sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings. In this respect, information allowing the victim to know about the current status of any proceedings is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute. Unless otherwise required, it should be possible to provide the information communicated to the victim orally or in writing, including through electronic means.
- (27) Information to a victim should be provided to the last known correspondence address or electronic contact details given to the competent authority by the victim. In exceptional cases, for example due to the high number of victims involved in a case, it should be possible to provide information through the press, through an official website of the competent authority or through a similar communication channel.
- (28) Member States should not be obliged to provide information where disclosure of that information could affect the proper handling of a case or harm a given case or person, or if they consider it contrary to the essential interests of their security.
- (29) Competent authorities should ensure that victims receive updated contact details for communication about their case unless the victim has expressed a wish not to receive such information.
- (30) A reference to a 'decision' in the context of the right to information, interpretation and translation, should be understood only as a reference to the finding of guilt or otherwise ending criminal proceedings. The reasons for that decision should be provided to the victim through a copy of the document which contains that decision or through a brief summary of them.
- (31) The right to information about the time and place of a trial resulting from the complaint with regard to a criminal offence suffered by the victim should also apply to information about the time and place of a hearing related to an appeal of a judgment in the case.
- (32) Specific information about the release or the escape of the offender should be given to victims, upon request, at least in cases where there might be a danger or an identified risk of harm to the victims, unless there is an identified risk of harm to the offender which would result from the notification. Where there is an identified risk of harm to the offender which would result from the notification, the competent authority should take into account all other risks when determining an appropriate action. The reference to 'identified risk of harm to the victims' should cover such factors as the nature and severity of the crime and the risk of retaliation. Therefore, it should not be applied to those situations where minor offences were committed and thus where there is only a slight risk of harm to the victim.
- (33) Victims should receive information about any right to appeal of a decision to release the offender, if such a right exists in national law.
- (34) Justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure that victims are treated in a respectful manner and that they are able to access their rights. Interpretation should therefore be made available, free of charge, during questioning of the victim and in order to enable them to participate actively in court hearings, in accordance with the role of the victim in the relevant criminal justice system. For other aspects of criminal proceedings, the need for interpretation and translation can vary depending on specific issues, the role of the victim in the relevant criminal justice system and his or her involvement in proceedings and any specific rights they have. As such, interpretation and translation for these other cases need only be provided to the extent necessary for victims to exercise their rights.

- (35) The victim should have the right to challenge a decision finding that there is no need for interpretation or translation, in accordance with procedures in national law. That right does not entail the obligation for Member States to provide for a separate mechanism or complaint procedure in which such decision may be challenged and should not unreasonably prolong the criminal proceedings. An internal review of the decision in accordance with existing national procedures would suffice.
- (36) The fact that a victim speaks a language which is not widely spoken should not, in itself, be grounds to decide that interpretation or translation would unreasonably prolong the criminal proceedings.
- (37) Support should be available from the moment the competent authorities are aware of the victim and throughout criminal proceedings and for an appropriate time after such proceedings in accordance with the needs of the victim and the rights set out in this Directive. Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution across the Member State to allow all victims the opportunity to access such services. Victims who have suffered considerable harm due to the severity of the crime could require specialist support services.
- (38) Persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection. Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment. A main task of these services and their staff, which play an important role in supporting the victim to recover from and overcome potential harm or trauma as a result of a criminal offence, should be to inform victims about the rights set out in this Directive so that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity. The types of support that such specialist support services should offer could include providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims.
- (39) Victim support services are not required to provide extensive specialist and professional expertise themselves. If necessary, victim support services should assist victims in calling on existing professional support, such as psychologists.
- (40) Although the provision of support should not be dependent on victims making a complaint with regard to a criminal offence to a competent authority such as the police, such authorities are often best placed to inform victims of the possibility of support. Member States are therefore encouraged to establish appropriate conditions to enable the referral of victims to victim support services, including by ensuring that data protection requirements can be and are adhered to. Repeat referrals should be avoided.
- (41) The right of victims to be heard should be considered to have been fulfilled where victims are permitted to make statements or explanations in writing.
- (42) The right of child victims to be heard in criminal proceedings should not be precluded solely on the basis that the victim is a child or on the basis of that victim's age.
- (43) The right to a review of a decision not to prosecute should be understood as referring to decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers, but not to the decisions taken by courts. Any review of a decision not to prosecute should be carried out by a different person or authority to that which made the original decision, unless the initial decision not to prosecute was taken by the highest prosecuting authority, against whose decision no review can be made, in which case the review may be carried out by that same authority. The right to a review of a decision not to prosecute does not concern special procedures, such as proceedings against members of parliament or government, in relation to the exercise of their official position.

- (44) A decision ending criminal proceedings should include situations where a prosecutor decides to withdraw charges or discontinue proceedings.
- (45) A decision of the prosecutor resulting in an out-of-court settlement and thus ending criminal proceedings, excludes victims from the right to a review of a decision of the prosecutor not to prosecute, only if the settlement imposes a warning or an obligation.
- (46) Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Factors such as the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting a restorative justice process. Restorative justice processes should, in principle, be confidential, unless agreed otherwise by the parties, or as required by national law due to an overriding public interest. Factors such as threats made or any forms of violence committed during the process may be considered as requiring disclosure in the public interest.
- (47) Victims should not be expected to incur expenses in relation to their participation in criminal proceedings. Member States should be required to reimburse only necessary expenses of victims in relation to their participation in criminal proceedings and should not be required to reimburse victims' legal fees. Member States should be able to impose conditions in regard to the reimbursement of expenses in national law, such as time limits for claiming reimbursement, standard rates for subsistence and travel costs and maximum daily amounts for loss of earnings. The right to reimbursement of expenses in criminal proceedings should not arise in a situation where a victim makes a statement on a criminal offence. Expenses should only be covered to the extent that the victim is obliged or requested by the competent authorities to be present and actively participate in the criminal proceedings.
- (48) Recoverable property which is seized in criminal proceedings should be returned as soon as possible to the victim of the crime, subject to exceptional circumstances, such as in a dispute concerning the ownership or where the possession of the property or the property itself is illegal. The right to have property returned should be without prejudice to its legitimate retention for the purposes of other legal proceedings.
- (49) The right to a decision on compensation from the offender and the relevant applicable procedure should also apply to victims resident in a Member State other than the Member State where the criminal offence was committed.
- (50) The obligation set out in this Directive to transmit complaints should not affect Member States' competence to institute proceedings and is without prejudice to the rules of conflict relating to the exercise of jurisdiction, as laid down in Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings ⁽¹⁾.
- (51) If the victim has left the territory of the Member State where the criminal offence was committed, that Member State should no longer be obliged to provide assistance, support and protection except for what is directly related to any criminal proceedings it is conducting regarding the criminal offence concerned, such as special protection measures during court proceedings. The Member State of the victim's residence should provide assistance, support and protection required for the victim's need to recover.
- (52) Measures should be available to protect the safety and dignity of victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, such as interim injunctions or protection or restraining orders.
- ⁽¹⁾ OJ L 328, 15.12.2009, p. 42.

- (53) The risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a coordinated and respectful manner, enabling victims to establish trust in authorities. Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through, for example, video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his or her family, associates or members of the public. To that end, Member States should be encouraged to introduce, especially in relation to court buildings and police stations, feasible and practical measures enabling the facilities to include amenities such as separate entrances and waiting areas for victims. In addition, Member States should, to the extent possible, plan the criminal proceedings so that contacts between victims and their family members and offenders are avoided, such as by summoning victims and offenders to hearings at different times.
- (54) Protecting the privacy of the victim can be an important means of preventing secondary and repeat victimisation, intimidation and retaliation and can be achieved through a range of measures including non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim. Such protection is particularly important for child victims, and includes non-disclosure of the name of the child. However, there might be cases where, exceptionally, the child can benefit from the disclosure or even widespread publication of information, for example where a child has been abducted. Measures to protect the privacy and images of victims and of their family members should always be consistent with the right to a fair trial and freedom of expression, as recognised in Articles 6 and 10, respectively, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (55) Some victims are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. It is possible that such a risk derives from the personal characteristics of the victim or the type, nature or circumstances of the crime. Only through individual assessments, carried out at the earliest opportunity, can such a risk be effectively identified. Such assessments should be carried out for all victims to determine whether they are at risk of secondary and repeat victimisation, of intimidation and of retaliation and what special protection measures they require.
- (56) Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.
- (57) Victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures.
- (58) Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.
- (59) Immediate operational needs and constraints may make it impossible to ensure, for example, that the same police officer consistently interview the victim; illness, maternity or parental leave are examples of such constraints. Furthermore, premises specially designed for interviews with victims may not be available due, for example, to renovation. In the event of such operational or practical constraints, a special measure envisaged following an individual assessment may not be possible to provide on a case-by-case basis.

- (60) Where, in accordance with this Directive, a guardian or a representative is to be appointed for a child, those roles could be performed by the same person or by a legal person, an institution or an authority.
- (61) Any officials involved in criminal proceedings who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Member States should ensure such training for police services and court staff. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services. This requirement should include training on the specific support services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training, as appropriate. Where relevant, such training should be gender sensitive. Member States' actions on training should be complemented by guidelines, recommendations and exchange of best practices in accordance with the Budapest roadmap.
- (62) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policymaking initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime. For victims of crime to receive the proper degree of assistance, support and protection, public services should work in a coordinated manner and should be involved at all administrative levels — at Union level, and at national, regional and local level. Victims should be assisted in finding and addressing the competent authorities in order to avoid repeat referrals. Member States should consider developing 'sole points of access' or 'one-stop shops', that address victims' multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation.
- (63) In order to encourage and facilitate reporting of crimes and to allow victims to break the cycle of repeat victimisation, it is essential that reliable support services are available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, sensitive, professional and non-discriminatory manner. This could increase victims' confidence in the criminal justice systems of Member States and reduce the number of unreported crimes. Practitioners who are likely to receive complaints from victims with regard to criminal offences should be appropriately trained to facilitate reporting of crimes, and measures should be put in place to enable third-party reporting, including by civil society organisations. It should be possible to make use of communication technology, such as e-mail, video recordings or online electronic forms for making complaints.
- (64) Systematic and adequate statistical data collection is recognised as an essential component of effective policy-making in the field of rights set out in this Directive. In order to facilitate evaluation of the application of this Directive, Member States should communicate to the Commission relevant statistical data related to the application of national procedures on victims of crime, including at least the number and type of the reported crimes and, as far as such data are known and are available, the number and age and gender of the victims. Relevant statistical data can include data recorded by the judicial authorities and by law enforcement agencies and, as far as possible, administrative data compiled by healthcare and social welfare services and by public and non-governmental victim support or restorative justice services and other organisations working with victims of crime. Judicial data can include information about reported crime, the number of cases that are investigated and persons prosecuted and sentenced. Service-based administrative data can include, as far as possible, data on how victims are using services provided by government agencies and public and private support organisations, such as the number of referrals by police to victim support services, the number of victims that request, receive or do not receive support or restorative justice.
- (65) This Directive aims to amend and expand the provisions of Framework Decision 2001/220/JHA. Since the amendments to be made are substantial in number and nature, that Framework Decision should, in the interests of clarity, be replaced in its entirety in relation to Member States participating in the adoption of this Directive.

(66) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.

(67) Since the objective of this Directive, namely to establish minimum standards on the rights, support and protection of victims of crime, cannot be sufficiently achieved by the Member States, and can therefore, by reason of its scale and potential effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(68) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters⁽¹⁾ and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.

(69) This Directive does not affect more far reaching provisions contained in other Union acts which address the specific needs of particular categories of victims, such as victims of human trafficking and victims of child sexual abuse, sexual exploitation and child pornography, in a more targeted manner.

(70) In accordance with Article 3 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, those Member States have notified their wish to take part in the adoption and application of this Directive.

(71) In accordance with Articles 1 and 2 of 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 Directive and is not bound by it or subject to its application.

(72) The European Data Protection Supervisor delivered an opinion on 17 October 2011⁽²⁾ based on Article 41(2) of 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⁽³⁾,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Objectives

1. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

2. Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

Article 2

Definitions

1. For the purposes of this Directive the following definitions shall apply:

(a) 'victim' means:

(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;

(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;

⁽¹⁾ OJ L 350, 30.12.2008, p. 60.

⁽²⁾ OJ C 35, 9.2.2012, p. 10.

⁽³⁾ OJ L 8, 12.1.2001, p. 1.

(b) 'family members' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim;

(c) 'child' means any person below 18 years of age;

(d) 'restorative justice' means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.

2. Member States may establish procedures:

(a) to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case; and

(b) in relation to paragraph (1)(a)(ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.

CHAPTER 2

PROVISION OF INFORMATION AND SUPPORT

Article 3

Right to understand and to be understood

1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.

2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.

3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

Article 4

Right to receive information from the first contact with a competent authority

1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

(a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;

(b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;

(c) how and under what conditions they can obtain protection, including protection measures;

(d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;

(e) how and under what conditions they can access compensation;

(f) how and under what conditions they are entitled to interpretation and translation;

(g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;

(h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;

(i) the contact details for communications about their case;

(j) the available restorative justice services;

(k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

2. The extent or detail of information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.

*Article 5***Right of victims when making a complaint**

1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.

2. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.

3. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint provided for in paragraph 1, if they so request, in a language that they understand.

*Article 6***Right to receive information about their case**

1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:

- (a) any decision not to proceed with or to end an investigation or not to prosecute the offender;
- (b) the time and place of the trial, and the nature of the charges against the offender.

2. Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:

- (a) any final judgment in a trial;
- (b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.

3. Information provided for under paragraph 1(a) and paragraph 2(a) shall include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.

5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender.

6. Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

*Article 7***Right to interpretation and translation**

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.

2. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.

3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. Member States shall ensure that victims who are entitled to information about the time and place of the trial in accordance with Article 6(1)(b) and who do not understand the language of the competent authority, are provided with a translation of the information to which they are entitled, upon request.

5. Victims may submit a reasoned request to consider a document as essential. There shall be no requirement to translate passages of essential documents which are not relevant for the purpose of enabling victims to actively participate in the criminal proceedings.

6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

7. Member States shall ensure that the competent authority assesses whether victims need interpretation or translation as provided for under paragraphs 1 and 3. Victims may challenge a decision not to provide interpretation or translation. The procedural rules for such a challenge shall be determined by national law.

8. Interpretation and translation and any consideration of a challenge of a decision not to provide interpretation or translation under this Article shall not unreasonably prolong the criminal proceedings.

Article 8

Right to access victim support services

1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

4. Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.

5. Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

Article 9

Support from victim support services

1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:

- (a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
- (b) information about or direct referral to any relevant specialist support services in place;
- (c) emotional and, where available, psychological support;
- (d) advice relating to financial and practical issues arising from the crime;
- (e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:

- (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
- (b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

CHAPTER 3

PARTICIPATION IN CRIMINAL PROCEEDINGS

Article 10

Right to be heard

1. Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

2. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence shall be determined by national law.

Article 11

Rights in the event of a decision not to prosecute

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

4. Where the decision not to prosecute is taken by the highest prosecuting authority against whose decision no review may be carried out under national law, the review may be carried out by the same authority.

5. Paragraphs 1, 3 and 4 shall not apply to a decision of the prosecutor not to prosecute, if such a decision results in an out-of-court settlement, in so far as national law makes such provision.

Article 12

Right to safeguards in the context of restorative justice services

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

(a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;

(b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;

(c) the offender has acknowledged the basic facts of the case;

(d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;

(e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

Article 13

Right to legal aid

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

*Article 14***Right to reimbursement of expenses**

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system. The conditions or procedural rules under which victims may be reimbursed shall be determined by national law.

*Article 15***Right to the return of property**

Member States shall ensure that, following a decision by a competent authority, recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings. The conditions or procedural rules under which such property is returned to the victims shall be determined by national law.

*Article 16***Right to decision on compensation from the offender in the course of criminal proceedings**

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

*Article 17***Rights of victims resident in another Member State**

1. Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the criminal offence was committed shall, in particular, be in a position:

- (a) to take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority;
- (b) to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ⁽¹⁾ for the purpose of hearing victims who are resident abroad.

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

2. Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.

3. Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.

CHAPTER 4

PROTECTION OF VICTIMS AND RECOGNITION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS*Article 18***Right to protection**

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

*Article 19***Right to avoid contact between victim and offender**

1. Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.

2. Member States shall ensure that new court premises have separate waiting areas for victims.

*Article 20***Right to protection of victims during criminal investigations**

Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that during criminal investigations:

- (a) interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority;
- (b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;

- (c) victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary;
- (d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

Article 21

Right to protection of privacy

1. Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

2. In order to protect the privacy, personal integrity and personal data of victims, Member States shall, with respect for freedom of expression and information and freedom and pluralism of the media, encourage the media to take self-regulatory measures.

Article 22

Individual assessment of victims to identify specific protection needs

1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

2. The individual assessment shall, in particular, take into account:

- (a) the personal characteristics of the victim;
- (b) the type or nature of the crime; and
- (c) the circumstances of the crime.

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their

personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article.

5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.

7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.

Article 23

Right to protection of victims with specific protection needs during criminal proceedings

1. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 22(1), may benefit from the measures provided for in paragraphs 2 and 3 of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

2. The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22(1):

- (a) interviews with the victim being carried out in premises designed or adapted for that purpose;
- (b) interviews with the victim being carried out by or through professionals trained for that purpose;

(c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;

(d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

3. The following measures shall be available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings:

(a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;

(b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;

(c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and

(d) measures allowing a hearing to take place without the presence of the public.

Article 24

Right to protection of child victims during criminal proceedings

1. In addition to the measures provided for in Article 23, Member States shall ensure that where the victim is a child:

(a) in criminal investigations, all interviews with the child victim may be audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings;

(b) in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family;

(c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be,

a conflict of interest between the child victim and the holders of parental responsibility.

The procedural rules for the audiovisual recordings referred to in point (a) of the first subparagraph and the use thereof shall be determined by national law.

2. Where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child.

CHAPTER 5

OTHER PROVISIONS

Article 25

Training of practitioners

1. Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.

2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase the awareness of judges and prosecutors of the needs of victims.

3. With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims.

4. Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

5. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

Article 26

Cooperation and coordination of services

1. Member States shall take appropriate action to facilitate cooperation between Member States to improve the access of victims to the rights set out in this Directive and under national law. Such cooperation shall be aimed at least at:

- (a) the exchange of best practices;
- (b) consultation in individual cases; and
- (c) assistance to European networks working on matters directly relevant to victims' rights.

2. Member States shall take appropriate action, including through the internet, aimed at raising awareness of the rights set out in this Directive, reducing the risk of victimisation, and minimising the negative impact of crime and the risks of secondary and repeat victimisation, of intimidation and of retaliation, in particular by targeting groups at risk such as children, victims of gender-based violence and violence in close relationships. Such action may include information and awareness raising campaigns and research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders.

CHAPTER 6

FINAL PROVISIONS

Article 27

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 November 2015.

2. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

Article 28

Provision of data and statistics

Member States shall, by 16 November 2017 and every three years thereafter, communicate to the Commission available data

showing how victims have accessed the rights set out in this Directive.

Article 29

Report

The Commission shall, by 16 November 2017, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken under Articles 8, 9 and 23, accompanied, if necessary, by legislative proposals.

Article 30

Replacement of Framework Decision 2001/220/JHA

Framework Decision 2001/220/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law.

In relation to Member States participating in the adoption of this Directive, references to that Framework Decision shall be construed as references to this Directive.

Article 31

Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 32

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 25 October 2012.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. D. MAVROYIANNIS

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

COUNCIL

RESOLUTION OF THE COUNCIL

of 30 November 2009

on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings**(Text with EEA relevance)**

(2009/C 295/01)

THE COUNCIL OF THE EUROPEAN UNION,

accused persons are particularly important in order to safeguard the right to a fair trial.

Whereas:

- (1) In the European Union, the Convention for the Protection of Human Rights and Fundamental Freedoms (the 'Convention') constitutes the common basis for the protection of the rights of suspected or accused persons in criminal proceedings, which for the purposes of this Resolution includes the pre-trial and trial stages.
- (2) Furthermore, the Convention, as interpreted by the European Court of Human Rights, is an important foundation for Member States to have trust in each other's criminal justice systems and to strengthen such trust. At the same time, there is room for further action on the part of the European Union to ensure full implementation and respect of Convention standards, and, where appropriate, to ensure consistent application of the applicable standards and to raise existing standards.
- (3) The European Union has successfully established an area of freedom of movement and residence, which citizens benefit from by increasingly travelling, studying and working in countries other than that of their residence. However, the removal of internal borders and the increasing exercise of the rights to freedom of movement and residence have, as an inevitable consequence, led to an increase in the number of people becoming involved in criminal proceedings in a Member State other than that of their residence. In those situations, the procedural rights of suspected or
- (4) Indeed, whilst various measures have been taken at European Union level to guarantee a high level of safety for citizens, there is an equal need to address specific problems that can arise when a person is suspected or accused in criminal proceedings.
- (5) This calls for specific action on procedural rights, in order to ensure the fairness of the criminal proceedings. Such action, which can comprise legislation as well as other measures, will enhance citizens' confidence that the European Union and its Member States will protect and guarantee their rights.
- (6) The 1999 Tampere European Council concluded that, in the context of implementing the principle of mutual recognition, work should also be launched on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States (Conclusion 37).
- (7) Also, the 2004 Hague Programme states that further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards of procedural rights in criminal proceedings, based on studies of the existing level of safeguards in Member States and with due respect for their legal traditions (point III 3.3.1).

- (8) Mutual recognition presupposes that the competent authorities of the Member States trust the criminal justice systems of the other Member States. For the purpose of enhancing mutual trust within the European Union, it is important that, complementary to the Convention, there exist European Union standards for the protection of procedural rights which are properly implemented and applied in the Member States.
- (9) Recent studies show that there is wide support among experts for European Union action on procedural rights, through legislation and other measures, and that there is a need for enhanced mutual trust between the judicial authorities in the Member States ⁽¹⁾. These sentiments are echoed by the European Parliament ⁽²⁾. In its Communication for the Stockholm programme ⁽³⁾, the European Commission observes that strengthening the rights of defence is vital in order to maintain mutual trust between the Member States and public confidence in the European Union.
- (10) Discussions on procedural rights within the context of the European Union over the last few years have not led to any concrete results. However, a lot of progress has been made in the area of judicial and police cooperation on measures that facilitate prosecution. It is now time to take action to improve the balance between these measures and the protection of procedural rights of the individual. Efforts should be deployed to strengthen procedural guarantees and the respect of the rule of law in criminal proceedings, no matter where citizens decide to travel, study, work or live in the European Union.
- (11) Bearing in mind the importance and complexity of these issues, it seems appropriate to address them in a step-by-step approach, whilst ensuring overall consistency. By addressing future actions, one area at a time, focused attention can be paid to each individual measure, so as to enable problems to be identified and addressed in a way that will give added value to each measure.
- (12) In view of the non-exhaustive nature of the catalogue of measures laid down in the Annex to this Resolution, the Council should also consider the possibility of addressing the question of protection of procedural rights other than those listed in that catalogue.
- (13) Any new EU legislative acts in this field should be consistent with the minimum standards set out by the Convention, as interpreted by the European Court of Human Rights,
- HEREBY ADOPTS THE FOLLOWING RESOLUTION:
1. Action should be taken at the level of the European Union in order to strengthen the rights of suspected or accused persons in criminal proceedings. Such action can comprise legislation as well as other measures.
 2. The Council endorses the 'Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings' (hereinafter referred to as 'the Roadmap'), set out in the Annex to this Resolution, as the basis for future action. The rights included in this Roadmap, which could be complemented by other rights, are considered to be fundamental procedural rights and action in respect of these rights should be given priority at this stage.
 3. The Commission is invited to submit proposals regarding the measures set out in the Roadmap, and to consider presenting the Green Paper mentioned under point F.
 4. The Council will examine all proposals presented in the context of the Roadmap and pledges to deal with them as matters of priority.
 5. The Council will act in full cooperation with the European Parliament, in accordance with the applicable rules, and will duly collaborate with the Council of Europe.

⁽¹⁾ See inter alia the 'Analysis of the future of mutual recognition in criminal matters in the European Union', report of 20 November 2008 by the *Université Libre de Bruxelles*.

⁽²⁾ See e.g. the 'European Parliament recommendation of 7 May 2009 to the Council on development of an EU criminal justice area', 2009/2012(INI), point 1 (a).

⁽³⁾ 'An area of freedom, security and justice serving the citizen', COM(2009) 262/4 (point 4.2.2).

ANNEX

ROADMAP FOR STRENGTHENING PROCEDURAL RIGHTS OF SUSPECTED OR ACCUSED PERSONS IN CRIMINAL PROCEEDINGS

The order of the rights indicated in this Roadmap is indicative. It is emphasised that the explanations provided below merely serve to give an indication of the proposed action, and do not aim to regulate the precise scope and content of the measures concerned in advance.

Measure A: Translation and Interpretation*Short explanation:*

The suspected or accused person must be able to understand what is happening and to make him/herself understood. A suspected or accused person who does not speak or understand the language that is used in the proceedings will need an interpreter and translation of essential procedural documents. Particular attention should also be paid to the needs of suspected or accused persons with hearing impediments.

Measure B: Information on Rights and Information about the Charges*Short explanation:*

A person that is suspected or accused of a crime should get information on his/her basic rights orally or, where appropriate, in writing, e.g. by way of a Letter of Rights. Furthermore, that person should also receive information promptly about the nature and cause of the accusation against him or her. A person who has been charged should be entitled, at the appropriate time, to the information necessary for the preparation of his or her defence, it being understood that this should not prejudice the due course of the criminal proceedings.

Measure C: Legal Advice and Legal Aid*Short explanation:*

The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure effective access to the aforementioned right to legal advice.

Measure D: Communication with Relatives, Employers and Consular Authorities*Short explanation:*

A suspected or accused person who is deprived of his or her liberty shall be promptly informed of the right to have at least one person, such as a relative or employer, informed of the deprivation of liberty, it being understood that this should not prejudice the due course of the criminal proceedings. In addition, a suspected or accused person who is deprived of his or her liberty in a State other than his or her own shall be informed of the right to have the competent consular authorities informed of the deprivation of liberty.

Measure E: Special Safeguards for Suspected or Accused Persons who are Vulnerable*Short explanation:*

In order to safeguard the fairness of the proceedings, it is important that special attention is shown to suspected or accused persons who cannot understand or follow the content or the meaning of the proceedings, owing, for example, to their age, mental or physical condition.

Measure F: A Green Paper on Pre-Trial Detention*Short explanation:*

The time that a person can spend in detention before being tried in court and during the court proceedings varies considerably between the Member States. Excessively long periods of pre-trial detention are detrimental for the individual, can prejudice the judicial cooperation between the Member States and do not represent the values for which the European Union stands. Appropriate measures in this context should be examined in a Green Paper.

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 October 2010

on the right to interpretation and translation in criminal proceedings

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 point (b) of the second subparagraph of Article 82(2) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand-Duchy of Luxembourg, the Republic of Hungary, the Republic of Austria, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden ⁽¹⁾,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Presidency Conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition of judgments and other decisions of judicial authorities should become the cornerstone of judicial cooperation in civil and criminal matters within the Union because enhanced mutual recognition and the necessary approximation of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights.

- (2) 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⁾. The introduction to the programme states that mutual recognition is 'designed to strengthen cooperation between Member States but also to enhance the protection of individual rights'.

- (3) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. The extent of mutual recognition is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspected or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.

- (4) Mutual recognition of decisions in criminal matters can operate effectively only in a spirit of trust in which not only judicial authorities but all actors in the criminal process consider decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of other Member States' rules, but also trust that those rules are correctly applied.

- (5) Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the ECHR) and Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter the Charter) enshrine the right to a fair trial. Article 48(2) of the Charter guarantees respect for the right of defence. This Directive respects those rights and should be implemented accordingly.

⁽¹⁾ OJ C 69, 18.3.2010, p. 1.

⁽²⁾ Position of the European Parliament of 16 June 2010 (not yet published in the Official Journal) and decision of the Council of 7 October 2010.

⁽³⁾ OJ C 12, 15.1.2001, p. 10.

- (6) Although all the Member States are party to the ECHR, experience has shown that that alone does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.
- (7) Strengthening mutual trust requires a more consistent implementation of the rights and guarantees set out in Article 6 of the ECHR. It also requires, by means of this Directive and other measures, further development within the Union of the minimum standards set out in the ECHR and the Charter.
- (8) Article 82(2) of the Treaty on the Functioning of the European Union provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Point (b) of the second subparagraph of Article 82(2) refers to 'the rights of individuals in criminal procedure' as one of the areas in which minimum rules may be established.
- (9) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should be established in the fields of interpretation and translation in criminal proceedings.
- (10) On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings⁽¹⁾. Taking a step-by-step approach, the Roadmap called for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communication with relatives, employers and consular authorities (measure D), and special safeguards for suspected or accused persons who are vulnerable (measure E).
- (11) In the Stockholm programme, adopted on 10 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.
- (12) This Directive relates to measure A of the Roadmap. It lays down common minimum rules to be applied in the fields of interpretation and translation in criminal proceedings with a view to enhancing mutual trust among Member States.
- (13) This Directive draws on the Commission proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings of 8 July 2009, and on the Commission proposal for a Directive of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings of 9 March 2010.
- (14) The right to interpretation and translation for those who do not speak or understand the language of the proceedings is enshrined in Article 6 of the ECHR, as interpreted in the case-law of the European Court of Human Rights. This Directive facilitates the application of that right in practice. To that end, the aim of this Directive is to ensure the right of suspected or accused persons to interpretation and translation in criminal proceedings with a view to ensuring their right to a fair trial.
- (15) The rights provided for in this Directive should also apply, as necessary accompanying measures, to the execution of a European arrest warrant⁽²⁾ within the limits provided for by this Directive. Executing Member States should provide, and bear the costs of, interpretation and translation for the benefit of the requested persons who do not speak or understand the language of the proceedings.
- (16) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authority ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is a right of appeal to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal.

⁽¹⁾ OJ C 295, 4.12.2009, p. 1.

⁽²⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

- (17) This Directive should ensure that there is free and adequate linguistic assistance, allowing suspected or accused persons who do not speak or understand the language of the criminal proceedings fully to exercise their right of defence and safeguarding the fairness of the proceedings.
- (18) Interpretation for the benefit of the suspected or accused persons should be provided without delay. However, where a certain period of time elapses before interpretation is provided, that should not constitute an infringement of the requirement that interpretation be provided without delay, as long as that period of time is reasonable in the circumstances.
- (19) Communication between suspected or accused persons and their legal counsel should be interpreted in accordance with this Directive. Suspected or accused persons should be able, *inter alia*, to explain their version of the events to their legal counsel, point out any statements with which they disagree and make their legal counsel aware of any facts that should be put forward in their defence.
- (20) For the purposes of the preparation of the defence, communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings, or with the lodging of an appeal or other procedural applications, such as an application for bail, should be interpreted where necessary in order to safeguard the fairness of the proceedings.
- (21) Member States should ensure that there is a procedure or mechanism in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter. Such procedure or mechanism implies that competent authorities verify in any appropriate manner, including by consulting the suspected or accused persons concerned, whether they speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter.
- (22) Interpretation and translation under this Directive should be provided in the native language of the suspected or accused persons or in any other language that they speak or understand in order to allow them fully to exercise their right of defence, and in order to safeguard the fairness of the proceedings.
- (23) The respect for the right to interpretation and translation contained in this Directive should not compromise any other procedural right provided under national law.
- (24) Member States should ensure that control can be exercised over the adequacy of the interpretation and translation provided when the competent authorities have been put on notice in a given case.
- (25) The suspected or accused persons or the persons subject to proceedings for the execution of a European arrest warrant should have the right to challenge the finding that there is no need for interpretation, in accordance with procedures in national law. That right does not entail the obligation for Member States to provide for a separate mechanism or complaint procedure in which such finding may be challenged and should not prejudice the time limits applicable to the execution of a European arrest warrant.
- (26) When the quality of the interpretation is considered insufficient to ensure the right to a fair trial, the competent authorities should be able to replace the appointed interpreter.
- (27) The duty of care towards suspected or accused persons who are in a potentially weak position, in particular because of any physical impairments which affect their ability to communicate effectively, underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore ensure that such persons are able to exercise effectively the rights provided for in this Directive, for example by taking into account any potential vulnerability that affects their ability to follow the proceedings and to make themselves understood, and by taking appropriate steps to ensure those rights are guaranteed.
- (28) When using videoconferencing for the purpose of remote interpretation, the competent authorities should be able to rely on the tools that are being developed in the context of European e-Justice (e.g. information on courts with videoconferencing equipment or manuals).
- (29) This Directive should be evaluated in the light of the practical experience gained. If appropriate, it should be amended so as to improve the safeguards which it lays down.

- (30) Safeguarding the fairness of the proceedings requires that essential documents, or at least the relevant passages of such documents, be translated for the benefit of suspected or accused persons in accordance with this Directive. Certain documents should always be considered essential for that purpose and should therefore be translated, such as any decision depriving a person of his liberty, any charge or indictment, and any judgment. It is for the competent authorities of the Member States to decide, on their own motion or upon a request of suspected or accused persons or of their legal counsel, which other documents are essential to safeguard the fairness of the proceedings and should therefore be translated as well.
- (31) Member States should facilitate access to national databases of legal translators and interpreters where such databases exist. In that context, particular attention should be paid to the aim of providing access to existing databases through the e-Justice portal, as planned in the multiannual European e-Justice action plan 2009-2013 of 27 November 2008 ⁽¹⁾.
- (32) This Directive should set minimum rules. Member States should be able to extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never fall below the standards provided by the ECHR or the Charter as interpreted in the case-law of the European Court of Human Rights or the Court of Justice of the European Union.
- (33) The provisions of this Directive that correspond to rights guaranteed by the ECHR or the Charter should be interpreted and implemented consistently with those rights, as interpreted in the relevant case-law of the European Court of Human Rights and the Court of Justice of the European Union.
- (34) Since the objective of this Directive, namely establishing common minimum rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (35) In accordance with Article 3 of the 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 Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Directive.
- (36) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. This Directive lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant.
2. The right referred to in paragraph 1 shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.
3. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, this Directive shall apply only to the proceedings before that court following such an appeal.

⁽¹⁾ OJ C 75, 31.3.2009, p. 1.

4. This Directive does not affect national law concerning the presence of legal counsel during any stage of the criminal proceedings, nor does it affect national law concerning the right of access of a suspected or accused person to documents in criminal proceedings.

Article 2

Right to interpretation

1. Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.

2. Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.

3. The right to interpretation under paragraphs 1 and 2 includes appropriate assistance for persons with hearing or speech impediments.

4. Member States shall ensure that a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter.

5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.

6. Where appropriate, communication technology such as videoconferencing, telephone or the Internet may be used, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings.

7. In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide persons subject to such

proceedings who do not speak or understand the language of the proceedings with interpretation in accordance with this Article.

8. Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

Article 3

Right to translation of essential documents

1. Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.

2. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

3. The competent authorities shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect.

4. There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.

5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.

6. In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand the language in which the European arrest warrant is drawn up, or into which it has been translated by the issuing Member State, with a written translation of that document.

7. As an exception to the general rules established in paragraphs 1, 2, 3 and 6, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

8. Any waiver of the right to translation of documents referred to in this Article shall be subject to the requirements that suspected or accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.

9. Translation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

Article 4

Costs of interpretation and translation

Member States shall meet the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings.

Article 5

Quality of the interpretation and translation

1. Member States shall take concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9).

2. In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities.

3. Member States shall ensure that interpreters and translators be required to observe confidentiality regarding interpretation and translation provided under this Directive.

Article 6

Training

Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.

Article 7

Record-keeping

Member States shall ensure that when a suspected or accused person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter pursuant to Article 2, when an oral translation or oral summary of essential documents has been provided in the presence of such an authority pursuant to Article 3(7), or when a person has waived the right to translation pursuant to Article 3(8), it will be noted that these events have occurred, using the recording procedure in accordance with the law of the Member State concerned.

Article 8

Non-regression

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union, other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

Article 9

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 October 2013.

2. Member States shall transmit the text of those measures to the Commission.

3. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 10

Report

The Commission shall, by 27 October 2014, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.

Article 11

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 12***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 20 October 2010.

For the European Parliament

The President

J. BUZEK

For the Council

The President

O. CHASTEL

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2012/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 May 2012

on the right to information in criminal proceedings

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 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Presidency Conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition of judgments and other decisions of judicial authorities should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union because enhanced mutual recognition and the necessary approximation of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights.

(2) 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⁾. The introduction to the programme states that mutual recognition

is 'designed to strengthen cooperation between Member States but also to enhance the protection of individual rights'.

(3) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States trust in each other's criminal justice systems. The extent of mutual recognition is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.

(4) Mutual recognition of decisions in criminal matters can operate effectively only in a spirit of trust in which not only judicial authorities but all actors in the criminal process consider decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of other Member States' rules, but also trust that those rules are correctly applied.

(5) Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter 'the Charter') and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter 'the ECHR') enshrine the right to a fair trial. Article 48(2) of the Charter guarantees respect for the rights of the defence.

(6) Article 6 of the Charter and Article 5 ECHR enshrine the right to liberty and security of person. Any restrictions on that right must not exceed those permitted in accordance with Article 5 ECHR and inferred from the case-law of the European Court of Human Rights.

(7) Although all the Member States are party to the ECHR, experience has shown that that alone does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.

(8) Strengthening mutual trust requires detailed rules on the protection of the procedural rights and guarantees arising from the Charter and from the ECHR.

⁽¹⁾ OJ C 54, 19.2.2011, p. 48.

⁽²⁾ Position of the European Parliament of 13 December 2011 (not yet published in the Official Journal) and decision of the Council of 26 April 2012.

⁽³⁾ OJ C 12, 15.1.2001, p. 10.

- (9) Article 82(2) of the Treaty on the Functioning of the European Union provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. That Article refers to 'the rights of individuals in criminal procedure' as one of the areas in which minimum rules may be established.
- (10) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should be established in the field of information in criminal proceedings.
- (11) On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings⁽¹⁾ (hereinafter 'the Roadmap'). Taking a step-by-step approach, the Roadmap called for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communication with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). The Roadmap emphasises that the order of the rights is only indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole; only when all its component parts have been implemented will its benefits be felt in full.
- (12) On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm Programme — An open and secure Europe serving and protecting citizens⁽²⁾ (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.
- (13) The first measure adopted pursuant to the Roadmap, measure A, was Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings⁽³⁾.
- (14) This Directive relates to measure B of the Roadmap. It lays down common minimum standards to be applied in the field of information about rights and about the accusation to be given to persons suspected or accused of having committed a criminal offence, with a view to enhancing mutual trust among Member States. This Directive builds on the rights laid down in the Charter, and in particular Articles 6, 47 and 48 thereof, by building upon Articles 5 and 6 ECHR as interpreted by the European Court of Human Rights. In this Directive, the term 'accusation' is used to describe the same concept as the term 'charge' used in Article 6(1) ECHR.
- (15) In its Communication of 20 April 2010 entitled 'Delivering an area of freedom, security and justice for Europe's citizens — Action Plan Implementing the Stockholm Programme', the Commission announced that it would present a proposal on the right to information on rights and information about charges in 2010.
- (16) This Directive should apply to suspects and accused persons regardless of their legal status, citizenship or nationality.
- (17) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authority ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.
- (18) The right to information about procedural rights, which is inferred from the case-law of the European Court of Human Rights, should be explicitly established by this Directive.
- (19) The competent authorities should inform suspects or accused persons promptly of those rights, as they apply under national law, which are essential to safeguarding the fairness of the proceedings, either orally or in writing, as provided for by this Directive. In order to allow the practical and effective exercise of those rights, the information should be provided promptly in the course of the proceedings and at the latest before the first official interview of the suspect or accused person by the police or by another competent authority.
- (20) This Directive lays down minimum rules with respect to the information on rights of suspects or accused persons. This is without prejudice to information to be given on other procedural rights arising out of the Charter, the ECHR, national law and applicable Union law as interpreted by the relevant courts and tribunals. Once the information about a particular right has been provided, the competent authorities should not be required to

⁽¹⁾ OJ C 295, 4.12.2009, p. 1.

⁽²⁾ OJ C 115, 4.5.2010, p. 1.

⁽³⁾ OJ L 280, 26.10.2010, p. 1.

reiterate it, unless the specific circumstances of the case or the specific rules laid down in national law so require.

necessary to enable them to prepare their defence and to safeguard the fairness of the proceedings.

- (21) References in this Directive to suspects or accused persons who are arrested or detained should be understood to refer to any situation where, in the course of criminal proceedings, suspects or accused persons are deprived of liberty within the meaning of Article 5(1)(c) ECHR, as interpreted by the case-law of the European Court of Human Rights.
- (22) Where suspects or accused persons are arrested or detained, information about applicable procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner so as to assist those persons in understanding their rights. Such a Letter of Rights should be provided promptly to each arrested person when deprived of liberty by the intervention of law enforcement authorities in the context of criminal proceedings. It should include basic information concerning any possibility to challenge the lawfulness of the arrest, obtaining a review of the detention, or requesting provisional release where, and to the extent that, such a right exists in national law. To help Member States draw up such a Letter of Rights, a model is provided in Annex I. That model is indicative and may be subject to review in the context of the Commission's report on the implementation of this Directive and also once all the Roadmap measures have entered into force. The Letter of Rights may include other relevant procedural rights that apply in Member States.
- (23) Specific conditions and rules relating to the right of suspects or accused persons to have another person informed about their arrest or detention are to be determined by the Member States in their national law. As set out in the Roadmap, the exercise of that right should not prejudice the due course of the criminal proceedings.
- (24) This Directive is without prejudice to the provisions of national law concerning safety of persons remaining in detention facilities.
- (25) Member States should ensure that, when providing information in accordance with this Directive, suspects or accused persons are provided, where necessary, with translations or interpretation into a language that they understand, in accordance with the standards set out in Directive 2010/64/EU.
- (26) When providing suspects or accused persons with information in accordance with this Directive, competent authorities should pay particular attention to persons who cannot understand the content or meaning of the information, for example because of their youth or their mental or physical condition.
- (27) Persons accused of having committed a criminal offence should be given all the information on the accusation necessary to enable them to prepare their defence and to safeguard the fairness of the proceedings.
- (28) The information provided to suspects or accused persons about the criminal act they are suspected or accused of having committed should be given promptly, and at the latest before their first official interview by the police or another competent authority, and without prejudicing the course of ongoing investigations. A description of the facts, including, where known, time and place, relating to the criminal act that the persons are suspected or accused of having committed and the possible legal classification of the alleged offence should be given in sufficient detail, taking into account the stage of the criminal proceedings when such a description is given, to safeguard the fairness of the proceedings and allow for an effective exercise of the rights of the defence.
- (29) Where, in the course of the criminal proceedings, the details of the accusation change to the extent that the position of suspects or accused persons is substantially affected, this should be communicated to them where necessary to safeguard the fairness of the proceedings and in due time to allow for an effective exercise of the rights of the defence.
- (30) Documents and, where appropriate, photographs, audio and video recordings, which are essential to challenging effectively the lawfulness of an arrest or detention of suspects or accused persons in accordance with national law, should be made available to suspects or accused persons or to their lawyers at the latest before a competent judicial authority is called to decide upon the lawfulness of the arrest or detention in accordance with Article 5(4) ECHR, and in due time to allow the effective exercise of the right to challenge the lawfulness of the arrest or detention.
- (31) For the purpose of this Directive, access to the material evidence, as defined in national law, whether for or against the suspect or accused person, which is in the possession of the competent authorities in relation to the specific criminal case, should include access to materials such as documents, and where appropriate photographs and audio and video recordings. Such materials may be contained in a case file or otherwise held by competent authorities in any appropriate way in accordance with national law.
- (32) Access to the material evidence in the possession of the competent authorities, whether for or against the suspect or accused person, as provided for under this Directive, may be refused, in accordance with national law, where such access may lead to a serious threat to the life or fundamental rights of another person or where refusal of such access is strictly necessary to safeguard an important public interest. Any refusal of such access must be weighed against the rights of the defence of the suspect or accused person, taking into account the different stages of the criminal proceedings. Restrictions on such access should be interpreted strictly and in accordance

with the principle of the right to a fair trial under the ECHR and as interpreted by the case-law of the European Court of Human Rights.

- (33) The right of access to the materials of a case should be without prejudice to the provisions of national law on the protection of personal data and the whereabouts of protected witnesses.
- (34) Access to the materials of the case, as provided for by this Directive, should be provided free of charge, without prejudice to provisions of national law providing for fees to be paid for documents to be copied from the case file or for sending materials to the persons concerned or to their lawyer.
- (35) Where information is provided in accordance with this Directive, the competent authorities should take note of this in accordance with existing recording procedures under national law and should not be subject to any additional obligation to introduce new mechanisms or to any additional administrative burden.
- (36) Suspects or accused persons or their lawyers should have the right to challenge, in accordance with national law, the possible failure or refusal of the competent authorities to provide information or to disclose certain materials of the case in accordance with this Directive. That right does not entail the obligation for Member States to provide for a specific appeal procedure, a separate mechanism, or a complaint procedure in which such failure or refusal may be challenged.
- (37) Without prejudice to judicial independence and to differences in the organisation of the judiciary across the Union, Member States should provide or encourage the provision of adequate training with respect to the objectives of this Directive to the relevant officials in Member States.
- (38) Member States should undertake all the necessary action to comply with this Directive. A practical and effective implementation of some of the provisions such as the obligation to provide suspects or accused persons with information about their rights in simple and accessible language could be achieved by different means including non-legislative measures such as appropriate training for the competent authorities or by a Letter of Rights drafted in simple and non-technical language so as to be easily understood by a lay person without any knowledge of criminal procedural law.
- (39) The right to written information about rights on arrest provided for in this Directive should also apply, *mutatis mutandis*, to persons arrested for the purpose of the execution of a European Arrest Warrant under Council

Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ⁽¹⁾. To help Member States draw up a Letter of Rights for such persons, a model is provided in Annex II. That model is indicative and may be subject to review in the context of the Commission's report on implementation of this Directive and also once all the Roadmap measures have come into force.

- (40) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never fall below the standards provided by the ECHR as interpreted in the case-law of the European Court of Human Rights.
- (41) This Directive respects fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial and the rights of the defence. It should be implemented accordingly.
- (42) The provisions of this Directive that correspond to rights guaranteed by the ECHR should be interpreted and implemented consistently with those rights, as interpreted in the case-law of the European Court of Human Rights.
- (43) Since the objective of this Directive, namely establishing common minimum standards relating to the right to information in criminal proceedings, cannot be achieved by Member States acting unilaterally, at national, regional or local level, and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (44) In accordance with Article 3 of the 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 Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Directive.
- (45) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights.

Article 2

Scope

1. This Directive applies from the time persons are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal.

2. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, this Directive shall apply only to the proceedings before that court, following such an appeal.

Article 3

Right to information about rights

1. Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively:

- (a) the right of access to a lawyer;
- (b) any entitlement to free legal advice and the conditions for obtaining such advice;
- (c) the right to be informed of the accusation, in accordance with Article 6;
- (d) the right to interpretation and translation;
- (e) the right to remain silent.

2. Member States shall ensure that the information provided for under paragraph 1 shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.

Article 4

Letter of Rights on arrest

1. Member States shall ensure that suspects or accused persons who are arrested or detained are provided promptly

with a written Letter of Rights. They shall be given an opportunity to read the Letter of Rights and shall be allowed to keep it in their possession throughout the time that they are deprived of liberty.

2. In addition to the information set out in Article 3, the Letter of Rights referred to in paragraph 1 of this Article shall contain information about the following rights as they apply under national law:

- (a) the right of access to the materials of the case;
- (b) the right to have consular authorities and one person informed;
- (c) the right of access to urgent medical assistance; and
- (d) the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority.

3. The Letter of Rights shall also contain basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

4. The Letter of Rights shall be drafted in simple and accessible language. An indicative model Letter of Rights is set out in Annex I.

5. Member States shall ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand shall then be given to them without undue delay.

Article 5

Letter of Rights in European Arrest Warrant proceedings

1. Member States shall ensure that persons who are arrested for the purpose of the execution of a European Arrest Warrant are provided promptly with an appropriate Letter of Rights containing information on their rights according to the law implementing Framework Decision 2002/584/JHA in the executing Member State.

2. The Letter of Rights shall be drafted in simple and accessible language. An indicative model Letter of Rights is set out in Annex II.

Article 6

Right to information about the accusation

1. Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence.

2. Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed.

3. Member States shall ensure that, at the latest on submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.

4. Member States shall ensure that suspects or accused persons are informed promptly of any changes in the information given in accordance with this Article where this is necessary to safeguard the fairness of the proceedings.

Article 7

Right of access to the materials of the case

1. Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.

2. Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence.

3. Without prejudice to paragraph 1, access to the materials referred to in paragraph 2 shall be granted in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court. Where further material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered.

4. By way of derogation from paragraphs 2 and 3, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted. Member States shall ensure that, in accordance with procedures in national law, a decision to refuse access to certain materials in accordance with this paragraph is taken by a judicial authority or is at least subject to judicial review.

5. Access, as referred to in this Article, shall be provided free of charge.

Article 8

Verification and remedies

1. Member States shall ensure that when information is provided to suspects or accused persons in accordance with

Articles 3 to 6 this is noted using the recording procedure specified in the law of the Member State concerned.

2. Member States shall ensure that suspects or accused persons or their lawyers have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive.

Article 9

Training

Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request those responsible for the training of judges, prosecutors, police and judicial staff involved in criminal proceedings to provide appropriate training with respect to the objectives of this Directive.

Article 10

Non-regression

Nothing in this Directive shall be construed as limiting or derogating from any of the rights or procedural safeguards that are ensured under the Charter, the ECHR, other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

Article 11

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 June 2014.

2. Member States shall transmit the text of those measures to the Commission.

3. When Member States adopt those measures they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 12

Report

The Commission shall, by 2 June 2015, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.

Article 13

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 14***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 22 May 2012.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

N. WAMMEN

ANNEX I

**Indicative model Letter of Rights**

The sole purpose of this model is to assist national authorities in drawing up their Letter of Rights at national level. Member States are not bound to use this model. When preparing their Letter of Rights, Member States may amend this model in order to align it with their national rules and add further useful information. The Member State's Letter of Rights must be given upon arrest or detention. This however does not prevent Member States from providing suspects or accused persons with written information in other situations during criminal proceedings.

You have the following rights when you are arrested or detained:

A. ASSISTANCE OF A LAWYER/ENTITLEMENT TO LEGAL AID

You have the right to speak confidentially to a lawyer. A lawyer is independent from the police. Ask the police if you need help to get in contact with a lawyer, the police shall help you. In certain cases the assistance may be free of charge. Ask the police for more information.

B. INFORMATION ABOUT THE ACCUSATION

You have the right to know why you have been arrested or detained and what you are suspected or accused of having done.

C. INTERPRETATION AND TRANSLATION

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to translation of at least the relevant passages of essential documents, including any order by a judge allowing your arrest or keeping you in custody, any charge or indictment and any judgment. You may in some circumstances be provided with an oral translation or summary.

D. RIGHT TO REMAIN SILENT

While questioned by the police or other competent authorities, you do not have to answer questions about the alleged offence. Your lawyer can help you to decide on that.

E. ACCESS TO DOCUMENTS

When you are arrested and detained, you (or your lawyer) have the right to access essential documents you need to challenge the arrest or detention. If your case goes to court, you (or your lawyer) have the right to access the material evidence for or against you.

F. INFORMING SOMEONE ELSE ABOUT YOUR ARREST OR DETENTION/INFORMING YOUR CONSULATE OR EMBASSY

When you are arrested or detained, you should tell the police if you want someone to be informed of your detention, for example a family member or your employer. In certain cases the right to inform another person of your detention may be temporarily restricted. In such cases the police will inform you of this.

If you are a foreigner, tell the police if you want your consular authority or embassy to be informed of your detention. Please also tell the police if you want to contact an official of your consular authority or embassy.

G. URGENT MEDICAL ASSISTANCE

When you are arrested or detained, you have the right to urgent medical assistance. Please let the police know if you are in need of such assistance.

H. PERIOD OF DEPRIVATION OF LIBERTY

After your arrest you may be deprived of liberty or detained for a maximum period of ... [fill in applicable number of hours/days]. At the end of that period you must either be released or be heard by a judge who will decide on your further detention. Ask your lawyer or the judge for information about the possibility to challenge your arrest, to review the detention or to ask for provisional release.

ANNEX II

**Indicative model Letter of Rights for persons arrested on the basis of a European Arrest Warrant**

The sole purpose of this model is to assist national authorities in drawing up their Letter of Rights at national level. Member States are not bound to use this model. When preparing their Letter of Rights, Member States may amend this model in order to align it with their national rules and add further useful information.

You have been arrested on the basis of a European Arrest Warrant. You have the following rights:

A. INFORMATION ABOUT THE EUROPEAN ARREST WARRANT

You have the right to be informed about the content of the European Arrest Warrant on the basis of which you have been arrested.

B. ASSISTANCE OF A LAWYER

You have the right to speak confidentially to a lawyer. A lawyer is independent from the police. Ask the police if you need help to get in contact with a lawyer, the police shall help you. In certain cases the assistance may be free of charge. Ask the police for more information.

C. INTERPRETATION AND TRANSLATION

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to a translation of the European Arrest Warrant in a language you understand. You may in some circumstances be provided with an oral translation or summary.

D. POSSIBILITY TO CONSENT

You may consent or not consent to being surrendered to the State seeking you. Your consent would speed up the proceedings. [Possible addition of certain Member States: It may be difficult or even impossible to change this decision at a later stage.] Ask the authorities or your lawyer for more information.

E. HEARING

If you do not consent to your surrender, you have the right to be heard by a judicial authority.

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2013/48/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 October 2013

on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

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 point (b) of Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) Article 47 of the Charter of Fundamental Rights of the European Union (the Charter), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR) and Article 14 of the International Covenant on Civil and Political Rights (the ICCPR) enshrine the right to a fair trial. Article 48(2) of the Charter guarantees respect for the rights of the defence.

(2) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Presidency conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point (33) thereof, the principle of mutual recognition of judgments and other decisions of judicial authorities should become the cornerstone of judicial cooperation in civil and criminal matters within the Union because enhanced mutual recognition and the

necessary approximation of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights.

(3) Pursuant to Article 82(1) of the Treaty on the Functioning of the European Union (TFEU), 'judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions...'.

(4) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States trust in each other's criminal justice systems. The extent of the mutual recognition is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.

(5) Although the Member States are party to the ECHR and to the ICCPR, experience has shown that that alone does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.

(6) Mutual recognition of decisions in criminal matters can operate effectively only in a spirit of trust in which not only judicial authorities, but all actors in the criminal process consider decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of other Member States' rules, but also trust that those rules are correctly applied. Strengthening mutual trust requires detailed rules on the protection of the procedural rights and guarantees arising from the Charter, the ECHR and the ICCPR. It also requires, by means of this Directive and by means of other measures, further development within the Union of the minimum standards set out in the Charter and in the ECHR.

⁽¹⁾ OJ C 43, 15.2.2012, p. 51.

⁽²⁾ Position of the European Parliament of 10 September 2013 (not yet published in the Official Journal) and decision of the Council of 7 October 2013.

- (7) Article 82(2) TFEU provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. That Article refers to 'the rights of individuals in criminal procedure' as one of the areas in which minimum rules may be established.
- (8) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust and to the promotion of a fundamental rights culture in the Union. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States. Such common minimum rules should be established in relation to the right of access to a lawyer in criminal proceedings, the right to have a third party informed upon deprivation of liberty and the right to communicate with third persons and with consular authorities while deprived of liberty.
- (9) On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ('the Roadmap')⁽¹⁾. Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). The Roadmap emphasises that the order of the rights is only indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole; only when all its components are implemented will its benefits be felt in full.
- (10) On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — An open and secure Europe serving and protecting citizens⁽²⁾ (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.
- (11) Two measures have been adopted pursuant to the Roadmap to date, namely Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings⁽³⁾ and Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings⁽⁴⁾.
- (12) This Directive lays down minimum rules concerning the right of access to a lawyer in criminal proceedings and in proceedings for the execution of a European arrest warrant pursuant to Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States⁽⁵⁾ (European arrest warrant proceedings) and the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. In doing so, it promotes the application of the Charter, in particular Articles 4, 6, 7, 47 and 48 thereof, by building upon Articles 3, 5, 6 and 8 ECHR, as interpreted by the European Court of Human Rights, which, in its case-law, on an ongoing basis, sets standards on the right of access to a lawyer. That case-law provides, *inter alia*, that the fairness of proceedings requires that a suspect or accused person be able to obtain the whole range of services specifically associated with legal assistance. In that regard, the lawyers of suspects or accused persons should be able to secure without restriction, the fundamental aspects of the defence.
- (13) Without prejudice to the obligations of Member States under the ECHR to ensure the right to a fair trial, proceedings in relation to minor offending which take place within a prison and proceedings in relation to offences committed in a military context which are dealt with by a commanding officer should not be considered to be criminal proceedings for the purposes of this Directive.
- (14) This Directive should be implemented taking into account the provisions of Directive 2012/13/EU, which provide that suspects or accused persons are provided promptly with information concerning the right of access to a lawyer, and that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights containing information about the right of access to a lawyer.
- (15) The term 'lawyer' in this Directive refers to any person who, in accordance with national law, is qualified and entitled, including by means of accreditation by an authorised body, to provide legal advice and assistance to suspects or accused persons.
- (16) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions other than deprivation of liberty in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent

⁽¹⁾ OJ C 295, 4.12.2009, p. 1.

⁽²⁾ OJ C 115, 4.5.2010, p. 1.

⁽³⁾ OJ L 280, 26.10.2010, p. 1.

⁽⁴⁾ OJ L 142, 1.6.2012, p. 1.

⁽⁵⁾ OJ L 190, 18.7.2002, p. 1.

authorities ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.

(17) In some Member States certain minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.

(18) The scope of application of this Directive in respect of certain minor offences should not affect the obligations of Member States under the ECHR to ensure the right to a fair trial including obtaining legal assistance from a lawyer.

(19) Member States should ensure that suspects or accused persons have the right of access to a lawyer without undue delay in accordance with this Directive. In any event, suspects or accused persons should be granted access to a lawyer during criminal proceedings before a court, if they have not waived that right.

(20) For the purposes of this Directive, questioning does not include preliminary questioning by the police or by another law enforcement authority the purpose of which is to identify the person concerned, to verify the possession of weapons or other similar safety issues or to determine whether an investigation should be started, for example in the course of a road-side check, or during regular random checks when a suspect or accused person has not yet been identified.

(21) Where a person other than a suspect or accused person, such as a witness, becomes a suspect or accused person, that person should be protected against self-incrimination and has the right to remain silent, as confirmed by the case-law of the European Court of Human Rights. This Directive therefore makes express reference to the practical situation where such a person becomes a suspect or accused person during questioning by the police or by another law enforcement authority in the context of criminal proceedings. Where, in the course of such questioning, a person other than a suspect or accused person becomes a suspect or accused person,

questioning should be suspended immediately. However, questioning may be continued if the person concerned has been made aware that he or she is a suspect or accused person and is able to fully exercise the rights provided for in this Directive.

(22) Suspects or accused persons should have the right to meet in private with the lawyer representing them. Member States may make practical arrangements concerning the duration and frequency of such meetings, taking into account the circumstances of the proceedings, in particular the complexity of the case and the procedural steps applicable. Member States may also make practical arrangements to ensure safety and security, in particular of the lawyer and of the suspect or accused person, in the place where such a meeting is conducted. Such practical arrangements should not prejudice the effective exercise or essence of the right of suspects or accused persons to meet their lawyer.

(23) Suspects or accused persons should have the right to communicate with the lawyer representing them. Such communication may take place at any stage, including before any exercise of the right to meet that lawyer. Member States may make practical arrangements concerning the duration, frequency and means of such communication, including concerning the use of video-conferencing and other communication technology in order to allow such communications to take place. Such practical arrangements should not prejudice the effective exercise or essence of the right of suspects or accused persons to communicate with their lawyer.

(24) In respect of certain minor offences, this Directive should not prevent Member States from organising the right of suspects or accused persons to have access to a lawyer by telephone. However, limiting the right in this way should be restricted to cases where a suspect or accused person will not be questioned by the police or by another law enforcement authority.

(25) Member States should ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when they are questioned by the police or by another law enforcement or judicial authority, including during court hearings. Such participation should be in accordance with any procedures under national law which may regulate the participation of a lawyer during questioning of the suspect or accused person by the police or by another law enforcement or judicial authority, including during court hearings, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. During questioning by the police or by another law

enforcement or judicial authority of the suspect or accused person or in a court hearing, the lawyer may, *inter alia*, in accordance with such procedures, ask questions, request clarification and make statements, which should be recorded in accordance with national law.

arrange for the assistance of a lawyer on the basis of a list of available lawyers from which the suspect or accused person could choose. Such arrangements could include those on legal aid if applicable.

(26) Suspects or accused persons have the right for their lawyer to attend investigative or evidence-gathering acts, insofar as they are provided for in the national law concerned and in so far as the suspects or accused persons are required or permitted to attend. Such acts should at least include identity parades, at which the suspect or accused person figures among other persons in order to be identified by a victim or witness; confrontations, where a suspect or accused person is brought together with one or more witnesses or victims where there is disagreement between them on important facts or issues; and reconstructions of the scene of a crime in the presence of the suspect or accused person, in order to better understand the manner and circumstances under which a crime was committed and to be able to ask specific questions to the suspect or accused person. Member States may make practical arrangements concerning the presence of a lawyer during investigative or evidence-gathering acts. Such practical arrangements should not prejudice the effective exercise and essence of the rights concerned. Where the lawyer is present during an investigative or evidence-gathering act, this should be noted using the recording procedure in accordance with the law of the Member State concerned.

(27) Member States should endeavour to make general information available, for instance on a website or by means of a leaflet that is available at police stations, to facilitate the obtaining of a lawyer by suspects or accused persons. However, Member States would not need to take active steps to ensure that suspects or accused persons who are not deprived of liberty will be assisted by a lawyer if they have not themselves arranged to be assisted by a lawyer. The suspect or accused person concerned should be able freely to contact, consult and be assisted by a lawyer.

(28) Where suspects or accused persons are deprived of liberty, Member States should make the necessary arrangements to ensure that such persons are in a position to exercise effectively the right of access to a lawyer, including by arranging for the assistance of a lawyer when the person concerned does not have one, unless they have waived that right. Such arrangements could imply, *inter alia*, that the competent authorities

(29) The conditions in which suspects or accused persons are deprived of liberty should fully respect the standards set out in the ECHR, in the Charter, and in the case-law of the Court of Justice of the European Union (the Court of Justice) and of the European Court of Human Rights. When providing assistance under this Directive to a suspect or to an accused person who is deprived of liberty, the lawyer concerned should be able to raise a question with the competent authorities regarding the conditions in which that person is deprived of liberty.

(30) In cases of geographical remoteness of the suspect or accused person, such as in overseas territories or where the Member State undertakes or participates in military operations outside its territory, Member States are permitted to derogate temporarily from the right of the suspect or accused person to have access to a lawyer without undue delay after deprivation of liberty. During such a temporary derogation, the competent authorities should not question the person concerned or carry out any of the investigative or evidence-gathering acts provided for in this Directive. Where immediate access to a lawyer is not possible because of the geographical remoteness of the suspect or accused person, Member States should arrange for communication via telephone or video conference unless this is impossible.

(31) Member States should be permitted to derogate temporarily from the right of access to a lawyer in the pre-trial phase when there is a need, in cases of urgency, to avert serious adverse consequences for the life, liberty or physical integrity of a person. During a temporary derogation on that ground, the competent authorities may question suspects or accused persons without the lawyer being present, provided that they have been informed of their right to remain silent and can exercise that right, and provided that such questioning does not prejudice the rights of the defence, including the privilege against self-incrimination. Questioning may be carried out for the sole purpose and to the extent necessary to obtain information that is essential to avert serious adverse consequences for the life, liberty or physical integrity of a person. Any abuse of this derogation would in principle irretrievably prejudice the rights of the defence.

- (32) Member States should also be permitted to derogate temporarily from the right of access to a lawyer in the pre-trial phase where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings, in particular to prevent destruction or alteration of essential evidence, or to prevent interference with witnesses. During a temporary derogation on that ground, the competent authorities may question suspects or accused persons without a lawyer being present, provided that they have been informed of their right to remain silent and can exercise that right, and provided that such questioning does not prejudice the rights of the defence, including the privilege against self-incrimination. Questioning may be carried out for the sole purpose and to the extent necessary to obtain information that is essential to prevent substantial jeopardy to criminal proceedings. Any abuse of this derogation would in principle irretrievably prejudice the rights of the defence.
- (33) Confidentiality of communication between suspects or accused persons and their lawyer is key to ensuring the effective exercise of the rights of the defence and is an essential part of the right to a fair trial. Member States should therefore respect the confidentiality of meetings and other forms of communication between the lawyer and the suspect or accused person in the exercise of the right of access to a lawyer provided for in this Directive, without derogation. This Directive is without prejudice to procedures that address the situation where there are objective and factual circumstances giving rise to the suspicion that the lawyer is involved with the suspect or accused person in a criminal offence. Any criminal activity on the part of a lawyer should not be considered to be legitimate assistance to suspects or accused persons within the framework of this Directive. The obligation to respect confidentiality not only implies that Member States should refrain from interfering with or accessing such communication but also that, where suspects or accused persons are deprived of liberty or otherwise find themselves in a place under the control of the State, Member States should ensure that arrangements for communication uphold and protect confidentiality. This is without prejudice to any mechanisms that are in place in detention facilities with the purpose of avoiding illicit enclosures being sent to detainees, such as screening correspondence, provided that such mechanisms do not allow the competent authorities to read the communication between suspects or accused persons and their lawyer. This Directive is also without prejudice to procedures under national law according to which forwarding correspondence may be rejected if the sender does not agree to the correspondence first being submitted to a competent court.
- (34) This Directive should be without prejudice to a breach of confidentiality which is incidental to a lawful surveillance operation by competent authorities. This Directive should also be without prejudice to the work that is carried out, for example, by national intelligence services to safeguard national security in accordance with Article 4(2) of the Treaty on European Union (TEU) or that falls within the scope of Article 72 TFEU, pursuant to which Title V on an area of Freedom, Security and Justice must 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.
- (35) Suspects or accused persons who are deprived of liberty should have the right to have at least one person, such as a relative or an employer, nominated by them, informed of their deprivation of liberty without undue delay, provided that this does not prejudice the due course of the criminal proceedings against the person concerned or any other criminal proceedings. Member States may make practical arrangements in relation to the application of that right. Such practical arrangements should not prejudice the effective exercise and essence of the right. In limited, exceptional circumstances, however, it should be possible to derogate temporarily from that right when this is justified, in the light of the particular circumstances of the case, by a compelling reason as specified in this Directive. When the competent authorities envisage making such a temporary derogation in respect of a specific third person, they should firstly consider whether another third person, nominated by the suspect or accused person, could be informed of the deprivation of liberty.
- (36) Suspects or accused persons should, while deprived of liberty, have the right to communicate without undue delay with at least one third person, such as a relative, nominated by them. Member States may limit or defer the exercise of that right in view of imperative requirements or proportionate operational requirements. Such requirements could include, inter alia, the need to avert serious adverse consequences for the life, liberty or physical integrity of a person, the need to prevent prejudice to criminal proceedings, the need to prevent a criminal offence, the need to await a court hearing, and the need to protect victims of crime. When the competent authorities envisage limiting or deferring the exercise of the right to communicate in respect of a specific third person, they should first consider whether the suspects or accused persons could communicate with another third person nominated by them. Member States may make practical arrangements concerning the timing, means, duration and frequency of communication with third persons, taking account of the need to maintain good order, safety and security in the place where the person is being deprived of liberty.

- (37) The right of suspects and accused persons who are deprived of liberty to consular assistance is enshrined in Article 36 of the 1963 Vienna Convention on Consular Relations where it is a right conferred on States to have access to their nationals. This Directive confers a corresponding right on suspects or accused persons who are deprived of liberty, subject to their wishes. Consular protection may be exercised by diplomatic authorities where such authorities act as consular authorities.
- (38) Member States should clearly set out in their national law the grounds and criteria for any temporary derogations from the rights granted under this Directive, and they should make restricted use of those temporary derogations. Any such temporary derogations should be proportional, should be strictly limited in time, should not be based exclusively on the type or the seriousness of the alleged offence, and should not prejudice the overall fairness of the proceedings. Member States should ensure that where a temporary derogation has been authorised under this Directive by a judicial authority which is not a judge or a court, the decision on authorising the temporary derogation can be assessed by a court, at least during the trial stage.
- (39) Suspects or accused persons should be able to waive a right granted under this Directive provided that they have been given information about the content of the right concerned and the possible consequences of waiving that right. When providing such information, the specific conditions of the suspects or accused persons concerned should be taken into account, including their age and their mental and physical condition.
- (40) A waiver and the circumstances in which it was given should be noted using the recording procedure in accordance with the law of the Member State concerned. This should not lead to any additional obligation for Member States to introduce new mechanisms or to any additional administrative burden.
- (41) Where a suspect or accused person revokes a waiver in accordance with this Directive, it should not be necessary to proceed again with questioning or any procedural acts that have been carried out during the period when the right concerned was waived.
- (42) Persons subject to a European arrest warrant ('requested persons') should have the right of access to a lawyer in the executing Member State in order to allow them to exercise their rights effectively under Framework Decision 2002/584/JHA. Where a lawyer participates in a hearing of a requested person by an executing judicial authority, that lawyer may, *inter alia*, in accordance with procedures provided for under national law, ask questions, request clarification and make statements. The fact that the lawyer has participated in such a hearing should be noted using the recording procedure in accordance with the law of the Member State concerned.
- (43) Requested persons should have the right to meet in private with the lawyer representing them in the executing Member State. Member States may make practical arrangements concerning the duration and frequency of such meetings, taking into account the particular circumstances of the case. Member States may also make practical arrangements to ensure safety and security, in particular of the lawyer and of the requested person, in the place where the meeting between the lawyer and the requested person is conducted. Such practical arrangements should not prejudice the effective exercise and essence of the right of requested persons to meet with their lawyer.
- (44) Requested persons should have the right to communicate with the lawyer representing them in the executing Member State. It should be possible for such communication to take place at any stage, including before any exercise of the right to meet with the lawyer. Member States may make practical arrangements concerning the duration, frequency and means of communication between requested persons and their lawyer, including concerning the use of videoconferencing and other communication technology in order to allow such communications to take place. Such practical arrangements should not prejudice the effective exercise and essence of the right of requested persons to communicate with their lawyer.
- (45) Executing Member States should make the necessary arrangements to ensure that requested persons are in a position to exercise effectively their right of access to a lawyer in the executing Member State, including by arranging for the assistance of a lawyer when requested persons do not have one, unless they have waived that right. Such arrangements, including those on legal aid if applicable, should be governed by national law. They could imply, *inter alia*, that the competent authorities arrange for the assistance of a lawyer on the basis of a list of available lawyers from which requested persons could choose.
- (46) Without undue delay after being informed that a requested person wishes to appoint a lawyer in the issuing Member State, the competent authority of that Member State should provide the requested person with

information to facilitate the appointment of a lawyer in that Member State. Such information could, for example, include a current list of lawyers, or the name of a lawyer on duty in the issuing State, who can provide information and advice in European arrest warrant cases. Member States could request that the appropriate bar association draw up such a list.

- (47) The surrender procedure is crucial for cooperation in criminal matters between the Member States. Observance of the time-limits contained in Framework Decision 2002/584/JHA is essential for such cooperation. Therefore, while requested persons should be able to exercise fully their rights under this Directive in European arrest warrant proceedings, those time-limits should be respected.
- (48) Pending a legislative act of the Union on legal aid, Member States should apply their national law in relation to legal aid, which should be in line with the Charter, the ECHR and the case-law of the European Court of Human Rights.
- (49) In accordance with the principle of effectiveness of Union law, Member States should put in place adequate and effective remedies to protect the rights that are conferred upon individuals by this Directive.
- (50) Member States should ensure that in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer, or in cases where a derogation from that right was authorised in accordance with this Directive, the rights of the defence and the fairness of the proceedings are respected. In this context, regard should be had to the case-law of the European Court of Human Rights, which has established that the rights of the defence will, in principle, be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction. This should be without prejudice to the use of statements for other purposes permitted under national law, such as the need to execute urgent investigative acts to avoid the perpetration of other offences or serious adverse consequences for any person or related to an urgent need to prevent substantial jeopardy to criminal proceedings where access to a lawyer or delaying the investigation would irretrievably prejudice the ongoing investigations regarding a serious crime. Further, this should be without prejudice to national rules or systems regarding admissibility of evidence, and should not prevent Member States from maintaining a system whereby all existing evidence can be adduced before a court or a judge, without there being any separate or prior assessment as to admissibility of such evidence.
- (51) The duty of care towards suspects or accused persons who are in a potentially weak position underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore facilitate the effective exercise by such persons of the rights provided for in this Directive, for example by taking into account any potential vulnerability that affects their ability to exercise the right of access to a lawyer and to have a third party informed upon deprivation of liberty, and by taking appropriate steps to ensure those rights are guaranteed.
- (52) This Directive upholds the fundamental rights and principles recognised by the Charter, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.
- (53) Member States should ensure that the provisions of this Directive, where they correspond to rights guaranteed by the ECHR, are implemented consistently with those of the ECHR and as developed by case-law of the European Court of Human Rights.
- (54) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter or by the ECHR, as interpreted by the case-law of the Court of Justice and of the European Court of Human Rights.
- (55) This Directive promotes the rights of children and takes into account the Guidelines of the Council of Europe on child friendly justice, in particular its provisions on information and advice to be given to children. This Directive ensures that suspects and accused persons, including children, are provided with adequate information to understand the consequences of waiving a right under this Directive and that any such waiver is made voluntarily and unequivocally. Where the suspect or accused person is a child, the holder of parental responsibility should be notified as soon as possible after the child's deprivation of liberty and should be provided with the reasons therefor. If providing such information to the holder of parental responsibility is contrary to the best interests of the child, another suitable adult such as a relative should be informed instead. This should be without prejudice to provisions

of national law which require that any specified authorities, institutions or individuals, in particular those that are responsible for the protection or welfare of children, should be informed of the deprivation of liberty of a child. Member States should refrain from limiting or deferring the exercise of the right to communicate with a third party in respect of suspects or accused persons who are children and who are deprived of liberty, save in the most exceptional circumstances. Where a deferral is applied the child should, however, not be held incommunicado and should be permitted to communicate, for example with an institution or an individual responsible for the protection or welfare of children.

- (56) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁽¹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (57) Since the objectives of this Directive, namely setting common minimum rules for the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings and the right to have a third person informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale of the measure, 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 Directive does not go beyond what is necessary in order to achieve those objectives.
- (58) In accordance with Articles 1 and 2 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 Directive and are not bound by it or subject to its application.
- (59) In accordance with Articles 1 and 2 of 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 Directive, and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down minimum rules concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant to Framework Decision 2002/584/JHA ('European arrest warrant proceedings') to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

Article 2

Scope

1. This Directive applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. It applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.
2. This Directive applies to persons subject to European arrest warrant proceedings (requested persons) from the time of their arrest in the executing Member State in accordance with Article 10.
3. This Directive also applies, under the same conditions as provided for in paragraph 1, to persons other than suspects or accused persons who, in the course of questioning by the police or by another law enforcement authority, become suspects or accused persons.
4. Without prejudice to the right to a fair trial, in respect of minor offences:
 - (a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or
 - (b) where deprivation of liberty cannot be imposed as a sanction;

this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters.

⁽¹⁾ OJ C 369, 17.12.2011, p. 14.

In any event, this Directive shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.

Article 3

The right of access to a lawyer in criminal proceedings

1. Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.

2. Suspects or accused persons shall have access to a lawyer without undue delay. In any event, suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest:

- (a) before they are questioned by the police or by another law enforcement or judicial authority;
- (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 3;
- (c) without undue delay after deprivation of liberty;
- (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

3. The right of access to a lawyer shall entail the following:

- (a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;
- (b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. Such participation shall be in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure in accordance with the law of the Member State concerned;
- (c) Member States shall ensure that suspects or accused persons shall have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:

- (i) identity parades;
- (ii) confrontations;
- (iii) reconstructions of the scene of a crime.

4. Member States shall endeavour to make general information available to facilitate the obtaining of a lawyer by suspects or accused persons.

Notwithstanding provisions of national law concerning the mandatory presence of a lawyer, Member States shall make the necessary arrangements to ensure that suspects or accused persons who are deprived of liberty are in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with Article 9.

5. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of point (c) of paragraph 2 where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

6. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

Article 4

Confidentiality

Member States shall respect the confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

Article 5

The right to have a third person informed of the deprivation of liberty

1. Member States shall ensure that suspects or accused persons who are deprived of liberty have the right to have at least one person, such as a relative or an employer, nominated by them, informed of their deprivation of liberty without undue delay if they so wish.

2. If the suspect or accused person is a child, Member States shall ensure that the holder of parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed. For the purposes of this paragraph, a person below the age of 18 years shall be considered to be a child.

3. Member States may temporarily derogate from the application of the rights set out in paragraphs 1 and 2 where justified in the light of the particular circumstances of the case on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised.

4. Where Member States temporarily derogate from the application of the right set out in paragraph 2, they shall ensure that an authority responsible for the protection or welfare of children is informed without undue delay of the deprivation of liberty of the child.

Article 6

The right to communicate, while deprived of liberty, with third persons

1. Member States shall ensure that suspects or accused persons who are deprived of liberty have the right to communicate without undue delay with at least one third person, such as a relative, nominated by them.

2. Member States may limit or defer the exercise of the right referred to in paragraph 1 in view of imperative requirements or proportionate operational requirements.

Article 7

The right to communicate with consular authorities

1. Member States shall ensure that suspects or accused persons who are non-nationals and who are deprived of liberty have the right to have the consular authorities of their State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities, if they so wish. However, where suspects or accused persons have two or more nationalities, they may choose which consular authorities, if any, are to be informed of the deprivation of liberty and with whom they wish to communicate.

2. Suspects or accused persons also have the right to be visited by their consular authorities, the right to converse and correspond with them and the right to have legal representation arranged for by their consular authorities, subject to the agreement of those authorities and the wishes of the suspects or accused persons concerned.

3. The exercise of the rights laid down in this Article may be regulated by national law or procedures, provided that such law or procedures enable full effect to be given to the purposes for which these rights are intended.

Article 8

General conditions for applying temporary derogations

1. Any temporary derogation under Article 3(5) or (6) or under Article 5(3) shall

- (a) be proportionate and not go beyond what is necessary;
- (b) be strictly limited in time;
- (c) not be based exclusively on the type or the seriousness of the alleged offence; and
- (d) not prejudice the overall fairness of the proceedings.

2. Temporary derogations under Article 3(5) or (6) may be authorised only by a duly reasoned decision taken on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review. The duly reasoned decision shall be recorded using the recording procedure in accordance with the law of the Member State concerned.

3. Temporary derogations under Article 5(3) may be authorised only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.

Article 9

Waiver

1. Without prejudice to national law requiring the mandatory presence or assistance of a lawyer, Member States shall ensure that, in relation to any waiver of a right referred to in Articles 3 and 10:

- (a) the suspect or accused person has been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it; and

(b) the waiver is given voluntarily and unequivocally.

2. The waiver, which can be made in writing or orally, shall be noted, as well as the circumstances under which the waiver was given, using the recording procedure in accordance with the law of the Member State concerned.

3. Member States shall ensure that suspects or accused persons may revoke a waiver subsequently at any point during the criminal proceedings and that they are informed about that possibility. Such a revocation shall have effect from the moment it is made.

Article 10

The right of access to a lawyer in European arrest warrant proceedings

1. Member States shall ensure that a requested person has the right of access to a lawyer in the executing Member State upon arrest pursuant to the European arrest warrant.

2. With regard to the content of the right of access to a lawyer in the executing Member State, requested persons shall have the following rights in that Member State:

(a) the right of access to a lawyer in such time and in such a manner as to allow the requested persons to exercise their rights effectively and in any event without undue delay from deprivation of liberty;

(b) the right to meet and communicate with the lawyer representing them;

(c) the right for their lawyer to be present and, in accordance with procedures in national law, participate during a hearing of a requested person by the executing judicial authority. Where a lawyer participates during the hearing this shall be noted using the recording procedure in accordance with the law of the Member State concerned.

3. The rights provided for in Articles 4, 5, 6, 7, 9, and, where a temporary derogation under Article 5(3) is applied, in Article 8, shall apply, *mutatis mutandis*, to European arrest warrant proceedings in the executing Member State.

4. The competent authority in the executing Member State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State. The role of that lawyer in the issuing Member State is to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA.

5. Where requested persons wish to exercise the right to appoint a lawyer in the issuing Member State and do not already have such a lawyer, the competent authority in the executing Member State shall promptly inform the competent

authority in the issuing Member State. The competent authority of that Member State shall, without undue delay, provide the requested persons with information to facilitate them in appointing a lawyer there.

6. The right of a requested person to appoint a lawyer in the issuing Member State is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation on the executing judicial authority to decide, within those time-limits and the conditions defined under that Framework Decision, whether the person is to be surrendered.

Article 11

Legal aid

This Directive is without prejudice to national law in relation to legal aid, which shall apply in accordance with the Charter and the ECHR.

Article 12

Remedies

1. Member States shall ensure that suspects or accused persons in criminal proceedings, as well as requested persons in European arrest warrant proceedings, have an effective remedy under national law in the event of a breach of the rights under this Directive.

2. Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with Article 3(6), the rights of the defence and the fairness of the proceedings are respected.

Article 13

Vulnerable persons

Member States shall ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of this Directive.

Article 14

Non-regression clause

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

Article 15

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 November 2016. They shall immediately inform the Commission thereof.

2. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

3. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

Article 16

Report

The Commission shall, by 28 November 2019, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including an evaluation of the application of Article 3(6) in conjunction with Article 8(1) and (2), accompanied, if necessary, by legislative proposals.

Article 17

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 18

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 22 October 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
V. LEŠKEVIČIUS

I

(Legislative acts)

DIRECTIVES

DIRECTIVE (EU) 2016/343 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 9 March 2016****on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings**

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 point (b) of Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The presumption of innocence and the right to a fair trial are enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (the Charter), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), Article 14 of the International Covenant on Civil and Political Rights (the ICCPR) and Article 11 of the Universal Declaration of Human Rights.
- (2) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Presidency conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point (33) thereof, enhanced mutual recognition of judgments and other judicial decisions and the necessary approximation of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights. The principle of mutual recognition should therefore become the cornerstone of judicial cooperation in civil and criminal matters within the Union.
- (3) According to the Treaty on the Functioning of the European Union (TFEU), judicial cooperation in criminal matters in the Union is to be based on the principle of mutual recognition of judgments and other judicial decisions.

⁽¹⁾ OJ C 226, 16.7.2014, p. 63.⁽²⁾ Position of the European Parliament of 20 January 2016 (not yet published in the Official Journal) and decision of the Council of 12 February 2016.

- (4) The implementation of that principle relies on the premise that Member States trust in each other's criminal justice systems. The extent of the principle of mutual recognition is dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects and accused persons and common minimum standards necessary to facilitate the application of that principle.
- (5) Although the Member States are party to the ECHR and to the ICCPR, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.
- (6) On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ⁽¹⁾ ('the Roadmap'). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E).
- (7) On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — An open and secure Europe serving and protecting citizens ⁽²⁾ (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.
- (8) Three measures on procedural rights in criminal proceedings have been adopted pursuant to the Roadmap to date, namely Directives 2010/64/EU ⁽³⁾, 2012/13/EU ⁽⁴⁾ and 2013/48/EU ⁽⁵⁾ of the European Parliament and of the Council.
- (9) The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down common minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.
- (10) By establishing common minimum rules on the protection of procedural rights of suspects and accused persons, this Directive aims to strengthen the trust of Member States in each other's criminal justice systems and thus to facilitate mutual recognition of decisions in criminal matters. Such common minimum rules may also remove obstacles to the free movement of citizens throughout the territory of the Member States.
- (11) This Directive should apply only to criminal proceedings as interpreted by the Court of Justice of the European Union (Court of Justice), without prejudice to the case-law of the European Court of Human Rights. This Directive should not apply to civil proceedings or to administrative proceedings, including where the latter can lead to sanctions, such as proceedings relating to competition, trade, financial services, road traffic, tax or tax surcharges, and investigations by administrative authorities in relation to such proceedings.
- (12) This Directive should apply to natural persons who are suspects or accused persons in criminal proceedings. It should apply from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, and, therefore, even before that person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he or she is a suspect or accused person. This Directive should apply at all stages of the criminal proceedings until the decision on the final determination of whether the suspect or accused person has committed the criminal offence has become definitive. Legal actions and remedies which are available only once that decision has become definitive, including actions before the European Court of Human Rights, should not fall within the scope of this Directive.

⁽¹⁾ OJ C 295, 4.12.2009, p. 1.

⁽²⁾ OJ C 115, 4.5.2010, p. 1.

⁽³⁾ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁽⁴⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁽⁵⁾ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

- (13) This Directive acknowledges the different needs and levels of protection of certain aspects of the presumption of innocence as regards natural and legal persons. As regards natural persons, such protection is reflected in well-established case-law of the European Court of Human Rights. The Court of Justice has, however, recognised that the rights flowing from the presumption of innocence do not accrue to legal persons in the same way as they do to natural persons.
- (14) At the current stage of development of national law and of case-law at national and Union level, it is premature to legislate at Union level on the presumption of innocence with regard to legal persons. This Directive should not, therefore, apply to legal persons. This should be without prejudice to the application of the presumption of innocence as laid down, in particular, in the ECHR and as interpreted by the European Court of Human Rights and by the Court of Justice, to legal persons.
- (15) The presumption of innocence with regard to legal persons should be ensured by the existing legislative safeguards and case-law, the evolution of which is to determine whether there is a need for Union action.
- (16) The presumption of innocence would be violated if public statements made by public authorities, or judicial decisions other than those on guilt, referred to a suspect or an accused person as being guilty, for as long as that person has not been proved guilty according to law. Such statements and judicial decisions should not reflect an opinion that that person is guilty. This should be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, such as the indictment, and without prejudice to judicial decisions as a result of which a suspended sentence takes effect, provided that the rights of the defence are respected. This should also be without prejudice to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and are based on suspicion or on elements of incriminating evidence, such as decisions on pre-trial detention, provided that such decisions do not refer to the suspect or accused person as being guilty. Before taking a preliminary decision of a procedural nature the competent authority might first have to verify that there are sufficient elements of incriminating evidence against the suspect or accused person to justify the decision concerned, and the decision could contain reference to those elements.
- (17) The term 'public statements made by public authorities' should be understood to be any statement which refers to a criminal offence and which emanates from an authority involved in the criminal proceedings concerning that criminal offence, such as judicial authorities, police and other law enforcement authorities, or from another public authority, such as ministers and other public officials, it being understood that this is without prejudice to national law regarding immunity.
- (18) The obligation not to refer to suspects or accused persons as being guilty should not prevent public authorities from publicly disseminating information on the criminal proceedings where this is strictly necessary for reasons relating to the criminal investigation, such as when video material is released and the public is asked to help in identifying the alleged perpetrator of the criminal offence, or to the public interest, such as when, for safety reasons, information is provided to the inhabitants of an area affected by an alleged environmental crime or when the prosecution or another competent authority provides objective information on the state of criminal proceedings in order to prevent a public order disturbance. The use of such reasons should be confined to situations in which this would be reasonable and proportionate, taking all interests into account. In any event, the manner and context in which the information is disseminated should not create the impression that the person is guilty before he or she has been proved guilty according to law.
- (19) Member States should take appropriate measures to ensure that, when they provide information to the media, public authorities do not refer to suspects or accused persons as being guilty for as long as such persons have not been proved guilty according to law. To that end, Member States should inform public authorities of the importance of having due regard to the presumption of innocence when providing or divulging information to the media. This should be without prejudice to national law protecting the freedom of press and other media.
- (20) The competent authorities should abstain from presenting suspects or accused persons as being guilty, in court or in public, through the use of measures of physical restraint, such as handcuffs, glass boxes, cages and leg irons, unless the use of such measures is required for case-specific reasons, either relating to security, including to prevent suspects or accused persons from harming themselves or others or from damaging any property, or relating to the prevention of suspects or accused persons from absconding or from having contact with third persons, such as witnesses or victims. The possibility of applying measures of physical restraint does not imply that the competent authorities are to take any formal decision on the use of such measures.

- (21) Where feasible, the competent authorities should also abstain from presenting suspects or accused persons in court or in public while wearing prison clothes, so as to avoid giving the impression that those persons are guilty.
- (22) The burden of proof for establishing the guilt of suspects and accused persons is on the prosecution, and any doubt should benefit the suspect or accused person. The presumption of innocence would be infringed if the burden of proof were shifted from the prosecution to the defence, without prejudice to any *ex officio* fact-finding powers of the court, to the independence of the judiciary when assessing the guilt of the suspect or accused person, and to the use of presumptions of fact or law concerning the criminal liability of a suspect or accused person. Such presumptions should be confined within reasonable limits, taking into account the importance of what is at stake and maintaining the rights of the defence, and the means employed should be reasonably proportionate to the legitimate aim pursued. Such presumptions should be rebuttable and in any event, should be used only where the rights of the defence are respected.
- (23) In various Member States not only the prosecution, but also judges and competent courts are charged with seeking both inculpatory and exculpatory evidence. Member States which do not have an adversarial system should be able to maintain their current system provided that it complies with this Directive and with other relevant provisions of Union and international law.
- (24) The right to remain silent is an important aspect of the presumption of innocence and should serve as protection from self-incrimination.
- (25) The right not to incriminate oneself is also an important aspect of the presumption of innocence. Suspects and accused persons should not be forced, when asked to make statements or answer questions, to produce evidence or documents or to provide information which may lead to self-incrimination.
- (26) The right to remain silent and the right not to incriminate oneself should apply to questions relating to the criminal offence that a person is suspected or accused of having committed and not, for example, to questions relating to the identification of a suspect or accused person.
- (27) The right to remain silent and the right not to incriminate oneself imply that competent authorities should not compel suspects or accused persons to provide information if those persons do not wish to do so. In order to determine whether the right to remain silent or the right not to incriminate oneself has been violated, the interpretation by the European Court of Human Rights of the right to a fair trial under the ECHR should be taken into account.
- (28) The exercise of the right to remain silent or the right not to incriminate oneself should not be used against a suspect or accused person and should not, in itself, be considered to be evidence that the person concerned has committed the criminal offence concerned. This should be without prejudice to national rules concerning the assessment of evidence by courts or judges, provided that the rights of the defence are respected.
- (29) The exercise of the right not to incriminate oneself should not prevent the competent authorities from gathering evidence which may be lawfully obtained from the suspect or accused person through the use of legal powers of compulsion and which has an existence independent of the will of the suspect or accused person, such as material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, breath, blood or urine samples and bodily tissue for the purpose of DNA testing.
- (30) The right to remain silent and the right not to incriminate oneself should not preclude Member States from deciding that, with regard to minor offences, such as minor road traffic offences, the conduct of the proceedings, or certain stages thereof, may take place in writing or without questioning of the suspect or accused person by the competent authorities in relation to the offence concerned, provided that this complies with the right to a fair trial.
- (31) Member States should consider ensuring that, where suspects or accused persons are provided with information about rights pursuant to Article 3 of Directive 2012/13/EU, they are also provided with information concerning the right not to incriminate oneself, as it applies under national law in accordance with this Directive.

- (32) Member States should consider ensuring that, where suspects or accused persons are provided with a Letter of Rights pursuant to Article 4 of Directive 2012/13/EU, such a Letter also contains information concerning the right not to incriminate oneself as it applies under national law in accordance with this Directive.
- (33) The right to a fair trial is one of the basic principles in a democratic society. The right of suspects and accused persons to be present at the trial is based on that right and should be ensured throughout the Union.
- (34) If, for reasons beyond their control, suspects or accused persons are unable to be present at the trial, they should have the possibility to request a new date for the trial within the time frame provided for in national law.
- (35) The right of suspects and accused persons to be present at the trial is not absolute. Under certain conditions, suspects and accused persons should be able, expressly or tacitly, but unequivocally, to waive that right.
- (36) Under certain circumstances it should be possible for a decision on the guilt or innocence of a suspect or accused person to be handed down even if the person concerned is not present at the trial. This might be the case where the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance and does not, nevertheless, appear. Informing a suspect or accused person of the trial should be understood to mean summoning him or her in person or, by other means, providing that person with official information about the date and place of the trial in a manner that enables him or her to become aware of the trial. Informing the suspect or accused person of the consequences of non-appearance should, in particular, be understood to mean informing that person that a decision might be handed down if he or she does not appear at the trial.
- (37) It should also be possible to hold a trial which may result in a decision on guilt or innocence in the absence of a suspect or accused person where that person has been informed of the trial and has given a mandate to a lawyer who was appointed by that person or by the State to represent him or her at the trial and who represented the suspect or accused person.
- (38) When considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention should, where appropriate, also be paid to the diligence exercised by public authorities in order to inform the person concerned and to the diligence exercised by the person concerned in order to receive information addressed to him or her.
- (39) Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but the conditions for taking a decision in the absence of a particular suspect or accused person are not met because the suspect or accused person could not be located despite reasonable efforts having been made, for example because the person has fled or absconded, it should nevertheless be possible to take a decision in the absence of the suspect or accused person and to enforce that decision. In that case, Member States should ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they should also be informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy. Such information should be provided in writing. The information may also be provided orally on condition that the fact that the information has been provided is noted in accordance with the recording procedure under national law.
- (40) Competent authorities in the Member States should be allowed to exclude a suspect or accused person temporarily from the trial where this is in the interests of securing the proper conduct of the criminal proceedings. This could, for example, be the case where a suspect or accused person disturbs the hearing and must be escorted out of the court room on order of the judge, or where it appears that the presence of a suspect or accused person prevents the proper hearing of a witness.
- (41) The right to be present at the trial can be exercised only if one or more hearings are held. This means that the right to be present at the trial cannot apply if the relevant national rules of procedure do not provide for a hearing. Such national rules should comply with the Charter and with the ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights, in particular with regard to the right to a fair trial. This is the case, for example, if the proceedings are conducted in a simplified manner following, solely or in part, a written procedure or a procedure in which no hearing is provided for.

- (42) Member States should ensure that in the implementation of this Directive, in particular with regard to the right to be present at the trial and the right to a new trial, the particular needs of vulnerable persons are taken into account. According to the Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings ⁽¹⁾, vulnerable suspects or accused persons should be understood to mean all suspects or accused persons who are not able to understand or effectively participate in criminal proceedings due to their age, their mental or physical condition or any disabilities they may have.
- (43) Children are vulnerable and should be given a specific degree of protection. Therefore, in respect of some of the rights provided for in this Directive, specific procedural safeguards should be established.
- (44) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. An effective remedy, which is available in the event of a breach of any of the rights laid down in this Directive, should, as far as possible, have the effect of placing the suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, with a view to protecting the right to a fair trial and the rights of the defence.
- (45) When assessing statements made by suspects or accused persons or evidence obtained in breach of the right to remain silent or the right not to incriminate oneself, courts and judges should respect the rights of the defence and the fairness of the proceedings. In that context, regard should be had to the case-law of the European Court of Human Rights, according to which the admission of statements obtained as a result of torture or of other ill-treatment in breach of Article 3 ECHR as evidence to establish the relevant facts in criminal proceedings would render the proceedings as a whole unfair. According to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, any statement which is established to have been made as a result of torture should not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.
- (46) In order to monitor and evaluate the effectiveness of this Directive, Member States should send available data with regard to the implementation of the rights laid down in this Directive to the Commission. Such data could include records made by law enforcement and judicial authorities as regards remedies applied in the case of a breach of any of the aspects of the presumption of innocence covered by this Directive or of the right to be present at the trial.
- (47) This Directive upholds the fundamental rights and principles recognised by the Charter and by the ECHR, including the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, the integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and the rights of the defence. Regard should be had, in particular, to Article 6 of the Treaty on European Union (TEU), according to which the Union recognises the rights, freedoms and principles set out in the Charter, and according to which fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, are to constitute general principles of Union law.
- (48) As this Directive establishes minimum rules, Member States should be able to extend the rights laid down in this Directive in order to provide a higher level of protection. The level of protection provided for by Member States should never fall below the standards provided for by the Charter or by the ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights.
- (49) Since the objectives of this Directive, namely setting common minimum rules for certain aspects of the presumption of innocence and for the right to be present at the trial in criminal proceedings, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, 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 Directive does not go beyond what is necessary in order to achieve those objectives.

⁽¹⁾ OJ C 378, 24.12.2013, p. 8.

- (50) In accordance with Articles 1 and 2 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 Directive and are not bound by it or subject to its application.
- (51) In accordance with Articles 1 and 2 of 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 Directive, and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

SUBJECT MATTER AND SCOPE

Article 1

Subject matter

This Directive lays down common minimum rules concerning:

- (a) certain aspects of the presumption of innocence in criminal proceedings;
- (b) the right to be present at the trial in criminal proceedings.

Article 2

Scope

This Directive applies to natural persons who are suspects or accused persons in criminal proceedings. It applies at all stages of the criminal proceedings, from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, until the decision on the final determination of whether that person has committed the criminal offence concerned has become definitive.

CHAPTER 2

PRESUMPTION OF INNOCENCE

Article 3

Presumption of innocence

Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to law.

Article 4

Public references to guilt

1. Member States shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty. This shall be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence.

2. Member States shall ensure that appropriate measures are available in the event of a breach of the obligation laid down in paragraph 1 of this Article not to refer to suspects or accused persons as being guilty, in accordance with this Directive and, in particular, with Article 10.

3. The obligation laid down in paragraph 1 not to refer to suspects or accused persons as being guilty shall not prevent public authorities from publicly disseminating information on the criminal proceedings where strictly necessary for reasons relating to the criminal investigation or to the public interest.

Article 5

Presentation of suspects and accused persons

1. Member States shall take appropriate measures to ensure that suspects and accused persons are not presented as being guilty, in court or in public, through the use of measures of physical restraint.

2. Paragraph 1 shall not prevent Member States from applying measures of physical restraint that are required for case-specific reasons, relating to security or to the prevention of suspects or accused persons from absconding or from having contact with third persons.

Article 6

Burden of proof

1. Member States shall ensure that the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution. This shall be without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence, and to the right of the defence to submit evidence in accordance with the applicable national law.

2. Member States shall ensure that any doubt as to the question of guilt is to benefit the suspect or accused person, including where the court assesses whether the person concerned should be acquitted.

Article 7

Right to remain silent and right not to incriminate oneself

1. Member States shall ensure that suspects and accused persons have the right to remain silent in relation to the criminal offence that they are suspected or accused of having committed.

2. Member States shall ensure that suspects and accused persons have the right not to incriminate themselves.

3. The exercise of the right not to incriminate oneself shall not prevent the competent authorities from gathering evidence which may be lawfully obtained through the use of legal powers of compulsion and which has an existence independent of the will of the suspects or accused persons.

4. Member States may allow their judicial authorities to take into account, when sentencing, cooperative behaviour of suspects and accused persons.

5. The exercise by suspects and accused persons of the right to remain silent or of the right not to incriminate oneself shall not be used against them and shall not be considered to be evidence that they have committed the criminal offence concerned.

6. This Article shall not preclude Member States from deciding that, with regard to minor offences, the conduct of the proceedings, or certain stages thereof, may take place in writing or without questioning of the suspect or accused person by the competent authorities in relation to the offence concerned, provided that this complies with the right to a fair trial.

CHAPTER 3

RIGHT TO BE PRESENT AT THE TRIAL

Article 8

Right to be present at the trial

1. Member States shall ensure that suspects and accused persons have the right to be present at their trial.
2. Member States may provide that a trial which can result in a decision on the guilt or innocence of a suspect or accused person can be held in his or her absence, provided that:
 - (a) the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance; or
 - (b) the suspect or accused person, having been informed of the trial, is represented by a mandated lawyer, who was appointed either by the suspect or accused person or by the State.
3. A decision which has been taken in accordance with paragraph 2 may be enforced against the person concerned.
4. Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but it is not possible to comply with the conditions laid down in paragraph 2 of this Article because a suspect or accused person cannot be located despite reasonable efforts having been made, Member States may provide that a decision can nevertheless be taken and enforced. In that case, Member States shall ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they are also informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy, in accordance with Article 9.
5. This Article shall be without prejudice to national rules that provide that the judge or the competent court can exclude a suspect or accused person temporarily from the trial where necessary in the interests of securing the proper conduct of the criminal proceedings, provided that the rights of the defence are complied with.
6. This Article shall be without prejudice to national rules that provide for proceedings or certain stages thereof to be conducted in writing, provided that this complies with the right to a fair trial.

Article 9

Right to a new trial

Member States shall ensure that, where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) were not met, they have the right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision being reversed. In that regard, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.

CHAPTER 4

GENERAL AND FINAL PROVISIONS*Article 10***Remedies**

1. Member States shall ensure that suspects and accused persons have an effective remedy if their rights under this Directive are breached.
2. Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of the right to remain silent or the right not to incriminate oneself, the rights of the defence and the fairness of the proceedings are respected.

*Article 11***Data collection**

Member States shall, by 1 April 2020 and every three years thereafter, send to the Commission available data showing how the rights laid down in this Directive have been implemented.

*Article 12***Report**

The Commission shall, by 1 April 2021, submit a report to the European Parliament and to the Council on the implementation of this Directive.

*Article 13***Non-regression**

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

*Article 14***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 April 2018. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

*Article 15***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 16***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 9 March 2016.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

J.A. HENNIS-PLASSCHAERT

I

(Legislative acts)

DIRECTIVES

DIRECTIVE (EU) 2016/800 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 11 May 2016****on procedural safeguards for children who are suspects or accused persons in criminal proceedings**

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 point (b) of Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The purpose of this Directive is to establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration.
- (2) By establishing common minimum rules on the protection of procedural rights of children who are suspects or accused persons, this Directive aims to strengthen the trust of Member States in each other's criminal justice systems and thus to improve mutual recognition of decisions in criminal matters. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States.
- (3) Although the Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights, and the UN Convention on the Rights of the Child, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.
- (4) On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ⁽³⁾ ('the Roadmap'). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspected or accused persons who are vulnerable (measure E). The Roadmap emphasises

⁽¹⁾ OJ C 226, 16.7.2014, p. 63.

⁽²⁾ Position of the European Parliament of 9 March 2016 (not yet published in the Official Journal) and decision of the Council of 21 April 2016.

⁽³⁾ OJ C 295, 4.12.2009, p. 1.

that the order of the rights is indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole; only when all its components are implemented will its benefits be experienced in full.

- (5) On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — An open and secure Europe serving and protecting citizens ⁽¹⁾ (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.
- (6) Four measures on procedural rights in criminal proceedings have been adopted pursuant to the Roadmap to date, namely Directives 2010/64/EU ⁽²⁾, 2012/13/EU ⁽³⁾, 2013/48/EU ⁽⁴⁾ and Directive (EU) 2016/343 ⁽⁵⁾ of the European Parliament and the Council.
- (7) This Directive promotes the rights of the child, taking into account the Guidelines of the Council of Europe on child-friendly justice.
- (8) Where children are suspects or accused persons in criminal proceedings or are subject to European arrest warrant proceedings pursuant to Council Framework Decision 2002/584/JHA ⁽⁶⁾ (requested persons), Member States should ensure that the child's best interests are always a primary consideration, in accordance with Article 24(2) of the Charter of Fundamental Rights of the European Union (the Charter).
- (9) Children who are suspects or accused persons in criminal proceedings should be given particular attention in order to preserve their potential for development and reintegration into society.
- (10) This Directive should apply to children who are suspects or accused persons in criminal proceedings and to children who are requested persons. In respect of children who are requested persons, the relevant provisions of this Directive should apply from the time of their arrest in the executing Member State.
- (11) This Directive, or certain provisions thereof, should also apply to suspects or accused persons in criminal proceedings, and to requested persons, who were children when they became subject to the proceedings, but who have subsequently reached the age of 18, and where the application of this Directive is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned.
- (12) When, at the time a person becomes a suspect or accused person in criminal proceedings, that person has reached the age of 18, but the criminal offence was committed when the person was a child, Member States are encouraged to apply the procedural safeguards provided for by this Directive until that person reaches the age of 21, at least as regards criminal offences that are committed by the same suspect or accused person and that are jointly investigated and prosecuted as they are inextricably linked to criminal proceedings which were initiated against that person before the age of 18.
- (13) Member States should determine the age of the child on the basis of the child's own statements, checks of the child's civil status, documentary research, other evidence and, if such evidence is unavailable or inconclusive, a medical examination. A medical examination should be carried out as a last resort and in strict compliance with the child's rights, physical integrity and human dignity. Where a person's age remains in doubt, that person should, for the purposes of this Directive, be presumed to be a child.

⁽¹⁾ OJ C 115, 4.5.2010, p. 1.

⁽²⁾ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁽³⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁽⁴⁾ Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and European arrest warrant proceedings and on the right to have a third party informed upon deprivation of liberty, and to communicate with third persons and with consular authorities (OJ L 294, 6.11.2013, p. 1).

⁽⁵⁾ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

⁽⁶⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

- (14) This Directive should not apply in respect of certain minor offences. However, it should apply where a child who is a suspect or accused person is deprived of liberty.
- (15) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions other than deprivation of liberty in relation to relatively minor offences. That may be the case, for example, in relation to road traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.
- (16) In some Member States certain minor offences, in particular minor road traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.
- (17) This Directive should apply only to criminal proceedings. It should not apply to other types of proceedings, in particular proceedings which are specially designed for children and which could lead to protective, corrective or educative measures.
- (18) This Directive should be implemented taking into account the provisions of Directives 2012/13/EU and 2013/48/EU. This Directive provides for further complementary safeguards with regard to information to be provided to children and to the holder of parental responsibility in order to take into account the specific needs and vulnerabilities of children.
- (19) Children should receive information about general aspects of the conduct of the proceedings. To that end, they should, in particular, be given a brief explanation about the next procedural steps in the proceedings in so far as this is possible in the light of the interest of the criminal proceedings, and about the role of the authorities involved. The information to be given should depend on the circumstances of the case.
- (20) Children should receive information in respect of the right to a medical examination at the earliest appropriate stage in the proceedings, at the latest upon deprivation of liberty where such a measure is taken in relation to the child.
- (21) Where a child is deprived of liberty, the Letter of Rights provided to the child pursuant to Directive 2012/13/EU should include clear information on the child's rights under this Directive.
- (22) Member States should inform the holder of parental responsibility about applicable procedural rights, in writing, orally, or both. The information should be provided as soon as possible and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the child.
- (23) In certain circumstances, which can also relate to only one of the persons holding parental responsibility, the information should be provided to another appropriate adult nominated by the child and accepted as such by the competent authority. One of those circumstances is where there are objective and factual grounds indicating or giving rise to the suspicion that providing information to the holder of parental responsibility could substantially jeopardise the criminal proceedings, in particular, where evidence might be destroyed or altered, witnesses might be interfered with, or the holder of parental responsibility might have been involved in the alleged criminal activity together with the child.
- (24) Where the circumstances which led the competent authorities to provide information to an appropriate adult other than the holder of parental responsibility cease to exist, any information that the child receives in accordance with this Directive, and which remains relevant in the course of the proceedings, should be provided to the holder of parental responsibility. This requirement should not unnecessarily prolong the criminal proceedings.

- (25) Children who are suspects or accused persons have the right of access to a lawyer in accordance with Directive 2013/48/EU. Since children are vulnerable and not always able to fully understand and follow criminal proceedings, they should be assisted by a lawyer in the situations set out in this Directive. In those situations, Member States should arrange for the child to be assisted by a lawyer where the child or the holder of parental responsibility has not arranged such assistance. Member States should provide legal aid where this is necessary to ensure that the child is effectively assisted by a lawyer.
- (26) Assistance by a lawyer under this Directive presupposes that the child has the right of access to a lawyer under Directive 2013/48/EU. Therefore, where the application of a provision of Directive 2013/48/EU would make it impossible for the child to be assisted by a lawyer under this Directive, such provision should not apply to the right of children to have access to a lawyer under Directive 2013/48/EU. On the other hand, the derogations and exceptions to assistance by a lawyer laid down in this Directive should not affect the right of access to a lawyer in accordance with Directive 2013/48/EU, or the right to legal aid in accordance with the Charter and the ECHR, and with national and other Union law.
- (27) The provisions laid down in this Directive on assistance by a lawyer should apply without undue delay once children are made aware that they are suspects or accused persons. For the purposes of this Directive, assistance by a lawyer means legal support and representation by a lawyer during the criminal proceedings. Where this Directive provides for the assistance by a lawyer during questioning, a lawyer should be present. Without prejudice to a child's right of access to a lawyer pursuant to Directive 2013/48/EU, assistance by a lawyer does not require a lawyer to be present during each investigative or evidence-gathering act.
- (28) Provided that this complies with the right to a fair trial, the obligation for Member States to provide children who are suspects or accused persons with assistance by a lawyer in accordance with this Directive does not include the following: identifying the child; determining whether an investigation should be started; verifying the possession of weapons or other similar safety issues; carrying out investigative or evidence-gathering acts other than those specifically referred to in this Directive, such as body checks, physical examinations, blood, alcohol or similar tests, or the taking of photographs or fingerprints; or bringing the child to appear before a competent authority or surrendering the child to the holder of parental responsibility or to another appropriate adult, in accordance with national law.
- (29) Where a child who was not initially a suspect or accused person, such as a witness, becomes a suspect or accused person, that child should have the right not to incriminate him or herself and the right to remain silent, in accordance with Union law and the ECHR, as interpreted by the Court of Justice of the European Union (Court of Justice) and by the European Court of Human Rights. This Directive therefore makes express reference to the practical situation where such a child becomes a suspect or accused person during questioning by the police or by another law enforcement authority in the context of criminal proceedings. Where, in the course of such questioning, a child other than a suspect or accused person becomes a suspect or accused person, questioning should be suspended until the child is made aware that he or she is a suspect or accused person and is assisted by a lawyer in accordance with this Directive.
- (30) Provided that this complies with the right to a fair trial, Member States should be able to derogate from the obligation to provide assistance by a lawyer where this is not proportionate in the light of the circumstances of the case, it being understood that the child's best interests should always be a primary consideration. In any event, children should be assisted by a lawyer when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive, as well as during detention. Moreover, deprivation of liberty should not be imposed as a criminal sentence unless the child has been assisted by a lawyer in such a way as to allow the child to exercise his or her rights of the defence effectively and, in any event, during the trial hearings before a court. Member States should be able to make practical arrangements in that respect.
- (31) Member States should be able to derogate temporarily from the obligation to provide assistance by a lawyer in the pre-trial phase for compelling reasons, namely where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person, or where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence, inter alia, with a view to obtaining information concerning the alleged co-perpetrators of a serious criminal offence, or in order to avoid the loss of important evidence regarding a serious criminal offence. During a temporary derogation for one of those compelling reasons, the competent authorities should be able to question children without the lawyer being present, provided that they have been informed of their right to

remain silent and can exercise that right, and that such questioning does not prejudice the rights of the defence, including the right not to incriminate oneself. It should be possible to carry out questioning, to the extent necessary, for the sole purpose of obtaining information that is essential to avert serious adverse consequences for the life, liberty or physical integrity of a person, or to prevent substantial jeopardy to criminal proceedings. Any abuse of this temporary derogation would, in principle, irretrievably prejudice the rights of the defence.

- (32) Member States should clearly set out in their national law the grounds and criteria for such a temporary derogation, and they should make restricted use thereof. Any temporary derogation should be proportional, strictly limited in time, not based exclusively on the type or the seriousness of the alleged criminal offence, and should not prejudice the overall fairness of the proceedings. Member States should ensure that where the temporary derogation has been authorised pursuant to this Directive by a competent authority which is not a judge or a court, the decision on authorising the temporary derogation can be assessed by a court, at least during the trial stage.
- (33) Confidentiality of communication between children and their lawyer is key to ensuring the effective exercise of the rights of the defence and is an essential part of the right to a fair trial. Member States should therefore respect the confidentiality of meetings and other forms of communication between the lawyer and the child in the context of the assistance by a lawyer provided for in this Directive, without derogation. This Directive is without prejudice to procedures that address the situation where there are objective and factual circumstances giving rise to the suspicion that the lawyer is involved with the child in a criminal offence. Any criminal activity on the part of a lawyer should not be considered to be legitimate assistance to children within the framework of this Directive. The obligation to respect confidentiality not only implies that Member States refrain from interfering with, or accessing, such communication but also that, where children are deprived of liberty or otherwise find themselves in a place under the control of the State, Member States ensure that arrangements for communication uphold and protect such confidentiality. This is without prejudice to any mechanisms that are in place in detention facilities with the purpose of avoiding illicit enclosures being sent to detainees, such as screening correspondence, provided that such mechanisms do not allow the competent authorities to read the communication between children and their lawyer. This Directive is also without prejudice to procedures under national law according to which forwarding correspondence may be rejected if the sender does not agree to the correspondence first being submitted to a competent court.
- (34) This Directive is without prejudice to a breach of confidentiality that is incidental to a lawful surveillance operation by competent authorities. This Directive is also without prejudice to the work that is carried out, for example, by national intelligence services to safeguard national security in accordance with Article 4(2) of the Treaty on European Union (TEU), or that falls within the scope of Article 72 of the Treaty on the Functioning of the European Union (TFEU) pursuant to which Title V of Part III of the TFEU, on the Area of Freedom, Security and Justice, must 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.
- (35) Children who are suspects or accused persons in criminal proceedings should have the right to an individual assessment to identify their specific needs in terms of protection, education, training and social integration, to determine if and to what extent they would need special measures during the criminal proceedings, the extent of their criminal responsibility and the appropriateness of a particular penalty or educative measure.
- (36) The individual assessment should, in particular, take into account the child's personality and maturity, the child's economic, social and family background, including living environment, and any specific vulnerabilities of the child, such as learning disabilities and communication difficulties.
- (37) It should be possible to adapt the extent and detail of an individual assessment according to the circumstances of the case, taking into account the seriousness of the alleged criminal offence and the measures that could be taken if the child is found guilty of such an offence. An individual assessment which has been carried out with regard to the same child in the recent past could be used if it is updated.
- (38) The competent authorities should take information deriving from an individual assessment into account when determining whether any specific measure concerning the child is to be taken, such as providing any practical assistance; when assessing the appropriateness and effectiveness of any precautionary measures in respect of the child, such as decisions on provisional detention or alternative measures; and, taking account of the individual characteristics and circumstances of the child, when taking any decision or course of action in the context of the criminal proceedings, including when sentencing. Where an individual assessment is not yet available, this should

not prevent the competent authorities from taking such measures or decisions, provided that the conditions set out in this Directive are complied with, including carrying out an individual assessment at the earliest appropriate stage of the proceedings. The appropriateness and effectiveness of the measures or decisions that are taken before an individual assessment is carried out could be re-assessed when the individual assessment becomes available.

- (39) The individual assessment should take place at the earliest appropriate stage of the proceedings and in due time so that the information deriving from it can be taken into account by the prosecutor, judge or another competent authority, before presentation of the indictment for the purposes of the trial. It should nevertheless be possible to present an indictment in the absence of an individual assessment provided that this is in the child's best interests. This could be the case, for example, where a child is in pre-trial detention and waiting for the individual assessment to become available would risk unnecessarily prolonging such detention.
- (40) Member States should be able to derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, taking into account, inter alia, the seriousness of the alleged criminal offence and the measures that could be taken if the child is found guilty of such an offence, provided that the derogation is compatible with the child's best interests. In that context, all relevant elements should be taken into consideration, including whether or not the child has, in the recent past, been the subject of an individual assessment in the context of criminal proceedings or whether the case concerned may be conducted without an indictment.
- (41) The duty of care towards children who are suspects or accused persons underpins a fair administration of justice, in particular where children are deprived of liberty and are therefore in a particularly weak position. In order to ensure the personal integrity of a child who is deprived of liberty, the child should have the right to a medical examination. Such a medical examination should be carried out by a physician or another qualified professional, either on the initiative of the competent authorities, in particular where specific health indications give reasons for such an examination, or in response to a request of the child, of the holder of parental responsibility or of the child's lawyer. Member States should lay down practical arrangements concerning medical examinations that are to be carried out in accordance with this Directive, and concerning access by children to such examinations. Such arrangements could, inter alia, address situations where two or more requests for medical examinations are made in respect of the same child in a short period of time.
- (42) Children who are suspects or accused persons in criminal proceedings are not always able to understand the content of questioning to which they are subject. In order to ensure sufficient protection of such children, questioning by police or by other law enforcement authorities should therefore be audio-visually recorded where it is proportionate to do so, taking into account, inter alia, whether or not a lawyer is present and whether or not the child is deprived of liberty, it being understood that the child's best interests should always be a primary consideration. This Directive does not require Member States to make audiovisual recordings of questioning of children by a judge or a court.
- (43) Where an audiovisual recording is to be made in accordance with this Directive but an insurmountable technical problem renders it impossible to make such a recording, the police or other law enforcement authorities should be able to question the child without it being audio-visually recorded, provided that reasonable efforts have been made to overcome the technical problem, that it is not appropriate to postpone the questioning, and that it is compatible with the child's best interests.
- (44) Whether or not the questioning of children is audio-visually recorded, questioning should in any event be carried out in a manner that takes into account the age and maturity of the children concerned.
- (45) Children are in a particularly vulnerable position when they are deprived of liberty. Special efforts should therefore be undertaken to avoid deprivation of liberty and, in particular, detention of children at any stage of the proceedings before the final determination by a court of the question whether the child concerned has committed the criminal offence, given the possible risks for their physical, mental and social development, and because deprivation of liberty could lead to difficulties as regards their reintegration into society. Member States could make practical arrangements, such as guidelines or instructions to police officers, on the application of this requirement to situations of police custody. In any case, this requirement is without prejudice to the possibility for police officers or other law enforcement authorities to apprehend a child in situations where it seems, *prima facie*, to be necessary to do so, such as *in flagrante delicto* or immediately after a criminal offence has been committed.

- (46) The competent authorities should always consider measures alternative to detention (alternative measures) and should have recourse to such measures where possible. Such alternative measures could include a prohibition for the child to be in certain places, an obligation for the child to reside in a specific place, restrictions concerning contact with specific persons, reporting obligations to the competent authorities, participation in educational programmes, or, subject to the child's consent, participation in therapeutic or addiction programmes.
- (47) Detention of children should be subject to periodic review by a court, which could also be a judge sitting alone. It should be possible to carry out such periodic review *ex officio* by the court, or at the request of the child, of the child's lawyer or of a judicial authority which is not a court, in particular a prosecutor. Member States should provide for practical arrangements in that respect, including regarding the situation where a periodic review has already been carried out *ex officio* by the court and the child or the child's lawyer requests that another review be carried out.
- (48) Where children are detained they should benefit from special protection measures. In particular, they should be held separately from adults unless it is considered to be in the child's best interests not to do so, in accordance with Article 37(c) of the UN Convention on the Rights of the Child. When a detained child reaches the age of 18, it should be possible to continue separate detention where warranted, taking into account the circumstances of the person concerned. Particular attention should be paid to the manner in which detained children are treated given their inherent vulnerability. Children should have access to educational facilities according to their needs.
- (49) Member States should ensure that children who are suspects or accused persons and kept in police custody are held separately from adults, unless it is considered to be in the child's best interests not to do so, or unless, in exceptional circumstances, it is not possible in practice to do so, provided that children are held together with adults in a manner that is compatible with the child's best interests. For example, in sparsely populated areas, it should be possible, exceptionally, for children to be held in police custody with adults, unless this is contrary to the child's best interests. In such situations, particular vigilance should be required on the part of competent authorities in order to protect the child's physical integrity and well-being.
- (50) It should be possible to detain children with young adults unless this is contrary to the child's best interests. It is for Member States to determine which persons are considered to be young adults in accordance with their national law and procedures. Member States are encouraged to determine that persons older than 24 years do not qualify as young adults.
- (51) Where children are detained, Member States should take appropriate measures as set out in this Directive. Such measures should, *inter alia*, ensure the effective and regular exercise of the right to family life. Children should have the right to maintain regular contact with their parents, family and friends through visits and correspondence, unless exceptional restrictions are required in the child's best interests or in the interests of justice.
- (52) Member States should also take appropriate measures to ensure respect for the freedom of religion or belief of the child. In that regard, Member States should, in particular, refrain from interfering with the religion or belief of the child. Member States are not, however, required to take active steps to assist children in worshipping.
- (53) Where appropriate, Member States should also take appropriate measures in other situations of deprivation of liberty. The measures taken should be proportionate and appropriate to the nature of the deprivation of liberty, such as police custody or detention, and to its duration.
- (54) Professionals in direct contact with children should take into account the particular needs of children of different age groups and should ensure that the proceedings are adapted to them. For those purposes, those professionals should be specially trained in dealing with children.
- (55) Children should be treated in a manner appropriate to their age, maturity and level of understanding, taking into account any special needs, including any communication difficulties, that they may have.

- (56) Taking into account the differences between the legal traditions and systems across the Member States, the privacy of children during criminal proceedings should be ensured in the best possible way with a view, *inter alia*, to facilitating the reintegration of children into society. Member States should provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public. This is without prejudice to judgments being pronounced publicly in accordance with Article 6 ECHR.
- (57) Children should have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved. If more than one person holds parental responsibility for the same child, the child should have the right to be accompanied by all of them, unless this is not possible in practice despite the competent authorities' reasonable efforts. Member States should lay down practical arrangements for the exercise by children of the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved and concerning the conditions under which an accompanying person may be temporarily excluded from court hearings. Such arrangements could, *inter alia*, address the situation where the holder of parental responsibility is temporarily not available to accompany the child or where the holder does not want to make use of the possibility to accompany the child, provided that the child's best interests are taken into account.
- (58) In certain circumstances, which can also relate to only one of the persons holding parental responsibility, the child should have the right to be accompanied during court hearings by an appropriate adult other than the holder of parental responsibility. One of those circumstances is where the holder of parental responsibility accompanying the child could substantially jeopardise the criminal proceedings, in particular where objective and factual circumstances indicate or give rise to the suspicion that evidence may be destroyed or altered, witnesses may be interfered with, or the holder of parental responsibility may have been involved with the child in the alleged criminal activity.
- (59) In accordance with this Directive, children should also have the right to be accompanied by the holder of parental responsibility during other stages of the proceedings at which they are present, such as during police questioning.
- (60) The right of an accused person to appear in person at the trial is based on the right to a fair trial provided for in Article 47 of the Charter and in Article 6 ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights. Member States should take appropriate measures to provide incentives for children to attend their trial, including by summoning them in person and by sending a copy of the summons to the holder of parental responsibility or, where that would be contrary to the child's best interests, to another appropriate adult. Member States should provide for practical arrangements regarding the presence of a child at the trial. Those arrangements could include provisions concerning the conditions under which a child can be temporarily excluded from the trial.
- (61) Certain rights provided for by this Directive should apply to children who are requested persons from the time when they are arrested in the executing Member State.
- (62) The European arrest warrant proceedings are crucial for cooperation between the Member States in criminal matters. Compliance with the time-limits contained in Framework Decision 2002/584/JHA is essential for such cooperation. Therefore, while children who are requested persons should be able to exercise their rights fully under this Directive in European arrest warrant proceedings, those time-limits should be complied with.
- (63) Member States should take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field or have effective access to specific training, in particular with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to children. Member States should also take appropriate measures to promote the provision of such specific training to lawyers who deal with criminal proceedings involving children.
- (64) In order to monitor and evaluate the effectiveness of this Directive, there is a need for collection of relevant data, from available data, with regard to the implementation of the rights set out in this Directive. Such data include data recorded by the judicial authorities and by law enforcement authorities and, as far as possible, administrative data compiled by healthcare and social welfare services as regards the rights set out in this Directive, in particular in relation to the number of children given access to a lawyer, the number of individual assessments carried out, the number of audiovisual recordings of questioning and the number of children deprived of liberty.

- (65) Member States should respect and guarantee the rights set out in this Directive, without any discrimination based on any ground such as race, colour, sex, sexual orientation, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability or birth.
- (66) This Directive upholds the fundamental rights and principles as recognised by the Charter and by the ECHR, including the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, the integration of persons with disabilities, the right to an effective remedy and to a fair trial, the presumption of innocence, and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.
- (67) This Directive lays down minimum rules. Member States should be able to extend the rights laid down in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection provided for by Member States should never fall below the standards provided by the Charter or the ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights.
- (68) Since the objectives of this Directive, namely setting common minimum standards on procedural safeguards for children who are suspects or accused persons in criminal proceedings, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effect, 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 Directive does not go beyond what is necessary in order to achieve those objectives.
- (69) In accordance with Articles 1 and 2 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 Directive and are not bound by it or subject to its application.
- (70) In accordance with Articles 1 and 2 of 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 Directive, and is not bound by it or subject to its application.
- (71) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents ⁽¹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down common minimum rules concerning certain rights of children who are:

- (a) suspects or accused persons in criminal proceedings; or
- (b) subject to European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA (requested persons).

⁽¹⁾ OJ C 369, 17.12.2011, p. 14.

*Article 2***Scope**

1. This Directive applies to children who are suspects or accused persons in criminal proceedings. It applies until the final determination of the question whether the suspect or accused person has committed a criminal offence, including, where applicable, sentencing and the resolution of any appeal.
2. This Directive applies to children who are requested persons from the time of their arrest in the executing Member State, in accordance with Article 17.
3. With the exception of Article 5, point (b) of Article 8(3), and Article 15, insofar as those provisions refer to a holder of parental responsibility, this Directive, or certain provisions thereof, applies to persons as referred to in paragraphs 1 and 2 of this Article, where such persons were children when they became subject to the proceedings but have subsequently reached the age of 18, and the application of this Directive, or certain provisions thereof, is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned. Member States may decide not to apply this Directive when the person concerned has reached the age of 21.
4. This Directive applies to children who were not initially suspects or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority.
5. This Directive does not affect national rules determining the age of criminal responsibility.
6. Without prejudice to the right to a fair trial, in respect of minor offences:
 - (a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or
 - (b) where deprivation of liberty cannot be imposed as a sanction,

this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters.

In any event, this Directive shall fully apply where the child is deprived of liberty, irrespective of the stage of the criminal proceedings.

*Article 3***Definitions**

For the purposes of this Directive the following definitions apply:

- (1) 'child' means a person below the age of 18;
- (2) 'holder of parental responsibility' means any person having parental responsibility over a child;
- (3) 'parental responsibility' means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effects, including rights of custody and rights of access.

With regard to point (1) of the first paragraph, where it is uncertain whether a person has reached the age of 18, that person shall be presumed to be a child.

*Article 4***Right to information**

1. Member States shall ensure that when children are made aware that they are suspects or accused persons in criminal proceedings, they are informed promptly about their rights in accordance with Directive 2012/13/EU and about general aspects of the conduct of the proceedings.

Member States shall also ensure that children are informed about the rights set out in this Directive. That information shall be provided as follows:

- (a) promptly when children are made aware that they are suspects or accused persons, in respect of:
 - (i) the right to have the holder of parental responsibility informed, as provided for in Article 5;
 - (ii) the right to be assisted by a lawyer, as provided for in Article 6;
 - (iii) the right to protection of privacy, as provided for in Article 14;
 - (iv) the right to be accompanied by the holder of parental responsibility during stages of the proceedings other than court hearings, as provided for in Article 15(4);
 - (v) the right to legal aid, as provided for in Article 18;
- (b) at the earliest appropriate stage in the proceedings, in respect of:
 - (i) the right to an individual assessment, as provided for in Article 7;
 - (ii) the right to a medical examination, including the right to medical assistance, as provided for in Article 8;
 - (iii) the right to limitation of deprivation of liberty and to the use of alternative measures, including the right to periodic review of detention, as provided for in Articles 10 and 11;
 - (iv) the right to be accompanied by the holder of parental responsibility during court hearings, as provided for in Article 15(1);
 - (v) the right to appear in person at trial, as provided for in Article 16;
 - (vi) the right to effective remedies, as provided for in Article 19;
- (c) upon deprivation of liberty in respect of the right to specific treatment during deprivation of liberty, as provided for in Article 12.

2. Member States shall ensure that the information referred to in paragraph 1 is given in writing, orally, or both, in simple and accessible language, and that the information given is noted, using the recording procedure in accordance with national law.

3. Where children are provided with a Letter of Rights pursuant to Directive 2012/13/EU, Member States shall ensure that such a Letter includes a reference to their rights under this Directive.

*Article 5***Right of the child to have the holder of parental responsibility informed**

1. Member States shall ensure that the holder of parental responsibility is provided, as soon as possible, with the information that the child has a right to receive in accordance with Article 4.

2. The information referred to in paragraph 1 shall be provided to another appropriate adult who is nominated by the child and accepted as such by the competent authority where providing that information to the holder of parental responsibility:

- (a) would be contrary to the child's best interests;
- (b) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown;
- (c) could, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings.

Where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the competent authority, the competent authority shall, taking into account the child's best interests, designate, and provide the information to, another person. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.

3. Where the circumstances which led to the application of point (a), (b) or (c) of paragraph 2 cease to exist, any information that the child receives in accordance with Article 4, and which remains relevant in the course of the proceedings, shall be provided to the holder of parental responsibility.

Article 6

Assistance by a lawyer

1. Children who are suspects or accused persons in criminal proceedings have the right of access to a lawyer in accordance with Directive 2013/48/EU. Nothing in this Directive, in particular in this Article, shall affect that right.

2. Member States shall ensure that children are assisted by a lawyer in accordance with this Article in order to allow them to exercise the rights of the defence effectively.

3. Member States shall ensure that children are assisted by a lawyer without undue delay once they are made aware that they are suspects or accused persons. In any event, children shall be assisted by a lawyer from whichever of the following points in time is the earliest:

- (a) before they are questioned by the police or by another law enforcement or judicial authority;
- (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 4;
- (c) without undue delay after deprivation of liberty;
- (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

4. Assistance by a lawyer shall include the following:

- (a) Member States shall ensure that children have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;
- (b) Member States shall ensure that children are assisted by a lawyer when they are questioned, and that the lawyer is able to participate effectively during questioning. Such participation shall be conducted in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise or essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure under national law;

(c) Member States shall ensure that children are, as a minimum, assisted by a lawyer during the following investigative or evidence-gathering acts, where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:

- (i) identity parades;
- (ii) confrontations;
- (iii) reconstructions of the scene of a crime.

5. Member States shall respect the confidentiality of communication between children and their lawyer in the exercise of the right to be assisted by a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

6. Provided that this complies with the right to a fair trial, Member States may derogate from paragraph 3 where assistance by a lawyer is not proportionate in the light of the circumstances of the case, taking into account the seriousness of the alleged criminal offence, the complexity of the case and the measures that could be taken in respect of such an offence, it being understood that the child's best interests shall always be a primary consideration.

In any event, Member States shall ensure that children are assisted by a lawyer:

- (a) when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and
- (b) during detention.

Member States shall also ensure that deprivation of liberty is not imposed as a criminal sentence, unless the child has been assisted by a lawyer in such a way as to allow the child to exercise the rights of the defence effectively and, in any event, during the trial hearings before a court.

7. Where the child is to be assisted by a lawyer in accordance with this Article but no lawyer is present, the competent authorities shall postpone the questioning of the child, or other investigative or evidence-gathering acts provided for in point (c) of paragraph 4, for a reasonable period of time in order to allow for the arrival of the lawyer or, where the child has not nominated a lawyer, to arrange a lawyer for the child.

8. In exceptional circumstances, and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence.

Member States shall ensure that the competent authorities, when applying this paragraph, shall take the child's best interests into account.

A decision to proceed to questioning in the absence of the lawyer under this paragraph may be taken only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.

Article 7

Right to an individual assessment

1. Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.

2. For that purpose children who are suspects or accused persons in criminal proceedings shall be individually assessed. The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have.
3. The extent and detail of the individual assessment may vary depending on the circumstances of the case, the measures that can be taken if the child is found guilty of the alleged criminal offence, and whether the child has, in the recent past, been the subject of an individual assessment.
4. The individual assessment shall serve to establish and to note, in accordance with the recording procedure in the Member State concerned, such information about the individual characteristics and circumstances of the child as might be of use to the competent authorities when:
 - (a) determining whether any specific measure to the benefit of the child is to be taken;
 - (b) assessing the appropriateness and effectiveness of any precautionary measures in respect of the child;
 - (c) taking any decision or course of action in the criminal proceedings, including when sentencing.
5. The individual assessment shall be carried out at the earliest appropriate stage of the proceedings and, subject to paragraph 6, before indictment.
6. In the absence of an individual assessment, an indictment may nevertheless be presented provided that this is in the child's best interests and that the individual assessment is in any event available at the beginning of the trial hearings before a court.
7. Individual assessments shall be carried out with the close involvement of the child. They shall be carried out by qualified personnel, following, as far as possible, a multidisciplinary approach and involving, where appropriate, the holder of parental responsibility, or another appropriate adult as referred to in Articles 5 and 15, and/or a specialised professional.
8. If the elements that form the basis of the individual assessment change significantly, Member States shall ensure that the individual assessment is updated throughout the criminal proceedings.
9. Member States may derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, provided that it is compatible with the child's best interests.

Article 8

Right to a medical examination

1. Member States shall ensure that children who are deprived of liberty have the right to a medical examination without undue delay with a view, in particular, to assessing their general mental and physical condition. The medical examination shall be as non-invasive as possible and shall be carried out by a physician or another qualified professional.
2. The results of the medical examination shall be taken into account when determining the capacity of the child to be subject to questioning, other investigative or evidence-gathering acts, or any measures taken or envisaged against the child.
3. The medical examination shall be carried out either on the initiative of the competent authorities, in particular where specific health indications call for such an examination, or on a request by any of the following:
 - (a) the child;
 - (b) the holder of parental responsibility, or another appropriate adult as referred to in Articles 5 and 15;
 - (c) the child's lawyer.

4. The conclusion of the medical examination shall be recorded in writing. Where required, medical assistance shall be provided.
5. Member States shall ensure that another medical examination is carried out where the circumstances so require.

Article 9

Audiovisual recording of questioning

1. Member States shall ensure that questioning of children by police or other law enforcement authorities during the criminal proceedings is audio-visually recorded where this is proportionate in the circumstances of the case, taking into account, inter alia, whether a lawyer is present or not and whether the child is deprived of liberty or not, provided that the child's best interests are always a primary consideration.
2. In the absence of audiovisual recording, questioning shall be recorded in another appropriate manner, such as by written minutes which are duly verified.
3. This Article shall be without prejudice to the possibility to ask questions for the sole purpose of the identification of the child without audiovisual recording.

Article 10

Limitation of deprivation of liberty

1. Member States shall ensure that deprivation of liberty of a child at any stage of the proceedings is limited to the shortest appropriate period of time. Due account shall be taken of the age and individual situation of the child, and of the particular circumstances of the case.
2. Member States shall ensure that deprivation of liberty, in particular detention, shall be imposed on children only as a measure of last resort. Member States shall ensure that any detention is based on a reasoned decision, subject to judicial review by a court. Such a decision shall also be subject to periodic review, at reasonable intervals of time, by a court, either *ex officio* or at the request of the child, of the child's lawyer, or of a judicial authority which is not a court. Without prejudice to judicial independence, Member States shall ensure that decisions to be taken pursuant to this paragraph are taken without undue delay.

Article 11

Alternative measures

Member States shall ensure that, where possible, the competent authorities have recourse to measures alternative to detention (alternative measures).

Article 12

Specific treatment in the case of deprivation of liberty

1. Member States shall ensure that children who are detained are held separately from adults, unless it is considered to be in the child's best interests not to do so.

2. Member States shall also ensure that children who are kept in police custody are held separately from adults, unless:

- (a) it is considered to be in the child's best interests not to do so; or
- (b) in exceptional circumstances, it is not possible in practice to do so, provided that children are held together with adults in a manner that is compatible with the child's best interests.

3. Without prejudice to paragraph 1, when a detained child reaches the age of 18, Member States shall provide for the possibility to continue to hold that person separately from other detained adults where warranted, taking into account the circumstances of the person concerned, provided that this is compatible with the best interests of children who are detained with that person.

4. Without prejudice to paragraph 1, and taking into account paragraph 3, children may be detained with young adults, unless this is contrary to the child's best interests.

5. When children are detained, Member States shall take appropriate measures to:

- (a) ensure and preserve their health and their physical and mental development;
- (b) ensure their right to education and training, including where the children have physical, sensory or learning disabilities;
- (c) ensure the effective and regular exercise of their right to family life;
- (d) ensure access to programmes that foster their development and their reintegration into society; and
- (e) ensure respect for their freedom of religion or belief.

The measures taken pursuant to this paragraph shall be proportionate and appropriate to the duration of the detention.

Points (a) and (e) of the first subparagraph shall also apply to situations of deprivation of liberty other than detention. The measures taken shall be proportionate and appropriate to such situations of deprivation of liberty.

Points (b), (c), and (d) of the first subparagraph shall apply to situations of deprivation of liberty other than detention only to the extent that is appropriate and proportionate in the light of the nature and duration of such situations.

6. Member States shall endeavour to ensure that children who are deprived of liberty can meet with the holder of parental responsibility as soon as possible, where such a meeting is compatible with investigative and operational requirements. This paragraph shall be without prejudice to the nomination or designation of another appropriate adult pursuant to Article 5 or 15.

Article 13

Timely and diligent treatment of cases

1. Member States shall take all appropriate measures to ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence.

2. Member States shall take appropriate measures to ensure that children are always treated in a manner which protects their dignity and which is appropriate to their age, maturity and level of understanding, and which takes into account any special needs, including any communication difficulties, that they may have.

*Article 14***Right to protection of privacy**

1. Member States shall ensure that the privacy of children during criminal proceedings is protected.
2. To that end, Member States shall either provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public.
3. Member States shall take appropriate measures to ensure that the records referred to in Article 9 are not publicly disseminated.
4. Member States shall, while respecting freedom of expression and information, and freedom and pluralism of the media, encourage the media to take self-regulatory measures in order to achieve the objectives set out in this Article.

*Article 15***Right of the child to be accompanied by the holder of parental responsibility during the proceedings**

1. Member States shall ensure that children have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved.
2. A child shall have the right to be accompanied by another appropriate adult who is nominated by the child and accepted as such by the competent authority where the presence of the holder of parental responsibility accompanying the child during court hearings:
 - (a) would be contrary to the child's best interests;
 - (b) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown; or
 - (c) would, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings.

Where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the competent authority, the competent authority shall, taking into account the child's best interests, designate another person to accompany the child. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.

3. Where the circumstances which led to an application of point (a), (b) or (c) of paragraph 2 cease to exist, the child shall have the right to be accompanied by the holder of parental responsibility during any remaining court hearings.
4. In addition to the right provided for under paragraph 1, Member States shall ensure that children have the right to be accompanied by the holder of parental responsibility, or by another appropriate adult as referred to in paragraph 2, during stages of the proceedings other than court hearings at which the child is present where the competent authority considers that:
 - (a) it is in the child's best interests to be accompanied by that person; and
 - (b) the presence of that person will not prejudice the criminal proceedings.

*Article 16***Right of children to appear in person at, and participate in, their trial**

1. Member States shall ensure that children have the right to be present at their trial and shall take all necessary measures to enable them to participate effectively in the trial, including by giving them the opportunity to be heard and to express their views.
2. Member States shall ensure that children who were not present at their trial have the right to a new trial or to another legal remedy, in accordance with, and under the conditions set out in, Directive (EU) 2016/343.

*Article 17***European arrest warrant proceedings**

Member States shall ensure that the rights referred to in Articles 4, 5, 6 and 8, Articles 10 to 15 and Article 18 apply *mutatis mutandis*, in respect of children who are requested persons, upon their arrest pursuant to European arrest warrant proceedings in the executing Member State.

*Article 18***Right to legal aid**

Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to be assisted by a lawyer pursuant to Article 6.

*Article 19***Remedies**

Member States shall ensure that children who are suspects or accused persons in criminal proceedings and children who are requested persons have an effective remedy under national law in the event of a breach of their rights under this Directive.

*Article 20***Training**

1. Member States shall ensure that staff of law enforcement authorities and of detention facilities who handle cases involving children, receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child.
2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Member States, and with due respect for the role of those responsible for the training of judges and prosecutors, Member States shall take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field, effective access to specific training, or both.

3. With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of specific training as referred to in paragraph 2 to lawyers who deal with criminal proceedings involving children.

4. Through their public services or by funding child support organisations, Member States shall encourage initiatives enabling those providing children with support and restorative justice services to receive adequate training to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

Article 21

Data collection

Member States shall by 11 June 2021 and every three years thereafter, send to the Commission available data showing how the rights set out in this Directive have been implemented.

Article 22

Costs

Member States shall meet the costs resulting from the application of Articles 7, 8 and 9 irrespective of the outcome of the proceedings, unless, as regards the costs resulting from the application of Article 8, they are covered by medical insurance.

Article 23

Non-regression

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law, in particular the UN Convention on the Rights of the Child, or the law of any Member State which provides a higher level of protection.

Article 24

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 11 June 2019. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

*Article 25***Report**

The Commission shall, by 11 June 2022, submit a report to the European Parliament and to the Council assessing the extent to which the Member States have taken the necessary measures to comply with this Directive, including an evaluation of the application of Article 6, accompanied, if necessary, by legislative proposals.

*Article 26***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 27***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 11 May 2016.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
J.A. HENNIS-PLASSCHAERT

I

(Legislative acts)

DIRECTIVES

DIRECTIVE (EU) 2016/1919 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 26 October 2016****on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings**

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 point (b) of Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The purpose of this Directive is to ensure the effectiveness of the right of access to a lawyer as provided for under Directive 2013/48/EU of the European Parliament and of the Council ⁽³⁾ by making available the assistance of a lawyer funded by the Member States for suspects and accused persons in criminal proceedings and for requested persons who are the subject of European arrest warrant proceedings pursuant to Council Framework Decision 2002/584/JHA ⁽⁴⁾ (requested persons).
- (2) By establishing common minimum rules concerning the right to legal aid for suspects, accused persons and requested persons, this Directive aims to strengthen the trust of Member States in each other's criminal justice systems and thus to improve mutual recognition of decisions in criminal matters.
- (3) The third paragraph of Article 47 of the Charter of Fundamental Rights of the European Union (the Charter), Article 6(3)(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR) enshrine the right to legal aid in criminal proceedings in accordance with the conditions laid down in those provisions. The Charter has the same legal value as the Treaties, and the Member States are parties to the ECHR and the ICCPR. However, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.

⁽¹⁾ OJ C 226, 16.7.2014, p. 63.

⁽²⁾ Position of the European Parliament of 4 October 2016 (not yet published in the Official Journal) and Council decision of 13 October 2016.

⁽³⁾ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

⁽⁴⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

- (4) On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ⁽¹⁾ ('the Roadmap'). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E).
- (5) On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — 'An open and secure Europe serving and protecting citizens' ⁽²⁾ (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.
- (6) Five measures on procedural rights in criminal proceedings have been adopted pursuant to the Roadmap to date, namely Directives 2010/64/EU ⁽³⁾, 2012/13/EU ⁽⁴⁾, 2013/48/EU, (EU) 2016/343 ⁽⁵⁾ and (EU) 2016/800 ⁽⁶⁾ of the European Parliament and of the Council.
- (7) This Directive relates to the second part of measure C of the Roadmap, regarding legal aid.
- (8) Legal aid should cover the costs of the defence of suspects, accused persons and requested persons. When granting legal aid, the competent authorities of the Member States should be able to require that suspects, accused persons or requested persons bear part of those costs themselves, depending on their financial resources.
- (9) Without prejudice to Article 6 of Directive (EU) 2016/800, this Directive should not apply where suspects or accused persons, or requested persons, have waived their right of access to a lawyer in accordance with, respectively, Article 9 or Article 10(3) of Directive 2013/48/EU, and have not revoked such waiver, or where Member States have applied the temporary derogations in accordance with Article 3(5) or (6) of Directive 2013/48/EU, for the time of such derogation.
- (10) Where a person who was initially not a suspect or an accused person, such as a witness, becomes a suspect or an accused person, that person should have the right not to incriminate him or herself and the right to remain silent, in accordance with Union law and the ECHR, as interpreted by the Court of Justice of the European Union (Court of Justice) and by the European Court of Human Rights (ECtHR). This Directive therefore makes express reference to the practical situation where such a person becomes a suspect or an accused person during questioning by the police or by another law enforcement authority in the context of criminal proceedings. Where, in the course of such questioning, a person other than a suspect or an accused person becomes a suspect or an accused person, questioning should be suspended immediately. However, it should be possible to continue questioning where the person concerned has been made aware that he or she has become a suspect or an accused person and that person is able to fully exercise the rights provided for in this Directive.
- (11) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions other than deprivation of liberty in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.

⁽¹⁾ OJ C 295, 4.12.2009, p. 1.

⁽²⁾ OJ C 115, 4.5.2010, p. 1.

⁽³⁾ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁽⁴⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁽⁵⁾ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

⁽⁶⁾ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

- (12) In some Member States certain minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.
- (13) The application of this Directive to minor offences is subject to the conditions set out in this Directive. Member States should be able to apply a means test, a merits test, or both in order to determine whether legal aid is to be granted. Provided that this complies with the right to a fair trial, the merits test may be deemed not to have been met in respect of certain minor offences.
- (14) The scope of application of this Directive in respect of certain minor offences should not affect the obligations of Member States under the ECHR to ensure the right to a fair trial, including obtaining the assistance of a lawyer.
- (15) Provided that this complies with the right to a fair trial, the following situations do not constitute a deprivation of liberty within the meaning of this Directive: identifying the suspect or accused person; determining whether an investigation should be started; verifying the possession of weapons or other similar safety issues; carrying out investigative or evidence-gathering acts other than those specifically referred to in this Directive, such as body checks, physical examinations, blood, alcohol or similar tests, or the taking of photographs or fingerprints; bringing the suspect or accused person to appear before a competent authority, in accordance with national law.
- (16) This Directive lays down minimum rules. Member States should be able to grant legal aid in situations which are not covered by this Directive, for example when investigative or evidence-gathering acts other than those specifically referred to in this Directive are carried out.
- (17) In accordance with Article 6(3)(c) ECHR, suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer are to have the right to legal aid when the interests of justice so require. This minimum rule allows Member States to apply a means test, a merits test, or both. The application of those tests should not limit or derogate from the rights and procedural safeguards that are ensured under the Charter and the ECHR, as interpreted by the Court of Justice and by the ECtHR.
- (18) Member States should lay down practical arrangements regarding the provision of legal aid. Such arrangements could determine that legal aid is granted following a request by a suspect, an accused person or a requested person. Given in particular the needs of vulnerable persons, such a request should not, however, be a substantive condition for granting legal aid.
- (19) The competent authorities should grant legal aid without undue delay and at the latest before questioning of the person concerned by the police, by another law enforcement authority or by a judicial authority, or before the specific investigative or evidence-gathering acts referred to in this Directive are carried out. If the competent authorities are not able to do so, they should at least grant emergency or provisional legal aid before such questioning or before such investigative or evidence-gathering acts are carried out.
- (20) Given the specificity of European arrest warrant proceedings, the interpretation of the provisions of this Directive relating only to requested persons should take into account this specificity and should not in any way prejudice the interpretation of the other provisions of this Directive.
- (21) Requested persons should have the right to legal aid in the executing Member State. In addition, requested persons who are the subject of European arrest warrant proceedings for the purpose of conducting a criminal prosecution and who exercise their right to appoint a lawyer in the issuing Member State in accordance with Directive 2013/48/EU should have the right to legal aid in that Member State for the purpose of such proceedings in the executing Member State, in so far as legal aid is necessary to ensure effective access to justice, as laid down in Article 47 of the Charter. This would be the case where the lawyer in the executing Member State cannot fulfil his or her tasks as regards the execution of a European arrest warrant effectively and efficiently without the assistance of a lawyer in the issuing Member State. Any decision regarding the granting of legal aid in the issuing Member State should be taken by an authority that is competent for taking such decisions in that Member State, on the basis of criteria that are established by that Member State when implementing this Directive.

- (22) To ensure effective access to a lawyer by requested persons, Member States should ensure that requested persons have a right to legal aid until they are surrendered, or until the decision not to surrender them becomes final.
- (23) When implementing this Directive, Member States should ensure respect for the fundamental right to legal aid as provided for by the Charter and by the ECHR. In doing so, they should respect the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.
- (24) Without prejudice to provisions of national law concerning the mandatory presence of a lawyer, a competent authority should decide, without undue delay, whether or not to grant legal aid. The competent authority should be an independent authority that is competent to take decisions regarding the granting of legal aid, or a court, including a judge sitting alone. In urgent situations the temporary involvement of the police and the prosecution should, however, also be possible in so far as this is necessary for granting legal aid in a timely manner.
- (25) Where legal aid has been granted to a suspect, an accused person or a requested person, one way of ensuring its effectiveness and quality is to facilitate continuity in his or her legal representation. In that respect, Member States should facilitate continuity of legal representation throughout the criminal proceedings, as well as — where relevant — in European arrest warrant proceedings.
- (26) Adequate training should be provided to staff involved in the decision-making on legal aid in criminal proceedings and in European arrest warrant proceedings. Without prejudice to the judicial independence and differences in the organisation of the judiciary across the Member States, Member States should request that those responsible for the training of judges provide such training to courts and judges that take decisions regarding the granting of legal aid.
- (27) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. An effective remedy should be available where the right to legal aid is undermined or the provision of legal aid is delayed or refused in full or in part.
- (28) In order to monitor and evaluate the effectiveness of this Directive, there is a need for collection of relevant data, from available data, with regard to the implementation of the rights set out in this Directive. Such data include, where possible, the number of requests for legal aid in criminal proceedings, as well as in European arrest warrant proceedings where the Member State concerned acts as an issuing or executing Member State, the number of cases where legal aid was granted, and the number of cases where a request for legal aid was refused. Data on the costs of providing legal aid to suspects or accused persons and to requested persons should also be collected in so far as possible.
- (29) This Directive should apply to suspects, accused persons and requested persons regardless of their legal status, citizenship or nationality. Member States should respect and guarantee the rights set out in this Directive, without any discrimination based on any ground such as race, colour, sex, sexual orientation, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability or birth. This Directive upholds the fundamental rights and principles recognised by the Charter and by the ECHR, including the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, the integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence, and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.
- (30) This Directive lays down minimum rules. Member States should be able to extend the rights laid down in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection provided for by Member States should never fall below the standards provided by the Charter or by the ECHR, as interpreted by the Court of Justice and by the ECtHR.
- (31) Since the objective of this Directive, namely setting common minimum rules concerning the right to legal aid for suspects, accused persons and requested persons, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (32) In accordance with Articles 1 and 2 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 Treaty on the Functioning of the European Union (TFEU), and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (33) In accordance with Articles 1 and 2 of 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 Directive, and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

1. This Directive lays down common minimum rules concerning the right to legal aid for:
 - (a) suspects and accused persons in criminal proceedings; and
 - (b) persons who are the subject of European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA (requested persons).
2. This Directive complements Directives 2013/48/EU and (EU) 2016/800. Nothing in this Directive shall be interpreted as limiting the rights provided for in those Directives.

Article 2

Scope

1. This Directive applies to suspects and accused persons in criminal proceedings who have a right of access to a lawyer pursuant to Directive 2013/48/EU and who are:
 - (a) deprived of liberty;
 - (b) required to be assisted by a lawyer in accordance with Union or national law; or
 - (c) required or permitted to attend an investigative or evidence-gathering act, including as a minimum the following:
 - (i) identity parades;
 - (ii) confrontations;
 - (iii) reconstructions of the scene of a crime.
2. This Directive also applies, upon arrest in the executing Member State, to requested persons who have a right of access to a lawyer pursuant to Directive 2013/48/EU.
3. This Directive also applies, under the same conditions as provided for in paragraph 1, to persons who were not initially suspects or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority.
4. Without prejudice to the right to a fair trial, in respect of minor offences:
 - (a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or
 - (b) where deprivation of liberty cannot be imposed as a sanction;

this Directive applies only to the proceedings before a court having jurisdiction in criminal matters.

In any event, this Directive applies when a decision on detention is taken, and during detention, at any stage of the proceedings until the conclusion of the proceedings.

*Article 3***Definition**

For the purposes of this Directive, 'legal aid' means funding by a Member State of the assistance of a lawyer, enabling the exercise of the right of access to a lawyer.

*Article 4***Legal aid in criminal proceedings**

1. Member States shall ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require.
2. Member States may apply a means test, a merits test, or both to determine whether legal aid is to be granted in accordance with paragraph 1.
3. Where a Member State applies a means test, it shall take into account all relevant and objective factors, such as the income, capital and family situation of the person concerned, as well as the costs of the assistance of a lawyer and the standard of living in that Member State, in order to determine whether, in accordance with the applicable criteria in that Member State, a suspect or an accused person lacks sufficient resources to pay for the assistance of a lawyer.
4. Where a Member State applies a merits test, it shall take into account the seriousness of the criminal offence, the complexity of the case and the severity of the sanction at stake, in order to determine whether the interests of justice require legal aid to be granted. In any event, the merits test shall be deemed to have been met in the following situations:
 - (a) where a suspect or an accused person is brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and
 - (b) during detention.
5. Member States shall ensure that legal aid is granted without undue delay, and at the latest before questioning by the police, by another law enforcement authority or by a judicial authority, or before the investigative or evidence-gathering acts referred to in point (c) of Article 2(1) are carried out.
6. Legal aid shall be granted only for the purposes of the criminal proceedings in which the person concerned is suspected or accused of having committed a criminal offence.

*Article 5***Legal aid in European arrest warrant proceedings**

1. The executing Member State shall ensure that requested persons have a right to legal aid upon arrest pursuant to a European arrest warrant until they are surrendered, or until the decision not to surrender them becomes final.
2. The issuing Member State shall ensure that requested persons who are the subject of European arrest warrant proceedings for the purpose of conducting a criminal prosecution and who exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State in accordance with Article 10(4) and (5) of Directive 2013/48/EU have the right to legal aid in the issuing Member State for the purpose of such proceedings in the executing Member State, in so far as legal aid is necessary to ensure effective access to justice.
3. The right to legal aid referred to in paragraphs 1 and 2 may be subject to a means test in accordance with Article 4(3), which shall apply *mutatis mutandis*.

*Article 6***Decisions regarding the granting of legal aid**

1. Decisions on whether or not to grant legal aid and on the assignment of lawyers shall be made, without undue delay, by a competent authority. Member States shall take appropriate measures to ensure that the competent authority takes its decisions diligently, respecting the rights of the defence.
2. Member States shall take necessary measures to ensure that suspects, accused persons and requested persons are informed in writing if their request for legal aid is refused in full or in part.

*Article 7***Quality of legal aid services and training**

1. Member States shall take necessary measures, including with regard to funding, to ensure that:
 - (a) there is an effective legal aid system that is of an adequate quality; and
 - (b) legal aid services are of a quality adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession.
2. Member States shall ensure that adequate training is provided to staff involved in the decision-making on legal aid in criminal proceedings and in European arrest warrant proceedings.
3. With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of adequate training to lawyers providing legal aid services.
4. Member States shall take the necessary measures to ensure that suspects, accused persons and requested persons have the right, upon their request, to have the lawyer providing legal aid services assigned to them replaced, where the specific circumstances so justify.

*Article 8***Remedies**

Member States shall ensure that suspects, accused persons and requested persons have an effective remedy under national law in the event of a breach of their rights under this Directive.

*Article 9***Vulnerable persons**

Member States shall ensure that the particular needs of vulnerable suspects, accused persons and requested persons are taken into account in the implementation of this Directive.

*Article 10***Provision of data and report**

1. By 25 May 2021, and every three years thereafter, Member States shall submit available data to the Commission showing how the rights laid down in this Directive have been implemented.
2. By 25 May 2022, and every three years thereafter, the Commission shall submit a report on the implementation of this Directive to the European Parliament and to the Council. In its report, the Commission shall assess the implementation of this Directive as regards the right to legal aid in criminal proceedings and in European arrest warrant proceedings.

*Article 11***Non-regression**

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

*Article 12***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 25 May 2019. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

*Article 13***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 14***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 26 October 2016.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

I. LESAY

CORRIGENDA**Corrigendum to Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings**

(Official Journal of the European Union L 297 of 4 November 2016)

On page 7, Article 10(1):

for: '25 May 2021',

read: '5 May 2021';

on page 7, Article 10(2):

for: '25 May 2022',

read: '5 May 2022';

on page 8, Article 12(1):

for: '25 May 2019',

read: '5 May 2019':

V. SECTORIAL TEXTS

ANNEX

CONVENTION

Drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 26 July 1995;

DESIRING to ensure that their criminal laws contribute effectively to the protection of the financial interests of the European Communities;

NOTING that fraud affecting Community revenue and expenditure in many cases is not confined to a single country and is often committed by organized criminal networks;

CONVINCED that protection of the European Communities' financial interests calls for the criminal prosecution of fraudulent conduct injuring those interests and requires, for that purpose, the adoption of a common definition;

CONVINCED of the need to make such conduct punishable with effective, proportionate and dissuasive criminal penalties, without prejudice to the possibility of applying other penalties in appropriate cases, and of the need, at least in serious cases, to make such conduct punishable with deprivation of liberty which can give rise to extradition;

RECOGNIZING that businesses play an important role in the areas financed by the European Communities and that those with decision-making powers in business should not escape criminal responsibility in appropriate circumstances;

DETERMINED to combat together fraud affecting the European Communities' financial interests by undertaking obligations concerning jurisdiction, extradition, and mutual cooperation,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

*Article 1***General provisions**

1. For the purposes of this Convention, fraud affecting the European Communities' financial interests shall consist of:

(a) in respect of expenditure, any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

— non-disclosure of information in violation of a specific obligation, with the same effect,

— the misapplication of such funds for purposes other than those for which they were originally granted;

(b) in respect of revenue, any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

- non-disclosure of information in violation of a specific obligation, with the same effect,
- misapplication of a legally obtained benefit, with the same effect.

2. Subject to Article 2 (2), each Member State shall take the necessary and appropriate measures to transpose paragraph 1 into their national criminal law in such a way that the conduct referred to therein constitutes criminal offences.

3. Subject to Article 2 (2), each Member State shall also take the necessary measures to ensure that the intentional preparation or supply of false, incorrect or incomplete statements or documents having the effect described in paragraph 1 constitutes a criminal offence if it is not already punishable as a principal offence or as participation in, instigation of, or attempt to commit, fraud as defined in paragraph 1.

4. The intentional nature of an act or omission as referred to in paragraphs 1 and 3 may be inferred from objective, factual circumstances.

Article 2

Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 1, and participating in, instigating, or attempting the conduct referred to in Article 1 (1), are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, penalties involving deprivation of liberty which can give rise to extradition, it being understood that serious fraud shall be considered to be fraud involving a minimum amount to be set in each Member State. This minimum amount may not be set at a sum exceeding ECU 50 000.

2. However in cases of minor fraud involving a total amount of less than ECU 4 000 and not involving particularly serious circumstances under its laws, a Member State may provide for penalties of a different type from those laid down in paragraph 1.

3. The Council of the European Union, acting unanimously, may alter the amount referred to in paragraph 2.

Article 3

Criminal liability of heads of businesses

Each Member State shall take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the

principles defined by its national law in cases of fraud affecting the European Community's financial interests, as referred to in Article 1, by a person under their authority acting on behalf of the business.

Article 4

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with Article 1 and 2 (1) when:

- fraud, participation in fraud or attempted fraud affecting the European Communities' financial interests is committed in whole or in part within its territory, including fraud for which the benefit was obtained in that territory,
- a person within its territory knowingly assists or induces the commission of such fraud within the territory of any other State,
- the offender is a national of the Member State concerned, provided that the law of that Member State may require the conduct to be punishable also in the country where it occurred.

2. Each Member State may declare, when giving the notification referred to in Article 11 (2), that it will not apply the rule laid down in the third indent of paragraph 1 of this Article.

Article 5

Extradition and prosecution

1. Any Member State which, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with Articles 1 and 2 (1), when committed by its own nationals outside its territory.

2. Each Member State shall, when one of its nationals is alleged to have committed in another Member State a criminal offence involving the conduct described in Articles 1 and 2 (1), and it does not extradite that person to that other Member State solely on the ground of his or her nationality, submit the case to its competent authorities for the purpose of prosecution if appropriate. In order to enable prosecution to take place, the files, information and exhibits relating to the offence shall be transmitted in accordance with the procedures laid down in Article 6 of the European Convention on Extradition. The requesting Member State shall be informed of the prosecution initiated and of its outcome.

3. A Member State may not refuse extradition in the event of fraud affecting the European Communities'

financial interests for the sole reason that it concerns a tax or customs duty offence.

4. For the purposes of this Article, a Member State's own nationals shall be construed in accordance with any declaration made by it under Article 6 (1) (b) of the European Convention on Extradition and with paragraph 1 (c) of the Article.

Article 6

Cooperation

1. If a fraud as defined in Article 1 constitutes a criminal offence and concerns at least two Member States, those States shall cooperate effectively in the investigation, the prosecution and in carrying out the punishment imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State.

2. Where more than one Member State has jurisdiction and has the possibility of viable prosecution of an offence based on the same facts, the Member States involved shall cooperate in deciding which shall prosecute the offender or offenders with a view to centralizing the prosecution in a single Member State where possible.

Article 7

Ne bis in idem

1. Member States shall apply in their national criminal laws the 'ne bis in idem' rule, under which a person whose trial has been finally disposed of in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that if a penalty was imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing State.

2. A Member State may, when giving the notification referred to in Article 11 (2), declare that it shall not be bound by paragraph 1 of this Article in one or more of the following cases:

- (a) if the facts which were the subject of the judgement rendered abroad took place on its own territory either in whole or in part; in the latter case this exception shall not apply if those facts took place partly on the territory of the Member State where the judgement was rendered;
- (b) if the facts which were the subject of the judgment rendered abroad constitute an offence directed against the security or other equally essential interests of that Member State;

(c) if the facts which were the subject of the judgment rendered abroad were committed by an official of the Member State contrary to the duties of his office.

3. The exceptions which may be the subject of a declaration under paragraph 2 shall not apply if the Member State concerned in respect of the same facts requested the other Member State to bring the prosecution or granted extradition of the person concerned.

4. Relevant bilateral or multilateral agreements concluded between Member States and relevant declarations shall remain unaffected by this Article.

Article 8

Court of Justice

1. Any dispute between Member States on the interpretation or application of this Convention must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution.

If no solution is found within six months, the matter may be referred to the Court of Justice of the European Communities by a party to the dispute.

2. Any dispute between one or more Member States and the Commission of the European Communities concerning the application of Article 1 or 10 of this Convention which it has proved impossible to settle through negotiation may be submitted to the Court of Justice.

Article 9

Internal provisions

No provision in this Convention shall prevent Member States from adopting internal legal provisions which go beyond the obligations deriving from this Convention.

Article 10

Transmission

1. Member States shall transmit to the Commission of the European Communities the text of the provisions transposing into their domestic law the obligations imposed on them under the provisions of this Convention.

2. For the purposes of implementing this Convention, the High Contracting Parties shall determine, within the Council of the European Union, the information to be communicated or exchanged between the Member States or between the Member States and the Commission, and also the arrangements for doing so.

*Article 11***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 their constitutional requirements for adopting this Convention.

3. This Convention shall enter into force 90 days after the notification, referred to in paragraph 2, by the last Member State to fulfil that formality.

*Article 12***Accession**

1. This Convention shall be open to accession by any State that 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. Instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period 90 days.

*Article 13***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 European Communities* information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

ANNEX

PROTOCOL

drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests

THE HIGH CONTRACTING PARTIES to this Protocol, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 27 September 1996,

DESIRING to ensure that their criminal laws contribute effectively to the protection of the financial interests of the European Communities;

RECOGNIZING the importance of the Convention on the protection of the European Communities' financial interests of 26 July 1995 for combating fraud affecting Community revenue and expenditure;

AWARE that the financial interests of the European Communities may be damaged or threatened by other criminal offences, particularly acts of corruption by or against national and Community officials, responsible for the collection, management or disbursement of Community funds under their control;

CONSIDERING that people of different nationalities, employed by different public agencies or bodies, may be involved in such corruption and that, in the interests of effective action against such corruption with international ramifications, it is important for their reprehensible nature to be perceived in a similar manner under Member States' criminal laws;

NOTING that several Member States' criminal law on crime linked to the exercise of public duties in general and concerning corruption in particular covers only acts committed by or against their national officials and does not cover, or covers only in exceptional cases, conduct involving Community officials or officials of other Member States;

CONVINCED of the need for national law to be adapted where it does not penalize acts of corruption that damage or are likely to damage the financial interests of the European Communities involving Community officials or officials of other Member States;

CONVINCED also that such adaptation of national law should not be confined, in respect of Community officials, to acts of active or passive corruption, but should be extended to other crimes affecting or likely to affect the revenue or expenditure of the European Communities, including crimes committed by or against persons in whom the highest responsibilities are vested;

CONSIDERING that appropriate rules should also be laid down on jurisdiction and mutual cooperation, without prejudice to the legal conditions under which they are to apply in specific cases, including waiver of immunity where appropriate;

CONSIDERING finally that the relevant provisions of the Convention on the protection of the European Communities' financial interests of 26 July 1995 should be made applicable to the criminal acts covered by this Protocol,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

*Article 1***Definitions**

For the purposes of this Protocol:

1. (a) 'official' shall mean any 'Community' or 'national' official, including any national official of another Member State;

(b) the term 'Community official' shall mean:

- any person who is an official or other contracted employee within the meaning of the Staff Regulations of officials of the European Communities or the Conditions of employment of other servants of the European Communities,
- any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions equivalent to those performed by European Community officials or other servants.

Members of bodies set up in accordance with the Treaties establishing the European Communities and the staff of such bodies shall be treated as Community officials, inasmuch as the Staff Regulations of the European Communities or the Conditions of employment of other servants of the European Communities do not apply to them;

- (c) the term 'national official' shall be understood by reference to the definition of 'official' or 'public officer' in the national law of the Member State in which the person in question performs that function for the purposes of application of the criminal law of that Member State.

Nevertheless, in the case of proceedings involving a Member State's official initiated by another Member State the latter shall not be bound to apply the definition of 'national official' except in so far as that definition is compatible with its national law;

2. 'Convention' shall mean the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, of 26 July 1995 ⁽¹⁾;

*Article 2***Passive corruption**

1. For the purposes of this Protocol, the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute passive corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.

*Article 3***Active corruption**

1. For the purposes of this Protocol, the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute active corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.

*Article 4***Assimilation**

1. Each Member State shall take the necessary measures to ensure that in its criminal law the descriptions of the offences constituting conduct of the type referred to in Article 1 of the Convention committed by its national officials in the exercise of their functions apply similarly in cases where such offences are committed by Community officials in the exercise of their duties.

2. Each Member State shall take the necessary measures to ensure that in its criminal law the descriptions of the offences referred to in paragraph 1 of this Article and in Articles 2 and 3 committed by or against its Government Ministers, elected members of its parliamentary chambers, the members of its highest Courts or the members of its Court of Auditors in the exercise of their functions apply similarly in cases where such offences are committed by or against members of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the

⁽¹⁾ OJ No C 316, 27. 11. 1995, p. 49.

European Communities respectively in the exercise of their duties.

3. Where a Member State has enacted special legislation concerning acts or omissions for which Government Ministers are responsible by reason of their special political position in that Member State, paragraph 2 of this Article may not apply to such legislation, provided that the Member State ensures that Members of the Commission of the European Community are covered by the criminal legislation implementing Articles 2 and 3 and paragraph 1 of this Article.

4. Paragraphs 1, 2 and 3 shall be without prejudice to the provisions applicable in each Member State concerning criminal proceedings and the determination of the competent court.

5. This Protocol shall apply in full accordance with the relevant provisions of the Treaties establishing the European Communities, the Protocol on the Privileges and Immunities of the European Communities, the Statutes of the Court of Justice and the texts adopted for the purpose of their implementation, as regards the withdrawal of immunity.

Article 5

Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 and 3, and participating in and instigating the conduct in question, are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition.

2. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against national officials or Community officials. In determining the penalty to be imposed, the national criminal courts may, in accordance with the principles of their national law, take into account any disciplinary penalty already imposed on the same person for the same conduct.

Article 6

Jurisdiction

1. Each Member State shall take the measures necessary to establish its jurisdiction over the offences it has established in accordance with Articles 2, 3 and 4 where:

- (a) the offence is committed in whole or in part within its territory;
- (b) the offender is one of its nationals or one of its officials;

(c) the offence is committed against one of the persons referred to in Article 1 or a member of one of the institutions referred to in Article 4 (2) who is one of its nationals;

(d) the offender is a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the Member State concerned.

2. Each Member State may declare when giving the notification provided for in Article 9 (2) that it will not apply or will apply only in specific cases or conditions one or more of the jurisdiction rules laid down in paragraph 1 (b), (c), and (d).

Article 7

Relation to the Convention

1. Articles 3, 5 (1), (2) and (4) and Article 6 of the Convention shall apply as if there were a reference to the conduct referred to in Articles 2, 3 and 4 of this Protocol.

2. The following provisions of the Convention shall also apply to this Protocol:

— Article 7, on the understanding that, unless otherwise indicated at the time of the notification provided for in Article 9 (2) of this Protocol, any declaration within the meaning of Article 7 (2) of the Convention shall also apply to this Protocol,

— Article 9,

— Article 10.

Article 8

Court of Justice

1. Any dispute between Member States on the interpretation or application of this Protocol must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution.

If no solution is found within six months, the matter may be referred to the Court of Justice of the European Communities by a party to the dispute.

2. Any dispute between one or more Member States and the Commission of the European Communities concerning Article 1, with the exception of point 1 (c), or Articles 2, 3 and 4, or the third indent of Article 7 (2) of this Protocol which it has proved impossible to settle

through negotiation may be submitted to the Court of Justice of the European Communities.

Article 9

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 procedures required under their respective constitutional rules for adopting this Protocol.

3. This Protocol shall enter into force 90 days after the notification provided for in paragraph 2 has been given by the State which, being a Member of the European Union at the time of adoption by the Council of the Act drawing up this Protocol, is the last to fulfil that formality. If, however, the Convention has not entered into force on that date, this Protocol shall enter into force on the date on which the Convention enters into force.

Article 10

Accession of new Member States

1. This Protocol shall be open to accession by any State that becomes a member of the European Union.

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. Instruments of accession shall be deposited with the depositary.

4. This Protocol shall enter into force with respect to any State that 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 yet entered into force at the time of expiry of the said period of 90 days.

Article 11

Reservations

1. No reservation shall be authorized with the exception of those provided for in Article 6 (2).

2. Any Member State which has entered a reservation may withdraw it at any time in whole or in part by notifying the depositary. Withdrawal shall take effect on the date on which the depositary receives the notification.

Article 12

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.

2. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and reservations and any other notification concerning this Protocol.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

Done 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, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

ANNEX

Statements made by Member States on the adoption of the Act drawing up the Protocol

1. *Statement by the German delegation:*

'The Government of the Federal Republic of Germany states its intention, as regards the Protocol to the Convention on the protection of the European Communities' financial interests (officials), of reaching, through negotiation, an agreement on the competence of the Court of Justice of the European Communities to give preliminary rulings that is the same as that sought for the Convention on the protection of the European Communities' financial interests and by the same date.'

2. *Joint statement by the Belgian, Luxembourg and Netherlands delegations:*

'The Governments of the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg take the view that, for this Protocol to enter into force, a satisfactory solution to the question of the competence to be conferred on the Court of Justice of the European Communities for the interpretation of the Protocol must be found by the end of November 1996, preferably within the framework of the current discussions on the conferral of competence on the Court of Justice to give preliminary rulings on the interpretation of the Convention on the protection of the European Communities' financial interests.'

3. *Statement by the Austrian delegation:*

'Austria assumes that the question of the competence of the Court of Justice of the European Communities to give preliminary rulings will be settled favourably in the near future, and it will continue to work to that end.'

ANNEX

PROTOCOL

drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests

THE HIGH CONTRACTING PARTIES,

HAVE AGREED on the following provisions, which shall be annexed to the Convention:

Article 1

The Court of Justice of the European Communities shall have jurisdiction, pursuant to the conditions laid down in this Protocol, to give preliminary rulings on the interpretation of the Convention on the protection of the European Communities' financial interests and the Protocol to that Convention drawn up on 27 September 1996⁽¹⁾, hereinafter referred to as 'the first Protocol'.

Article 2

1. By a declaration made at the time of the signing of this Protocol or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice of the European Communities to give preliminary rulings on the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol to that Convention pursuant to the conditions specified in either paragraph 2 (a) or paragraph 2 (b).

2. A Member State making a declaration pursuant to paragraph 1 may specify that either:

- (a) any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol thereto if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment, or
- (b) any court or tribunal of that State may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Convention on the protection of the European Communities' financial interests and

the first Protocol thereto if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.

Article 3

1. The Protocol on the Statute of the Court of Justice of the European Communities and the Rules of Procedure of that Court of Justice shall apply.

2. In accordance with the Statute of the Court of Justice of the European Communities, any Member State, whether or not it has made a declaration pursuant to Article 2, shall be entitled to submit statements of case or written observations to the Court of Justice of the European Communities in cases which arise pursuant to Article 1.

Article 4

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 depositary of the completion of their respective constitutional requirements for adopting this Protocol and communicate to him any declaration made pursuant to Article 2.

3. This Protocol shall enter into force 90 days after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the Act drawing up this Protocol, is the last to fulfil that formality. However, it shall at the earliest enter into force at the same time as the Convention on the protection of the European Communities' financial interests.

Article 5

1. This Protocol shall be open to accession by any State that becomes a member of the European Union.

⁽¹⁾ OJ No C 313, 23. 10. 1996, p. 1.

2. Instruments of accession shall be deposited with the depositary.

3. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

4. This Protocol shall enter into force with respect to any State that accedes to it 90 days after the date of deposit of its instrument of accession, or on the date of the entry into force of this Protocol if the latter has not yet come into force when the said period of 90 days expires.

Article 6

Any State that becomes a member of the European Union and accedes to the Convention on the protection of the European Communities' financial interests in accordance with Article 12 thereof shall accept the provisions of this Protocol.

Article 7

1. Amendments to this Protocol may be proposed by any Member State, being a High Contracting Party. Any proposal for an amendment shall be sent to the depositary, who shall forward it to the Council.

2. Amendments shall be established by the Council, which shall recommend that they be adopted by the Member States in accordance with their respective constitutional requirements.

3. Amendments thus established shall enter into force in accordance with the provisions of Article 4.

Article 8

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.

2. The depositary shall publish in the *Official Journal of the European Communities* the notifications, instruments or communications concerning this Protocol.

DECLARATION

concerning the simultaneous adoption of the Convention on the protection of the European Communities' financial interests and the Protocol on the interpretation by way of preliminary rulings, by the Court of Justice of the European Communities, of that Convention

The representatives of the Governments of the Member States of the European Union meeting within the Council,

At the time of the signing of the Council Act drawing up the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests,

Wishing to ensure that the said Convention is interpreted as effectively and uniformly as possible as from its entry into force,

Declare themselves willing to take appropriate steps to ensure that the national procedures for adopting the Convention on the protection of the European Communities' financial interests and the Protocol concerning its interpretation are completed simultaneously at the earliest opportunity.

Declaration made pursuant to Article 2

At the time of the signing of this Protocol, the following declared that they accepted the jurisdiction of the Court of Justice of the European Communities in accordance with the procedures laid down in Article 2:

The French Republic, Ireland and the Portuguese Republic in accordance with the procedures laid down in Article 2 (2) (a);

The Federal Republic of Germany, the Hellenic Republic, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, in accordance with the procedures laid down in Article 2 (2) (b).

DECLARATION

The Federal Republic of Germany, the Hellenic Republic, the Kingdom of the Netherlands and the Republic of Austria, reserve the right to make provision in their national law to the effect that, where a question relating to the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol thereto is raised in a case pending before a national court or tribunal against whose decision there is no judicial remedy under national law, that court or tribunal will be required to refer the matter to the Court of Justice.

For the Kingdom of Denmark and the Kingdom of Spain, the declaration(s) will be made at the time of adoption.

ANNEX

SECOND PROTOCOL,

drawn up on the basis of Article K.3 of the treaty on European Union, to the Convention on the protection of the European Communities' financial interests

THE HIGH CONTRACTING PARTIES to this Protocol, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 19 June 1997;

DESIRING to ensure that their criminal laws contribute effectively to the protection of the financial interests of the European Communities;

RECOGNIZING the importance of the Convention on the protection of the European Communities' financial interests of 26 July 1995 in combating fraud affecting Community revenue and expenditure;

RECOGNIZING the importance of the Protocol of 27 September 1996 to the said Convention in the fight against corruption damaging or likely to damage the European Communities' financial interests;

AWARE that the financial interests of the European Communities may be damaged or threatened by acts committed on behalf of legal persons and acts involving money laundering;

CONVINCED of the need for national law to be adapted, where necessary, to provide that legal persons can be held liable in cases of fraud or active corruption and money laundering committed for their benefit that damage or are likely to damage the European Communities' financial interests;

CONVINCED of the need for national law to be adapted, where necessary, to penalize acts of laundering of proceeds of fraud or corruption that damage or are likely to damage the European Communities' financial interests and to make it possible to confiscate proceeds of such fraud and corruption;

CONVINCED of the need for national law to be adapted, where necessary, in order to prevent the refusal of mutual assistance solely because offences covered by this Protocol concern or are considered as tax or customs duty offences;

NOTING that cooperation between Member States is already covered by the Convention on the protection of the European Communities' financial interests of 26 July 1995, but that there is a need, without prejudice to obligations under Community law, for appropriate provision also to be made for cooperation between member States and the Commission to ensure effective action against fraud, active and passive corruption and related money laundering damaging or likely to damage the European Communities' financial interests, including exchange of information between the Member States and the Commission;

CONSIDERING that, in order to encourage and facilitate the exchange of information, it is necessary to ensure adequate protection of personal data;

CONSIDERING that the exchange of information should not hinder ongoing investigations and that it is therefore necessary to provide for the protection of investigation secrecy;

CONSIDERING that appropriate provisions have to be drawn up on the competence of the Court of Justice of the European Communities;

CONSIDERING finally that the relevant provisions of the Convention on the protection of the European Communities' financial interests of 26 July 1995 should be made applicable to certain acts covered by this Protocol,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

Definitions

For the purposes of this Protocol:

- (a) 'Convention' shall mean the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests, of 26 July 1995 ⁽¹⁾;
- (b) 'fraud' shall mean the conduct referred to in Article 1 of the Convention;
- (c) — 'passive corruption' shall mean the conduct referred to in Article 2 of the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the convention on the protection of the European Communities' financial interests, of 27 September 1996 ⁽¹⁾,
— 'active corruption' shall mean the conduct referred to in Article 3 of the same Protocol;
- (d) 'legal person' shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organizations;
- (e) 'money laundering' shall mean the conduct as defined in the third indent of Article 1 of Council Directive 91/308/EEC of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering ⁽²⁾, related to the proceeds of fraud, at least in serious cases, and of active and passive corruption.

Article 2

Money laundering

Each Member State shall take the necessary measures to establish money laundering as a criminal offence.

Article 3

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for fraud, active corruption and money laundering committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on

- a power of representation of the legal person, or
- an authority to take decisions on behalf of the legal person, or
- an authority to exercise control within the legal person,

as well as for involvement as accessories or instigators in such fraud, active corruption or money laundering or the attempted commission of such fraud.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of a fraud or an act of active corruption or money laundering for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the fraud, active corruption or money laundering.

Article 4

Sanctions for legal persons

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 3 (1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order.

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 3 (2) is punishable by effective, proportionate and dissuasive sanctions or measures.

Article 5

Confiscation

Each Member State shall take the necessary measures to enable the seizure and, without prejudice to the rights of bona fide third parties, the confiscation or removal of the instruments and proceeds of fraud, active and passive corruption and money laundering, or property the value

⁽¹⁾ OJ No C 316, 27. 11. 1995, p. 49.

⁽¹⁾ OJ No C 313, 23. 10. 1996, p. 2.

⁽²⁾ OJ No L 166, 28. 6. 1991, p. 77.

of which corresponds to such proceeds. Any instruments, proceeds or other property seized or confiscated shall be dealt with by the Member State in accordance with its national law.

Article 6

Cooperation with the Commission of the European Communities

A Member State may not refuse to provide mutual assistance in respect of fraud, active and passive corruption and money laundering for the sole reason that it concerns or is considered as a tax or customs duty offence.

Article 7

Cooperation with the Commission of the European Communities

1. The Member States and the Commission shall cooperate with each other in the fight against fraud, active and passive corruption and money laundering.

To that end, the Commission shall lend such technical and operational assistance as the competent national authorities may need to facilitate coordination of their investigations.

2. The competent authorities in the Member States may exchange information with the Commission so as to make it easier to establish the facts and to ensure effective action against fraud, active and passive corruption and money laundering. The Commission and the competent national authorities shall take account, in each specific case, of the requirements of investigation secrecy and data protection. To that end, a Member State, when supplying information to the Commission, may set specific conditions covering the use of information, whether by the Commission or by another Member State to which that information may be passed.

Article 8

Data protection responsibility for the Commission

The Commission shall ensure that, in the context of the exchange of information under Article 7 (2), it shall observe, as regards the processing of personal data, a level of protection equivalent to the level of protection set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection

of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾.

Article 9

Publication of data protection rules

The rules adopted concerning the obligations under Article 8 shall be published in the *Official Journal of the European Communities*.

Article 10

Transfer of data to other Member States and third countries

1. Subject to any conditions referred to in Article 7 (2), the Commission may transfer personal data obtained from a Member State in the performance of its functions under Article 7 to any other Member State. The Commission shall inform the Member State which supplied the information of its intention to make such as transfer.

2. The Commission may, under the same conditions, transfer personal data obtained from a Member State in the performance of its functions under Article 7 to any third country provided that the Member State which supplied the information has agreed to such transfer.

Article 11

Supervisory authority

Any authority designated or created for the purpose of exercising the function of independent data protection supervision over personal data held by the Commission pursuant to its functions under the Treaty establishing the European Community, shall be competent to exercise the same function with respect to personal data held by the Commission by virtue of this Protocol.

Article 12

Relation to the Convention

1. The provisions of Articles 3, 5 and 6 of the Convention shall also apply to the conduct referred to in Article 2 of this Protocol.

2. The following provisions of the Convention shall also apply to this Protocol:

⁽¹⁾ OJ No L 281, 23. 11. 1995, p. 31.

- Article 4, on the understanding that, unless otherwise indicated at the time of the notification provided for in Article 16 (2) of this Protocol, any declaration within the meaning of Article 4 (2) of the Convention, shall also apply to this Protocol,
- Article 7, on the understanding that the *ne bis in idem* principle also applies to legal persons, and that, unless otherwise indicated at the time the notification provided for in Article 16 (2) of this Protocol is being given, any declaration within the meaning of Article 7 (2), of the Convention shall also apply to this Protocol,
- Article 9,
- Article 10.

Article 13

Court of Justice

1. Any dispute between Member States on the interpretation or application of this Protocol must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution.

If no solution is found within six months, the matter may be referred to the Court of Justice by a party to the dispute.

2. Any dispute between one or more Member States and the Commission concerning the application of Article 2 in relation to Article 1 (e), and Article 7, 8, 10 and 12 (2), fourth indent of this Protocol which it has proved impossible to settle through negotiation may be submitted to the Court of Justice, after the expiry of a period of six months from the date on which one of the parties has notified the other of the existence of a dispute.

3. The Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests, of 29 November 1996⁽¹⁾, shall apply to this Protocol, on the understanding that a declaration made by a Member State pursuant to Article 2 of that Protocol is also valid regarding this Protocol unless the Member State concerned makes a declaration to the contrary when giving the notification provided for in Article 16 (2) of this Protocol.

⁽¹⁾ OJ No C 151, 20. 5. 1997, p. 1.

Article 14

Non-contractual liability

For the purposes of this Protocol, the non-contractual liability of the Community shall be governed by the second paragraph of Article 215 of the Treaty establishing the European Community. Article 178 of the same Treaty shall apply.

Article 15

Judicial control

1. The Court of Justice shall have jurisdiction in proceedings instituted by any natural or legal person against a decision of the Commission addressed to that person or which is of direct and individual concern to that person, on ground of infringement of Article 8 or any rule adopted pursuant thereto, or misuse of powers.

2. Articles 168 a (1) and (2), 173, fifth paragraph, 174, first paragraph, 176, first and second paragraphs, 185 and 186 of the Treaty establishing the European Community, as well as the Statute of the Court of Justice of the European Community, shall apply, *mutatis mutandis*.

Article 16

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 procedures required under their respective constitutional rules for adopting this Protocol.

3. This Protocol shall enter into force ninety days after the notification provided for in paragraph 2, by the State which, being a member of the European Union on the date of the adoption by the Council of the act drawing up this Protocol, is the last to fulfil that formality. If, however, the Convention has not entered into force on that date, this Protocol shall enter into force on the date on which the Convention enters into force.

4. However, the application of Article 7 (2) shall be suspended if, and for so long as, the relevant institution of the European Communities has not complied with its obligation to publish the data protection rules pursuant

to Article 9 or the terms of Article 11 concerning the supervisory authority have not been complied with.

Article 17

Accession of new Member States

1. This Protocol shall be open to accession by any State that becomes a member of the European Union.
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. Instruments of accession shall be deposited with the depositary.
4. This Protocol shall enter into force with respect to any State that accedes to it ninety days after the deposit of its instrument of accession or on the date of entry into force of this Protocol if it has not yet entered into force at the time of expiry of the said period of ninety days.

Article 18

Reservations

1. Each Member State may reserve the right to establish the money laundering related to the proceeds of active and passive corruption as a criminal offence only in serious cases of active and passive corruption. Any Member State making such a reservation shall inform the

depositary, giving details of the scope of the reservation, when giving the notification provided for in Article 16 (2). Such a reservation shall be valid for a period of five years after the said notification. It may be renewed once for a further period of five years.

2. The Republic of Austria may, when giving its notification referred to in Article 16 (2), declare that it will not be bound by Articles 3 and 4. Such a declaration shall cease to have effect five years after the date of the adoption of the act drawing up this Protocol.

3. No other reservations shall be authorized, with the exception of those provided for in Article 12 (2), first and second indent.

Article 19

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.
2. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and reservations and any other notification concerning this Protocol.

Joint Declaration on Article 13 (2)

The Member States declare that the reference in Article 13 (2) to Article 7 of the Protocol shall apply only to cooperation between the Commission on the one hand and the Member States on the other and is without prejudice to Member States' discretion in supplying information in the course of criminal investigations.

Commission Declaration on Article 7

The Commission accepts the tasks entrusted to it under Article 7 of the Second Additional Protocol to the Convention on the protection of the European Communities' financial interests.

DIRECTIVES

DIRECTIVE (EU) 2017/1371 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law

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 83(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Committee of the Regions ⁽¹⁾

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The protection of the Union's financial interests concerns not only the management of budget appropriations, but extends to all measures which negatively affect or which threaten to negatively affect its assets and those of the Member States, to the extent that those measures are of relevance to Union policies.
- (2) The Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests of 26 July 1995 ⁽³⁾, including the Protocols thereto of 27 September 1996 ⁽⁴⁾, of 29 November 1996 ⁽⁵⁾ and of 19 June 1997 ⁽⁶⁾ (the 'Convention') establishes minimum rules relating to the definition of criminal offences and sanctions in the area of fraud affecting the Union's financial interests. The Member States drew up the Convention, in which it was noted that fraud affecting Union revenue and expenditure in many cases was not confined to a single country and was often committed by organised criminal networks. On that basis, it was already recognised in the Convention that the protection of the Union's financial interests called for the criminal prosecution of fraudulent conduct injuring those interests. In parallel, Council Regulation (EC, Euratom) No 2988/95 ⁽⁷⁾ was adopted. That Regulation lays down general rules relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Union law while, at the same time, referring to sectoral rules in that area, fraudulent actions as defined in the Convention and the application of the Member States' criminal law and proceedings.
- (3) Union policy in the area of the protection of the Union's financial interests has already been the subject of harmonisation measures such as Regulation (EC, Euratom) No 2988/95. In order to ensure the implementation of Union policy in this area, it is essential to continue to approximate the criminal law of the Member States by complementing the protection of the Union's financial interests under administrative and civil law for the most serious types of fraud-related conduct in that field, whilst avoiding inconsistencies, both within and among those areas of law.
- (4) The protection of the Union's financial interests calls for a common definition of fraud falling within the scope of this Directive, which should cover fraudulent conduct with respect to revenues, expenditure and assets at the

⁽¹⁾ OJ C 391, 18.12.2012, p. 134.

⁽²⁾ Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal) and position of the Council at first reading of 25 April 2017 (OJ C 184, 9.6.2017, p. 1). Position of the European Parliament of 5 July 2017 (not yet published in the Official Journal).

⁽³⁾ OJ C 316, 27.11.1995, p. 48.

⁽⁴⁾ OJ C 313, 23.10.1996, p. 1.

⁽⁵⁾ OJ C 151, 20.5.1997, p. 1.

⁽⁶⁾ OJ C 221, 19.7.1997, p. 11.

⁽⁷⁾ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312, 23.12.1995, p. 1).

expense of the general budget of the European Union (the 'Union budget'), including financial operations such as borrowing and lending activities. The notion of serious offences against the common system of value added tax ('VAT') as established by Council Directive 2006/112/EC ⁽¹⁾ (the 'common VAT system') refers to the most serious forms of VAT fraud, in particular carousel fraud, VAT fraud through missing traders, and VAT fraud committed within a criminal organisation, which create serious threats to the common VAT system and thus to the Union budget. Offences against the common VAT system should be considered to be serious where they are connected with the territory of two or more Member States, result from a fraudulent scheme whereby those offences are committed in a structured way with the aim of taking undue advantage of the common VAT system and the total damage caused by the offences is at least EUR 10 000 000. The notion of total damage refers to the estimated damage that results from the entire fraud scheme, both to the financial interests of the Member States concerned and to the Union, excluding interest and penalties. This Directive aims to contribute to the efforts to fight those criminal phenomena.

- (5) When the Commission implements the Union budget under shared or indirect management, it may delegate budget implementation tasks to the Member States or entrust them to bodies, offices or agencies established pursuant to the Treaties or to other entities or persons. In the event of such shared or indirect management, the Union's financial interests should benefit from the same level of protection as they do when under the direct management of the Commission.
- (6) For the purposes of this Directive, procurement-related expenditure is any expenditure in connection with the public contracts determined by Article 101(1) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽²⁾.
- (7) Union money laundering law is fully applicable to money laundering involving property derived from the criminal offences covered by this Directive. A reference made to that law should ensure that the sanctioning regime introduced by this Directive applies to all serious cases of criminal offences against the Union's financial interests.
- (8) Corruption constitutes a particularly serious threat to the Union's financial interests, which can in many cases also be linked to fraudulent conduct. Since all public officials have a duty to exercise judgment or discretion impartially, the giving of bribes in order to influence a public official's judgment or discretion and the taking of such bribes should be included in the definition of corruption, irrespective of the law or regulations applicable in the particular official's country or to the international organisation concerned.
- (9) The Union's financial interests can be negatively affected by certain types of conduct of a public official who is entrusted with the management of funds or assets, whether he or she is in charge or acts in a supervisory capacity, which types of conduct aim at misappropriating funds or assets, contrary to the intended purpose and whereby the Union's financial interests are damaged. There is therefore a need to introduce a precise definition of criminal offences covering such conduct.
- (10) As regards the criminal offences of passive corruption and misappropriation, there is a need to include a definition of public officials covering all relevant officials, whether holding a formal office in the Union, in the Member States or in third countries. Private persons are increasingly involved in the management of Union funds. In order to protect Union funds adequately from corruption and misappropriation, the definition of 'public official' therefore needs to cover persons who do not hold formal office but who are nonetheless assigned and exercise, in a similar manner, a public service function in relation to Union funds, such as contractors involved in the management of such funds.
- (11) With regard to the criminal offences provided for in this Directive, the notion of intention must apply to all the elements constituting those criminal offences. The intentional nature of an act or omission may be inferred from objective, factual circumstances. Criminal offences which do not require intention are not covered by this Directive.

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁽²⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

- (12) This Directive does not oblige Member States to provide for sanctions of imprisonment for the commission of criminal offences that are not of a serious nature, in cases where intent is presumed under national law.
- (13) Some criminal offences against the Union's financial interests are in practice often closely related to the criminal offences covered by Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) and Union legislative acts that are based on that provision. Coherence between such legislative acts and this Directive should therefore be ensured in the wording of this Directive.
- (14) Insofar as the Union's financial interests can be damaged or threatened by conduct attributable to legal persons, legal persons should be liable for the criminal offences, as defined in this Directive, which are committed on their behalf.
- (15) In order to ensure equivalent protection of the Union's financial interests throughout the Union by means of measures which should act as a deterrent, Member States should provide for certain types and levels of sanctions when the criminal offences defined in this Directive are committed. The levels of sanctions should not go beyond what is proportionate for the offences.
- (16) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent rules for criminal offences affecting the Union's financial interests.
- (17) This Directive does not affect the proper and effective application of disciplinary measures or penalties other than of a criminal nature. Sanctions that cannot be equated to criminal sanctions, which are imposed on the same person for the same conduct, can be taken into account when sentencing that person for a criminal offence defined in this Directive. For other sanctions, the principle of prohibition of being tried or punished twice in criminal proceedings for the same criminal offence (*ne bis in idem*) should be fully respected. This Directive does not criminalise behaviour which is not also subject to disciplinary penalties or other measures concerning a breach of official duties, in cases where such disciplinary penalties or other measures can be applied to the persons concerned.
- (18) Sanctions with regard to natural persons should, in certain cases, provide for a maximum penalty of at least four years of imprisonment. Such cases should include at least those involving considerable damage done or advantage gained whereby the damage or advantage should be presumed to be considerable when it involves more than EUR 100 000. Where a Member State's law does not provide for an explicit threshold for considerable damage or advantage as a basis for a maximum penalty, the Member State should ensure that the amount of damage or advantage is taken into account by its courts in the determination of sanctions for fraud and other criminal offences affecting the Union's financial interests. This Directive does not prevent Member States from providing for other elements which would indicate the serious nature of a criminal offence, for instance when the damage or advantage is potential, but of very considerable nature. However, for offences against the common VAT system, the threshold as of which the damage or advantage should be presumed to be considerable is, in conformity with this Directive, EUR 10 000 000. The introduction of minimum levels of maximum imprisonment sanctions is necessary in order to ensure equivalent protection of the Union's financial interests throughout the Union. The sanctions are intended to serve as a strong deterrent for potential offenders, with effect throughout the Union.
- (19) Member States should ensure that the fact that a criminal offence is committed within a criminal organisation as defined in Council Framework Decision 2008/841/JHA ⁽¹⁾ is considered to be an aggravating circumstance in accordance with the applicable rules established by their legal systems. They should ensure that the aggravating circumstance is made available to judges for their consideration when sentencing offenders, although there is no obligation on judges to take the aggravating circumstance into account in their sentence. Member States are not obliged to provide for the aggravating circumstance where national law provides for the criminal offences as defined in Framework Decision 2008/841/JHA to be punishable as a separate criminal offence and this may lead to more severe sanctions.
- (20) Given, in particular, the mobility of perpetrators and of the proceeds stemming from illegal activities at the expense of the Union's financial interests, as well as the complex cross-border investigations which this entails, each Member State should establish its jurisdiction in order to enable it to counter such activities. Each Member State should thereby ensure that its jurisdiction covers criminal offences which are committed using information and communication technology accessed from its territory.

⁽¹⁾ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

- (21) Given the possibility of multiple jurisdictions for cross-border criminal offences falling under the scope of this Directive, the Member States should ensure that the principle of *ne bis in idem* is respected in full in the application of national law transposing this Directive.
- (22) Member States should lay down rules concerning limitation periods necessary in order to enable them to counter illegal activities at the expense of the Union's financial interests. In cases of criminal offences punishable by a maximum sanction of at least four years of imprisonment, the limitation period should be at least five years from the time when the criminal offence was committed. This should be without prejudice to those Member States which do not set limitation periods for investigation, prosecution and enforcement.
- (23) Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters and to other rules under Union law, in particular under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽¹⁾, there is a need for appropriate provision to be made for cooperation to ensure effective action against the criminal offences defined in this Directive affecting the Union's financial interests, including exchange of information between the Member States and the Commission as well as technical and operational assistance provided by the Commission to the competent national authorities as they may need to facilitate coordination of their investigations. Such assistance should not entail the participation of the Commission in the investigation or prosecution procedures of individual criminal cases conducted by the national authorities. The Court of Auditors and the auditors responsible for auditing the budgets of the Union institutions, bodies, offices and agencies should disclose to the European Anti-Fraud Office (OLAF) and to other competent authorities any fact which could be qualified as a criminal offence under this Directive, and Member States should ensure that national audit bodies within the meaning of Article 59 of Regulation (EU, Euratom) No 966/2012 do the same, in accordance with Article 8 of Regulation (EU, Euratom) No 883/2013.
- (24) The Commission should report to the European Parliament and to the Council on the measures taken by Member States to comply with this Directive. The report may be accompanied, if necessary, by proposals taking into consideration possible evolutions, in particular regarding the financing of the Union budget.
- (25) The Convention should be replaced by this Directive for the Member States bound by it.
- (26) For the application of point (d) of Article 3(4) of Directive (EU) 2015/849 of the European Parliament and of the Council ⁽²⁾, the reference to serious fraud affecting the Union's financial interests as defined in Article 1(1) and Article 2(1) of the Convention should be construed as fraud affecting the Union's financial interests as defined in Article 3 and in Article 7(3) of this Directive or, as regards offences against the common VAT system, as defined in Article 2(2) of this Directive.
- (27) Proper implementation of this Directive by the Member States includes the processing of personal data by the competent national authorities, and the exchange of such data between Member States on the one hand, and between competent Union bodies on the other. The processing of personal data at national level between national competent authorities should be regulated by the *acquis* of the Union. The exchange of personal data between Member States should be carried out in accordance with Directive (EU) 2016/680 of the European Parliament and of the Council ⁽³⁾. To the extent that the Union institutions, bodies, offices and agencies process personal data, Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽⁴⁾ or, where applicable, other Union legal acts regulating the processing of personal data by those bodies, offices and agencies as well as the applicable rules concerning the confidentiality of judicial investigations, should apply.

⁽¹⁾ 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).

⁽²⁾ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

⁽³⁾ 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).

⁽⁴⁾ 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).

- (28) The intended dissuasive effect of the application of criminal law sanctions requires particular caution with regard to fundamental rights. This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the 'Charter') and in particular the right to liberty and security, the protection of personal data, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the principles of the legality and proportionality of criminal offences and sanctions, as well as the principle of *ne bis in idem*. This Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.
- (29) Member States should take the necessary measures to ensure the prompt recovery of sums and their transfer to the Union budget, without prejudice to the relevant Union sector-specific rules on financial corrections and recovery of amounts unduly spent.
- (30) Administrative measures and penalties play an important role in the protection of the Union's financial interests. This Directive does not exempt Member States from the obligation to apply and implement administrative Union measures and penalties within the meaning of Articles 4 and 5 of Regulation (EC, Euratom) No 2988/95.
- (31) This Directive should oblige Member States to provide in their national law for criminal penalties in respect of the acts of fraud and fraud-related criminal offences affecting the Union's financial interests to which this Directive applies. This Directive should not create obligations regarding the application of such penalties or any other available system of law enforcement to individual cases. Member States may in principle continue to apply administrative measures and penalties in parallel in the area covered by this Directive. In the application of national law transposing this Directive, Member States should, however, ensure that the imposition of criminal sanctions for criminal offences in accordance with this Directive and of administrative measures and penalties does not lead to a breach of the Charter.
- (32) This Directive should not affect the competences of Member States to structure and organise their tax administration as they see fit to ensure the correct determination, assessment and collection of value added tax, as well as the effective application of VAT law.
- (33) This Directive applies without prejudice to the provisions on the lifting of the immunities contained in the TFEU, Protocol No 3 on the Statute of the Court of Justice of the European Union and Protocol No 7 on the Privileges and Immunities of the European Union, annexed to the TFEU and to the Treaty on European Union (TEU), and the texts implementing them, or similar provisions incorporated in national law. In the transposition of this Directive into national law as well as in the application of national law transposing this Directive, those privileges and immunities, including the respect for the freedom of the Member's mandate, are fully taken into account.
- (34) This Directive is without prejudice to the general rules and principles of national criminal law on the application and execution of sentences in accordance with the concrete circumstances in each individual case.
- (35) Since the objective of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, 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 Directive does not go beyond what is necessary to achieve that objective.
- (36) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified its wish to take part in the adoption and application of this Directive.
- (37) In accordance with Articles 1 and 2 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, the United Kingdom is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (38) In accordance with Articles 1 and 2 of 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 Directive and is not bound by it or subject to its application.

(39) The European Court of Auditors has been consulted and has adopted an opinion ⁽¹⁾,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SUBJECT MATTER, DEFINITIONS AND SCOPE

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions with regard to combatting fraud and other illegal activities affecting the Union's financial interests, with a view to strengthening protection against criminal offences which affect those financial interests, in line with the *acquis* of the Union in this field.

Article 2

Definitions and scope

1. For the purposes of this Directive, the following definitions apply:
 - (a) 'Union's financial interests' means all revenues, expenditure and assets covered by, acquired through, or due to:
 - (i) the Union budget;
 - (ii) the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored by them;
 - (b) 'legal person' means an entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.
2. In respect of revenue arising from VAT own resources, this Directive shall apply only in cases of serious offences against the common VAT system. For the purposes of this Directive, offences against the common VAT system shall be considered to be serious where the intentional acts or omissions defined in point (d) of Article 3(2) are connected with the territory of two or more Member States of the Union and involve a total damage of at least EUR 10 000 000.
3. The structure and functioning of the tax administration of the Member States are not affected by this Directive.

TITLE II

CRIMINAL OFFENCES WITH REGARD TO FRAUD AFFECTING THE UNION'S FINANCIAL INTERESTS

Article 3

Fraud affecting the Union's financial interests

1. Member States shall take the necessary measures to ensure that fraud affecting the Union's financial interests constitutes a criminal offence when committed intentionally.
2. For the purposes of this Directive, the following shall be regarded as fraud affecting the Union's financial interests:
 - (a) in respect of non-procurement-related expenditure, any act or omission relating to:
 - (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
 - (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
 - (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted;

⁽¹⁾ OJ C 383, 12.12.2012, p. 1.

- (b) in respect of procurement-related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, any act or omission relating to:
 - (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
 - (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
 - (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;
- (c) in respect of revenue other than revenue arising from VAT own resources referred to in point (d), any act or omission relating to:
 - (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf;
 - (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
 - (iii) misapplication of a legally obtained benefit, with the same effect;
- (d) in respect of revenue arising from VAT own resources, any act or omission committed in cross-border fraudulent schemes in relation to:
 - (i) the use or presentation of false, incorrect or incomplete VAT-related statements or documents, which has as an effect the diminution of the resources of the Union budget;
 - (ii) non-disclosure of VAT-related information in violation of a specific obligation, with the same effect; or
 - (iii) the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds.

Article 4

Other criminal offences affecting the Union's financial interests

1. Member States shall take the necessary measures to ensure that money laundering as described in Article 1(3) of Directive (EU) 2015/849 involving property derived from the criminal offences covered by this Directive constitutes a criminal offence.
2. Member States shall take the necessary measures to ensure that passive and active corruption, when committed intentionally, constitute criminal offences.
 - (a) For the purposes of this Directive, 'passive corruption' means the action of a public official who, directly or through an intermediary, requests or receives advantages of any kind, for himself or for a third party, or accepts a promise of such an advantage, to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests.
 - (b) For the purposes of this Directive, 'active corruption' means the action of a person who promises, offers or gives, directly or through an intermediary, an advantage of any kind to a public official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests.
3. Member States shall take the necessary measures to ensure that misappropriation, when committed intentionally, constitutes a criminal offence.

For the purposes of this Directive, 'misappropriation' means the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests.

4. For the purposes of this Directive, 'public official' means:

(a) a Union official or a national official, including any national official of another Member State and any national official of a third country:

(i) 'Union official' means a person who is:

- an official or other servant engaged under contract by the Union within the meaning of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾ (the 'Staff Regulations'), or
- seconded to the Union by a Member State or by any public or private body, who carries out functions equivalent to those performed by Union officials or other servants.

Without prejudice to the provisions on privileges and immunities contained in Protocols No 3 and No 7, Members of the Union institutions, bodies, offices and agencies, set up in accordance with the Treaties and the staff of such bodies shall be assimilated to Union officials, inasmuch as the Staff Regulations do not apply to them;

(ii) 'national official' shall be understood by reference to the definition of 'official' or 'public official' in the national law of the Member State or third country in which the person in question carries out his or her functions.

Nevertheless, in the case of proceedings involving a national official of a Member State, or a national official of a third country, initiated by another Member State, the latter shall not be bound to apply the definition of 'national official' except insofar as that definition is compatible with its national law.

The term 'national official' shall include any person holding an executive, administrative or judicial office at national, regional or local level. Any person holding a legislative office at national, regional or local level shall be assimilated to a national official;

(b) any other person assigned and exercising a public service function involving the management of or decisions concerning the Union's financial interests in Member States or third countries.

TITLE III

GENERAL PROVISIONS RELATING TO FRAUD AND OTHER CRIMINAL OFFENCES AFFECTING THE UNION'S FINANCIAL INTERESTS

Article 5

Incitement, aiding and abetting, and attempt

1. Member States shall take the necessary measures to ensure that inciting, and aiding and abetting the commission of any of the criminal offences referred to in Articles 3 and 4 are punishable as criminal offences.

2. Member States shall take the necessary measures to ensure that an attempt to commit any of the criminal offences referred to in Article 3 and Article 4(3) is punishable as a criminal offence.

Article 6

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for any of the criminal offences referred to in Articles 3, 4 and 5 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

⁽¹⁾ OJ L 56, 4.3.1968, p. 1.

2. Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission, by a person under its authority, of any of the criminal offences referred to in Article 3, 4 or 5 for the benefit of that legal person.

3. Liability of legal persons under paragraphs 1 and 2 of this Article shall not exclude the possibility of criminal proceedings against natural persons who are perpetrators of the criminal offences referred to in Articles 3 and 4 or who are criminally liable under Article 5.

Article 7

Sanctions with regard to natural persons

1. As regards natural persons, Member States shall ensure that the criminal offences referred to in Articles 3, 4 and 5 are punishable by effective, proportionate and dissuasive criminal sanctions.

2. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3 and 4 are punishable by a maximum penalty which provides for imprisonment.

3. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3 and 4 are punishable by a maximum penalty of at least four years of imprisonment when they involve considerable damage or advantage.

The damage or advantage resulting from the criminal offences referred to in points (a), (b) and (c) of Article 3(2) and in Article 4 shall be presumed to be considerable where the damage or advantage involves more than EUR 100 000.

The damage or advantage resulting from the criminal offences referred to in point (d) of Article 3(2) and subject to Article 2(2) shall always be presumed to be considerable.

Member States may also provide for a maximum sanction of at least four years of imprisonment in other serious circumstances defined in their national law.

4. Where a criminal offence referred to in point (a), (b) or (c) of Article 3(2) or in Article 4 involves damage of less than EUR 10 000 or an advantage of less than EUR 10 000, Member States may provide for sanctions other than criminal sanctions.

5. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials.

Article 8

Aggravating circumstance

Member States shall take the necessary measures to ensure that where a criminal offence referred to in Article 3, 4 or 5 is committed within a criminal organisation in the sense of Framework Decision 2008/841/JHA, this shall be considered to be an aggravating circumstance.

Article 9

Sanctions with regard to legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent exclusion from public tender procedures;
- (c) temporary or permanent disqualification from the practice of commercial activities;

- (d) placing under judicial supervision;
- (e) judicial winding-up;
- (f) temporary or permanent closure of establishments which have been used for committing the criminal offence.

Article 10

Freezing and confiscation

Member States shall take the necessary measures to enable the freezing and confiscation of instrumentalities and proceeds from the criminal offences referred to in Articles 3, 4 and 5. Member States bound by Directive 2014/42/EU of the European Parliament and of the Council ⁽¹⁾ shall do so in accordance with that Directive.

Article 11

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the criminal offences referred to in Articles 3, 4 and 5 where:

- (a) the criminal offence is committed in whole or in part within its territory; or
- (b) the offender is one of its nationals.

2. Each Member State shall take the necessary measures to establish its jurisdiction over the criminal offences referred to in Articles 3, 4 and 5 where the offender is subject to the Staff Regulations at the time of the criminal offence. Each Member State may refrain from applying the rules on jurisdiction established in this paragraph or may apply them only in specific cases or only where specific conditions are fulfilled and shall inform the Commission thereof.

3. A Member State shall inform the Commission where it decides to extend its jurisdiction to criminal offences referred to in Article 3, 4 or 5 which have been committed outside its territory in any of the following situations:

- (a) the offender is a habitual resident in its territory;
- (b) the criminal offence is committed for the benefit of a legal person established in its territory; or
- (c) the offender is one of its officials who acts in his or her official duty.

4. In cases referred to in point (b) of paragraph 1, Member States shall take the necessary measures to ensure that the exercise of their jurisdiction is not subject to the condition that a prosecution can be initiated only following a report made by the victim in the place where the criminal offence was committed, or a denunciation from the State of the place where the criminal offence was committed.

Article 12

Limitation periods for criminal offences affecting the Union's financial interests

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3, 4 and 5 for a sufficient period of time after the commission of those criminal offences, in order for those criminal offences to be tackled effectively.

2. Member States shall take the necessary measures to enable the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3, 4 and 5 which are punishable by a maximum sanction of at least four years of imprisonment, for a period of at least five years from the time when the offence was committed.

3. By way of derogation from paragraph 2, Member States may establish a limitation period that is shorter than five years, but not shorter than three years, provided that the period may be interrupted or suspended in the event of specified acts.

⁽¹⁾ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

4. Member States shall take the necessary measures to enable the enforcement of:

- (a) a penalty of more than one year of imprisonment; or alternatively
- (b) a penalty of imprisonment in the case of a criminal offence which is punishable by a maximum sanction of at least four years of imprisonment,

imposed following a final conviction for a criminal offence referred to in Article 3, 4 or 5, for at least five years from the date of the final conviction. That period may include extensions of the limitation period arising from interruption or suspension.

Article 13

Recovery

This Directive shall be without prejudice to the recovery of the following:

- (1) at Union level of sums unduly paid in the context of the commission of the criminal offences referred to in point (a), (b) or (c) of Article 3(2), or in Article 4 or 5;
- (2) at national level, of any VAT not paid in the context of the commission of the criminal offences referred in point (d) of Article 3(2), or in Article 4 or 5.

Article 14

Interaction with other applicable legal acts of the Union

The application of administrative measures, penalties and fines as laid down in Union law, in particular those within the meaning of Articles 4 and 5 of Regulation (EC, Euratom) No 2988/95, or in national law adopted in compliance with a specific obligation under Union law, shall be without prejudice to this Directive. Member States shall ensure that any criminal proceedings initiated on the basis of national provisions implementing this Directive do not unduly affect the proper and effective application of administrative measures, penalties and fines that cannot be equated to criminal proceedings, laid down in Union law or national implementing provisions.

TITLE IV

FINAL PROVISIONS

Article 15

Cooperation between the Member States and the Commission (OLAF) and other Union institutions, bodies, offices or agencies

1. Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, the Member States, Eurojust, the European Public Prosecutor's Office and the Commission shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in Articles 3, 4 and 5. To that end the Commission, and where appropriate, Eurojust, shall provide such technical and operational assistance as the competent national authorities need to facilitate coordination of their investigations.

2. The competent authorities in the Member States may, within their competences, exchange information with the Commission so as to make it easier to establish the facts and to ensure effective action against the criminal offences referred to in Articles 3, 4 and 5. The Commission and the competent national authorities shall take into account in each specific case the requirements of confidentiality and the rules on data protection. Without prejudice to national law on access to information, a Member State may, to that end, when supplying information to the Commission, set specific conditions covering the use of information, whether by the Commission or by another Member State to which the information is passed.

3. The Court of Auditors and auditors responsible for auditing the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties, and the budgets managed and audited by the institutions, shall disclose to OLAF and to other competent authorities any fact of which they become aware when carrying out their duties, which could be qualified as a criminal offence referred to in Article 3, 4 or 5. Member States shall ensure that national audit bodies do the same.

*Article 16***Replacement of the Convention on the protection of the European Communities' financial interests**

The Convention on the protection of the European Communities' financial interests of 26 July 1995, including the Protocols thereto of 27 September 1996, of 29 November 1996 and of 19 June 1997, is hereby replaced by this Directive for the Member States bound by it, with effect from 6 July 2019.

For the Member States bound by this Directive, references to the Convention shall be construed as references to this Directive.

*Article 17***Transposition**

1. Member States shall adopt and publish, by 6 July 2019, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission. They shall apply those measures from 6 July 2019.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that, for the Member States bound by this Directive, references in existing laws, regulations and administrative provisions to the Convention replaced by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 18***Reporting and assessment**

1. The Commission shall by 6 July 2021 submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive.

2. Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit the following statistics on the criminal offences referred to in Articles 3, 4 and 5 to the Commission, if they are available at a central level in the Member State concerned:

- (a) the number of criminal proceedings initiated, dismissed, resulting in an acquittal, resulting in a conviction and ongoing;
- (b) the amounts recovered following criminal proceedings and the estimated damage.

3. The Commission shall, by 6 July 2024 and taking into account its report submitted pursuant to paragraph 1 and the Member States' statistics submitted pursuant to paragraph 2, submit a report to the European Parliament and to the Council, assessing the impact of national law transposing this Directive on the prevention of fraud to the Union's financial interests.

4. The Commission shall, by 6 July 2022 and on the basis of the statistics submitted by Member States, pursuant to paragraph 2, submit a report to the European Parliament and to the Council, assessing, with regard to the general objective to strengthen the protection of the Union's financial interests, whether:

- (a) the threshold indicated in Article 2(2) is appropriate;
- (b) the provisions relating to limitation periods as referred to in Article 12 are sufficiently effective;
- (c) this Directive effectively addresses cases of procurement fraud.

5. The reports referred to in paragraphs 3 and 4 shall be accompanied, if necessary, by a legislative proposal, which may include a specific provision on procurement fraud.

*Article 19***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 20***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 5 July 2017.

For the European Parliament

The President

A. TAJANI

For the Council

The President

M. MAASIKAS

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL DECISION
of 6 December 2001
on the protection of the euro against counterfeiting
(2001/887/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty on European Union, and in particular Article 31 and Article 34(2)(c) thereof,

Article 1

Having regard to the initiative by the French Republic ⁽¹⁾,

Definitions

Having regard to the opinion of the European Parliament ⁽²⁾,

For the purposes of this Decision:

Whereas:

- (1) Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro ⁽³⁾ lays down that currency denominated in euro shall start to be put into circulation as from 1 January 2002 and obliges the participating Member States to ensure adequate sanctions against counterfeiting and falsification of euro banknotes and coins.
- (2) The measures to protect the euro put in place by previous instruments should be supplemented and strengthened by provisions ensuring close cooperation between the competent authorities of the Member States, the European Central Bank, the national central banks, Europol and Eurojust to suppress offences involving counterfeiting of the euro.
- (3) On 29 May 2000 the Council adopted Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro ⁽⁴⁾.
- (4) On 28 June 2001 the Council adopted Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting ⁽⁵⁾ and Regulation (EC) No 1339/2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency ⁽⁶⁾,

- (a) 'counterfeit notes' and 'counterfeit coins' mean notes and coins defined as such by Article 2 of Regulation (EC) No 1338/2001;
- (b) 'counterfeiting and offences related to counterfeiting of the euro' means the conduct, in relation to the euro, described in Articles 3 to 5 of Council Framework Decision 2000/383/JHA;
- (c) 'competent authorities' means the authorities designated by the Member States to centralise information, in particular the national central offices, and to detect, investigate or punish counterfeiting and offences related to counterfeiting of the euro;
- (d) 'Geneva Convention' means the International Convention for the Suppression of Counterfeiting Currency, signed at Geneva on 20 April 1929 and its Protocol;
- (e) 'Europol Convention' means the Convention of 26 July 1995 on the establishment of a European police office ⁽⁷⁾.

Article 2

Expert analysis of notes and coins

Member States shall ensure that in the context of investigations into counterfeiting and offences related to counterfeiting of the euro:

- (a) the necessary expert analyses of suspected counterfeit notes are carried out by a National Analysis Centre (NAC) designated or established pursuant to Article 4(1) of Regulation (EC) No 1338/2001; and
- (b) the necessary expert analyses of suspected counterfeit coins are carried out by a Coin National Analysis Centre (CNAC) designated or established pursuant to Article 5(1) of Regulation (EC) No 1338/2001.

⁽¹⁾ OJ C 75, 7.3.2001, p. 1.

⁽²⁾ Opinion delivered on 23 October 2001 (not yet published in the Official Journal).

⁽³⁾ OJ L 139, 11.5.1998, p. 1.

⁽⁴⁾ OJ L 140, 14.6.2000, p. 1.

⁽⁵⁾ OJ L 181, 4.7.2001, p. 6.

⁽⁶⁾ OJ L 181, 4.7.2001, p. 11.

⁽⁷⁾ OJ C 316, 27.11.1995, p. 2. Convention as last amended by Protocol of 30 November 2000 (OJ C 358, 13.12.2000, p. 2).

*Article 3***Forwarding of the results of expert analyses**

Member States shall ensure that the results of the analyses carried out by the NAC and the NCAC in accordance with Article 2 are communicated to Europol in accordance with the Europol Convention.

*Article 4***Obligation to communicate information**

1. Member States shall ensure that the national central offices referred to in Article 12 of the Geneva Convention communicate to Europol, in accordance with the Europol Convention, centralised information on investigations into counterfeiting and offences related to counterfeiting of the euro, including information obtained from third countries. The Member States and Europol shall cooperate with a view to determining which information is to be communicated. The information shall, at least, include the particulars of the persons involved, the particulars of the offences, the circumstances in which the offences were discovered, the context of the seizure and links with other cases.

2. The competent authorities of the Member States shall, where appropriate, in investigations into counterfeiting and offences related to the counterfeiting of the euro make use of the facilities offered by the Provisional Judicial Cooperation Unit and, subsequently, the facilities for cooperation offered by Eurojust once it has been established, in accordance with the provisions laid down in the instruments establishing the Provisional Judicial Cooperation Unit and Eurojust.

*Article 5***Entry into force**

This Decision shall enter into force on the day of its publication in the Official Journal.

Done at Brussels, 6 December 2001.

For the Council

The President

M. VERWILGHEN

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2014/62/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 15 May 2014****on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/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 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank ⁽¹⁾,Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) As the single currency shared by the Member States of the euro area, the euro has become an important factor in the Union's economy and the everyday life of its citizens. However, since its introduction in 2002, as a currency continuously targeted by organised crime groups active in money counterfeiting, counterfeiting of the euro has caused financial damage of at least EUR 500 million. It is in the interests of the Union as a whole to oppose and pursue any activity that is likely to jeopardise the authenticity of the euro by counterfeiting.
- (2) Counterfeit money has a considerable ill-effect on society. It harms citizens and businesses that are not reimbursed for counterfeits even if received in good faith. It could lead to consumer concerns regarding the sufficient protection of cash and to the fear of receiving counterfeit notes and coins. It is therefore of fundamental importance to ensure trust and confidence in the authenticity of notes and coins for citizens, businesses and financial institutions in all Member States as well as in third countries.
- (3) It is essential to ensure that effective and efficient criminal law measures protect the euro and any other currency whose circulation is legally authorised in an appropriate way in all Member States.
- (4) Council Regulation (EC) No 974/98 ⁽⁴⁾ obliges the Member States whose currency is the euro to ensure adequate sanctions against counterfeiting and falsification of euro notes and coins.

⁽¹⁾ OJ C 179, 25.6.2013, p. 9.

⁽²⁾ OJ C 271, 19.9.2013, p. 42.

⁽³⁾ Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal) and decision of the Council of 6 May 2014.

⁽⁴⁾ Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1).

- (5) Council Regulations (EC) No 1338/2001 ⁽¹⁾ and (EC) No 1339/2001 ⁽²⁾ lay down measures necessary for the protection of the euro against counterfeiting, in particular measures to withdraw counterfeit euro notes and coins from circulation.
- (6) The International Convention for the Suppression of Counterfeiting Currency signed at Geneva on 20 April 1929 and its Protocol (the 'Geneva Convention') ⁽³⁾ lays down rules to effectively prevent, prosecute and punish the offence of counterfeiting currency. In particular, it aims at ensuring that severe criminal penalties and other sanctions can be imposed for offences of counterfeiting currency. All contracting parties to the Geneva Convention have to apply the principle of non-discrimination to currencies other than their domestic currency.
- (7) This Directive supplements the provisions and facilitates the application of the Geneva Convention by the Member States. To that end, it is important that the Member States are parties to the Geneva Convention.
- (8) This Directive builds on and updates Council Framework Decision 2000/383/JHA ⁽⁴⁾. It complements that Framework Decision with further provisions on the level of sanctions, on investigative tools and on the analysis, identification and detection of counterfeit euro notes and coins during judicial proceedings.
- (9) This Directive should protect any note and coin whose circulation is legally authorised, irrespective of whether it is made of paper, metal or any other material.
- (10) The protection of the euro and other currencies calls for a common definition of the criminal offences related to the currency counterfeiting as well as for common, effective, proportionate and dissuasive sanctions both for natural and legal persons. In order to ensure consistency with the Geneva Convention, this Directive should provide for the same offences to be punishable as in the Geneva Convention. Therefore, the production of counterfeit notes and coins and their distribution should be a criminal offence. Important preparatory work to those offences, for example the production of counterfeiting instruments and components, should be punished independently. The common aim of those definitions of offences should be to act as a deterrent to any handling of counterfeit notes and coins, instruments and other means for counterfeiting.
- (11) The misuse of legal facilities or material of authorised printers or mints for the production of unauthorised notes and coins for fraudulent use should also be a criminal offence. Such misuse covers the situation where a national central bank or mint or other authorised industry produces notes or coins exceeding the quota authorised by the European Central Bank (ECB). It also covers the situation where an employee of an authorised printer or mint abuses the facilities for his or her own purposes. That conduct should be punishable as a criminal offence even if the authorised quantities have not been exceeded, because the notes and coins produced would, once circulated, not be distinguishable from authorised currency.
- (12) Notes and coins which the ECB or the national central banks and mints have not yet formally issued should also fall under the protection of this Directive. Thus, for instance, euro coins with new national sides or new series of euro notes should be protected before they have officially been put into circulation.
- (13) Incitement, aiding and abetting and attempt to commit the main counterfeiting offences, including the misuse of legal facilities or material and including the counterfeiting of notes and coins not yet issued but designated for circulation, should also be penalised where appropriate. This Directive does not require Member States to render punishable an attempt to commit an offence relating to an instrument or component for counterfeiting.
- (14) Intention should be a part of all the elements constituting the offences laid down in this Directive.

⁽¹⁾ Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 181, 4.7.2001, p. 6).

⁽²⁾ Council Regulation (EC) No 1339/2001 of 28 June 2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency (OJ L 181, 4.7.2001, p. 11).

⁽³⁾ No 2623, p. 372 League of Nations — Treaty Series 1931.

⁽⁴⁾ Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (OJ L 140, 14.6.2000, p. 1).

- (15) Currency counterfeiting is traditionally a crime subject to a high level of sanctions in the Member States. That is due to the serious nature and the impact of the crime on citizens and businesses, and due to the need to ensure the trust of citizens and businesses in the genuine character of the euro and other currencies. That holds particularly true for the euro, which is the single currency of over 330 million people in the euro area and which is the second most important international currency.
- (16) Member States should provide for criminal sanctions in their national law in respect of the provisions of Union law on combating currency counterfeiting. Those sanctions should be effective, proportionate and dissuasive and should include imprisonment. The minimum level of the maximum term of imprisonment provided for in this Directive for the offences laid down herein should apply at least to the most serious forms of those offences.
- (17) The levels of the sanctions should be effective and dissuasive but should not go beyond what is proportionate to the offences. Although intentionally passing on counterfeit currency which has been received in good faith could be sanctioned with a different type of criminal sanction, including fines, in the national law of the Member States, those national laws should provide for imprisonment as a maximum sanction. Imprisonment sanctions for natural persons will serve as a strong deterrent for potential criminals, with effect all over the Union.
- (18) As this Directive establishes minimum rules, Member States can adopt or maintain more stringent rules for currency counterfeiting offences.
- (19) This Directive is without prejudice to the general rules and principles of national criminal law on the application and execution of sentences in accordance with the concrete circumstances in each individual case.
- (20) Since confidence in the genuine character of notes and coins can also be harmed or threatened by the conduct of legal persons, legal persons should be liable for the offences committed on their behalf.
- (21) To ensure the success of investigations and the prosecution of currency counterfeiting offences, those responsible for investigating and prosecuting such offences should have the possibility to make use of effective investigative tools such as those which are used in combating organised crime or other serious crimes. Such tools could, where appropriate, include, for example, the interception of communications, covert surveillance including electronic surveillance, the monitoring of bank accounts and other financial investigations. Taking into account, inter alia, the principle of proportionality, the use of such tools in accordance with national law should be commensurate with the nature and gravity of the offences under investigation. The right to the protection of personal data should be respected.
- (22) Member States should establish their jurisdiction in a manner consistent with the Geneva Convention and the provisions on jurisdiction in other Union criminal law, that is to say, over offences committed on their territory and over offences committed by their nationals, noting that in general offences are best dealt with by the criminal justice system of the country in which they occur.
- (23) The pre-eminent role of the euro for the economy and society of the Union, as well as the specific threat to the euro as a currency of worldwide importance as manifested by the existence of a considerable number of print-shops located in third countries, calls for an additional measure to protect it. Therefore, jurisdiction should be established over offences relating to the euro committed outside the territory of a given Member State if either the offender is in the territory of that Member State and is not extradited, or counterfeit euro notes or coins relating to the offence are detected in that Member State.

Given the objectively different situation of the Member States whose currency is the euro, it is appropriate that the obligation to establish such jurisdiction only applies to those Member States. For the purpose of prosecution of the offences laid down in point (a) of Article 3(1), Article 3(2) and (3), where they relate to point (a) of Article 3(1), as well as incitement, aiding and abetting, and attempt to commit those offences, jurisdiction should not be subordinated to the condition that the acts constitute an offence at the place where they were committed. When exercising such jurisdiction, Member States should take into account whether the offences are being dealt with by the criminal justice system of the country where they were committed, and should respect the principle of proportionality, in particular with regard to convictions by a third country for the same conduct.

- (24) For the euro, the identification of counterfeit euro notes and coins is centralised at the National Analysis Centres and the Coin National Analysis Centres respectively, which are designated or established in accordance with Regulation (EC) No 1338/2001. The analysis, identification and detection of counterfeit euro notes and coins should also be possible during on-going judicial proceedings in order to accelerate the detection of the source of production of counterfeits in a given criminal investigation or prosecution and to avoid and stop such types of counterfeits from further circulation, with due respect for the principle of a fair and effective trial. That would contribute to the efficiency of combating counterfeiting offences and would at the same time increase the number of transmissions of seized counterfeits during on-going criminal proceedings, subject to limited exceptions where only access to counterfeits should be provided. In general, the competent authorities should authorise the physical transmission of the counterfeits to the National Analysis Centres and Coin National Analysis Centres. In certain circumstances, for example where only a few counterfeit notes or coins constitute the evidence for the criminal proceedings, or where physical transmission would result in the risk of destruction of evidence, such as fingerprints, the competent authorities should instead be able to decide to give access to the notes and coins.
- (25) There is a need to collect comparable data on the offences laid down in this Directive. In order to gain a more complete picture of the problem of counterfeiting at Union level and thereby contribute to formulating a more effective response, Member States should transmit to the Commission relevant statistical data relating to the number of offences concerning counterfeit notes and coins and the number of persons prosecuted and sentenced.
- (26) In order to pursue the objective of fighting the counterfeiting of euro notes and coins, the conclusion of agreements with third countries, in particular those countries that use the euro as a currency, should be pursued in accordance with the relevant Treaty procedures.
- (27) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to liberty and security, the respect for private and family life, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality of criminal offences and penalties, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. This Directive seeks to ensure full respect for those rights and principles and should be implemented accordingly.
- (28) This Directive aims to amend and expand the provisions of Framework Decision 2000/383/JHA. Since the amendments to be made are of a substantial number and nature, that Framework Decision should in the interests of clarity be replaced in its entirety for the Member States bound by this Directive.
- (29) Since the objective of this Directive, namely to protect the euro and other currencies against counterfeiting, cannot be sufficiently achieved by the Member States but can rather, by reasons of its scale and effects, be better achieved at Union level, the Union may adopt the measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union ('TEU'). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (30) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the Treaty on the Functioning of the European Union ('TFEU'), Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (31) In accordance with Article 3 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, Ireland has notified its wish to take part in the adoption and application of this Directive.
- (32) In accordance with Articles 1, 2 and 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, the United Kingdom is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of counterfeiting of the euro and other currencies. It also introduces common provisions to strengthen the fight against those offences and to improve investigation of them and to ensure better cooperation against counterfeiting.

Article 2

Definitions

For the purposes of this Directive the following definitions apply:

- (a) 'currency' means notes and coins, the circulation of which is legally authorised, including euro notes and coins, the circulation of which is legally authorised pursuant to Regulation (EC) No 974/98;
- (b) 'legal person' means any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

Article 3

Offences

1. Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally:
 - (a) any fraudulent making or altering of currency, whatever means are employed;
 - (b) the fraudulent uttering of counterfeit currency;
 - (c) the import, export, transport, receiving or obtaining of counterfeit currency with a view to uttering the same and with knowledge that it is counterfeit;
 - (d) the fraudulent making, receiving, obtaining or possession of
 - (i) instruments, articles, computer programs and data, and any other means peculiarly adapted for the counterfeiting or altering of currency; or
 - (ii) security features, such as holograms, watermarks or other components of currency which serve to protect against counterfeiting.
2. Member States shall take the necessary measures to ensure that the conduct referred to in points (a), (b) and (c) of paragraph 1 is punishable also with respect to notes or coins being manufactured or having been manufactured by use of legal facilities or materials in violation of the rights or the conditions under which competent authorities may issue notes or coins.
3. Member States shall take the necessary measures to ensure that the conduct referred to in paragraphs 1 and 2 is punishable also in relation to notes and coins which are not yet issued, but are designated for circulation as legal tender.

Article 4

Incitement, aiding and abetting, and attempt

1. Member States shall take the necessary measures to ensure that inciting or aiding and abetting an offence referred to in Article 3 is punishable as a criminal offence.
2. Member States shall take the necessary measures to ensure that an attempt to commit an offence referred to in points (a), (b) or (c) of Article 3(1), Article 3(2), or Article 3(3) in relation to conduct referred to in points (a), (b) and (c) of Article 3(1) is punishable as a criminal offence.

*Article 5***Sanctions for natural persons**

1. Member States shall take the necessary measures to ensure that the conduct referred to in Articles 3 and 4 is punishable by effective, proportionate and dissuasive criminal sanctions.
2. Member States shall take the necessary measures to ensure that the offences referred to in point (d) of Article 3(1), the offences referred to in Article 3(2), and the offences referred to in Article 3(3) in relation to conduct referred to in point (d) of Article 3(1) shall be punishable by a maximum sanction which provides for imprisonment.
3. Member States shall take the necessary measures to ensure that the offences referred to in point (a) of Article 3(1) and in Article 3(3) in relation to conduct referred to in point (a) of Article 3(1) shall be punishable by a maximum term of imprisonment of at least eight years.
4. Member States shall take the necessary measures to ensure that the offences referred to in points (b) and (c) of Article 3(1) and in Article 3(3) in relation to conduct referred to in points (b) and (c) of Article 3(1) shall be punishable by a maximum term of imprisonment of at least five years.
5. In relation to the offence referred to in point (b) of Article 3(1), Member States may provide for effective, proportionate and dissuasive criminal sanctions other than that referred to in paragraph 4 of this Article, including fines and imprisonment, if the counterfeit currency was received without knowledge but passed on with the knowledge that it is counterfeit.

*Article 6***Liability of legal persons**

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 3 and 4 committed for their benefit by any person acting either individually or as part of an organ of the legal person who has a leading position within the legal person based on
 - (a) a power of representation of the legal person;
 - (b) an authority to take decisions on behalf of the legal person; or
 - (c) an authority to exercise control within the legal person.
2. Member States shall ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission of an offence referred to in Articles 3 and 4 for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 of this Article shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the offences referred to in Articles 3 and 4.

*Article 7***Sanctions for legal persons**

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding-up;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

*Article 8***Jurisdiction**

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 and 4, where

- (a) the offence is committed in whole or in part within its territory; or
- (b) the offender is one of its nationals.

2. Each Member State whose currency is the euro shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 and 4 committed outside its territory, at least where they relate to the euro and where

- (a) the offender is in the territory of that Member State and is not extradited; or
- (b) counterfeit euro notes or coins related to the offence have been detected in the territory of that Member State.

For the prosecution of the offences referred to in point (a) of Article 3(1), Article 3(2) and (3), where they relate to point (a) of Article 3(1), as well as incitement, aiding and abetting, and attempt to commit those offences, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the acts are a criminal offence at the place where they were committed.

*Article 9***Investigative tools**

Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 and 4.

*Article 10***Obligation to transmit counterfeit euro notes and coins for analysis and detection of counterfeits**

Member States shall ensure that during criminal proceedings the examination by the National Analysis Centre and Coin National Analysis Centre of suspected counterfeit euro notes and coins for analysis, identification and detection of further counterfeits is permitted without delay. The competent authorities shall transmit the necessary samples without any delay, and at the latest once a final decision concerning the criminal proceedings has been reached.

*Article 11***Statistics**

Member States shall, at least every two years, transmit data to the Commission on the number of offences laid down in Articles 3 and 4 and the number of persons prosecuted for and convicted of the offences laid down in Articles 3 and 4.

*Article 12***Reporting by the Commission and review**

By 23 May 2019, the Commission shall submit a report on the application of this Directive to the European Parliament and to the Council. The report shall assess the extent to which the Member States have taken the necessary measures to comply with this Directive. The report shall be accompanied, if necessary, by a legislative proposal.

*Article 13***Replacement of Framework Decision 2000/383/JHA**

Framework Decision 2000/383/JHA is hereby replaced in respect of the Member States bound by this Directive, without prejudice to the obligations of those Member States relating to the time-limit for transposition into national law of Framework Decision 2000/383/JHA.

For the Member States bound by this Directive, references to Framework Decision 2000/383/JHA shall be construed as references to this Directive.

*Article 14***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 May 2016. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

*Article 15***Entry into force**

This Directive shall enter into force on the day following its publication in the *Official Journal of the European Union*.

*Article 16***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 15 May 2014.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

D. KOURKOULAS

CONVENTION

drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 26 May 1997,

WHEREAS the Member States consider the improvement of judicial cooperation in the fight against corruption to be a matter of common interest, coming under the cooperation provided for in Title VI of the Treaty;

WHEREAS by its Act of 27 September 1996 the Council drew up a Protocol directed in particular at acts of corruption involving national or Community officials and damaging or likely to damage the European Communities' financial interests;

WHEREAS, for the purpose of improving judicial cooperation in criminal matters between Member States, it is necessary to go further than the said Protocol and to draw up a Convention directed at acts of corruption involving officials of the European Communities or officials of the Member States in general;

DESIROUS of ensuring consistent and effective application of this Convention throughout the European Union,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

equivalent to those performed by European Community officials or other servants.

Definitions

For the purposes of this Convention:

(a) 'official' shall mean any Community or national official, including any national official of another Member State;

(b) 'Community official' shall mean:

— any person who is an official or other contracted employee within the meaning of the Staff Regulations of officials of the European Communities or the Conditions of Employment of other servants of the European Communities,

— any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions

Members of bodies set up in accordance with the Treaties establishing the European Communities and the staff of such bodies shall be treated as Community officials, inasmuch as the Staff Regulations of officials of the European Communities or the Conditions of Employment of other servants of the European Communities do not apply to them;

(c) 'national official' shall be understood by reference to the definition of 'official' or 'public officer' in the national law of the Member State in which the person in question performs that function for the purposes of application of the criminal law of that Member State.

Nevertheless, in the case of proceedings involving a Member State's official initiated by another Member State, the latter shall not be bound to apply the definition of 'national official' except insofar as that definition is compatible with its national law.

*Article 2***Passive corruption**

1. For the purposes of this Convention, the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute passive corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.

*Article 3***Active corruption**

1. For the purposes of this Convention, the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute active corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.

*Article 4***Assimilation**

1. Each Member State shall take the necessary measures to ensure that in its criminal law the descriptions of the offences referred to in Articles 2 and 3 committed by or against its Government Ministers, elected members of its parliamentary chambers, the members of its highest Courts or the members of its Court of Auditors in the exercise of their functions apply similarly in cases where such offences are committed by or against Members of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the European Communities respectively in the exercise of their duties.

2. Where a Member State has enacted special legislation concerning acts or omissions for which Government Ministers are responsible by reason of their special political position in that Member State, paragraph 1 may not apply to such legislation, provided that the Member State ensures that Members of the

Commission of the European Communities are also covered by the criminal legislation implementing Articles 2 and 3.

3. Paragraphs 1 and 2 shall be without prejudice to the provisions applicable in each Member State concerning criminal proceedings and the determination of the competent court.

4. This Convention shall apply in full accordance with the relevant provisions of the Treaties establishing the European Communities, the Protocol on the Privileges and Immunities of the European Communities, the Statutes of the Court of Justice and the texts adopted for the purpose of their implementation, as regards the withdrawal of immunity.

*Article 5***Penalties**

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 and 3, and participating in and instigating the conduct in question, is punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition.

2. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against national officials or Community officials. In determining the penalty to be imposed, the national criminal courts may, in accordance with the principles of their national law, take into account any disciplinary penalty already imposed on the same person for the same conduct.

*Article 6***Criminal liability of heads of businesses**

Each Member State shall take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the principles defined by its national law in cases of corruption, as referred to in Article 3, by a person under their authority acting on behalf of the business.

*Article 7***Jurisdiction**

1. Each Member State shall take the measures necessary to establish its jurisdiction over the offences it has established in accordance with the obligations arising out of Articles 2, 3 and 4 where:

- (a) the offence is committed in whole or in part within its territory;
- (b) the offender is one of its nationals or one of its officials;
- (c) the offence is committed against one of the persons referred to in Article 1 or a member of one of the European Community institutions referred to in Article 4 (1) who is at the same time one of its nationals;
- (d) the offender is a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the Member State in question.

2. Each Member State may declare, when giving the notification provided for in Article 13 (2), that it will not apply or will apply only in specific cases or conditions one or more of the jurisdiction rules laid down in paragraph 1 (b), (c) and (d).

Article 8

Extradition and prosecution

1. Any Member State which, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with the obligations arising out of Articles 2, 3 and 4, when committed by its own nationals outside its territory.
2. Each Member State shall, when one of its nationals is alleged to have committed in another Member State an offence established in accordance with the obligations arising out of Articles 2, 3 and 4 and it does not extradite that person to that other Member State solely on the ground of his nationality, submit the case to its competent authorities for the purpose of prosecution if appropriate. In order to enable prosecution to take place, the files, information and exhibits relating to the offence shall be transmitted in accordance with the procedures laid down in Article 6 of the European Convention on Extradition of 13 December 1957. The requesting Member State shall be informed of the prosecution initiated and of its outcome.
3. For the purposes of this Article, the term 'national' of a Member State shall be construed in accordance with any declaration made by that State under Article 6 (1) (b) of the European Convention on Extradition and with paragraph 1 (c) of that Article.

Article 9

Cooperation

1. If any procedure in connection with an offence established in accordance with the obligations arising out of Articles 2, 3 and 4 concerns at least two Member States, those States shall cooperate effectively in the investigation, the prosecution and in carrying out the punishment imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State.
2. Where more than one Member State has jurisdiction and has the possibility of viable prosecution of an offence based on the same facts, the Member States involved shall cooperate in deciding which shall prosecute the offender or offenders with a view to centralizing the prosecution in a single Member State where possible.

Article 10

Ne bis in idem

1. Member States shall apply, in their national criminal laws, the *ne bis in idem* rule, under which a person whose trial has been finally disposed of in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that if a penalty was imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing State.
2. A Member State may, when giving the notification referred to in Article 13 (2), declare that it shall not be bound by paragraph 1 of this Article in one or more of the following cases:
 - (a) if the facts which were the subject of the judgment rendered abroad took place in its own territory either in whole or in part; in the latter case this exception shall not apply if those facts took place partly in the territory of the Member State where the judgment was rendered;
 - (b) if the facts which were the subject of the judgment rendered abroad constitute an offence directed against the security or other equally essential interests of that Member State;
 - (c) if the facts which were the subject of the judgment rendered abroad were committed by an official of that Member State contrary to the duties of his office.
3. If a further prosecution is brought in a Member State against a person whose trial, in respect of the same facts, has been finally disposed of in another Member State, any period of deprivation of liberty served in the latter Member State arising from those facts shall be deducted from any sanction imposed. To the extent

permitted by national law, sanctions not involving deprivation of liberty shall also be taken into account insofar as they have been enforced.

4. The exceptions which may be the subject of a declaration under paragraph 2 shall not apply if the Member State concerned in respect of the same facts requested the other Member State to bring the prosecution or granted extradition of the person concerned.

5. Relevant bilateral or multilateral agreements concluded between Member States and relevant declarations shall remain unaffected by this Article.

Article 11

Internal provisions

No provision in this Convention shall prevent Member States from adopting internal legal provisions which go beyond the obligations deriving from this Convention.

Article 12

Court of Justice

1. Any dispute between Member States on the interpretation or application of this Convention which it has proved impossible to resolve bilaterally must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution. If no solution has been found within six months, the matter may be referred to the Court of Justice of the European Communities by one of the parties to the dispute.

2. Any dispute between one or more Member States and the Commission of the European Communities concerning Article 1, with the exception of point (c), or Articles 2, 3 and 4, insofar as it concerns a question of Community law or the Communities' financial interests, or involves members of officials of Community institutions of bodies set up in accordance with the Treaties establishing the European Communities, which it has proved impossible to settle through negotiation, may be submitted to the Court of Justice by one of the parties to the dispute.

3. Any court in a Member State may ask the Court of Justice to give a preliminary ruling on a matter concerning the interpretation of Articles 1 to 4 and 12 to 16 raised in a case pending before it and involving members or officials of Community institutions or bodies set up in accordance with the Treaties establishing the European Communities, acting in the exercise of their

functions, if it considers that a decision on that matter is necessary to enable it to give judgment.

4. The competence of the Court of Justice provided for in paragraph 3 shall be subject to its acceptance by the Member State concerned in a declaration to that effect made at the time of the notification referred to in Article 13 (2) or at any subsequent time.

5. A Member State making a declaration under paragraph 4 may restrict the possibility of asking the Court of Justice to give a preliminary ruling to those of its courts against the decisions of which there is no judicial remedy under national law.

6. The Statute of the Court of Justice of the European Community and its Rules of Procedure shall apply. In accordance with those Statutes, any Member State, or the Commission, whether or not it has made a declaration pursuant to paragraph 4, shall be entitled to submit statements of case or written observations to the Court of Justice in cases which arise under paragraph 3.

Article 13

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 procedures laid down by their respective constitutional requirements for adopting this Convention.

3. This Convention shall enter into force ninety days after the notification, referred to in paragraph 2, by the last Member State to fulfil that formality.

4. Until the entry into force of this Convention, any Member State may, when giving the notification referred to in paragraph 2 or at any time thereafter, declare that this Convention, with the exception of Article 12 thereof, shall apply to it in its relationships with those Member States which have made the same declaration. This Convention shall become applicable in respect of the Member State that makes such a declaration on the first day of the month following the expiry of a period of ninety days after the date of deposit of its declaration.

5. A Member State that has not made any declaration as referred to in paragraph 4 may apply this Convention with respect to the other contracting Member States on the basis of bilateral agreements.

*Article 14***Accession of new Member States**

1. This Convention shall be open to accession by any State that 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. Instruments of accession shall be deposited with the depositary.
4. This Convention shall enter into force with respect to any State acceding to it ninety days after the date of deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period of ninety days.
5. If this Convention has not yet entered into force when the instrument of accession is deposited, Article 13 (4) shall apply to acceding States.

*Article 15***Reservations**

1. No reservation shall be authorized with the exception of those provided for in Articles 7 (2) and 10 (2).
2. Any Member State which has entered a reservation may withdraw it at any time in whole or in part by notifying the depositary. Withdrawal shall take effect on the date on which the depositary receives the notification.

*Article 16***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 European Communities* information on the progress of adoptions and accessions, declarations and reservations and any other notification concerning this Convention.

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION 2003/568/JHA
of 22 July 2003
on combating corruption in the private sector

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29, Article 31(1)(e) and Article 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) Along with globalisation, recent years have brought an increase in cross-border trade in goods and services. Any corruption in the private sector within a Member State is thus not just a domestic problem but also a trans-national problem, most effectively tackled by means of a European Union joint action.
- (2) On 27 September 1996 the Council adopted the Act drawing up a Protocol to the Convention on the Protection of the European Communities' Financial Interests ⁽³⁾. The Protocol, which entered into force on 17 October 2002, contains definitions of and harmonised penalties for offences of corruption.
- (3) On 26 May 1997 the Council approved a Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union ⁽⁴⁾.
- (4) On 22 December 1998, the Council also adopted Joint Action 98/742/JHA on corruption in the private sector ⁽⁵⁾. In connection with the adoption of that Joint Action, the Council issued a statement to the effect that it agreed that the Joint Action represents the first step at European Union level towards combating such corruption, and that additional measures will be implemented at a later stage in the light of the outcome of the assessment which is to take place pursuant to Article 8(2) of the Joint Action. A report on Member States' transposition of that Joint Action into national law is not yet available.
- (5) On 13 June 2002 the Council adopted Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between the Member

States ⁽⁶⁾, in which corruption is included in the list of offences falling within the scope of the European arrest warrant, in respect of which prior verification of double criminality is not required.

- (6) Under Article 29 of the Treaty on European Union, it is the Union's objective to provide citizens with a high level of safety within an area of freedom, security and justice, an objective to be achieved by preventing and combating crime, organised or otherwise, including corruption.
- (7) According to point 48 of the conclusions of the European Council meeting in Tampere on 15 and 16 October 1999, corruption is an area of particular relevance in establishing minimum rules on what constitutes a criminal offence in Member States and the penalties applicable.
- (8) An OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was approved at a negotiating conference on 21 November 1997, and the Council of Europe has also approved a Criminal Law Convention on Corruption, which opened for signature on 27 January 1999. That Convention is accompanied by an Agreement establishing the Group of States against Corruption (GRECO). Negotiations have also been opened for a UN Convention on combating corruption.
- (9) Member States attach particular importance to combating corruption in both the public and the private sector, in the belief that in both those sectors it poses a threat to a law-abiding society as well as distorting competition in relation to the purchase of goods or commercial services and impeding sound economic development. In that context the Member States which have not yet ratified the European Union Convention of 26 May 1997 and the Council of Europe Convention of 27 January 1999 will consider how to do so as soon as possible.

⁽¹⁾ OJ C 184, 2.8.2002, p. 5.

⁽²⁾ Opinion of 22 November 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 313, 23.10.1996, p. 1.

⁽⁴⁾ OJ C 195, 25.6.1997, p. 2.

⁽⁵⁾ OJ L 358, 31.12.1998, p. 2.

⁽⁶⁾ OJ L 190, 18.7.2002, p. 1.

- (10) The aim of this Framework Decision is in particular to ensure that both active and passive corruption in the private sector are criminal offences in all Member States, that legal persons may also be held responsible for such offences, and that these offences incur effective, proportionate and dissuasive penalties,

4. Declarations referred to in paragraph 3 shall be communicated to the Council at the time of the adoption of this Framework Decision and shall be valid for five years as from 22 July 2005.

5. The Council shall review this Article in due time before 22 July 2010 with a view to considering whether it shall be possible to renew declarations made under paragraph 3.

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 3

Instigation, aiding and abetting

Member States shall take the necessary measures to ensure that instigating, aiding and abetting the conduct referred to in Article 2 constitute criminal offences.

Article 1

Definitions

For the purposes of this Framework Decision:

- 'legal person' means any entity having such status under the applicable national law, except for States or other public bodies acting in the exercise of State authority and for public international organisations,
- 'breach of duty' shall be understood in accordance with national law. The concept of breach of duty in national law should cover as a minimum any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business of a person who in any capacity directs or works for a private sector entity.

Article 4

Penalties and other sanctions

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 and 3 is punishable by effective, proportionate and dissuasive criminal penalties.

2. Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 2 is punishable by a penalty of a maximum of at least one to three years of imprisonment.

3. Each Member State shall take the necessary measures in accordance with its constitutional rules and principles to ensure that where a natural person in relation to a certain business activity has been convicted of the conduct referred to in Article 2, that person may, where appropriate, at least in cases where he or she had a leading position in a company within the business concerned, be temporarily prohibited from carrying on this particular or comparable business activity in a similar position or capacity, if the facts established give reason to believe there to be a clear risk of abuse of position or of office by active or passive corruption.

Article 2

Active and passive corruption in the private sector

1. Member States shall take the necessary measures to ensure that the following intentional conduct constitutes a criminal offence, when it is carried out in the course of business activities:

- (a) promising, offering or giving, directly or through an intermediary, to a person who in any capacity directs or works for a private-sector entity an undue advantage of any kind, for that person or for a third party, in order that that person should perform or refrain from performing any act, in breach of that person's duties;
- (b) directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a private-sector entity, in order to perform or refrain from performing any act, in breach of one's duties.

2. Paragraph 1 applies to business activities within profit and non-profit entities.

3. A Member State may declare that it will limit the scope of paragraph 1 to such conduct which involves, or could involve, a distortion of competition in relation to the purchase of goods or commercial services.

Article 5

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Apart from the cases provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of an offence of the type referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are involved as perpetrators, instigators or accessories in an offence of the type referred to in Articles 2 and 3.

Article 6

Penalties for legal persons

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision; or
- (d) a judicial winding-up order.

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(2) is punishable by penalties or measures which are effective, proportionate and dissuasive.

Article 7

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction with regard to the offences referred to in Articles 2 and 3, where the offence has been committed:

- (a) in whole or in part within its territory;
- (b) by one of its nationals; or
- (c) for the benefit of a legal person that has its head office in the territory of that Member State.

2. Any Member State may decide that it will not apply the jurisdiction rules in paragraph 1(b) and (c), or will apply them only in specific cases or circumstances, where the offence has been committed outside its territory.

3. Any Member State which, under its domestic law, does not as yet surrender its own nationals shall take the necessary measures to establish its jurisdiction with regard to the offences referred to in Articles 2 and 3, when committed by its own nationals outside its territory.

4. Member States which decide to apply paragraph 2 shall inform the General Secretariat of the Council and the Commission accordingly, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Article 8

Repeal

Joint Action 98/742/JHA shall be repealed.

Article 9

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision before 22 July 2005.

2. By the same date, Member States shall transmit to the General Secretariat of the Council and 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 from the Commission, the Council shall before 22 October 2005 assess the extent to which Member States have complied with the provisions of this Framework Decision.

Article 10

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 11

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

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL DECISION 2008/852/JHA

of 24 October 2008

on a contact-point network against corruption

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29, Article 30(1), Article 31 and Article 34(2)(c) thereof,

Having regard to the initiative of the Federal Republic of Germany ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

(1) Article 29 of the Treaty states that the objective of the Union to provide citizens with a high level of safety within an area of freedom, security and justice is to be achieved by preventing and combating crime, organised or otherwise, including corruption and fraud.

(2) The European Union strategy for the beginning of the new millennium on the prevention and control of organised crime emphasises the need to develop a comprehensive EU policy against corruption.

(3) In its Resolution of 14 April 2005 concerning a comprehensive EU policy against corruption, which refers to the communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee of 28 May 2003 on a Comprehensive EU Policy against Corruption, the Council reaffirms the importance of the role and work of the Member States in developing a comprehensive, multi-faceted policy against corruption in both the public and private sectors, in partnership with all relevant players from civil society and business alike.

(4) The European Council welcomed the development in the Hague Programme ⁽³⁾ (point 2.7) of a strategic concept with regard to cross-border organised crime and corruption at EU level and asked the Council and the Commission to develop this concept further and make it operational.

(5) The heads and key representatives of EU Member States' national police monitoring and inspection bodies and those of their anti-corruption agencies with a wider remit met in November 2004 in Vienna at the AGIS conference on the Enhancement of Operational Cooperation in Fighting Corruption in the European Union. They emphasised the importance of further enhancing their cooperation, *inter alia*, through annual meetings, and welcomed the idea of a European anti-corruption network based upon existing structures. In the wake of the Vienna conference these European Partners Against Corruption (EPAC) met in Budapest in November 2006 for their sixth annual meeting, where with an overwhelming majority, they confirmed their commitment to supporting the initiative on setting up a more formal anti-corruption network.

(6) In order to build upon existing structures, the authorities and agencies to form part of the European anti-corruption network could include EPAC member organisations.

(7) The enhancement of international cooperation is generally ⁽⁴⁾ recognised as a key issue in the fight against corruption. The fight against all forms of corruption should be improved by cooperating effectively, identifying opportunities, sharing good practices and developing high professional standards. The establishment of an anti-corruption network at EU level is an important contribution to the improvement of such cooperation,

⁽¹⁾ OJ C 173, 26.7.2007, p. 3.

⁽²⁾ Opinion of 5 June 2008 (not yet published in the Official Journal).

⁽³⁾ The Hague Programme in strengthening freedom, security and justice in the European Union (OJ C 53, 3.3.2005, p. 1).

⁽⁴⁾ United Nations Convention against Corruption, adopted by General Assembly Resolution 58/4 of 31 October 2003.

HAS DECIDED AS FOLLOWS:

Article 1

Objective

In order to improve cooperation between authorities and agencies to prevent and combat corruption in Europe a network of contact points of the Member States of the European Union shall be set up (hereinafter referred to as the 'network'). The European Commission, Europol and Eurojust shall be fully associated with the activities of the Network.

Article 2

Composition of the network

The network shall consist of authorities and agencies of the Member States of the European Union charged with preventing or combating corruption. The members shall be designated by the Member States. The Member States shall each designate at least one, but not more than three organisations. The European Commission shall designate its representatives. Within their respective competencies, Europol and Eurojust may participate in the activities of the Network.

Article 3

Tasks of the network

1. The network shall in particular have the following tasks:
 1. it shall constitute a forum for the exchange throughout the EU of information on effective measures and experience in the prevention and combating of corruption;
 2. it shall facilitate the establishment and active maintenance of contacts between its members.

To these ends, *inter alia*, a list of contact points shall be kept up-to-date and a web site operated.

2. The members of the network shall, for the accomplishment of their tasks, meet at least once a year.

Article 4

Scope

Police and judicial cooperation between the Member States shall be governed by the relevant rules. The setting up of the network shall be without prejudice to such rules, and without prejudice to the role of CEPOL.

Article 5

Organisation of the network

1. The network shall organise itself, building upon existing informal collaboration between the EPAC.
2. The Member States and the European Commission shall bear all expenses of the members or representatives designated by them. The same rule shall apply to Europol and Eurojust.

Article 6

Entry into force

This Decision shall take effect on the day following that of its adoption.

Done at Luxembourg, 24 October 2008.

For the Council

The President

M. ALLIOT-MARIE

COUNCIL DECISION
of 17 October 2000
concerning arrangements for cooperation between financial intelligence units of the Member States
in respect of exchanging information

(2000/642/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 34(2)(c) thereof,

Having regard to the initiative of the Republic of Finland,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The action plan to combat organised crime was approved by the Amsterdam European Council on 16 to 17 June 1997 ⁽¹⁾. The action plan recommended, in particular in recommendation 26(e), that there should be an improvement in cooperation between contact points competent to receive suspicious transaction reports pursuant to Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering ⁽²⁾.
- (2) All Member States have set up financial intelligence units (FIUs) to collect and analyse information received under the provisions of Directive 91/308/EEC with the aim of establishing links between suspicious financial transactions and underlying criminal activity in order to prevent and to combat money laundering.
- (3) Improvement of the mechanisms for exchanging information between the FIUs is one of the objectives recognised by the Money Laundering Experts' Group set up within the Multidisciplinary Group on Organised Crime, along with an improvement in the exchange of information between FIUs and the investigating authorities in Member States and in the multidisciplinary organisation of FIUs, to incorporate knowledge of the financial, law enforcement and judicial sectors.
- (4) The Council conclusions of March 1995 highlighted the fact that the strengthening of systems for combating money laundering depends on closer cooperation between the different authorities involved in fighting it.
- (5) The second Commission report to the European Parliament and the Council on the implementation of Directive 91/308/EEC identifies the difficulties which still appear to prevent the communication and exchange

of information between certain units having a different legal status.

- (6) It is necessary that close cooperation take place between the relevant authorities of the Member States involved in the fight against money laundering and that provision be made for direct communication between those authorities.
- (7) Arrangements have already been successfully adopted by Member States in relation to this matter based mainly on the principles laid down in the model memorandum of understanding proposed by the informal worldwide network of FIUs referred to as 'the Egmont Group'.
- (8) Member States must organise the FIUs in such a way as to ensure that information and documents are submitted within a reasonable space of time.
- (9) This Decision does not affect any Convention or arrangement regarding mutual assistance in criminal matters between judicial authorities,

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall ensure that FIUs, set up or designated to receive disclosures of financial information for the purpose of combating money laundering shall cooperate to assemble, analyse and investigate relevant information within the FIU on any fact which might be an indication of money laundering in accordance with their national powers.

2. For the purposes of paragraph 1, Member States shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Decision or in accordance with existing or future memoranda of understanding, any available information that may be relevant to the processing or analysis of information or to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.

3. Where a Member State has designated a police authority as its FIU, it may supply information held by that FIU to be exchanged pursuant to this Decision to an authority of the receiving Member State designated for that purpose and being competent in the areas mentioned in paragraph 1.

⁽¹⁾ OJ C 251, 15.8.1997, p. 1.

⁽²⁾ OJ L 166, 28.6.1991, p. 77.

Article 2

1. Member States shall ensure that, for the purposes of this Decision, FIUs shall be a single unit for each Member State and shall correspond to the following definition:

‘A central, national unit which, in order to combat money laundering, is responsible for receiving (and to the extent permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information which concern suspected proceeds of crime or are required by national legislation or regulation’.

2. In the context of paragraph 1, a Member State may establish a central unit for the purpose of receiving or transmitting information to or from decentralised agencies.

3. Member States shall indicate the unit which is an FIU within the meaning of this Article. They shall notify this information to the General Secretariat of the Council in writing. This notification does not affect the current relations concerning cooperation between the FIUs.

Article 3

Member States shall ensure that the performance of the functions of the FIUs under this Decision shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.

Article 4

1. Each request made under this Decision shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.

2. When a request is made in accordance with this Decision, the requested FIU shall provide all relevant information, including available financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between Member States.

3. An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Member State or, in exceptional circumstances, where divulgement of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State concerned or would otherwise not be in accordance with fundamental principles of national law. Any such refusal shall be appropriately explained to the FIU requesting the information.

Article 5

1. Information or documents obtained under this Decision are intended to be used for the purposes laid down in Article 1(1).

2. When transmitting information or documents pursuant to this Decision, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other

than those stipulated in paragraph 1. The receiving FIU shall comply with any such restrictions and conditions.

3. Where a Member State wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in Article 1(1), the transmitting Member State may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in Article 4(3). Any refusal to grant consent shall be appropriately explained.

4. FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this Decision is not accessible by any other authorities, agencies or departments.

5. The information submitted will be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and taking account of Recommendation No R(87)15 of 15 September 1987 of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.

Article 6

1. FIUs may, within the limits of the applicable national law and without a request to that effect, exchange relevant information.

2. Article 5 shall apply in relation to information forwarded under this Article.

Article 7

Member States shall provide for, and agree on, appropriate and protected channels of communication between FIUs.

Article 8

This Decision shall be implemented without prejudice to the Member States' obligations towards Europol, as they have been laid down in the Europol Convention.

Article 9

1. To the extent that the level of cooperation between FIUs, as expressed in memoranda of understanding concluded or to be concluded between authorities of the Member States, is compatible with this Decision or goes further than the provisions thereof, it shall remain unaffected by this Decision. Where the provisions of this Decision go further than the provisions of any memorandum of understanding concluded between the authorities of Member States, this Decision shall supersede such memoranda of understanding two years after this Decision takes effect.

2. The Member States shall ensure that they are able to cooperate fully in accordance with the provisions of this Decision at the latest three years after this Decision takes effect.

3. The Council will assess Member States' compliance with this Decision within four years of the date on which it takes effect, and may decide to continue such assessments on a regular basis.

Article 10

This Decision shall apply to Gibraltar. To this effect, notwithstanding Article 2, the United Kingdom may notify to the General Secretariat of the Council an FIU in Gibraltar.

Article 11

This Decision shall take effect on 17 October 2000.

Done at Luxembourg, 17 October 2000.

For the Council

The President

É. GUIGOU

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION
of 26 June 2001
on money laundering, the identification, tracing, freezing, seizing and confiscation of
instrumentalities and the proceeds of crime

(2001/500/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a), (c) and (e) and Article 34(2)(b) thereof,

Having regard to the initiative of the French Republic,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) On 3 December 1998 the Council adopted Joint Action 98/699/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime⁽¹⁾.
- (2) Account should be taken of the Presidency conclusions of the European Council meeting in Tampere on 15 and 16 October 1999, and of the Presidency conclusions of the European Council meeting in Vienna on 11 and 12 December 1998.
- (3) The European Council, noting that serious forms of crime increasingly have tax and duty aspects, calls on Member States to provide full mutual legal assistance in the investigation and prosecution of this type of crime.
- (4) The European Council calls for the approximation of criminal law and procedures on money laundering (in particular, confiscating funds), adding that the scope of criminal activities which constitute principal offences for money laundering should be uniform and sufficiently broad in all Member States.
- (5) The European Council in Tampere considered that, with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance, such as financial crime.
- (6) The European Council in Tampere noted that 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.

- (7) Member States have subscribed to the principles of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, hereinafter referred to as 'the 1990 Convention',

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Reservations in respect of the 1990 Convention

In order to enhance action against organised crime, Member States shall take the necessary steps not to make or uphold reservations in respect of the following articles of the 1990 Convention:

- (a) Article 2, in so far as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year.

However, Member States may uphold reservations on Article 2 of the 1990 Convention in respect of the confiscation of the proceeds from tax offences for the sole purpose of their being able to confiscate such proceeds, both nationally and through international cooperation, under national, Community and international tax-debt recovery legislation;

- (b) Article 6, in so far as serious offences are concerned. Such offences shall in any event include offences which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, offences punishable by deprivation of liberty or a detention order for a minimum of more than six months.

⁽¹⁾ OJ L 333, 9.12.1998, p. 1.

*Article 2***Penalties**

Each Member State shall take the necessary steps consistent with its system of penalties to ensure that the offences referred to in Article 6(1)(a) and (b) of the 1990 Convention, as they result from the Article 1(b) of this framework Decision, are punishable by deprivation of liberty for a maximum of not less than 4 years.

*Article 3***Value confiscation**

Each Member State shall take the necessary steps to ensure that its legislation and procedures on the confiscation of the proceeds of crime also allow, at least in cases where these proceeds cannot be seized, for the confiscation of property the value of which corresponds to such proceeds, both in purely domestic proceedings and in proceedings instituted at the request of another Member State, including requests for the enforcement of foreign confiscation orders. However, Member States may exclude the confiscation of property the value of which corresponds to the proceeds of crime in cases in which that value would be less than EUR 4 000.

The words 'property', 'proceeds' and 'confiscation' shall have the same meaning as in Article 1 of the 1990 Convention.

*Article 4***Processing of requests for mutual assistance**

Member States shall take the necessary steps to ensure that all requests from other Member States which relate to asset identification, tracing, freezing or seizing and confiscation are processed with the same priority as is given to such measures in domestic proceedings.

*Article 5***Repeal of existing provisions**

Articles 1, 3, 5(1) and 8(2) of Joint Action 98/699/JHA are hereby repealed.

*Article 6***Implementation**

1. Member States shall adopt the measures necessary to comply with the provisions of this framework Decision by 31 December 2002.

2. By 1 March 2003, Member States shall forward to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations arising for them from this framework Decision and, where appropriate, the notifications made pursuant to Article 40(2) of the 1990 Convention. On the basis of this information and a written report from the Commission, the Council shall ascertain, by 31 December 2003, to what extent Member States have taken the measures necessary to comply with this framework Decision.

*Article 7***Territorial application**

This framework Decision shall apply to Gibraltar as soon as application of the 1990 Convention is extended to Gibraltar.

*Article 8***Entry into force**

This framework Decision shall enter into force on the day of its publication in the Official Journal.

Done at Luxembourg, 26 June 2001.

For the Council

The President

T. ÖSTROS

COUNCIL FRAMEWORK DECISION 2005/212/JHA

of 24 February 2005

on Confiscation of Crime-Related Proceeds, Instrumentalities and Property

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 31(1)(c) 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,

Whereas:

- (1) The main motive for cross-border 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. However, this is made difficult, *inter alia*, as a result of differences between Member States' legislation in this area.
- (2) In the conclusions of the Vienna European Council of December 1998, the European Council called for a strengthening of EU efforts to combat international organised crime in accordance with an action plan on how best to implement the provisions of the Treaty of Amsterdam in an area of freedom, security and justice⁽²⁾.
- (3) Pursuant to paragraph 50(b) of the Vienna Action Plan, within five years of the entry into force of the Treaty of Amsterdam, national provisions governing seizures and confiscation of the proceeds from crime must be improved and approximated where necessary, taking account of the rights of third parties in bona fide.
- (4) Paragraph 51 of the conclusions of the Tampere European Council of 15 and 16 October 1999 stresses that money laundering is at the very heart of organised crime, and should be rooted out wherever it occurs and that the European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds from crime. The European Council also calls, in paragraph 55, for the approximation of criminal law and procedures on money laundering (e.g. tracing, freezing and confiscating funds).
- (5) Pursuant to Recommendation 19 in the 2000 action plan entitled 'The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium', which was approved by the Council on 27 March 2000⁽³⁾, an examination should be made of the possible need for an instrument which, taking into account best practice in the Member States and with due respect for fundamental legal principles, introduces the possibility of mitigating, under criminal, civil or fiscal law, as appropriate, the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.
- (6) Pursuant to Article 12, on confiscation and seizure, of the UN Convention of 12 December 2000 against Transnational Organised Crime, States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of judicial proceedings.
- (7) 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. Some Member States have submitted declarations with regard to Article 2 of the Convention concerning confiscation so as to be obliged to confiscate proceeds only from a number of specified offences.
- (8) The Council Framework Decision 2001/500/JHA⁽⁴⁾ 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 the provisions of the Council of Europe Convention concerning confiscation, insofar as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year.
- (9) The existing instruments in this area have not to a sufficient extent achieved effective cross-border co-operation with regard to confiscation as there are still a number of Member States which are unable to confiscate the proceeds from all offences punishable by deprivation of liberty for more than one year.

⁽¹⁾ OJ C 184, 2.8.2002, p. 3.

⁽²⁾ OJ C 19, 23.1.1999, p. 1.

⁽³⁾ OJ C 124, 3.5.2000, p. 1.

⁽⁴⁾ OJ L 182, 5.7.2001, p. 1.

- (10) The aim of this 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. This Decision is linked to a Danish draft Framework Decision on the mutual recognition within the European Union of decisions concerning the confiscation of proceeds from crime and asset-sharing, which is being submitted at the same time.
- (11) This Framework Decision does not prevent a Member State from applying its fundamental principles relating to due process, in particular the presumption of innocence, property rights, 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:

- ‘proceeds’ means any economic advantage from criminal offences. It may consist of any form of property as defined in the following indent,
- ‘property’ includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property,
- ‘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,
- ‘confiscation’ means a penalty or measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of property,
- ‘legal person’ means any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations.

Article 2

Confiscation

1. Each Member State shall take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds.
2. In relation to tax offences, Member States may use procedures other than criminal procedures to deprive the perpetrator of the proceeds of the offence.

Article 3

Extended powers of confiscation

1. Each Member State shall as a minimum adopt the necessary measures to enable it, under the circumstances referred to in paragraph 2, to confiscate, either wholly or in part, property belonging to a person convicted of an offence
 - (a) committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union ⁽¹⁾, when the offence is covered by:
 - Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro ⁽²⁾,
 - Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime ⁽³⁾,
 - Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings ⁽⁴⁾,
 - Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence ⁽⁵⁾,
 - Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography ⁽⁶⁾,

⁽¹⁾ OJ L 351, 29.12.1998, p. 1.

⁽²⁾ OJ L 140, 14.6.2000, p. 1.

⁽³⁾ OJ L 182, 5.7.2001, p. 1.

⁽⁴⁾ OJ L 203, 1.8.2002, p. 1.

⁽⁵⁾ OJ L 328, 5.12.2002, p. 1.

⁽⁶⁾ OJ L 13, 20.1.2004, p. 44.

— Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking⁽¹⁾,

(b) which is covered by the Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism⁽²⁾,

provided that the offence according to the Framework Decisions referred to above

— regarding offences other than money laundering are punishable with criminal penalties of a maximum of at least between 5 and 10 years of imprisonment,

— regarding money laundering, are punishable with criminal penalties of a maximum of at least 4 years of imprisonment,

and the offence is of such a nature that it can generate financial gain.

2. Each Member State shall take the necessary measures to enable confiscation under this Article at least:

(a) where a national court based on specific facts is fully convinced that the property in question has been derived from criminal activities of the convicted person during a period prior to conviction for the offence referred to in paragraph 1 which is deemed reasonable by the court in the circumstances of the particular case, or, alternatively,

(b) where a national court based on specific facts is fully convinced that the property in question has been derived from similar criminal activities of the convicted person during a period prior to conviction for the offence referred to in paragraph 1 which is deemed reasonable by the court in the circumstances of the particular case, or, alternatively,

(c) where it is established that the value of the property is disproportionate to the lawful income of the convicted person and a national court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that convicted person.

3. Each Member State may also consider adopting the necessary measures to enable it to confiscate, in accordance with the conditions set out in paragraphs 1 and 2, either wholly or in part, property acquired by the closest relations of the person concerned and property transferred to a legal person in respect of which the person concerned — acting

either alone or in conjunction with his closest relations — has a controlling influence. The same shall apply if the person concerned receives a significant part of the legal person's income.

4. Member States may use procedures other than criminal procedures to deprive the perpetrator of the property in question.

Article 4

Legal remedies

Each Member State shall take the necessary measures to ensure that interested parties affected by measures under Articles 2 and 3 have effective legal remedies in order to preserve their rights.

Article 5

Safeguards

This Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental principles, including in particular the presumption of innocence, as enshrined in Article 6 of the Treaty on European Union.

Article 6

Implementation

1. Member States shall adopt the necessary measures to comply with this Framework Decision by 15 March 2007.

2. Member States shall transmit to the General Secretariat of the Council and to the Commission, by 15 March 2007, the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. In accordance with a report established on the basis of this information and a written report from the Commission, the Council shall assess, by 15 June 2007, the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

Article 7

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

⁽¹⁾ OJ L 335, 11.11.2004, p. 8.

⁽²⁾ OJ L 164, 22.6.2002, p. 3.

DIRECTIVE 2014/42/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 3 April 2014
on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union

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 82(2) and Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) The main motive for cross-border organised crime, including mafia-type criminal organisation, is financial gain. As a consequence, competent authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime. However, the effective prevention of and fight against organised crime should be achieved by neutralising the proceeds of crime and should be extended, in certain cases, to any property deriving from activities of a criminal nature.
- (2) Organised criminal groups operate without borders and increasingly acquire assets in Member States other than those in which they are based and in third countries. There is an increasing need for effective international cooperation on asset recovery and mutual legal assistance.
- (3) Among the most effective means of combating organised crime is providing for severe legal consequences for committing such crime, as well as effective detection and the freezing and confiscation of the instrumentalities and proceeds of crime.
- (4) Although existing statistics are limited, the amounts recovered from proceeds of crime in the Union seem insufficient compared to the estimated proceeds. Studies have shown that, although regulated by Union and national law, confiscation procedures remain underused.
- (5) The adoption of minimum rules will approximate the Member States' freezing and confiscation regimes, thus facilitating mutual trust and effective cross-border cooperation.

⁽¹⁾ OJ C 299, 4.10.2012, p. 128.

⁽²⁾ OJ C 391, 18.12.2012, p. 134.

⁽³⁾ Position of the European Parliament of 25 February 2014 (not yet published in the Official Journal) and Council decision of 14 March 2014.

- (6) The Stockholm Programme and the Justice and Home Affairs Council Conclusions on confiscation and asset recovery adopted in June 2010 emphasise the importance of a more effective identification, confiscation and re-use of criminal assets.
- (7) The current Union legal framework on freezing, seizure and confiscation of assets consists of Joint Action 98/699/JHA ⁽¹⁾, Council Framework Decision 2001/500/JHA ⁽²⁾, Council Framework Decision 2003/577/JHA ⁽³⁾, Council Framework Decision 2005/212/JHA ⁽⁴⁾ and Council Framework Decision 2006/783/JHA ⁽⁵⁾.
- (8) The Commission implementation reports on Framework Decisions 2003/577/JHA, 2005/212/JHA and 2006/783/JHA show that existing regimes for extended confiscation and for the mutual recognition of freezing and confiscation orders are not fully effective. Confiscation is hindered by differences between Member States' law.
- (9) This Directive aims to amend and expand the provisions of Framework Decisions 2001/500/JHA and 2005/212/JHA. Those Framework Decisions should be partially replaced for the Member States bound by this Directive.
- (10) Member States are free to bring confiscation proceedings which are linked to a criminal case before any competent court.
- (11) There is a need to clarify the existing concept of proceeds of crime to include the direct proceeds from criminal activity and all indirect benefits, including subsequent reinvestment or transformation of direct proceeds. Thus proceeds can include any property including that which has been transformed or converted, fully or in part, into other property, and that which has been intermingled with property acquired from legitimate sources, up to the assessed value of the intermingled proceeds. It can also include the income or other benefits derived from proceeds of crime, or from property into or with which such proceeds have been transformed, converted or intermingled.
- (12) This Directive provides for a broad definition of property that can be subject to freezing and confiscation. That definition includes legal documents or instruments evidencing title or interest in such property. Such documents or instruments could include, for example, financial instruments, or documents that may give rise to creditor claims and are normally found in the possession of the person affected by the relevant procedures. This Directive is without prejudice to the existing national procedures for keeping legal documents or instruments evidencing title or interest in property, as they are applied by the competent national authorities or public bodies in accordance with national law.
- (13) Freezing and confiscation under this Directive are autonomous concepts, which should not prevent Member States from implementing this Directive using instruments which, in accordance with national law, would be considered as sanctions or other types of measures.

⁽¹⁾ Joint Action 98/699/JHA of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime (OJ L 333, 9.12.1998, p. 1).

⁽²⁾ Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001, p. 1).

⁽³⁾ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45).

⁽⁴⁾ Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property (OJ L 68, 15.3.2005, p. 49).

⁽⁵⁾ Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59).

- (14) In the confiscation of instrumentalities and proceeds of crime following a final decision of a court and of property of equivalent value to those instrumentalities and proceeds, the broad concept of criminal offences covered by this Directive should apply. Framework Decision 2001/500/JHA requires Member States to enable the confiscation of instrumentalities and proceeds of crime following a final conviction and to enable the confiscation of property the value of which corresponds to such instrumentalities and proceeds. Such obligations should be maintained for the criminal offences not covered by this Directive, and the concept of proceeds as defined in this Directive should be interpreted in the similar way as regards criminal offences not covered by this Directive. Member States are free to define the confiscation of property of equivalent value as subsidiary or alternative to direct confiscation, as appropriate in accordance with national law.
- (15) Subject to a final conviction for a criminal offence, it should be possible to confiscate instrumentalities and proceeds of crime, or property the value of which corresponds to such instrumentalities or proceeds. Such final conviction can also result from proceedings in absentia. When confiscation on the basis of a final conviction is not possible, it should nevertheless under certain circumstances still be possible to confiscate instrumentalities and proceeds, at least in the cases of illness or absconding of the suspected or accused person. However, in such cases of illness and absconding, the existence of proceedings in absentia in Member States would be sufficient to comply with this obligation. When the suspected or accused person has absconded, Member States should take all reasonable steps and may require that the person concerned be summoned to or made aware of the confiscation proceedings.
- (16) For the purposes of this Directive, illness should be understood to mean the inability of the suspected or accused person to attend the criminal proceedings for an extended period, as a result of which the proceedings cannot continue under normal conditions. Suspected or accused persons may be requested to prove illness, for example by a medical certificate, which the court should be able to disregard if it finds it unsatisfactory. The right of that person to be represented in the proceedings by a lawyer should not be affected.
- (17) When implementing this Directive in respect of confiscation of property the value of which corresponds to instrumentalities, the relevant provisions could be applicable where, in view of the particular circumstances of the case at hand, such a measure is proportionate, having regard in particular to the value of the instrumentalities concerned. Member States may also take into account whether and to what extent the convicted person is responsible for making the confiscation of the instrumentalities impossible.
- (18) When implementing this Directive, Member States may provide that, in exceptional circumstances, confiscation should not be ordered, insofar as it would, in accordance with national law, represent undue hardship for the affected person, on the basis of the circumstances of the respective individual case which should be decisive. Member States should make a very restricted use of this possibility, and should only be allowed to provide that confiscation is not to be ordered in cases where it would put the person concerned in a situation in which it would be very difficult for him to survive.
- (19) Criminal groups engage in a wide range of criminal activities. In order to effectively tackle organised criminal activities there may be situations where it is appropriate that a criminal conviction be followed by the confiscation not only of property associated with a specific crime, but also of additional property which the court determines constitutes the proceeds of other crimes. This approach is referred to as extended confiscation. Framework Decision 2005/212/JHA provides for three different sets of minimum requirements that Member States can choose from in order to apply extended confiscation. As a result, in the process of transposition of that Framework Decision, Member States have chosen different options which resulted in divergent concepts of extended confiscation in national jurisdictions. That divergence hampers cross-border cooperation in relation to confiscation cases. It is therefore necessary to further harmonise the provisions on extended confiscation by setting a single minimum standard.
- (20) When determining whether a criminal offence is liable to give rise to economic benefit, Member States may take into account the *modus operandi*, for example if a condition of the offence is that it was committed in the context of organised crime or with the intention of generating regular profits from criminal offences. However, this should not, in general, prejudice the possibility to resort to extended confiscation.

- (21) Extended confiscation should be possible where a court is satisfied that the property in question is derived from criminal conduct. This does not mean that it must be established that the property in question is derived from criminal conduct. Member States may provide that it could, for example, be sufficient for the court to consider on the balance of probabilities, or to reasonably presume that it is substantially more probable, that the property in question has been obtained from criminal conduct than from other activities. In this context, the court has to consider the specific circumstances of the case, including the facts and available evidence based on which a decision on extended confiscation could be issued. The fact that the property of the person is disproportionate to his lawful income could be among those facts giving rise to a conclusion of the court that the property derives from criminal conduct. Member States could also determine a requirement for a certain period of time during which the property could be deemed to have originated from criminal conduct.
- (22) This Directive lays down minimum rules. It does not prevent Member States from providing more extensive powers in their national law, including, for example, in relation to their rules on evidence.
- (23) This Directive applies to criminal offences which fall within the scope of the instruments listed herein. Within the scope of those instruments, Member States should apply extended confiscation at least to certain criminal offences as defined in this Directive.
- (24) The practice by a suspected or accused person of transferring property to a knowing third party with a view to avoiding confiscation is common and increasingly widespread. The current Union legal framework does not contain binding rules on the confiscation of property transferred to third parties. It is therefore becoming increasingly necessary to allow for the confiscation of property transferred to or acquired by third parties. Acquisition by a third party refers to situations where, for example, property has been acquired, directly or indirectly, for example through an intermediary, by the third party from a suspected or accused person, including when the criminal offence has been committed on their behalf or for their benefit, and when an accused person does not have property that can be confiscated. Such confiscation should be possible at least in cases where third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer was carried out free of charge or in exchange for an amount significantly lower than the market value. The rules on third party confiscation should extend to both natural and legal persons. In any event the rights of bona fide third parties should not be prejudiced.
- (25) Member States are free to define third party confiscation as subsidiary or alternative to direct confiscation, as appropriate in accordance with national law.
- (26) Confiscation leads to the final deprivation of property. However, preservation of property can be a prerequisite to confiscation and can be of importance for the enforcement of a confiscation order. Property is preserved by means of freezing. In order to prevent the dissipation of property before a freezing order can be issued, the competent authorities in the Member States should be empowered to take immediate action in order to secure such property.
- (27) Since property is often preserved for the purposes of confiscation, freezing and confiscation are closely linked. In some legal systems freezing for the purposes of confiscation is regarded as a separate procedural measure of a provisional nature, which may be followed by a confiscation order. Without prejudice to different national legal systems and to Framework Decision 2003/577/JHA, this Directive should approximate some aspects of the national systems of freezing for the purposes of confiscation.
- (28) Freezing measures are without prejudice to the possibility for a specific property to be considered evidence throughout the proceedings, provided that it would ultimately be made available for effective execution of the confiscation order.

- (29) In the context of criminal proceedings, property may also be frozen with a view to its possible subsequent restitution or in order to safeguard compensation for the damage caused by a criminal offence.
- (30) Suspected or accused persons often hide property throughout the entire duration of criminal proceedings. As a result confiscation orders cannot be executed, leaving those subject to confiscation orders to benefit from their property once they have served their sentences. It is therefore necessary to enable the determination of the precise extent of the property to be confiscated even after a final conviction for a criminal offence, in order to permit the full execution of confiscation orders when no property or insufficient property was initially identified and the confiscation order remains unexecuted.
- (31) Given the limitation of the right to property by freezing orders, such provisional measures should not be maintained longer than necessary to preserve the availability of the property with a view to possible subsequent confiscation. This may require a review by the court in order to ensure that the purpose of preventing the dissipation of property remains valid.
- (32) Property frozen with a view to possible subsequent confiscation should be managed adequately in order not to lose its economic value. Member States should take the necessary measures, including the possibility of selling or transferring the property to minimise such losses. Member States should take relevant measures, for example the establishment of national centralised Asset Management Offices, a set of specialised offices or equivalent mechanisms, in order to effectively manage the assets frozen before confiscation and preserve their value, pending judicial determination.
- (33) This Directive substantially affects the rights of persons, not only of suspected or accused persons, but also of third parties who are not being prosecuted. It is therefore necessary to provide for specific safeguards and judicial remedies in order to guarantee the preservation of their fundamental rights in the implementation of this Directive. This includes the right to be heard for third parties who claim that they are the owner of the property concerned, or who claim that they have other property rights ('real rights', '*ius in re*'), such as the right of usufruct. The freezing order should be communicated to the affected person as soon as possible after its execution. Nevertheless, the competent authorities may postpone communicating such orders to the affected person due to the needs of the investigation.
- (34) The purpose of communicating the freezing order is, *inter alia*, to allow the affected person to challenge the order. Therefore, such communication should indicate, at least briefly, the reason or reasons for the order concerned, it being understood that such indication can be very succinct.
- (35) Member States should consider taking measures allowing confiscated property to be used for public interest or social purposes. Such measures could, *inter alia*, comprise earmarking property for law enforcement and crime prevention projects, as well as for other projects of public interest and social utility. That obligation to consider taking measures entails a procedural obligation for Member States, such as conducting a legal analysis or discussing the advantages and disadvantages of introducing measures. When managing frozen property and when taking measures concerning the use of confiscated property, Member States should take appropriate action to prevent criminal or illegal infiltration.
- (36) Reliable data sources on the freezing and confiscation of the proceeds of crime are scarce. In order to allow for the evaluation of this Directive, it is necessary to collect a comparable minimum set of appropriate statistical data on freezing and confiscation of property, asset tracing, judicial and asset disposal activities.

- (37) Member States should endeavour to collect data for certain statistics at a central level, with a view to sending them to the Commission. This means that the Member States should make reasonable efforts to collect the data concerned. It does not mean, however, that the Member States are under an obligation to achieve the result of collecting the data where there is a disproportionate administrative burden or when there are high costs for the Member State concerned.
- (38) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union ('the Charter') and the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR'), as interpreted in the case-law of the European Court of Human Rights. This Directive should be implemented in accordance with those rights and principles. This Directive should be without prejudice to national law in relation to legal aid and does not create any obligations for Member States' legal aid systems, which should apply in accordance with the Charter and the ECHR.
- (39) Specific safeguards should be put in place, so as to ensure that as a general rule reasons are given for confiscation orders, unless when, in simplified criminal proceedings in minor cases, the affected person has waived his or her right to be given reasons.
- (40) This Directive should be implemented taking account of the provisions of Directive 2010/64/EU of the European Parliament and of the Council ⁽¹⁾, Directive 2012/13/EU of the European Parliament and of the Council ⁽²⁾ and Directive 2013/48/EU of the European Parliament and of the Council ⁽³⁾ which concern procedural rights in criminal proceedings.
- (41) Since the objective of this Directive, namely facilitating confiscation of property in criminal matters, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (42) In accordance with Articles 3 and 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 Treaty on the Functioning of the European Union (TFEU), Ireland has notified its wish to take part in the adoption and application of this Directive. In accordance with that Protocol, Ireland is to be bound by this Directive only in respect of the offences covered by the instruments by which it is bound.
- (43) In accordance with Articles 1, 2 and 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, the United Kingdom is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Subject to its participation in accordance with Article 4 of that Protocol, the United Kingdom is to be bound by this Directive only in respect of the offences covered by the instruments by which it is bound.
- (44) In accordance with Articles 1 and 2 of 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 Directive and is not bound by it or subject to its application,

⁽¹⁾ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁽²⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁽³⁾ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

1. This Directive establishes minimum rules on the freezing of property with a view to possible subsequent confiscation and on the confiscation of property in criminal matters.
2. This Directive is without prejudice to the procedures that Member States may use to confiscate the property in question.

Article 2

Definitions

For the purpose of this Directive, the following definitions apply:

- (1) 'proceeds' means any economic advantage derived directly or indirectly from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;
- (2) 'property' means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property;
- (3) '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;
- (4) 'confiscation' means a final deprivation of property ordered by a court in relation to a criminal offence;
- (5) 'freezing' means the temporary prohibition of the transfer, destruction, conversion, disposal or movement of property or temporarily assuming custody or control of property;
- (6) 'criminal offence' means an offence covered by any of the instruments listed in Article 3.

Article 3

Scope

This Directive shall apply to criminal offences covered by:

- (a) Convention drawn up on the basis of Article K.3(2)(c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union ⁽¹⁾ ('Convention on the fight against corruption involving officials');
- (b) Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro ⁽²⁾;
- (c) Council Framework Decision 2001/413/JHA of 28 May 2001 on combating fraud and counterfeiting on non-cash means of payment ⁽³⁾;

⁽¹⁾ OJ C 195, 25.6.1997, p. 1.

⁽²⁾ OJ L 140, 14.6.2000, p. 1.

⁽³⁾ OJ L 149, 2.6.2001, p. 1.

- (d) Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime ⁽¹⁾;
- (e) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism ⁽²⁾;
- (f) Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector ⁽³⁾;
- (g) Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking ⁽⁴⁾;
- (h) Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime ⁽⁵⁾;
- (i) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA ⁽⁶⁾;
- (j) Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA ⁽⁷⁾;
- (k) Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA ⁽⁸⁾,

as well as other legal instruments if those instruments provide specifically that this Directive applies to the criminal offences harmonised therein.

Article 4

Confiscation

1. Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from proceedings in absentia.
2. Where confiscation on the basis of paragraph 1 is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.

Article 5

Extended confiscation

1. Member States shall adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct.

⁽¹⁾ OJ L 182, 5.7.2001, p. 1.

⁽²⁾ OJ L 164, 22.6.2002, p. 3.

⁽³⁾ OJ L 192, 31.7.2003, p. 54.

⁽⁴⁾ OJ L 335, 11.11.2004, p. 8.

⁽⁵⁾ OJ L 300, 11.11.2008, p. 42.

⁽⁶⁾ OJ L 101, 15.4.2011, p. 1.

⁽⁷⁾ OJ L 335, 17.12.2011, p. 1.

⁽⁸⁾ OJ L 218, 14.8.2013, p. 8.

2. For the purpose of paragraph 1 of this Article, the notion of 'criminal offence' shall include at least the following:
- (a) active and passive corruption in the private sector, as provided for in Article 2 of Framework Decision 2003/568/JHA, as well as active and passive corruption involving officials of institutions of the Union or of the Member States, as provided for in Articles 2 and 3 respectively of the Convention on the fight against corruption involving officials;
 - (b) offences relating to participation in a criminal organisation, as provided for in Article 2 of Framework Decision 2008/841/JHA, at least in cases where the offence has led to economic benefit;
 - (c) causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes if the child is over the age of sexual consent, as provided for in Article 4(2) of Directive 2011/93/EU; distribution, dissemination or transmission of child pornography, as provided for in Article 5(4) of that Directive; offering, supplying or making available child pornography, as provided for in Article 5(5) of that Directive; production of child pornography, as provided for in Article 5(6) of that Directive;
 - (d) illegal system interference and illegal data interference, as provided for in Articles 4 and 5 respectively of Directive 2013/40/EU, where a significant number of information systems have been affected through the use of a tool, as provided for in Article 7 of that Directive, designed or adapted primarily for that purpose; the intentional production, sale, procurement for use, import, distribution or otherwise making available of tools used for committing offences, at least for cases which are not minor, as provided for in Article 7 of that Directive;
 - (e) a criminal offence that is punishable, in accordance with the relevant instrument in Article 3 or, in the event that the instrument in question does not contain a penalty threshold, in accordance with the relevant national law, by a custodial sentence of a maximum of at least four years.

Article 6

Confiscation from a third party

1. Member States shall take the necessary measures to enable the confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value.
2. Paragraph 1 shall not prejudice the rights of bona fide third parties.

Article 7

Freezing

1. Member States shall take the necessary measures to enable the freezing of property with a view to possible subsequent confiscation. Those measures, which shall be ordered by a competent authority, shall include urgent action to be taken when necessary in order to preserve property.
2. Property in the possession of a third party, as referred to under Article 6, can be subject to freezing measures for the purposes of possible subsequent confiscation.

*Article 8***Safeguards**

1. Member States shall take the necessary measures to ensure that the persons affected by the measures provided for under this Directive have the right to an effective remedy and a fair trial in order to uphold their rights.
2. Member States shall take the necessary measures to ensure that the freezing order is communicated to the affected person as soon as possible after its execution. Such communication shall indicate, at least briefly, the reason or reasons for the order concerned. When it is necessary to avoid jeopardising a criminal investigation, the competent authorities may postpone communicating the freezing order to the affected person.
3. The freezing order shall remain in force only for as long as it is necessary to preserve the property with a view to possible subsequent confiscation.
4. Member States shall provide for the effective possibility for the person whose property is affected to challenge the freezing order before a court, in accordance with procedures provided for in national law. Such procedures may provide that when the initial freezing order has been taken by a competent authority other than a judicial authority, such order shall first be submitted for validation or review to a judicial authority before it can be challenged before a court.
5. Frozen property which is not subsequently confiscated shall be returned immediately. The conditions or procedural rules under which such property is returned shall be determined by national law.
6. Member States shall take the necessary measures to ensure that reasons are given for any confiscation order and that the order is communicated to the person affected. Member States shall provide for the effective possibility for a person in respect of whom confiscation is ordered to challenge the order before a court.
7. Without prejudice to Directive 2012/13/EU and Directive 2013/48/EU, persons whose property is affected by a confiscation order shall have the right of access to a lawyer throughout the confiscation proceedings relating to the determination of the proceeds and instrumentalities in order to uphold their rights. The persons concerned shall be informed of that right.
8. In proceedings referred to in Article 5, the affected person shall have an effective possibility to challenge the circumstances of the case, including specific facts and available evidence on the basis of which the property concerned is considered to be property that is derived from criminal conduct.
9. Third parties shall be entitled to claim title of ownership or other property rights, including in the cases referred to in Article 6.
10. Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to ensure that the confiscation measure does not prevent those victims from seeking compensation for their claims.

*Article 9***Effective confiscation and execution**

Member States shall take the necessary measures to enable the detection and tracing of property to be frozen and confiscated even after a final conviction for a criminal offence or following proceedings in application of Article 4(2) and to ensure the effective execution of a confiscation order, if such an order has already been issued.

*Article 10***Management of frozen and confiscated property**

1. Member States shall take the necessary measures, for example by establishing centralised offices, a set of specialised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view to possible subsequent confiscation.
2. Member States shall ensure that the measures referred to in paragraph 1 include the possibility to sell or transfer property where necessary.
3. Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes.

*Article 11***Statistics**

1. Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities. The statistics collected shall be sent to the Commission each year and shall include:
 - (a) the number of freezing orders executed;
 - (b) the number of confiscation orders executed;
 - (c) the estimated value of property frozen, at least of property frozen with a view to possible subsequent confiscation at the time of freezing;
 - (d) the estimated value of property recovered at the time of confiscation.
2. Member States shall also send each year the following statistics to the Commission, if they are available at a central level in the Member State concerned:
 - (a) the number of requests for freezing orders to be executed in another Member State;
 - (b) the number of requests for confiscation orders to be executed in another Member State;
 - (c) the value or estimated value of the property recovered following execution in another Member State.
3. Member States shall endeavour to collect data referred to in paragraph 2 at a central level.

*Article 12***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 4 October 2015. They shall forthwith transmit to the Commission the text of those provisions.
2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 13***Reporting**

The Commission shall, by 4 October 2018 submit a report to the European Parliament and the Council, assessing the impact of existing national law on confiscation and asset recovery, accompanied, if necessary, by adequate proposals.

In that report, the Commission shall also assess whether there is any need to revise the list of offences in Article 5(2).

*Article 14***Replacement of Joint Action 98/699/JHA and of certain provisions of Framework Decisions 2001/500/JHA and 2005/212/JHA**

1. Joint Action 98/699/JHA, point (a) of Article 1 and Articles 3 and 4 of Framework Decision 2001/500/JHA, and the first four indents of Article 1 and Article 3 of Framework Decision 2005/212/JHA, are replaced by this Directive for the Member States bound by this Directive, without prejudice to the obligations of those Member States relating to the time limits for transposition of those Framework Decisions into national law.
2. For the Member States bound by this Directive, references to Joint Action 98/699/JHA and to the provisions of Framework Decisions 2001/500/JHA and 2005/212/JHA referred to in paragraph 1 shall be construed as references to this Directive.

*Article 15***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 16***Addressees**

This Directive is addressed to Member States in accordance with the Treaties.

Done at Brussels, 3 April 2014.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
D. KOURKOULAS

Corrigendum to Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union

(Official Journal of the European Union L 127 of 29 April 2014)

On page 50, Article 12:

for: '1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 4 October 2015. They shall forthwith transmit to the Commission the text of those provisions.'

read: '1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 4 October 2016. They shall forthwith transmit to the Commission the text of those provisions.'

on page 50, Article 13:

for: 'The Commission shall, by 4 October 2018 submit a report to the European Parliament and the Council, assessing the impact of existing national law on confiscation and asset recovery, accompanied, if necessary, by adequate proposals.

In that report, the Commission shall also assess whether there is any need to revise the list of offences in Article 5(2).'

read: 'The Commission shall, by 4 October 2019 submit a report to the European Parliament and the Council, assessing the impact of existing national law on confiscation and asset recovery, accompanied, if necessary, by adequate proposals.

In that report, the Commission shall also assess whether there is any need to revise the list of offences in Article 5(2).'

DIRECTIVES

DIRECTIVE (EU) 2018/1673 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 October 2018

on combating money laundering by criminal law

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 83(1) 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) Money laundering and the related financing of terrorism and organised crime remain significant problems at Union level, thus damaging the integrity, stability and reputation of the financial sector and threatening the internal market and the internal security of the Union. In order to tackle those problems and to complement and reinforce the application of Directive (EU) 2015/849 of the European Parliament and of the Council ⁽²⁾, this Directive aims to combat money laundering by means of criminal law, enabling more efficient and swifter cross-border cooperation between competent authorities.
- (2) Measures adopted solely at national or even at Union level, without taking into account international coordination and cooperation, would have very limited effect. The measures adopted by the Union to combat money laundering should therefore be compatible with, and at least as stringent as, other actions undertaken in international fora.
- (3) Union action should continue to take particular account of the Financial Action Task Force (FATF) Recommendations and instruments of other international organisations and bodies active in the fight against money laundering and terrorist financing. The relevant Union legal acts should, where appropriate, be further aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (the 'revised FATF Recommendations'). As a signatory to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, the Union should transpose the requirements of that Convention into its legal order.
- (4) Council Framework Decision 2001/500/JHA ⁽³⁾ lays down requirements with regard to the criminalisation of money laundering. However, that Framework Decision is not comprehensive enough and the current criminalisation of money laundering is not sufficiently coherent to effectively combat money laundering across the Union and results in enforcement gaps and in obstacles to cooperation between the competent authorities in different Member States.

⁽¹⁾ Position of the European Parliament of 12 September 2018 (not yet published in the Official Journal) and decision of the Council of 11 October 2018.

⁽²⁾ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

⁽³⁾ Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001, p. 1).

- (5) The definition of criminal activities which constitute predicate offences for money laundering should be sufficiently uniform in all Member States. Member States should ensure that all offences that are punishable by a term of imprisonment as set out in this Directive are considered predicate offences for money laundering. Moreover, to the extent that the application of those penalty thresholds does not already do so, Member States should include a range of offences within each of the categories of offences listed in this Directive. In that case, Member States should be able to decide how to delimit the range of offences within each category. Where a category of offences, such as terrorism or environmental offences, includes offences set out in legal acts of the Union, this Directive should refer to those legal acts. Member States should, however, consider any offence set out in those legal acts as constituting a predicate offence for money laundering. Any kind of punishable involvement in the commission of a predicate offence as criminalised in accordance with national law should also be considered as a criminal activity for the purposes of this Directive. In cases where Union law allows Member States to provide for sanctions other than criminal sanctions, this Directive should not require Member States to classify the offences in those cases as predicate offences for the purposes of this Directive.
- (6) The use of virtual currencies presents new risks and challenges from the perspective of combating money laundering. Member States should ensure that those risks are addressed appropriately.
- (7) Due to the impact of money laundering offences committed by public office holders on the public sphere and on the integrity of public institutions, Member States should be able to consider including more severe penalties for public office holders in their national frameworks in accordance with their legal traditions.
- (8) Tax crimes relating to direct and indirect taxes should be covered by the definition of criminal activity, in line with the revised FATF Recommendations. Given that different tax crimes in each Member State can constitute a criminal activity punishable by the sanctions referred to in this Directive, the definitions of tax crimes might diverge in national law. The aim of this Directive, however, is not to harmonise the definitions of tax crimes in national law.
- (9) In criminal proceedings regarding money laundering, Member States should assist each other in the widest possible way and ensure that information is exchanged in an effective and timely manner in accordance with national law and the existing Union legal framework. Differences between the definitions of predicate offences in national law should not hinder international cooperation in criminal proceedings regarding money laundering. Cooperation with third countries should be intensified, in particular by encouraging and supporting the establishment of effective measures and mechanisms to combat money laundering and by ensuring better international cooperation in this field.
- (10) This Directive does not apply to money laundering involving property derived from criminal offences affecting the Union's financial interests, which is subject to specific rules as laid down in Directive (EU) 2017/1371 of the European Parliament and of the Council⁽¹⁾. This is without prejudice to the possibility for Member States to transpose this Directive and Directive (EU) 2017/1371 by means of a single comprehensive framework at national level. In accordance with Article 325(2) of the Treaty on the Functioning of the European Union (TFEU), the Member States are to take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.
- (11) Member States should ensure that certain types of money laundering activities are also punishable when committed by the perpetrator of the criminal activity that generated the property ('self-laundering'). In such cases, where, the money laundering activity does not simply amount to the mere possession or use of property, but also involves the transfer, conversion, concealment or disguise of property and results in further damage than that already caused by the criminal activity, for instance by putting the property derived from criminal activity into circulation and, by doing so, concealing its unlawful origin, that money laundering activity should be punishable.

⁽¹⁾ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

- (12) In order for criminal law measures to be effective against money laundering, a conviction should be possible without it being necessary to establish precisely which criminal activity generated the property, or for there to be a prior or simultaneous conviction for that criminal activity, while taking into account all relevant circumstances and evidence. It should be possible for Member States, in line with their national legal systems, to ensure this by means other than legislation. Prosecutions for money laundering should also not be impeded by the fact that the criminal activity was committed in another Member State or in a third country, subject to the conditions set out in this Directive.
- (13) This Directive aims to criminalise money laundering when it is committed intentionally and with the knowledge that the property was derived from criminal activity. In that context, this Directive should not distinguish between situations where property has been derived directly from criminal activity and situations where it has been derived indirectly from criminal activity, in line with the broad definition of 'proceeds' as laid down in Directive 2014/42/EU of the European Parliament and of the Council ⁽¹⁾. In each case, when considering whether the property is derived from criminal activity and whether the person knew that, the specific circumstances of the case should be taken into account, such as the fact that the value of the property is disproportionate to the lawful income of the accused person and that the criminal activity and acquisition of property occurred within the same time frame. Intention and knowledge can be inferred from objective, factual circumstances. As this Directive provides for minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering, Member States are free to adopt or maintain more stringent criminal law rules in that area. Member States should be able, for example, to provide that money laundering committed recklessly or by serious negligence constitutes a criminal offence. References in this Directive to money laundering committed by negligence should be understood as such for Member States that criminalise such conduct.
- (14) In order to deter money laundering throughout the Union, Member States should ensure that it is punishable by a maximum term of imprisonment of at least four years. That obligation is without prejudice to the individualisation and application of penalties and the execution of sentences in accordance with the concrete circumstances in each individual case. Member States should also provide for additional sanctions or measures, such as fines, temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions, temporary disqualifications from the practice of commercial activities or temporary bans on running for elected or public office. That obligation is without prejudice to the discretion of the judge or the court to decide whether to impose additional sanctions or measures or not, taking into account all the circumstances of the particular case.
- (15) While there is no obligation to increase sentences, Member States should ensure that the judge or the court is able to take the aggravating circumstances set out in this Directive into account when sentencing offenders. It remains within the discretion of the judge or the court to determine whether to increase the sentence due to the specific aggravating circumstances, taking into account all the facts of the particular case. Member States should not be obliged to provide for aggravating circumstances where national law provides for the criminal offences laid down in Council Framework Decision 2008/841/JHA ⁽²⁾ or for offences committed by natural persons acting as obliged entities in the exercise of their professional activities to be punishable as separate criminal offences and this may lead to more severe sanctions.
- (16) The freezing and confiscation of the instrumentalities and proceeds of crime remove the financial incentives which drive crime. Directive 2014/42/EU lays down minimum rules on the freezing and confiscation of the instrumentalities and proceeds of crime in criminal matters. That Directive also requires the Commission to report to the European Parliament and to the Council on its implementation and make adequate proposals if necessary. Member States should, as a minimum, ensure the freezing and confiscation of the instrumentalities and proceeds of crime in all cases provided for in Directive 2014/42/EU. Member States should also strongly consider enabling confiscation in all cases where it is not possible to initiate or conclude criminal proceedings, including in cases where the offender has died. As requested by the European Parliament and the Council in the statement accompanying Directive 2014/42/EU, the Commission will submit a report analysing the feasibility and possible benefits of introducing further common rules on the confiscation of property deriving from activities of a criminal nature, including in the absence of a conviction of a specific person or persons for those activities. Such analysis will take into account the differences between the legal traditions and systems of the Member States.

⁽¹⁾ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

⁽²⁾ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

- (17) Given the mobility of perpetrators and proceeds stemming from criminal activities, as well as the complex cross-border investigations required to combat money laundering, all Member States should establish their jurisdiction in order to enable the competent authorities to investigate and prosecute such activities. Member States should thereby ensure that their jurisdiction includes situations where an offence is committed by means of information and communication technology from their territory, whether such technology is based on their territory or not.
- (18) Under Council Framework Decision 2009/948/JHA ⁽¹⁾ and Council Decision 2002/187/JHA ⁽²⁾, the competent authorities of two or more Member States conducting parallel criminal proceedings in respect of the same facts involving the same person are, with the assistance of Eurojust, to enter into direct consultations with one another, in particular to ensure that all offences covered by this Directive are prosecuted.
- (19) To ensure the successful investigation and prosecution of money laundering offences, those responsible for investigating or prosecuting such offences should have the possibility to make use of effective investigative tools such as those which are used in combating organised crime or other serious crimes. It should thereby be ensured that sufficient personnel and targeted training, resources and up-to-date technological capacity are available. The use of such tools, in accordance with national law, should be targeted and take into account the principle of proportionality and the nature and seriousness of the offences under investigation and should respect the right to the protection of personal data.
- (20) This Directive replaces certain provisions of Framework Decision 2001/500/JHA for the Member States bound by this Directive.
- (21) This Directive respects the principles recognised by Article 2 of the Treaty on European Union (TEU), respects fundamental rights and freedoms and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union, including those set out in Titles II, III, V and VI thereof which encompass, inter alia, the right to respect for private and family life and the right to protection of personal data, the principles of legality and proportionality of criminal offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law, the presumption of innocence, as well as the rights of suspects and accused persons to have access to a lawyer, the right not to incriminate oneself and the right to a fair trial. This Directive has to be implemented in accordance with those rights and principles, taking also into account the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other human rights obligations under international law.
- (22) Since the objective of this Directive, namely to subject money laundering in all Member States to effective, proportionate and dissuasive criminal penalties, cannot be sufficiently achieved by Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (23) In accordance with Articles 1 and 2 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, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (24) In accordance with Articles 1 and 2 of 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 Directive and is not bound by it or subject to its application. Framework Decision 2001/500/JHA continues to be binding upon and applicable to Denmark,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering.

⁽¹⁾ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

⁽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).

2. This Directive does not apply to money laundering as regards property derived from criminal offences affecting the Union's financial interests, which is subject to specific rules laid down in Directive (EU) 2017/1371.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) 'criminal activity' means any kind of criminal involvement in the commission of any offence punishable, in accordance with national law, by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal systems, any offence punishable by deprivation of liberty or a detention order for a minimum of more than six months. In any case, offences within the following categories are considered a criminal activity:
- (a) participation in an organised criminal group and racketeering, including any offence set out in Framework Decision 2008/841/JHA;
 - (b) terrorism, including any offence set out in Directive (EU) 2017/541 of the European Parliament and of the Council ⁽¹⁾;
 - (c) trafficking in human beings and migrant smuggling, including any offence set out in Directive 2011/36/EU of the European Parliament and of the Council ⁽²⁾ and Council Framework Decision 2002/946/JHA ⁽³⁾;
 - (d) sexual exploitation, including any offence set out in Directive 2011/93/EU of the European Parliament and of the Council ⁽⁴⁾;
 - (e) illicit trafficking in narcotic drugs and psychotropic substances, including any offence set out in Council Framework Decision 2004/757/JHA ⁽⁵⁾;
 - (f) illicit arms trafficking;
 - (g) illicit trafficking in stolen goods and other goods;
 - (h) corruption, including any offence set out in the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union ⁽⁶⁾ and in Council Framework Decision 2003/568/JHA ⁽⁷⁾;
 - (i) fraud, including any offence set out in Council Framework Decision 2001/413/JHA ⁽⁸⁾;

⁽¹⁾ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

⁽²⁾ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

⁽³⁾ Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1).

⁽⁴⁾ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

⁽⁵⁾ Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ L 335, 11.11.2004, p. 8).

⁽⁶⁾ Council Act of 26 May 1997 drawing up, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 1).

⁽⁷⁾ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).

⁽⁸⁾ Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ L 149, 2.6.2001, p. 1).

- (j) counterfeiting of currency, including any offence set out in Directive 2014/62/EU of the European Parliament and of the Council ⁽¹⁾;
 - (k) counterfeiting and piracy of products;
 - (l) environmental crime, including any offence set out in Directive 2008/99/EC of the European Parliament and of the Council ⁽²⁾ or in Directive 2009/123/EC of the European Parliament and of the Council ⁽³⁾;
 - (m) murder, grievous bodily injury;
 - (n) kidnapping, illegal restraint and hostage-taking;
 - (o) robbery or theft;
 - (p) smuggling;
 - (q) tax crimes relating to direct and indirect taxes, as laid down in national law;
 - (r) extortion;
 - (s) forgery;
 - (t) piracy;
 - (u) insider trading and market manipulation, including any offence set out in Directive 2014/57/EU of the European Parliament and of the Council ⁽⁴⁾;
 - (v) cybercrime, including any offence set out in Directive 2013/40/EU of the European Parliament and of the Council ⁽⁵⁾.
- (2) 'property' means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or an interest in, such assets;
- (3) 'legal person' means any entity having legal personality under the applicable law, except for states or public bodies in the exercise of state authority and for public international organisations.

Article 3

Money laundering offences

1. Member States shall take the necessary measures to ensure that the following conduct, when committed intentionally, is punishable as a criminal offence:
- (a) the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;
 - (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity;
 - (c) the acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from criminal activity.
2. Member States may take the necessary measures to ensure that the conduct referred to in paragraph 1 is punishable as a criminal offence where the offender suspected or ought to have known that the property was derived from criminal activity.

⁽¹⁾ Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA (OJ L 151, 21.5.2014, p. 1).

⁽²⁾ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

⁽³⁾ Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52).

⁽⁴⁾ Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (OJ L 173, 12.6.2014, p. 179).

⁽⁵⁾ Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ L 218, 14.8.2013, p. 8).

3. Member States shall take the necessary measures to ensure that:
- (a) a prior or simultaneous conviction for the criminal activity from which the property was derived is not a prerequisite for a conviction for the offences referred to in paragraphs 1 and 2;
 - (b) a conviction for the offences referred to in paragraphs 1 and 2 is possible where it is established that the property was derived from a criminal activity, without it being necessary to establish all the factual elements or all circumstances relating to that criminal activity, including the identity of the perpetrator;
 - (c) the offences referred to in paragraphs 1 and 2 extend to property derived from conduct that occurred on the territory of another Member State or of a third country, where that conduct would constitute a criminal activity had it occurred domestically.
4. In the case of point (c) of paragraph 3 of this Article, Member States may further require that the relevant conduct constitutes a criminal offence under the national law of the other Member State or of the third country where that conduct was committed, except where that conduct constitutes one of the offences referred to in points (a) to (e) and (h) of point (1) of Article 2 and as defined in the applicable Union law.
5. Member States shall take the necessary measures to ensure that the conduct referred to in points (a) and (b) of paragraph 1 is punishable as a criminal offence when committed by persons who committed, or were involved in, the criminal activity from which the property was derived.

Article 4

Aiding and abetting, inciting and attempting

Member States shall take the necessary measures to ensure that aiding and abetting, inciting and attempting an offence referred to in Article 3(1) and (5) is punishable as a criminal offence.

Article 5

Penalties for natural persons

1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.
2. Member States shall take the necessary measures to ensure that the offences referred to in Article 3(1) and (5) are punishable by a maximum term of imprisonment of at least four years.
3. Member States shall also take the necessary measures to ensure that natural persons who have committed the offences referred to in Articles 3 and 4 are, where necessary, subject to additional sanctions or measures.

Article 6

Aggravating circumstances

1. Member States shall take the necessary measures to ensure that, in relation to the offences referred to in Article 3(1) and (5) and Article 4, the following circumstances are to be regarded as aggravating circumstances:
 - (a) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA; or
 - (b) the offender is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849 and has committed the offence in the exercise of their professional activities.
2. Member States may provide that, in relation to the offences referred to in Article 3(1) and (5) and Article 4, the following circumstances are to be regarded as aggravating circumstances:
 - (a) the laundered property is of considerable value; or
 - (b) the laundered property derives from one of the offences referred to in points (a) to (e) and (h) of point (1) of Article 2.

Article 7

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Article 3(1) and (5) and Article 4 committed for their benefit by any person, acting either individually or as part of an organ of the legal person and having a leading position within the legal person, based on any of the following:
 - (a) a power of representation of the legal person;

- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Member States shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission of any of the offences referred to in Article 3(1) and (5) and Article 4 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 of this Article shall not preclude criminal proceedings from being brought against natural persons who are perpetrators, inciters or accessories in any of the offences referred to in Article 3(1) and (5) and Article 4.

Article 8

Sanctions for legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions;
- (c) temporary or permanent disqualification from the practice of commercial activities;
- (d) placing under judicial supervision;
- (e) a judicial winding-up order;
- (f) temporary or permanent closure of establishments which have been used for committing the offence.

Article 9

Confiscation

Member States shall take the necessary measures to ensure, as appropriate, that their competent authorities freeze or confiscate, in accordance with Directive 2014/42/EU, the proceeds derived from and instrumentalities used or intended to be used in the commission or contribution to the commission of the offences as referred to in this Directive.

Article 10

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 and 4 where:

- (a) the offence is committed in whole or in part on its territory;
- (b) the offender is one of its nationals.

2. A Member State shall inform the Commission where it decides to extend its jurisdiction to offences referred to in Articles 3 and 4 which have been committed outside its territory where:

- (a) the offender is a habitual resident on its territory;
- (b) the offence is committed for the benefit of a legal person established on its territory.

3. Where an offence referred to in Articles 3 and 4 falls within the jurisdiction of more than one Member State and where any of the Member States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offender, with the aim of centralising proceedings in a single Member State.

Account shall be taken of the following factors:

- (a) the territory of the Member State on which the offence was committed;
- (b) the nationality or residency of the offender;
- (c) the country of origin of the victim or victims; and
- (d) the territory on which the offender was found.

The matter shall, where appropriate and in accordance with Article 12 of Framework Decision 2009/948/JHA, be referred to Eurojust.

*Article 11***Investigative tools**

Member States shall take the necessary measures to ensure that effective investigative tools, such as those used in combating organised crime or other serious crimes are available to the persons, units or services responsible for investigating or prosecuting the offences referred to in Article 3(1) and (5) and Article 4.

*Article 12***Replacement of certain provisions of Framework Decision 2001/500/JHA**

Point (b) of Article 1 and Article 2 of Framework Decision 2001/500/JHA are replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for transposition of that Framework Decision into national law.

With regard to the Member States bound by this Directive, references to the provisions of Framework Decision 2001/500/JHA referred to in the first paragraph shall be construed as references to this Directive.

*Article 13***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 3 December 2020. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 14***Reporting**

The Commission shall, by 3 December 2022, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.

The Commission shall, by 3 December 2023, submit a report to the European Parliament and to the Council assessing the added value of this Directive with regard to combating money laundering as well as its impact on fundamental rights and freedoms. On the basis of that report, the Commission shall, if necessary, present a legislative proposal to amend this Directive. The Commission shall take into account the information provided by Member States.

*Article 15***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 16***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 23 October 2018.

For the European Parliament

The President

A. TAJANI

For the Council

The President

K. EDTSTADLER

DIRECTIVE 2014/57/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 April 2014
on criminal sanctions for market abuse (market abuse directive)

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 83(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) An integrated and efficient financial market and stronger investor confidence requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities, derivatives and benchmarks.
- (2) Directive 2003/6/EC of the European Parliament and the Council ⁽⁴⁾ completed and updated the Union's legal framework to protect market integrity. It also required Member States to ensure that competent authorities have the power to detect and investigate market abuse. Without prejudice to the right of Member States to impose criminal sanctions, Directive 2003/6/EC also required Member States to ensure that the appropriate administrative measures can be taken or administrative sanctions can be imposed against the persons responsible for violations of the national rules implementing that Directive.
- (3) The report of 25 February 2009 by the High-Level Group on Financial Supervision in the EU, chaired by Jacques de Larosière (the 'de Larosière Group'), recommended that a sound prudential and conduct of business framework for the financial sector must rest on strong supervisory and sanctioning regimes. To that end, the de Larosière Group considered that supervisory authorities must be equipped with sufficient powers to act and that there should also be equal, strong and deterrent sanctions regimes against all financial crimes, sanctions which should be enforced effectively, in order to preserve market integrity. The de Larosière Group concluded that Member States' sanctioning regimes are in general weak and heterogeneous.

⁽¹⁾ OJ C 161, 7.6.2012, p. 3.

⁽²⁾ OJ C 181, 21.6.2012, p. 64.

⁽³⁾ Position of the European Parliament of 4 February 2014 (not yet published in the Official Journal) and decision of the Council of 14 April 2014.

⁽⁴⁾ Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L 96, 12.4.2003, p. 16).

- (4) A well-functioning legislative framework in relation to market abuse requires effective enforcement. An evaluation of the national regimes for administrative sanctions under Directive 2003/6/EC showed that not all national competent authorities had a full set of powers at their disposal to ensure that they could respond to market abuse with the appropriate sanction. In particular, not all Member States provided for pecuniary administrative sanctions for insider dealing and market manipulation, and the level of sanctions varied widely among Member States. A new legislative act is therefore needed to ensure common minimum rules across the Union.
- (5) The adoption of administrative sanctions by Member States has, to date, proven to be insufficient to ensure compliance with the rules on preventing and fighting market abuse.
- (6) It is essential that compliance with the rules on market abuse be strengthened by the availability of criminal sanctions which demonstrate a stronger form of social disapproval compared to administrative penalties. Establishing criminal offences for at least serious forms of market abuse sets clear boundaries for types of behaviour that are considered to be particularly unacceptable and sends a message to the public and to potential offenders that competent authorities take such behaviour very seriously.
- (7) Not all Member States have provided for criminal sanctions for some forms of serious breaches of national law implementing Directive 2003/6/EC. Different approaches by Member States undermine the uniformity of conditions of operation in the internal market and may provide an incentive for persons to carry out market abuse in Member States which do not provide for criminal sanctions for those offences. In addition, there has, to date, been no Union-wide understanding of conduct that is considered to constitute a serious breach of the rules on market abuse. Therefore, minimum rules should be established with regard to the definition of criminal offences committed by natural persons, liability of legal persons and the relevant sanctions. Common minimum rules would also make it possible to use more effective methods of investigation and enable more effective cooperation within and between Member States. In the light of the financial crisis, it is evident that market manipulation has a potential for widespread damage on the lives of millions of people. The Libor scandal, which concerned a serious case of benchmark manipulation, demonstrated that relevant problems and loopholes impact gravely on market confidence and may result in significant losses to investors and distortions of the real economy. The absence of common criminal sanction regimes across the Union creates opportunities for perpetrators of market abuse to take advantage of lighter regimes in some Member States. The imposition of criminal sanctions for market abuse will have an increased deterrent effect on potential offenders.
- (8) The introduction by all Member States of criminal sanctions for at least serious market abuse offences is therefore essential to ensure the effective implementation of Union policy on fighting market abuse.
- (9) In order for the scope of this Directive to be aligned with that of Regulation (EU) No 596/2014 of the European Parliament and of the Council⁽¹⁾, trading in own shares in buy-back programmes and trading in securities or associated instruments for the stabilisation of securities; transactions, orders or behaviour in pursuit of monetary, exchange-rate or public debt management policy; activities concerning emission allowances undertaken in pursuit of the Union's climate policy; and activities undertaken in pursuit of the Union's Common Agricultural Policy and the Union's Common Fisheries Policy, should be exempt from this Directive.
- (10) Member States should be required to provide at least for serious cases of insider dealing, market manipulation and unlawful disclosure of inside information to constitute criminal offences when committed with intent.
- (11) For the purposes of this Directive, insider dealing and unlawful disclosure of inside information should be deemed to be serious in cases such as those where the impact on the integrity of the market, the actual or potential profit derived or loss avoided, the level of damage caused to the market, or the overall value of the financial instruments traded is high. Other circumstances that might be taken into account are, for instance, where an offence has been committed within the framework of a criminal organisation or where the person has committed such an offence before.

⁽¹⁾ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (see page 1 of this Official Journal).

- (12) For the purposes of this Directive, market manipulation should be deemed to be serious in cases such as those where the impact on the integrity of the market, the actual or potential profit derived or loss avoided, the level of damage caused to the market, the level of alteration of the value of the financial instrument or spot commodity contract, or the amount of funds originally used is high or where the manipulation is committed by a person employed or working in the financial sector or in a supervisory or regulatory authority.
- (13) Due to the adverse effects of attempted insider dealing and attempted market manipulation on the integrity of the financial markets and on investor confidence in those markets, those forms of behaviour should also be punishable as a criminal offence.
- (14) This Directive should oblige Member States to provide in their national law for criminal penalties in respect of insider dealing, market manipulation and unlawful disclosure of inside information to which this Directive applies. This Directive should not create obligations regarding the application of such penalties or any other available system of law enforcement, to individual cases.
- (15) This Directive should also require Member States to ensure that inciting, aiding and abetting the criminal offences are also punishable.
- (16) In order for the sanctions for the offences referred to in this Directive to be effective and dissuasive, a minimum level for the maximum term of imprisonment should be set in this Directive.
- (17) This Directive should be applied taking into account the legal framework established by Regulation (EU) No 596/2014 and its implementing measures.
- (18) In order to ensure effective implementation of the European policy for ensuring the integrity of the financial markets set out in Regulation (EU) No 596/2014, Member States should extend liability for the offences provided for in this Directive to legal persons through the imposition of criminal or non-criminal sanctions or other measures which are effective, proportionate and dissuasive, for example those provided for in Regulation (EU) No 596/2014. Such sanctions or other measures may include the publication of a final decision on a sanction, including the identity of the liable legal person, taking into account fundamental rights, the principle of proportionality and the risks to the stability of financial markets and ongoing investigations. Member States should, where appropriate and where national law provides for criminal liability of legal persons, extend such criminal liability, in accordance with national law, to the offences provided for in this Directive. This Directive should not prevent Member States from publishing final decisions on liability or sanctions.
- (19) Member States should take necessary measures to ensure that law enforcement, judicial authorities and other competent authorities responsible for investigating or prosecuting the offences provided for in this Directive have the ability to use effective investigative tools. Taking into account, inter alia, the principle of proportionality, the use of such tools in accordance with national law should be commensurate with the nature and seriousness of the offences under investigation.
- (20) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent criminal law rules for market abuse.
- (21) Member States may, for example, provide that market manipulation committed recklessly or by serious negligence constitutes a criminal offence.
- (22) The obligations in this Directive to provide for penalties on natural persons and sanctions on legal persons in their national law do not exempt Member States from the obligation to provide in national law for administrative sanctions and other measures for breaches provided for in Regulation (EU) No 596/2014 unless Member States have decided, in accordance with Regulation (EU) No 596/2014, to provide only for criminal sanctions for such breaches in their national law.

- (23) The scope of this Directive is determined in such a way as to complement, and ensure the effective implementation of, Regulation (EU) No 596/2014. Whereas offences should be punishable under this Directive when committed intentionally and at least in serious cases, sanctions for breaches of Regulation (EU) No 596/2014 do not require that intent is proven or that they are qualified as serious. In the application of national law transposing this Directive, Member States should ensure that the imposition of criminal sanctions for offences in accordance with this Directive and of administrative sanctions in accordance with the Regulation (EU) No 596/2014 does not lead to a breach of the principle of *ne bis in idem*.
- (24) Without prejudice to the general rules of national criminal law on the application and execution of sentences in accordance with the concrete circumstances in each individual case, the imposition of sanctions should be proportionate, taking into account the profits made or losses avoided by the persons held liable as well as the damage resulting from the offence to other persons and, where applicable, to the functioning of markets or the wider economy.
- (25) Since the objective of this Directive, namely to ensure the availability of criminal sanctions for at least serious market abuse across the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (26) Increasing cross-border activities require efficient and effective cooperation between national authorities which are competent for the investigation and prosecution of market abuse offences. The organisation and competences of those national authorities in the different Member States should not hinder their cooperation.
- (27) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (the Charter) as recognised in the TEU. Specifically, it should be applied with due respect for the right to protection of personal data (Article 8), the freedom of expression and information (Article 11), the freedom to conduct a business (Article 16), the right to an effective remedy and to a fair trial (Article 47), the presumption of innocence and right of defence (Article 48), the principles of legality and proportionality of criminal offences and penalties (Article 49), and the right not to be tried or punished twice in criminal proceedings for the same offence (Article 50).
- (28) In implementing this Directive, Member States should ensure procedural rights of suspected or accused persons in criminal proceedings. Their obligations under this Directive are without prejudice to their obligations under Union law on procedural rights in criminal proceedings. Nothing in this Directive is intended to restrict the freedom of press or the freedom of expression in the media in so far as they are guaranteed in the Union and in the Member States, in particular under Article 11 of the Charter and other relevant provisions. This should be emphasised in particular as regards disclosure of inside information in accordance with the provisions on such disclosure in this Directive.
- (29) Without prejudice to Article 4 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 Treaty on the Functioning of the European Union (TFEU), the United Kingdom will not participate in the adoption of this Directive and is therefore not bound by or be subject to its application.
- (30) In accordance with Articles 1, 2, 3 and 4 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, Ireland has notified its wish to take part in the adoption and application of this Directive.
- (31) In accordance with Articles 1 and 2 of 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 Directive and is therefore not bound by it or subject to its application.

(32) The European Data Protection Supervisor delivered an opinion on 10 February 2012 ⁽¹⁾,

HAVE ADOPTED THIS DIRECTIVE;

Article 1

Subject matter and scope

1. This Directive establishes minimum rules for criminal sanctions for insider dealing, for unlawful disclosure of inside information and for market manipulation to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.

2. This Directive applies to the following:

- (a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;
- (b) financial instruments traded on a multilateral trading facility (MTF), admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;
- (c) financial instruments traded on an organised trading facility (OTF);
- (d) financial instruments not covered by point (a), (b) or (c), the price or value of which depends on, or has an effect on, the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.

This Directive also applies to behaviour or transactions, including bids, relating to the auctioning on an auction platform authorised as a regulated market of emission allowances or other auctioned products based thereon, including when auctioned products are not financial instruments, pursuant to Commission Regulation (EU) No 1031/2010 ⁽²⁾. Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any provisions in this Directive referring to orders to trade shall apply to such bids.

3. This Directive does not apply to:

- (a) trading in own shares in buy-back programmes, where such trading is carried out in accordance with Article 5(1), (2) and (3) of Regulation (EU) No 596/2014;
- (b) trading in securities or associated instruments as referred to in points (a) and (b) of Article 3(2) of Regulation (EU) No 596/2014 for the stabilisation of securities, where such trading is carried out in accordance with Article 5(4) and (5) of that Regulation;
- (c) transactions, orders or behaviours carried out in pursuit of monetary, exchange rate or public debt management policy in accordance with Article 6(1) of Regulation (EU) No 596/2014, transactions order or behaviours carried out in accordance with Article 6(2) thereof, activities in pursuit of the Union's climate policy in accordance with Article 6(3) thereof, or activities in pursuit of the Union's Common Agricultural Policy or of the Union's Common Fisheries Policy in accordance with Article 6(4) thereof;

4. Article 5 also applies to:

- (a) spot commodity contracts that are not wholesale energy products, where the transaction, order or behaviour has an effect on the price or value of a financial instrument referred to in paragraph 2 of this Article;

⁽¹⁾ OJ C 177, 20.6.2012, p. 1.

⁽²⁾ Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).

- (b) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk, where the transaction, order, bid or behaviour has an effect on the price or value of a spot commodity contract where the price or value depends on the price or value of those financial instruments;
- (c) behaviour in relation to benchmarks.

5. This Directive applies to any transaction, order or behaviour concerning any financial instrument as referred to in paragraphs 2 and 4, irrespective of whether or not such transaction, order or behaviour takes place on a trading venue.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) 'financial instrument' means a financial instrument as defined in point (15) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council ⁽¹⁾;
- (2) 'spot commodity contract' means a spot commodity contract as defined in point (15) of Article 3(1) of Regulation (EU) No 596/2014;
- (3) 'buy-back programme' means trading in own shares in accordance with Articles 21 to 27 of Directive 2012/30/EU of the European Parliament and of the Council ⁽²⁾;
- (4) 'inside information' means information within the meaning of Article 7(1) to (4) of Regulation (EU) No 596/2014;
- (5) 'emission allowance' means an emission allowance as described in point (11) of Section C of Annex I of Directive 2014/65/EU;
- (6) 'benchmark' means a benchmark as defined in point (29) of Article 3(1) of Regulation (EU) No 596/2014;
- (7) 'accepted market practice' means a specific market practice that is accepted by the competent authority of a Member State in accordance with Article 13 of Regulation (EU) No 596/2014;
- (8) 'stabilisation' means stabilisation as defined in Article 3(2)(d) of Regulation (EU) No 596/2014;
- (9) 'regulated market' means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;
- (10) 'multilateral trading facility' or 'MTF' means a multilateral trading facility as defined in point (22) of Article 4(1) of Directive 2014/65/EU;
- (11) 'organised trading facility' or 'OTF' means an organised trading facility as defined in point (23) of Article 4(1) of Directive 2014/65/EU;
- (12) 'trading venue' means a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU;

⁽¹⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2011/61/EU and Directive 2002/92/EC (see page 349 of this Official Journal).

⁽²⁾ Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 315, 14.11.2012, p. 74).

(13) 'wholesale energy product' means a wholesale energy product as defined in point (4) of Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council ⁽¹⁾;

(14) 'issuer' means an issuer as defined in point (21) of Article 3(1) of Regulation (EU) No 596/2014.

Article 3

Insider dealing, recommending or inducing another person to engage in insider dealing

1. Member States shall take the necessary measures to ensure that insider dealing, recommending or inducing another person to engage in insider dealing as referred to in paragraphs 2 to 8, constitute criminal offences at least in serious cases and when committed intentionally.

2. For the purposes of this Directive, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates.

3. This Article applies to any person who possesses inside information as a result of:

- (a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;
- (b) having a holding in the capital of the issuer or emission allowance market participant;
- (c) having access to the information through the exercise of an employment, profession or duties; or
- (d) being involved in criminal activities.

This Article also applies to any person who has obtained inside information under circumstances other than those referred to in the first subparagraph where that person knows that it is inside information.

4. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information shall also be considered to be insider dealing.

5. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010, the use of inside information referred to in paragraph 4 of this Article shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.

6. For the purposes of this Directive, recommending that another person engage in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and:

- (a) recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal; or
- (b) recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.

⁽¹⁾ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

7. The use of the recommendations or inducements referred to in paragraph 6 amounts to insider dealing where the person using the recommendation or inducement knows that it is based upon inside information.

8. For the purposes of this Article, it shall not be deemed from the mere fact that a person is or has been in possession of inside information that that person has used that information and has thus engaged in insider dealing on the basis of an acquisition or disposal, where its behaviour qualifies as legitimate behaviour under Article 9 of Regulation (EU) No 596/2014.

Article 4

Unlawful disclosure of inside information

1. Member States shall take the necessary measures to ensure that unlawful disclosure of inside information as referred to in paragraphs 2 to 5 constitutes a criminal offence at least in serious cases and when committed intentionally.

2. For the purposes of this Directive, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties, including where the disclosure qualifies as a market sounding made in compliance with Article 11(1) to (8) of Regulation (EU) No 596/2014.

3. This Article applies to any person in the situations or circumstances referred to in Article 3(3).

4. For the purposes of this Directive, the onward disclosure of recommendations or inducements referred to in Article 3(6) amounts to unlawful disclosure of inside information under this Article where the person disclosing the recommendation or inducement knows that it was based on inside information.

5. This Article shall be applied in accordance with the need to protect the freedom of the press and the freedom of expression.

Article 5

Market manipulation

1. Member States shall take the necessary measures to ensure that market manipulation as referred to in paragraph 2 constitutes a criminal offence at least in serious cases and when committed intentionally.

2. For the purposes of this Directive, market manipulation shall comprise the following activities:

(a) entering into a transaction, placing an order to trade or any other behaviour which:

(i) gives false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract; or

(ii) secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level;

unless the reasons for so doing of the person who entered into the transactions or issued the orders to trade are legitimate, and those transactions or orders to trade are in conformity with accepted market practices on the trading venue concerned;

(b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects the price of one or several financial instruments or a related spot commodity contract, which employs a fictitious device or any other form of deception or contrivance;

- (c) disseminating information through the media, including the internet, or by any other means, which gives false or misleading signals as to the supply of, demand for, or price of a financial instrument, or a related spot commodity contract, or secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level, where the persons who made the dissemination derive for themselves or for another person an advantage or profit from the dissemination of the information in question; or
- (d) transmitting false or misleading information or providing false or misleading inputs or any other behaviour which manipulates the calculation of a benchmark.

Article 6

Inciting, aiding and abetting, and attempt

1. Member States shall take the necessary measures to ensure that inciting, aiding and abetting the offences referred to in Article 3(2) to (5) and Articles 4 and 5 is punishable as a criminal offence.
2. Member States shall take the necessary measures to ensure that the attempt to commit any of the offences referred to in Article 3(2) to (5) and (7) and Article 5 is punishable as a criminal offence.
3. Article 3(8) applies *mutatis mutandis*.

Article 7

Criminal penalties for natural persons

1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 6 are punishable by effective, proportionate and dissuasive criminal penalties.
2. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 5 are punishable by a maximum term of imprisonment of at least four years.
3. Member States shall take the necessary measures to ensure that the offence referred to in Article 4 is punishable by a maximum term of imprisonment of at least two years.

Article 8

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 to 6 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person based on:
 - (a) a power of representation of the legal person;
 - (b) an authority to take decisions on behalf of the legal person; or
 - (c) an authority to exercise control within the legal person.
2. Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in Articles 3 to 6 for the benefit of the legal person by a person under its authority.
3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in the offences referred to in Articles 3 to 6.

*Article 9***Sanctions for legal persons**

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 8 is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding-up;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

*Article 10***Jurisdiction**

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 3 to 6 where the offence has been committed:

- (a) in whole or in part within their territory; or
- (b) by one of their nationals, at least in cases where the act is an offence where it was committed.

2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 3 to 6 committed outside its territory where:

- (a) the offender is an habitual resident in its territory; or
- (b) the offence is committed for the benefit of a legal person established in its territory.

*Article 11***Training**

Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request those responsible for the training of judges, prosecutors, police, judicial and those competent authorities' staff involved in criminal proceedings and investigations to provide appropriate training with respect to the objectives of this Directive.

*Article 12***Report**

By 4 July 2018, the Commission shall report to the European Parliament and to the Council on the functioning of this Directive and, if necessary, on the need to amend it, including with regard to the interpretation of serious cases as referred to in Article 3(1), Article 4(1) and Article 5(1), the level of sanctions provided for by Member States and the extent to which the optional elements referred to in this Directive have been adopted.

The Commission's report shall, if appropriate, be accompanied by a legislative proposal.

*Article 13***Transposition**

1. Member States shall adopt and publish, by 3 July 2016, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

They shall apply those measures from 3 July 2016 subject to the entry into force of Regulation (EU) No 596/2014.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 14***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 15***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 16 April 2014.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
D. KOURKOULAS

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL DECISION
of 29 May 2000
to combat child pornography on the Internet

(2000/375/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 34(2)(c) thereof,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the initiative of the Republic of Austria,

Taking account of the resolutions adopted by the European Parliament on 19 September 1996 on minors who are victims of violence ⁽²⁾, 12 December 1996 on measures to protect minors in the European Union ⁽³⁾, 24 April 1997 on the Commission communication on illegal and harmful content on the Internet ⁽⁴⁾ and 6 November 1997 on the Commission communication on combating child sex tourism, and the *aide-memoire* on the European Union's contribution to reinforcing the prevention of the sexual abuse and exploitation of children ⁽⁵⁾,

Bearing in mind the Declaration and Agenda for Action, unanimously accepted by delegates at the World Congress against commercial sexual exploitation of children, held in Stockholm in August 1996, and the conclusions and recommendations of the European follow-up conference to the World Congress, held in Strasbourg in April 1998;

Bearing in mind the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950, and in particular Articles 2, 3 and 10(2) thereof;

Recalling the European Convention on the Exercise of Children's Rights, adopted in Strasbourg on 25 January 1996, and in particular Articles 1, 6, 7, 8, 9, 10, 11, 12 and 15 thereof;

Having regard to the Universal Declaration of Human Rights, adopted by the UN General Assembly in its Resolution 217 A (III) on 10 December 1948 in Paris, and in particular Articles 2, 3, 7, 25 and 26 thereof;

Recalling Article 34 of the Convention on the Rights of the Child of 20 November 1989;

Bearing in mind Council Joint Action 96/700/JHA of 29 November 1996 establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children ⁽⁶⁾;

Bearing in mind the Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, of 17 February 1997 on illegal and harmful content on the Internet ⁽⁷⁾;

Bearing in mind Joint Action 97/154/JHA of 24 February 1997 adopted by the Council concerning action to combat trafficking in human beings and sexual exploitation of children ⁽⁸⁾;

Bearing in mind the Council decision of 3 December 1998 supplementing the definition of the form of crime 'traffic in human beings' in the Annex to the Europol Convention ⁽⁹⁾, and having regard to the Declaration of 3 December 1998 approved by the Council;

⁽¹⁾ Opinion delivered on 11 April 2000 (not yet published in the Official Journal).

⁽²⁾ OJ C 320, 28.10.1996, p. 190.

⁽³⁾ OJ C 20, 20.1.1997, p. 170.

⁽⁴⁾ OJ C 150, 19.5.1997, p. 38.

⁽⁵⁾ OJ C 358, 24.11.1997, p. 37.

⁽⁶⁾ OJ L 322, 12.12.1996, p. 7.

⁽⁷⁾ OJ C 70, 6.3.1997, p. 1.

⁽⁸⁾ OJ L 63, 4.3.1997, p. 2.

⁽⁹⁾ OJ C 26, 30.1.1999, p. 21.

Taking into account the recommendation adopted by the Council on 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity ⁽¹⁾;

Recalling the action plan adopted by the Council on 28 April 1997 to combat organised crime ⁽²⁾, approved by the Amsterdam European Council in June 1997, and the 10 principles of the G8 regarding high-tech crime of which the Council took note at its meeting on 19 March 1998 as well as the recommendation of the European Council in Vienna on 11 and 12 December 1998 to ensure an effective follow-up to the initiatives for the protection of children at European and international level, especially in the area of child pornography in the Internet;

Taking into account Decision No 276/1999/EC of the European Parliament and of the Council of 25 January 1999 adopting a multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks ⁽³⁾;

Recalling Council common position 1999/364/JHA of 27 May 1999 on negotiations relating to the Draft Convention on Cyber Crime held in the Council of Europe on 27 May 1999 ⁽⁴⁾;

Whereas the traffic in human beings and the sexual exploitation of children constitute a serious infringement of fundamental human rights and in particular of human dignity;

Aware of the fact that the sexual abuse of children and the production, processing, possession and distribution of child pornography material may constitute an important form of international organised crime, the extent of which within the European Union gives cause for ever-increasing concern;

Convinced that respect for the physical and emotional integrity of children and the protection of victims of sexual exploitation are of fundamental importance and must lie at the heart of the Union's concerns;

Aware of the need for further measures by the Union to promote the safe use of the Internet;

In order to prevent and combat the sexual abuse of children and, in particular, the production, processing, distribution and possession of child pornography material through the Internet,

HAS DECIDED AS FOLLOWS:

Article 1

1. Within the framework of Decision No 276/1999/EC of the European Parliament and of the Council and in order to intensify measures to prevent and combat the production, processing, possession and distribution of child pornography material and to promote the effective investigation and prosecution of offences in this area, Member States shall take the necessary measures to encourage Internet users to inform law enforcement authorities, either directly or indirectly, on suspected distribution of child pornography material on the Internet, if they come across such material. Internet users shall be made aware of ways to make contact with law enforcement authorities or entities which have privileged links with law enforcement authorities, to enable such authorities to fulfil their task of preventing and combating child pornography on the Internet.

2. Where necessary, and taking account of the administrative structure of each Member State, measures for the promotion of effective investigation and prosecution of offences in this area may be the setting-up of specialised units within law enforcement authorities with the necessary expertise and resources to be able to deal swiftly with information on suspected production, processing, distribution and possession of child pornography.

⁽¹⁾ OJ L 270, 7.10.1998, p. 48.

⁽²⁾ OJ C 251, 15.8.1997, p. 1.

⁽³⁾ OJ L 33, 6.2.1999, p. 1.

⁽⁴⁾ OJ L 142, 5.6.1999, p. 1.

3. Member States shall ensure that the law enforcement authorities act swiftly when they have received information on suspected production, processing, possession and distribution of child pornography material. Law enforcement authorities may defer taking action if and as long as tactically necessary, for instance with a view to getting at those behind the criminal operations, or at networks (child pornography rings).

Article 2

1. Member States shall ensure the widest and speediest possible cooperation to facilitate an effective investigation and prosecution of offences concerning child pornography on the Internet in accordance with existing arrangements and agreements.

2. To ensure a timely and effective response to these offences, Member States shall communicate already established points of contact, which are set up on a 24-hour basis and consist of knowledgeable personnel, as well as the specialised units which are referred to in Article 1(2) and which can be used for exchange of information and for further contacts between Member States. Points of contact, which Member States have already set up for other duties, may also be used for these purposes. Likewise, existing channels for communication, such as Europol and Interpol shall be used.

3. Member States shall ensure that Europol, within the limits of its mandate, is informed of suspected cases of child pornography.

4. Member States, in appropriate cooperation with Europol, shall examine the possibility of organising regular meetings of competent authorities specialising in combating child pornography on the Internet with a view to promoting general information exchanges, analysis of the situation and the coordination of measures in criminal tactics.

5. Each Member State shall notify the General Secretariat of the Council of its organisational unit or units acting as points of contact pursuant to paragraph 2. The General Secretariat shall inform all other Member States of these points of contact.

Article 3

Member States shall engage in constructive dialogue with industry and examine appropriate measures, of a voluntary or a legally binding nature, to eliminate child pornography on the Internet. In particular, Member States shall exchange experiences on the effectiveness of any measures they have taken to eliminate child pornography on the Internet. In this context, they shall examine the following measures, which would place Internet providers under a duty:

- (a) to advise the competent entities mentioned in Article 1 (1) or the units mentioned in Article 1(2) of child pornography material of which they have been informed or of which they are aware and which is distributed through them;
- (b) to withdraw from circulation child pornography material of which they have been informed or of which they are aware and which is distributed through them unless otherwise specified by the competent authorities;
- (c) in accordance with the Council resolution of 17 January 1995 on the lawful interception of telecommunications ⁽¹⁾ to retain traffic-related data, where applicable and technically feasible — in particular for criminal prosecution purposes in cases of suspected sexual abuse of children, production, processing and distribution of child pornography — for such time as may be specified under the applicable national law, to allow the data to be made available for inspection by the criminal prosecution authorities in accordance with the applicable rules of procedure;
- (d) to set up their own control systems for combating the production, processing, possession and distribution of child pornography material.

Article 4

Member States shall regularly verify whether technological developments require, in order to maintain the efficiency of the fight against child pornography on the Internet, changes to criminal procedural law, while respecting the fundamental principles thereof and, where necessary, shall initiate appropriate new legislation to that end.

⁽¹⁾ OJ C 329, 4.11.1996, p. 1.

Article 5

Member States shall cooperate, in contact with industry, by sharing their experiences and encouraging, as far as possible, the production of filters and other technical means to prevent the distribution of child pornography material and to make possible the detection thereof.

Article 6

1. The Council shall examine the extent to which Member States have fulfilled their obligations pursuant to Joint Action 97/154/JHA and the extent to which the measures proposed in this Decision have proved effective.

2. The examination referred to in paragraph 1 shall be carried out under Joint Action 97/827/JHA adopted by the Council on 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime ⁽¹⁾, subject to the following:

(a) evaluation teams shall consist of two experts;

(b) on-the-spot evaluation shall be made so as to avoid cumbersome procedures.

3. The assessment specified in Title IV B of Joint Action 97/154/JHA shall not be carried out. It shall be replaced by the evaluation referred to in paragraph 2 of this Article.

4. On the basis of the information received in the course of the evaluation pursuant to paragraph 2, the Council shall examine any further measure it may wish to take in order to make the combating of child pornography and sexual exploitation of children more effective.

Article 7

This Decision shall apply to Gibraltar.

Article 8

The measures contained in this Decision shall be implemented by the Member States at the latest on 31 December 2000.

Done at Brussels, 29 May 2000.

For the Council

The President

A. COSTA

⁽¹⁾ OJ L 344, 15.12.1997, p. 7.

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION
of 28 May 2001
combating fraud and counterfeiting of non-cash means of payment
 (2001/413/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 34(2)(b) thereof,

Having regard to the initiative of the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) Fraud and counterfeiting of non-cash means of payment often operate on an international scale.
- (2) The work developed by various international organisations (i.e. the Council of Europe, the Group of Eight, the OECD, Interpol and the UN) is important but needs to be complemented by action of the European Union.
- (3) The Council considers that the seriousness and development of certain forms of fraud regarding non-cash means of payment require comprehensive solutions. Recommendation No 18 of the Action Plan to combat organised crime ⁽³⁾, approved by the Amsterdam European Council on 16 and 17 June 1997, as well as point 46 of the Action Plan of the Council and the Commission on how to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice ⁽⁴⁾, approved by the Vienna European Council on 11 and 12 December 1998, call for an action on this subject.
- (4) Since the objectives of this Framework Decision, namely to ensure that fraud and counterfeiting involving all forms of non-cash means of payment are recognised as criminal offences and are subject to effective, proportionate and dissuasive sanctions in all Member States cannot be sufficiently achieved by the Member States in view of the international dimension of those offences and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in

that Article, this Framework Decision does not go beyond what is necessary in order to achieve those objectives.

- (5) This Framework Decision should assist in the fight against fraud and counterfeiting involving non-cash means of payment together with other instruments already agreed by the Council such as Joint Action 98/428/JHA on the creation of a European Judicial Network ⁽⁵⁾, Joint Action 98/733/JHA on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union ⁽⁶⁾, Joint Action 98/699/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime ⁽⁷⁾, as well as the Decision of 29 April 1999 extending Europol's mandate to deal with forgery of money and means of payment ⁽⁸⁾.
- (6) The Commission submitted to the Council, on 1 July 1998, the Communication entitled 'A framework for action combating fraud and counterfeit of non-cash means of payment' which advocates a Union Policy covering both preventive and repressive aspects of the problem.
- (7) The Communication contains a Draft Joint Action which is one element of that comprehensive approach, and constitutes the starting point for this Framework Decision.
- (8) It is necessary that a description of the different forms of behaviour requiring criminalisation in relation to fraud and counterfeiting of non-cash means of payment cover the whole range of activities that together constitute the menace of organised crime in this regard.
- (9) It is necessary that these forms of behaviour be classified as criminal offences in all Member States, and that effective, proportionate and dissuasive sanctions be provided for natural and legal persons having committed, or being liable for, such offences.

⁽¹⁾ OJ C 376 E, 28.12.1999, p. 20.

⁽²⁾ OJ C 121, 24.4.2001, p. 105.

⁽³⁾ OJ C 251, 15.8.1997, p. 1.

⁽⁴⁾ OJ C 19, 23.1.1999, p. 1.

⁽⁵⁾ OJ L 191, 7.7.1998, p. 4.

⁽⁶⁾ OJ L 351, 29.12.1998, p. 1.

⁽⁷⁾ OJ L 333, 9.12.1998, p. 1.

⁽⁸⁾ OJ C 149, 28.5.1999, p. 16.

- (10) By giving protection by penal law primarily to payment instruments that are provided with a special form of protection against imitation or abuse, the intention is to encourage operators to provide that protection to payment instruments issued by them, and thereby to add an element of prevention to the instrument.
- (11) It is necessary that Member States afford each other the widest measure of mutual assistance, and that they consult each other when two or more Member States have jurisdiction over the same offence,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purpose of this Framework Decision:

- (a) 'Payment instrument' shall mean a corporeal instrument, other than legal tender (bank notes and coins), enabling, by its specific nature, alone or in conjunction with another (payment) instrument, the holder or user to transfer money or monetary value, as for example credit cards, eurocheque cards, other cards issued by financial institutions, travellers' cheques, eurocheques, other cheques and bills of exchange, which is protected against imitation or fraudulent use, for example through design, coding or signature;
- (b) 'Legal person' shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations.

Article 2

Offences related to payment instruments

Each Member State shall take the necessary measures to ensure that the following conduct is a criminal offence when committed intentionally, at least in respect of credit cards, eurocheque cards, other cards issued by financial institutions, travellers cheques, eurocheques, other cheques and bills of exchange:

- (a) theft or other unlawful appropriation of a payment instrument;
- (b) counterfeiting or falsification of a payment instrument in order for it to be used fraudulently;
- (c) receiving, obtaining, transporting, sale or transfer to another person or possession of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument in order for it to be used fraudulently;

- (d) fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument;

Article 3

Offences related to computers

Each Member State shall take the necessary measures to ensure that the following conduct is a criminal offence when committed intentionally:

performing or causing a transfer of money or monetary value and thereby causing an unauthorised loss of property for another person, with the intention of procuring an unauthorised economic benefit for the person committing the offence or for a third party, by:

- without right introducing, altering, deleting or suppressing computer data, in particular identification data, or
- without right interfering with the functioning of a computer programme or system.

Article 4

Offences related to specifically adapted devices

Each Member State shall take the necessary measures to ensure that the following conduct is established as a criminal offence when committed intentionally:

the fraudulent making, receiving, obtaining, sale or transfer to another person or possession of:

- instruments, articles, computer programmes and any other means peculiarly adapted for the commission of any of the offences described under Article 2(b);
- computer programmes the purpose of which is the commission of any of the offences described under Article 3.

Article 5

Participation, instigation and attempt

Each Member State shall take the necessary measures to ensure that participating in and instigating the conduct referred to in Articles 2, 3 and 4, or attempting the conduct referred to in Article 2(a), (b) and (d) and Article 3, are punishable.

Article 6

Penalties

Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 to 5 is punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition.

*Article 7***Liability of legal persons**

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for conduct referred to in Article 2(b), (c) and (d) and Articles 3 and 4 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a power of representation of the legal person, or
 - an authority to take decisions on behalf of the legal person, or
 - an authority to exercise control within the legal person,
- as well as for involvement as accessories or instigators in the commission of such an offence.

2. Apart from the cases provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission referred to in Article 2(b), (c) and (d) and Articles 3 and 4 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the conduct referred to in Article 2(b), (c) and (d) and Articles 3 and 4.

*Article 8***Sanctions for legal persons**

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order.

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7(2) is punishable by effective, proportionate and dissuasive sanctions or measures.

*Article 9***Jurisdiction**

1. Each Member State shall take the necessary measures to establish its jurisdiction with regard to the offences referred to

in Articles 2, 3, 4 and 5 where the offence has been committed:

- (a) in whole or in part within its territory; or
- (b) by one of its nationals, provided that the law of that Member State may require the conduct to be punishable also in the country where it occurred; or
- (c) for the benefit of a legal person that has its head office in the territory of that Member State.

2. Subject to of Article 10, any Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, the jurisdiction rule set out in:

- paragraph 1(b);
- paragraph 1(c).

3. Member States shall inform the General Secretariat of the Council accordingly where they decide to apply paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

*Article 10***Extradition and prosecution**

1. (a) Any Member State which, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offences provided for in Articles 2, 3, 4 and 5 when committed by its own nationals outside its territory.

(b) Each Member State shall, when one of its nationals is alleged to have committed, in another Member State, an offence involving the conduct described in Articles 2, 3, 4 or 5, and it does not extradite that person to that other Member State solely on the ground of his nationality, submit the case to its competent authorities for the purpose of prosecution if appropriate. In order to enable prosecution to take place, the files, information and exhibits relating to the offence shall be forwarded in accordance with the procedures laid down in Article 6(2) of the European Convention on Extradition of 13 December 1957. The requesting Member State shall be informed of the prosecution initiated and of its outcome.

2. For the purpose of this Article, a 'national' of a Member State shall be construed in accordance with any declaration made by that State under Article 6(1)(b) and (c) of the European Convention on Extradition.

*Article 11***Cooperation between Member States**

1. In accordance with the applicable conventions, multilateral or bilateral agreements or arrangements, Member States shall afford each other the widest measure of mutual assistance in respect of proceedings relating to the offences provided for in this Framework Decision.

2. Where several Member States have jurisdiction in respect of offences envisaged by this Framework Decision, they shall consult one another with a view to coordinating their action in order to prosecute effectively.

Article 12

Exchange of information

1. Member States shall designate operational contact points or may use existing operational structures for the exchange of information and for other contacts between Member States for the purposes of applying this Framework Decision.

2. Each Member State shall inform the General Secretariat of the Council and the Commission of its department or departments acting as contact points in accordance with paragraph 1. The General Secretariat shall notify the other Member States of these contact points.

Article 13

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 14

Implementation

1. Member States shall bring into force the measures necessary to comply with this Framework Decision by 2 June 2003.

2. By 2 June 2003, Member States shall forward to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed upon them under this Framework Decision. The Council shall, by 2 September 2003, on the basis of a report established on the basis of this information and a written report by the Commission, assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

Article 15

Entry into force

This Framework Decision shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 28 May 2001.

For the Council

The President

T. BODSTRÖM

DIRECTIVE 2013/40/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 12 August 2013****on attacks against information systems and replacing Council Framework Decision 2005/222/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 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The objectives of this Directive are to approximate the criminal law of the Member States in the area of attacks against information systems by establishing minimum rules concerning the definition of criminal offences and the relevant sanctions and to improve cooperation between competent authorities, including the police and other specialised law enforcement services of the Member States, as well as the competent specialised Union agencies and bodies, such as Eurojust, Europol and its European Cyber Crime Centre, and the European Network and Information Security Agency (ENISA).
- (2) Information systems are a key element of political, social and economic interaction in the Union. Society is highly and increasingly dependent on such systems. The smooth operation and security of those systems in the Union is vital for the development of the internal market and of a competitive and innovative economy. Ensuring an appropriate level of protection of information systems should form part of an effective comprehensive framework of prevention measures accompanying criminal law responses to cybercrime.
- (3) Attacks against information systems, and, in particular, attacks linked to organised crime, are a growing menace in the Union and globally, and there is increasing concern about the potential for terrorist or politically motivated attacks against information systems which form part of the critical infrastructure of Member States and of the Union. This constitutes a threat to

the achievement of a safer information society and of an area of freedom, security, and justice, and therefore requires a response at Union level and improved cooperation and coordination at international level.

- (4) There are a number of critical infrastructures in the Union, the disruption or destruction of which would have a significant cross-border impact. It has become apparent from the need to increase the critical infrastructure protection capability in the Union that the measures against cyber attacks should be complemented by stringent criminal penalties reflecting the gravity of such attacks. Critical infrastructure could be understood to be an asset, system or part thereof located in Member States, which is essential for the maintenance of vital societal functions, health, safety, security, economic or social well-being of people, such as power plants, transport networks or government networks, and the disruption or destruction of which would have a significant impact in a Member State as a result of the failure to maintain those functions.
- (5) There is evidence of a tendency towards increasingly dangerous and recurrent large-scale attacks conducted against information systems which can often be critical to Member States or to particular functions in the public or private sector. This tendency is accompanied by the development of increasingly sophisticated methods, such as the creation and use of so-called 'botnets', which involves several stages of a criminal act, where each stage alone could pose a serious risk to public interests. This Directive aims, inter alia, to introduce criminal penalties for the creation of botnets, namely, the act of establishing remote control over a significant number of computers by infecting them with malicious software through targeted cyber attacks. Once created, the infected network of computers that constitute the botnet can be activated without the computer users' knowledge in order to launch a large-scale cyber attack, which usually has the capacity to cause serious damage, as referred to in this Directive. Member States may determine what constitutes serious damage according to their national law and practice, such as disrupting system services of significant public importance, or causing major financial cost or loss of personal data or sensitive information.
- (6) Large-scale cyber attacks can cause substantial economic damage both through the interruption of information systems and communication and through the loss or alteration of commercially important confidential information or other data. Particular attention should be paid to raising the awareness of innovative small and medium-sized enterprises to threats relating to such attacks and their vulnerability to such attacks, due to their increased dependence on the proper functioning and availability of information systems and often limited resources for information security.

⁽¹⁾ OJ C 218, 23.7.2011, p. 130.

⁽²⁾ Position of the European Parliament of 4 July 2013 (not yet published in the Official Journal) and decision of the Council of 22 July 2013.

- (7) Common definitions in this area are important in order to ensure a consistent approach in the Member States to the application of this Directive.
- (8) There is a need to achieve a common approach to the constituent elements of criminal offences by introducing common offences of illegal access to an information system, illegal system interference, illegal data interference, and illegal interception.
- (9) Interception includes, but is not necessarily limited to, the listening to, monitoring or surveillance of the content of communications and the procuring of the content of data either directly, through access and use of the information systems, or indirectly through the use of electronic eavesdropping or tapping devices by technical means.
- (10) Member States should provide for penalties in respect of attacks against information systems. Those penalties should be effective, proportionate and dissuasive and should include imprisonment and/or fines.
- (11) This Directive provides for criminal penalties at least for cases which are not minor. Member States may determine what constitutes a minor case according to their national law and practice. A case may be considered minor, for example, where the damage caused by the offence and/or the risk to public or private interests, such as to the integrity of a computer system or to computer data, or to the integrity, rights or other interests of a person, is insignificant or is of such a nature that the imposition of a criminal penalty within the legal threshold or the imposition of criminal liability is not necessary.
- (12) The identification and reporting of threats and risks posed by cyber attacks and the related vulnerability of information systems is a pertinent element of effective prevention of, and response to, cyber attacks and to improving the security of information systems. Providing incentives to report security gaps could add to that effect. Member States should endeavour to provide possibilities for the legal detection and reporting of security gaps.
- (13) It is appropriate to provide for more severe penalties where an attack against an information system is committed by a criminal organisation, as defined in Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime⁽¹⁾, where a cyber attack is conducted on a large scale, thus affecting a significant number of information systems, including where it is intended to create a botnet, or where a cyber attack causes serious damage, including where it is carried out through a botnet. It is also appropriate to provide for more severe penalties where an attack is conducted against a critical infrastructure of the Member States or of the Union.
- (14) Setting up effective measures against identity theft and other identity-related offences constitutes another important element of an integrated approach against cybercrime. Any need for Union action against this type of criminal behaviour could also be considered in the context of evaluating the need for a comprehensive horizontal Union instrument.
- (15) The Council Conclusions of 27 to 28 November 2008 indicated that a new strategy should be developed with the Member States and the Commission, taking into account the content of the 2001 Council of Europe Convention on Cybercrime. That Convention is the legal framework of reference for combating cybercrime, including attacks against information systems. This Directive builds on that Convention. Completing the process of ratification of that Convention by all Member States as soon as possible should be considered to be a priority.
- (16) Given the different ways in which attacks can be conducted, and given the rapid developments in hardware and software, this Directive refers to tools that can be used in order to commit the offences laid down in this Directive. Such tools could include malicious software, including those able to create botnets, used to commit cyber attacks. Even where such a tool is suitable or particularly suitable for carrying out one of the offences laid down in this Directive, it is possible that it was produced for a legitimate purpose. Motivated by the need to avoid criminalisation where such tools are produced and put on the market for legitimate purposes, such as to test the reliability of information technology products or the security of information systems, apart from the general intent requirement, a direct intent requirement that those tools be used to commit one or more of the offences laid down in this Directive must be also fulfilled.
- (17) This Directive does not impose criminal liability where the objective criteria of the offences laid down in this Directive are met but the acts are committed without criminal intent, for instance where a person does not know that access was unauthorised or in the case of mandated testing or protection of information systems, such as where a person is assigned by a company or vendor to test the strength of its security system. In the context of this Directive, contractual obligations or agreements to restrict access to information systems by way of a user policy or terms of service, as well as labour disputes as regards the access to and use of information systems of an employer for private purposes, should not incur criminal liability where the access under such circumstances would be deemed unauthorised and thus would constitute the sole basis for criminal proceedings. This Directive is without prejudice to the right of access to information as laid down in national and Union law, while at the same time it may not serve as a justification for unlawful or arbitrary access to information.

⁽¹⁾ OJ L 300, 11.11.2008, p. 42.

- (18) Cyber attacks could be facilitated by various circumstances, such as where the offender has access to security systems inherent in the affected information systems within the scope of his or her employment. In the context of national law, such circumstances should be taken into account in the course of criminal proceedings as appropriate.
- (19) Member States should provide for aggravating circumstances in their national law in accordance with the applicable rules established by their legal systems on aggravating circumstances. They should ensure that those aggravating circumstances are available for judges to consider when sentencing offenders. It remains within the discretion of the judge to assess those circumstances together with the other facts of the particular case.
- (20) This Directive does not govern conditions for exercising jurisdiction over any of the offences referred to herein, such as a report by the victim in the place where the offence was committed, a denunciation from the State of the place where the offence was committed, or the non-prosecution of the offender in the place where the offence was committed.
- (21) In the context of this Directive, States and public bodies remain fully bound to guarantee respect for human rights and fundamental freedoms, in accordance with existing international obligations.
- (22) This Directive strengthens the importance of networks, such as the G8 or the Council of Europe's network of points of contact available on a 24 hour, seven-day-a-week basis. Those points of contact should be able to deliver effective assistance thus, for example, facilitating the exchange of relevant information available and the provision of technical advice or legal information for the purpose of investigations or proceedings concerning criminal offences relating to information systems and associated data involving the requesting Member State. In order to ensure the smooth operation of the networks, each contact point should have the capacity to communicate with the point of contact of another Member State on an expedited basis with the support, inter alia, of trained and equipped personnel. Given the speed with which large-scale cyber attacks can be carried out, Member States should be able to respond promptly to urgent requests from this network of contact points. In such cases, it may be expedient that the request for information be accompanied by telephone contact in order to ensure that the request is processed swiftly by the requested Member State and that feedback is provided within eight hours.
- (23) Cooperation between public authorities on the one hand, and the private sector and civil society on the other, is of great importance in preventing and combating attacks against information systems. It is necessary to foster and improve cooperation between service providers, producers, law enforcement bodies and judicial authorities, while fully respecting the rule of law. Such cooperation could include support by service providers in helping to preserve potential evidence, in providing elements helping to identify offenders and, as a last resort, in shutting down, completely or partially, in accordance with national law and practice, information systems or functions that have been compromised or used for illegal purposes. Member States should also consider setting up cooperation and partnership networks with service providers and producers for the exchange of information in relation to the offences within the scope of this Directive.
- (24) There is a need to collect comparable data on the offences laid down in this Directive. Relevant data should be made available to the competent specialised Union agencies and bodies, such as Europol and ENISA, in line with their tasks and information needs, in order to gain a more complete picture of the problem of cybercrime and network and information security at Union level and thereby to contribute to formulating a more effective response. Member States should submit information on the *modus operandi* of the offenders to Europol and its European Cybercrime Centre for the purpose of conducting threat assessments and strategic analyses of cybercrime in accordance with Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) ⁽¹⁾. Providing information can facilitate a better understanding of present and future threats and thus contribute to more appropriate and targeted decision-making on combating and preventing attacks against information systems.
- (25) The Commission should submit a report on the application of this Directive and make necessary legislative proposals which could lead to broadening its scope, taking into account developments in the field of cybercrime. Such developments could include technological developments, for example those enabling more effective enforcement in the area of attacks against information systems or facilitating prevention or minimising the impact of such attacks. For that purpose, the Commission should take into account the available analyses and reports produced by relevant actors and, in particular, Europol and ENISA.
- (26) In order to fight cybercrime effectively, it is necessary to increase the resilience of information systems by taking appropriate measures to protect them more effectively against cyber attacks. Member States should take the necessary measures to protect their critical infrastructure from cyber attacks, as part of which they should consider the protection of their information systems and associated data. Ensuring an adequate level of protection
- (1) OJ L 121, 15.5.2009, p. 37.

and security of information systems by legal persons, for example in connection with the provision of publicly available electronic communications services in accordance with existing Union legislation on privacy and electronic communication and data protection, forms an essential part of a comprehensive approach to effectively counteracting cybercrime. Appropriate levels of protection should be provided against reasonably identifiable threats and vulnerabilities in accordance with the state of the art for specific sectors and the specific data processing situations. The cost and burden of such protection should be proportionate to the likely damage a cyber attack would cause to those affected. Member States are encouraged to provide for relevant measures incurring liabilities in the context of their national law in cases where a legal person has clearly not provided an appropriate level of protection against cyber attacks.

- (27) Significant gaps and differences in Member States' laws and criminal procedures in the area of attacks against information systems may hamper the fight against organised crime and terrorism, and may complicate effective police and judicial cooperation in this area. The transnational and borderless nature of modern information systems means that attacks against such systems have a cross-border dimension, thus underlining the urgent need for further action to approximate criminal law in this area. In addition, the coordination of prosecution of cases of attacks against information systems should be facilitated by the adequate implementation and application of Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflict of jurisdiction in criminal proceedings⁽¹⁾. Member States, in cooperation with the Union, should also seek to improve international cooperation relating to the security of information systems, computer networks and computer data. Proper consideration of the security of data transfer and storage should be given in any international agreement involving data exchange.
- (28) Improved cooperation between the competent law enforcement bodies and judicial authorities across the Union is essential in an effective fight against cybercrime. In this context, stepping up the efforts to provide adequate training to the relevant authorities in order to raise the understanding of cybercrime and its impact, and to foster cooperation and the exchange of best practices, for example via the competent specialised Union agencies and bodies, should be encouraged. Such training should, *inter alia*, aim at raising awareness about the different national legal systems, the possible legal and technical challenges of criminal investigations, and the distribution of competences between the relevant national authorities.
- (29) This Directive respects human rights and fundamental freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and the European Convention for the

Protection of Human Rights and Fundamental Freedoms, including the protection of personal data, the right to privacy, freedom of expression and information, the right to a fair trial, the presumption of innocence and the rights of the defence, as well as the principles of legality and proportionality of criminal offences and penalties. In particular, this Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.

- (30) The protection of personal data is a fundamental right in accordance with Article 16(1) TFEU and Article 8 of the Charter on Fundamental Rights of the European Union. Therefore, any processing of personal data in the context of the implementation of this Directive should fully comply with the relevant Union law on data protection.
- (31) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Directive.
- (32) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (33) Since the objectives of this Directive, namely to subject attacks against information systems in all Member States to effective, proportionate and dissuasive criminal penalties and to improve and encourage cooperation between judicial and other competent authorities, cannot be sufficiently achieved by the Member States, and can therefore, by reason of their scale or effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (34) This Directive aims to amend and expand the provisions of Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems⁽²⁾. Since the amendments to be made are of substantial number and nature, Framework Decision 2005/222/JHA should, in the interests of clarity, be replaced in its entirety in relation to Member States participating in the adoption of this Directive,

⁽¹⁾ OJ L 328, 15.12.2009, p. 42.

⁽²⁾ OJ L 69, 16.3.2005, p. 67.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of attacks against information systems. It also aims to facilitate the prevention of such offences and to improve cooperation between judicial and other competent authorities.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) 'information system' means a device or group of interconnected or related devices, one or more of which, pursuant to a programme, automatically processes computer data, as well as computer data stored, processed, retrieved or transmitted by that device or group of devices for the purposes of its or their operation, use, protection and maintenance;
- (b) 'computer data' means a representation of facts, information or concepts in a form suitable for processing in an information system, including a programme suitable for causing an information system to perform a function;
- (c) 'legal person' means an entity having the status of legal person under the applicable law, but does not include States or public bodies acting in the exercise of State authority, or public international organisations;
- (d) 'without right' means conduct referred to in this Directive, including access, interference, or interception, which is not authorised by the owner or by another right holder of the system or of part of it, or not permitted under national law.

Article 3

Illegal access to information systems

Member States shall take the necessary measures to ensure that, when committed intentionally, the access without right, to the whole or to any part of an information system, is punishable as a criminal offence where committed by infringing a security measure, at least for cases which are not minor.

Article 4

Illegal system interference

Member States shall take the necessary measures to ensure that seriously hindering or interrupting the functioning of an information system by inputting computer data, by transmitting, damaging, deleting, deteriorating, altering or suppressing such data, or by rendering such data inaccessible, intentionally and without right, is punishable as a criminal offence, at least for cases which are not minor.

Article 5

Illegal data interference

Member States shall take the necessary measures to ensure that deleting, damaging, deteriorating, altering or suppressing computer data on an information system, or rendering such data inaccessible, intentionally and without right, is punishable as a criminal offence, at least for cases which are not minor.

Article 6

Illegal interception

Member States shall take the necessary measures to ensure that intercepting, by technical means, non-public transmissions of computer data to, from or within an information system, including electromagnetic emissions from an information system carrying such computer data, intentionally and without right, is punishable as a criminal offence, at least for cases which are not minor.

Article 7

Tools used for committing offences

Member States shall take the necessary measures to ensure that the intentional production, sale, procurement for use, import, distribution or otherwise making available, of one of the following tools, without right and with the intention that it be used to commit any of the offences referred to in Articles 3 to 6, is punishable as a criminal offence, at least for cases which are not minor:

- (a) a computer programme, designed or adapted primarily for the purpose of committing any of the offences referred to in Articles 3 to 6;
- (b) a computer password, access code, or similar data by which the whole or any part of an information system is capable of being accessed.

Article 8

Incitement, aiding and abetting and attempt

1. Member States shall ensure that the incitement, or aiding and abetting, to commit an offence referred to in Articles 3 to 7 is punishable as a criminal offence.
2. Member States shall ensure that the attempt to commit an offence referred to in Articles 4 and 5 is punishable as a criminal offence.

Article 9

Penalties

1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 8 are punishable by effective, proportionate and dissuasive criminal penalties.
2. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 7 are punishable by a maximum term of imprisonment of at least two years, at least for cases which are not minor.
3. Member States shall take the necessary measures to ensure that the offences referred to in Articles 4 and 5, when committed intentionally, are punishable by a maximum term of imprisonment of at least three years where a significant

number of information systems have been affected through the use of a tool, referred to in Article 7, designed or adapted primarily for that purpose.

4. Member States shall take the necessary measures to ensure that offences referred to in Articles 4 and 5 are punishable by a maximum term of imprisonment of at least five years where:

- (a) they are committed within the framework of a criminal organisation, as defined in Framework Decision 2008/841/JHA, irrespective of the penalty provided for therein;
- (b) they cause serious damage; or
- (c) they are committed against a critical infrastructure information system.

5. Member States shall take the necessary measures to ensure that when the offences referred to in Articles 4 and 5 are committed by misusing the personal data of another person, with the aim of gaining the trust of a third party, thereby causing prejudice to the rightful identity owner, this may, in accordance with national law, be regarded as aggravating circumstances, unless those circumstances are already covered by another offence, punishable under national law.

Article 10

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 to 8, committed for their benefit by any person, acting either individually or as part of a body of the legal person, and having a leading position within the legal person, based on one of the following:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person;
- (c) an authority to exercise control within the legal person.

2. Member States shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has allowed the commission, by a person under its authority, of any of the offences referred to in Articles 3 to 8 for the benefit of that legal person.

3. The liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators or inciters of, or accessories to, any of the offences referred to in Articles 3 to 8.

Article 11

Sanctions against legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 10(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and which may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding-up;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

2. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 10(2) is punishable by effective, proportionate and dissuasive sanctions or other measures.

Article 12

Jurisdiction

1. Member States shall establish their jurisdiction with regard to the offences referred to in Articles 3 to 8 where the offence has been committed:

- (a) in whole or in part within their territory; or
- (b) by one of their nationals, at least in cases where the act is an offence where it was committed.

2. When establishing jurisdiction in accordance with point (a) of paragraph 1, a Member State shall ensure that it has jurisdiction where:

- (a) the offender commits the offence when physically present on its territory, whether or not the offence is against an information system on its territory; or
- (b) the offence is against an information system on its territory, whether or not the offender commits the offence when physically present on its territory.

3. A Member State shall inform the Commission where it decides to establish jurisdiction over an offence referred to in Articles 3 to 8 committed outside its territory, including where:

- (a) the offender has his or her habitual residence in its territory; or
- (b) the offence is committed for the benefit of a legal person established in its territory.

Article 13

Exchange of information

1. For the purpose of exchanging information relating to the offences referred to in Articles 3 to 8, Member States shall ensure that they have an operational national point of contact and that they make use of the existing network of operational points of contact available 24 hours a day and seven days a week. Member States shall also ensure that they have procedures in place so that for urgent requests for assistance, the competent authority can indicate, within eight hours of receipt, at least whether the request will be answered, and the form and estimated time of such an answer.

2. Member States shall inform the Commission of their appointed point of contact referred to in paragraph 1. The Commission shall forward that information to the other Member States and competent specialised Union agencies and bodies.

3. Member States shall take the necessary measures to ensure that appropriate reporting channels are made available in order to facilitate the reporting of the offences referred to in Article 3 to 6 to the competent national authorities without undue delay.

Article 14

Monitoring and statistics

1. Member States shall ensure that a system is in place for the recording, production and provision of statistical data on the offences referred to in Articles 3 to 7.

2. The statistical data referred to in paragraph 1 shall, as a minimum, cover existing data on the number of offences referred to in Articles 3 to 7 registered by the Member States, and the number of persons prosecuted for and convicted of the offences referred to in Articles 3 to 7.

3. Member States shall transmit the data collected pursuant to this Article to the Commission. The Commission shall ensure that a consolidated review of the statistical reports is published and submitted to the competent specialised Union agencies and bodies.

Article 15

Replacement of Framework Decision 2005/222/JHA

Framework Decision 2005/222/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limit for transposition of the Framework Decision into national law.

In relation to Member States participating in the adoption of this Directive, references to the Framework Decision 2005/222/JHA shall be construed as references to this Directive.

Article 16

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 4 September 2015.

2. Member States shall transmit to the Commission the text of the measures transposing into their national law the obligations imposed on them under this Directive.

3. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 17

Reporting

The Commission shall, by 4 September 2017, submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals. The Commission shall also take into account the technical and legal developments in the field of cybercrime, particularly with regard to the scope of this Directive.

Article 18

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 19

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 12 August 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
L. LINKEVIČIUS

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2011

on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/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 82(2) and Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) Sexual abuse and sexual exploitation of children, including child pornography, constitute serious violations of fundamental rights, in particular of the rights of children to the protection and care necessary for their well-being, as provided for by the 1989 United Nations Convention on the Rights of the Child and by the Charter of Fundamental Rights of the European Union ⁽³⁾.

(2) In accordance with Article 6(1) of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, in which Article 24(2) provides that in all actions relating to children, whether taken by public authorities or private

institutions, the child's best interests must be a primary consideration. Moreover, the Stockholm Programme — An Open and Secure Europe Serving and Protecting Citizens ⁽⁴⁾ gives a clear priority to combating the sexual abuse and sexual exploitation of children and child pornography.

(3) Child pornography, which consists of images of child sexual abuse, and other particularly serious forms of sexual abuse and sexual exploitation of children are increasing and spreading through the use of new technologies and the Internet.

(4) Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography ⁽⁵⁾ approximates Member States' legislation to criminalise the most serious forms of child sexual abuse and sexual exploitation, to extend domestic jurisdiction, and to provide for a minimum level of assistance for victims. Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings ⁽⁶⁾ establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. Moreover, the coordination of prosecution of cases of sexual abuse, sexual exploitation of children and child pornography will be facilitated by the implementation of Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings ⁽⁷⁾.

(5) In accordance with Article 34 of the United Nations Convention on the Rights of the Child, States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. The 2000 United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and, in particular, the 2007 Council

⁽¹⁾ OJ C 48, 15.2.2011, p. 138.

⁽²⁾ Position of the European Parliament of 27 October 2011 (not yet published in the Official Journal) and decision of the Council of 15 November 2011.

⁽³⁾ OJ C 364, 18.12.2000, p. 1.

⁽⁴⁾ OJ C 115, 4.5.2010, p. 1.

⁽⁵⁾ OJ L 13, 20.1.2004, p. 44.

⁽⁶⁾ OJ L 82, 22.3.2001, p. 1.

⁽⁷⁾ OJ L 328, 15.12.2009, p. 42.

of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse are crucial steps in the process of enhancing international cooperation in this field.

- (6) Serious criminal offences such as the sexual exploitation of children and child pornography require a comprehensive approach covering the prosecution of offenders, the protection of child victims, and prevention of the phenomenon. The child's best interests must be a primary consideration when carrying out any measures to combat these offences in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child. Framework Decision 2004/68/JHA should be replaced by a new instrument providing such comprehensive legal framework to achieve that purpose.
- (7) This Directive should be fully complementary with Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA ⁽¹⁾, as some victims of human trafficking have also been child victims of sexual abuse or sexual exploitation.
- (8) In the context of criminalising acts related to pornographic performance, this Directive refers to such acts which consist of an organised live exhibition, aimed at an audience, thereby excluding personal face-to-face communication between consenting peers, as well as children over the age of sexual consent and their partners from the definition.
- (9) Child pornography frequently includes images recording the sexual abuse of children by adults. It may also include images of children involved in sexually explicit conduct, or of their sexual organs, where such images are produced or used for primarily sexual purposes and exploited with or without the child's knowledge. Furthermore, the concept of child pornography also covers realistic images of a child, where a child is engaged or depicted as being engaged in sexually explicit conduct for primarily sexual purposes.
- (10) Disability, by itself, does not automatically constitute an impossibility to consent to sexual relations. However, the abuse of the existence of such a disability in order to engage in sexual activities with a child should be criminalised.
- (11) In adopting legislation on substantive criminal law, the Union should ensure consistency of such legislation in particular with regard to the level of penalties. The Council conclusions of 24 and 25 April 2002 on the approach to apply regarding approximation of penalties, which indicate four levels of penalties, should be kept in

mind in the light of the Lisbon Treaty. This Directive, because it contains an exceptionally high number of different offences, requires, in order to reflect the various degrees of seriousness, a differentiation in the level of penalties which goes further than what should usually be provided in Union legal instruments.

- (12) Serious forms of sexual abuse and sexual exploitation of children should be subject to effective, proportionate and dissuasive penalties. This includes, in particular, various forms of sexual abuse and sexual exploitation of children which are facilitated by the use of information and communication technology, such as the online solicitation of children for sexual purposes via social networking websites and chat rooms. The definition of child pornography should also be clarified and brought closer to that contained in international instruments.
- (13) The maximum term of imprisonment provided for in this Directive for the offences referred to therein should apply at least to the most serious forms of such offences.
- (14) In order to reach the maximum term of imprisonment provided for in this Directive for offences concerning sexual abuse and sexual exploitation of children and child pornography, Member States may combine, taking into account their national law, the imprisonment terms provided for in national legislation in respect of those offences.
- (15) This Directive obliges Member States to provide for criminal penalties in their national legislation in respect of the provisions of Union law on combating sexual abuse, sexual exploitation of children and child pornography. This Directive creates no obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases.
- (16) Especially for those cases where the offences referred to in this Directive are committed with the purpose of financial gain, Member States are invited to consider providing for the possibility to impose financial penalties in addition to imprisonment.
- (17) In the context of child pornography, the term 'without right' allows Member States to provide a defence in respect of conduct relating to pornographic material having for example, a medical, scientific or similar purpose. It also allows activities carried out under domestic legal powers, such as the legitimate possession of child pornography by the authorities in order to conduct criminal proceedings or to prevent, detect or investigate crime. Furthermore, it does not exclude legal defences or similar relevant principles that relieve a person of responsibility under specific circumstances, for example where telephone or Internet hotlines carry out activities to report those cases.

⁽¹⁾ OJ L 101, 15.4.2011, p. 1.

- (18) Knowingly obtaining access, by means of information and communication technology, to child pornography should be criminalised. To be liable, the person should both intend to enter a site where child pornography is available and know that such images can be found there. Penalties should not be applied to persons inadvertently accessing sites containing child pornography. The intentional nature of the offence may notably be deduced from the fact that it is recurrent or that the offence was committed via a service in return for payment.
- (19) Solicitation of children for sexual purposes is a threat with specific characteristics in the context of the Internet, as the latter provides unprecedented anonymity to users because they are able to conceal their real identity and personal characteristics, such as their age. At the same time, Member States acknowledge the importance of also combating the solicitation of a child outside the context of the Internet, in particular where such solicitation is not carried out by using information and communication technology. Member States are encouraged to criminalise the conduct where the solicitation of a child to meet the offender for sexual purposes takes place in the presence or proximity of the child, for instance in the form of a particular preparatory offence, attempt to commit the offences referred to in this Directive or as a particular form of sexual abuse. Whichever legal solution is chosen to criminalise 'off-line grooming', Member States should ensure that they prosecute the perpetrators of such offences one way or another.
- (20) This Directive does not govern Member States' policies with regard to consensual sexual activities in which children may be involved and which can be regarded as the normal discovery of sexuality in the course of human development, taking account of the different cultural and legal traditions and of new forms of establishing and maintaining relations among children and adolescents, including through information and communication technologies. These issues fall outside of the scope of this Directive. Member States which avail themselves of the possibilities referred to in this Directive do so in the exercise of their competences.
- (21) Member States should provide for aggravating circumstances in their national law in accordance with the applicable rules established by their legal systems on aggravating circumstances. They should ensure that those aggravating circumstances are available for judges to consider when sentencing offenders, although there is no obligation on judges to apply those aggravating circumstances. The aggravating circumstances should not be provided for in Member States' law when irrelevant taking into account the nature of the specific offence. The relevance of the various aggravating circumstances provided for in this Directive should be evaluated at national level for each of the offences referred to in this Directive.
- (22) Physical or mental incapacity under this Directive should be understood as also including the state of physical or mental incapacity caused by the influence of drugs and alcohol.
- (23) In combating sexual exploitation of children, full use should be made of existing instruments on the seizure and confiscation of the proceeds of crime, such as the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime⁽¹⁾, and Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime Related Proceeds, Instrumentalities and Property⁽²⁾. The use of seized and confiscated instrumentalities and the proceeds from the offences referred to in this Directive to support victims' assistance and protection should be encouraged.
- (24) Secondary victimisation should be avoided for victims of offences referred to in this Directive. In Member States where prostitution or the appearance in pornography is punishable under national criminal law, it should be possible not to prosecute or impose penalties under those laws where the child concerned has committed those acts as a result of being victim of sexual exploitation or where the child was compelled to participate in child pornography.
- (25) As an instrument of approximation of criminal law, this Directive provides for levels of penalties which should apply without prejudice to the specific criminal policies of the Member States concerning child offenders.
- (26) Investigating offences and bringing charges in criminal proceedings should be facilitated, to take into account the difficulty for child victims of denouncing sexual abuse and the anonymity of offenders in cyberspace. To ensure successful investigations and prosecutions of the offences referred to in this Directive, their initiation should not depend, in principle, on a report or accusation made by the victim or by his or her representative. The length of the sufficient period of time for prosecution should be determined in accordance with national law.
- (27) Effective investigatory tools should be made available to those responsible for the investigation and prosecutions
- ⁽¹⁾ OJ L 182, 5.7.2001, p. 1.
⁽²⁾ OJ L 68, 15.3.2005, p. 49.

of the offences referred to in this Directive. Those tools could include interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts or other financial investigations, taking into account, *inter alia*, the principle of proportionality and the nature and seriousness of the offences under investigation. Where appropriate, and in accordance with national law, such tools should also include the possibility for law enforcement authorities to use a concealed identity on the Internet.

- (28) Member States should encourage any person who has knowledge or suspicion of the sexual abuse or sexual exploitation of a child to report to the competent services. It is the responsibility of each Member State to determine the competent authorities to which such suspicions may be reported. Those competent authorities should not be limited to child protection services or relevant social services. The requirement of suspicion 'in good faith' should be aimed at preventing the provision being invoked to authorise the denunciation of purely imaginary or untrue facts carried out with malicious intent.
- (29) Rules on jurisdiction should be amended to ensure that sexual abusers or sexual exploiters of children from the Union face prosecution even if they commit their crimes outside the Union, in particular via so-called sex tourism. Child sex tourism should be understood as the sexual exploitation of children by a person or persons who travel from their usual environment to a destination abroad where they have sexual contact with children. Where child sex tourism takes place outside the Union, Member States are encouraged to seek to increase, through the available national and international instruments including bilateral or multilateral treaties on extradition, mutual assistance or a transfer of the proceedings, cooperation with third countries and international organisations with a view to combating sex tourism. Member States should foster open dialogue and communication with countries outside the Union in order to be able to prosecute perpetrators, under the relevant national legislation, who travel outside the Union borders for the purposes of child sex tourism.
- (30) Measures to protect child victims should be adopted in their best interest, taking into account an assessment of their needs. Child victims should have easy access to legal remedies and measures to address conflicts of interest where sexual abuse or sexual exploitation of a child occurs within the family. When a special representative should be appointed for a child during a criminal investigation or proceeding, this role may be also carried out by a legal person, an institution or an authority. Moreover, child victims should be protected from penalties, for example under national legislation on prostitution, if they bring their case to the attention of competent authorities. Furthermore, participation in criminal proceedings by child victims should not cause additional trauma to the extent possible, as a result of interviews or visual contact with offenders. A good understanding of children and how they behave when faced with traumatic experiences will help to ensure a high quality of evidence-taking and also reduce the stress placed on children when carrying out the necessary measures.
- (31) Member States should consider giving short and long term assistance to child victims. Any harm caused by the sexual abuse and sexual exploitation of a child is significant and should be addressed. Because of the nature of the harm caused by sexual abuse and sexual exploitation, such assistance should continue for as long as necessary for the child's physical and psychological recovery and may last into adulthood if necessary. Assistance and advice should be considered to be extended to parents or guardians of the child victims where they are not involved as suspects in relation to the offence concerned, in order to help them to assist child victims throughout the proceedings.
- (32) Framework Decision 2001/220/JHA establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. In addition child victims of sexual abuse, sexual exploitation and child pornography should be given access to legal counselling and, in accordance with the role of victims in the relevant justice systems, to legal representation, including for the purpose of claiming compensation. Such legal counselling and legal representation could also be provided by the competent authorities for the purpose of claiming compensation from the State. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them. Legal counselling should be provided by a person having received appropriate legal training without necessarily being a lawyer. Legal counselling and, in accordance with the role of victims in the relevant justice systems, legal representation should be provided free of charge, at least when the victim does not have sufficient financial resources, in a manner consistent with the internal procedures of Member States.
- (33) Member States should undertake action to prevent or prohibit acts related to the promotion of sexual abuse of children and child sex tourism. Different preventative measures could be considered, such as the drawing up and reinforcement of a code of conduct and self-regulatory mechanisms in the tourism industry, the setting-up of a code of ethics or 'quality labels' for tourist organisations combating child sex tourism, or establishing an explicit policy to tackle child sex tourism.

- (34) Member States should establish and/or strengthen policies to prevent sexual abuse and sexual exploitation of children, including measures to discourage and reduce the demand that fosters all forms of sexual exploitation of children, and measures to reduce the risk of children becoming victims, by means of, information and awareness-raising campaigns, and research and education programmes. In such initiatives, Member States should adopt a child-rights based approach. Particular care should be taken to ensure that awareness-raising campaigns aimed at children are appropriate and sufficiently easy to understand. The establishment of help-lines or hotlines should be considered.
- (35) Regarding the system of reporting sexual abuse and sexual exploitation of children and helping children in need, hotlines under the number 116 000 for missing children, 116 006 for victims of crime and 116 111 for children, as introduced by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering beginning with 116 for harmonised numbers for harmonised services of social value⁽¹⁾, should be promoted and experience regarding their functioning should be taken into account.
- (36) Professionals likely to come into contact with child victims of sexual abuse and sexual exploitation should be adequately trained to identify and deal with such victims. That training should be promoted for members of the following categories when they are likely to come into contact with child victims: police officers, public prosecutors, lawyers, members of the judiciary and court officials, child and health care personnel, but could also involve other groups of persons who are likely to encounter child victims of sexual abuse and sexual exploitation in their work.
- (37) In order to prevent the sexual abuse and sexual exploitation of children, intervention programmes or measures targeting sex offenders should be proposed to them. Those intervention programmes or measures should meet a broad, flexible approach focusing on the medical and psycho-social aspects and have a non-obligatory character. Those intervention programmes or measures are without prejudice to intervention programmes or measures imposed by the competent judicial authorities.
- (38) Intervention programmes or measures are not provided as an automatic right. It is for the Member State to decide which intervention programmes or measures are appropriate.
- (39) To prevent and minimise recidivism, offenders should be subject to an assessment of the danger posed by the offenders and the possible risks of repetition of sexual offences against children. Arrangements for such assessment, such as the type of authority competent to order and carry out the assessment or the moment in or after the criminal proceedings when that assessment should take place as well as arrangements for effective intervention programmes or measures offered following that assessment should be consistent with the internal procedures of Member States. For the same objective of preventing and minimising recidivism, offenders should also have access to effective intervention programmes or measures on a voluntary basis. Those intervention programmes or measures should not interfere with national schemes set up to deal with the treatment of persons suffering from mental disorders.
- (40) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising at least professional activities involving direct and regular contacts with children. Employers when recruiting for a post involving direct and regular contact with children are entitled to be informed of existing convictions for sexual offences against children entered in the criminal record, or of existing disqualifications. For the purposes of this Directive, the term 'employers' should also cover persons running an organisation that is active in volunteer work related to the supervision and/or care of children involving direct and regular contact with children. The manner in which such information is delivered, such as for example access via the person concerned, and the precise content of the information, the meaning of organised voluntary activities and direct and regular contact with children should be laid down in accordance with national law.
- (41) With due regard to the different legal traditions of the Member States, this Directive takes into account the fact that access to criminal records is allowed only either by the competent authorities or by the person concerned. This Directive does not establish an obligation to modify the national systems governing criminal records or the means of access to those records.
- (42) The aim of this Directive is not to harmonise rules concerning consent of the person concerned when exchanging information from the criminal registers, i.e. whether or not to require such consent. Whether the consent is required or not under national law, this Directive does not establish any new obligation to change the national law and national procedures in this respect.

⁽¹⁾ OJ L 49, 17.2.2007, p. 30.

- (43) Member States may consider adopting additional administrative measures in relation to perpetrators, such as the registration in sex offender registers of persons convicted of offences referred to in this Directive. Access to those registers should be subject to limitation in accordance with national constitutional principles and applicable data protection standards, for instance by limiting access to the judiciary and/or law enforcement authorities.
- (44) Member States are encouraged to create mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual abuse and sexual exploitation of children. In order to be able to properly evaluate the results of actions to combat sexual abuse and sexual exploitation of children and child pornography, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics.
- (45) Member States should take appropriate action for setting up information services to provide information on how to recognise the signs of sexual abuse and sexual exploitation.
- (46) Child pornography, which constitutes child sexual abuse images, is a specific type of content which cannot be construed as the expression of an opinion. To combat it, it is necessary to reduce the circulation of child sexual abuse material by making it more difficult for offenders to upload such content onto the publicly accessible web. Action is therefore necessary to remove the content and apprehend those guilty of making, distributing or downloading child sexual abuse images. With a view to supporting the Union's efforts to combat child pornography, Member States should use their best endeavours to cooperate with third countries in seeking to secure the removal of such content from servers within their territory.
- (47) However, despite such efforts, the removal of child pornography content at its source is often not possible when the original materials are not located within the Union, either because the State where the servers are hosted is not willing to cooperate or because obtaining removal of the material from the State concerned proves to be particularly long. Mechanisms may also be put in place to block access from the Union's territory to Internet pages identified as containing or disseminating child pornography. The measures undertaken by Member States in accordance with this Directive in order to remove or, where appropriate, block websites containing child pornography could be based on various types of public action, such as legislative, non-legislative, judicial or other. In that context, this Directive is without prejudice to voluntary action taken by the Internet industry to prevent the misuse of its services or to any support for such action by Member States. Whichever basis for action or method is chosen, Member States should ensure that it provides an adequate level of legal certainty and predictability to users and service providers. Both with a view to the removal and the blocking of child abuse content, cooperation between public authorities should be established and strengthened, particularly in the interests of ensuring that national lists of websites containing child pornography material are as complete as possible and of avoiding duplication of work. Any such developments must take account of the rights of the end users and comply with existing legal and judicial procedures and the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union. The Safer Internet Programme has set up a network of hotlines the goal of which is to collect information and to ensure coverage and exchange of reports on the major types of illegal content online.
- (48) This Directive aims to amend and expand the provisions of Framework Decision 2004/68/JHA. Since the amendments to be made are of substantial number and nature, the Framework Decision should, in the interests of clarity, be replaced in its entirety in relation to Member States participating in the adoption of this Directive.
- (49) Since the objective of this Directive, namely to combat sexual abuse, sexual exploitation of children and child pornography, cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (50) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and in particular the right to the protection of human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, the right to freedom of expression and information, the right to the protection of personal data, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties. This Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.

- (51) In accordance with Article 3 of the Protocol (No 21) on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.
- (52) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes. It also introduces provisions to strengthen the prevention of those crimes and the protection of the victims thereof.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (a) 'child' means any person below the age of 18 years;
- (b) 'age of sexual consent' means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child;
- (c) 'child pornography' means:
- (i) any material that visually depicts a child engaged in real or simulated sexually explicit conduct;
 - (ii) any depiction of the sexual organs of a child for primarily sexual purposes;
 - (iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or
 - (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes;
- (d) 'child prostitution' means the use of a child for sexual activities where money or any other form of remuneration

or consideration is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether that payment, promise or consideration is made to the child or to a third party;

- (e) 'pornographic performance' means a live exhibition aimed at an audience, including by means of information and communication technology, of:
- (i) a child engaged in real or simulated sexually explicit conduct; or
 - (ii) the sexual organs of a child for primarily sexual purposes;
- (f) 'legal person' means an entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

Article 3

Offences concerning sexual abuse

1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 6 is punishable.
2. Causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual activities, even without having to participate, shall be punishable by a maximum term of imprisonment of at least 1 year.
3. Causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual abuse, even without having to participate, shall be punishable by a maximum term of imprisonment of at least 2 years.
4. Engaging in sexual activities with a child who has not reached the age of sexual consent shall be punishable by a maximum term of imprisonment of at least 5 years.
5. Engaging in sexual activities with a child, where:
 - (i) abuse is made of a recognised position of trust, authority or influence over the child, shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 3 years of imprisonment, if the child is over that age; or
 - (ii) abuse is made of a particularly vulnerable situation of the child, in particular because of a mental or physical disability or a situation of dependence, shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 3 years of imprisonment if the child is over that age; or

(iii) use is made of coercion, force or threats shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

6. Coercing, forcing or threatening a child into sexual activities with a third party shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

Article 4

Offences concerning sexual exploitation

1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 7 is punishable.

2. Causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 5 years if the child has not reached the age of sexual consent and of at least 2 years of imprisonment if the child is over that age.

3. Coercing or forcing a child to participate in pornographic performances, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

4. Knowingly attending pornographic performances involving the participation of a child shall be punishable by a maximum term of imprisonment of at least 2 years if the child has not reached the age of sexual consent, and of at least 1 year of imprisonment if the child is over that age.

5. Causing or recruiting a child to participate in child prostitution, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

6. Coercing or forcing a child into child prostitution, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

7. Engaging in sexual activities with a child, where recourse is made to child prostitution shall be punishable by a maximum term of imprisonment of at least 5 years if the child has not reached the age of sexual consent, and of at least 2 years of imprisonment if the child is over that age.

Article 5

Offences concerning child pornography

1. Member States shall take the necessary measures to ensure that the intentional conduct, when committed without right, referred to in paragraphs 2 to 6 is punishable.

2. Acquisition or possession of child pornography shall be punishable by a maximum term of imprisonment of at least 1 year.

3. Knowingly obtaining access, by means of information and communication technology, to child pornography shall be punishable by a maximum term of imprisonment of at least 1 year.

4. Distribution, dissemination or transmission of child pornography shall be punishable by a maximum term of imprisonment of at least 2 years.

5. Offering, supplying or making available child pornography shall be punishable by a maximum term of imprisonment of at least 2 years.

6. Production of child pornography shall be punishable by a maximum term of imprisonment of at least 3 years.

7. It shall be within the discretion of Member States to decide whether this Article applies to cases involving child pornography as referred to in Article 2(c)(iii), where the person appearing to be a child was in fact 18 years of age or older at the time of depiction.

8. It shall be within the discretion of Member States to decide whether paragraphs 2 and 6 of this Article apply to cases where it is established that pornographic material as referred to in Article 2(c)(iv) is produced and possessed by the producer solely for his or her private use in so far as no pornographic material as referred to in Article 2(c)(i), (ii) or (iii) has been used for the purpose of its production and provided that the act involves no risk of dissemination of the material.

Article 6

Solicitation of children for sexual purposes

1. Member States shall take the necessary measures to ensure that the following intentional conduct is punishable:

the proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent, for the purpose of committing any of the offences referred to in Article 3(4) and Article 5(6), where that proposal was followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least 1 year.

2. Member States shall take the necessary measures to ensure that an attempt, by means of information and communication technology, to commit the offences provided for in Article 5(2) and (3) by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child is punishable.

Article 7

Incitement, aiding and abetting, and attempt

1. Member States shall take the necessary measures to ensure that inciting or aiding and abetting to commit any of the offences referred to in Articles 3 to 6 is punishable.

2. Member States shall take the necessary measures to ensure that an attempt to commit any of the offences referred to in Article 3(4), (5) and (6), Article 4(2), (3), (5), (6) and (7), and Article 5(4), (5) and (6) is punishable.

Article 8

Consensual sexual activities

1. It shall be within the discretion of Member States to decide whether Article 3(2) and (4) apply to consensual sexual activities between peers, who are close in age and degree of psychological and physical development or maturity, in so far as the acts did not involve any abuse.

2. It shall be within the discretion of Member States to decide whether Article 4(4) applies to a pornographic performance that takes place in the context of a consensual relationship where the child has reached the age of sexual consent or between peers who are close in age and degree of psychological and physical development or maturity, in so far as the acts did not involve any abuse or exploitation and no money or other form of remuneration or consideration is given as payment in exchange for the pornographic performance.

3. It shall be within the discretion of Member States to decide whether Article 5(2) and (6) apply to the production, acquisition or possession of material involving children who have reached the age of sexual consent where that material is produced and possessed with the consent of those children and only for the private use of the persons involved, in so far as the acts did not involve any abuse.

Article 9

Aggravating circumstances

In so far as the following circumstances do not already form part of the constituent elements of the offences referred to in Articles 3 to 7, Member States shall take the necessary measures to ensure that the following circumstances may, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances, in relation to the relevant offences referred to in Articles 3 to 7:

(a) the offence was committed against a child in a particularly vulnerable situation, such as a child with a mental or physical disability, in a situation of dependence or in a state of physical or mental incapacity;

(b) the offence was committed by a member of the child's family, a person cohabiting with the child or a person who has abused a recognised position of trust or authority;

(c) the offence was committed by several persons acting together;

(d) the offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime⁽¹⁾;

(e) the offender has previously been convicted of offences of the same nature;

(f) the offender has deliberately or recklessly endangered the life of the child; or

(g) the offence involved serious violence or caused serious harm to the child.

Article 10

Disqualification arising from convictions

1. In order to avoid the risk of repetition of offences, Member States shall take the necessary measures to ensure that a natural person who has been convicted of any of the offences referred to in Articles 3 to 7 may be temporarily or permanently prevented from exercising at least professional activities involving direct and regular contacts with children.

2. Member States shall take the necessary measures to ensure that employers, when recruiting a person for professional or organised voluntary activities involving direct and regular contacts with children, are entitled to request information in accordance with national law by way of any appropriate means, such as access upon request or via the person concerned, of the existence of criminal convictions for any of the offences referred to in Articles 3 to 7 entered in the criminal record or of the existence of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions.

3. Member States shall take the necessary measures to ensure that, for the application of paragraphs 1 and 2 of this Article, information concerning the existence of criminal convictions for any of the offences referred to in Articles 3 to 7, or of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions, is transmitted in accordance with the procedures set out in Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States⁽²⁾ when requested under Article 6 of that Framework Decision with the consent of the person concerned.

⁽¹⁾ OJ L 300, 11.11.2008, p. 42.

⁽²⁾ OJ L 93, 7.4.2009, p. 23.

*Article 11***Seizure and confiscation**

Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 3, 4 and 5.

*Article 12***Liability of legal persons**

1. Member States shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Articles 3 to 7 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Member States shall also take the necessary measures to ensure that legal persons may be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, by a person under its authority, of any of the offences referred to in Articles 3 to 7 for the benefit of that legal person.

3. Liability of legal persons under paragraphs 1 and 2 shall be without prejudice to criminal proceedings against natural persons who are perpetrators, inciters or accessories to the offences referred to in Articles 3 to 7.

*Article 13***Sanctions on legal persons**

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 12(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding-up; or
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

2. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 12(2) is punishable by sanctions or measures which are effective, proportionate and dissuasive.

*Article 14***Non-prosecution or non-application of penalties to the victim**

Member States shall, in accordance with the basic principles of their legal systems take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on child victims of sexual abuse and sexual exploitation for their involvement in criminal activities, which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 4(2), (3), (5) and (6), and in Article 5(6).

*Article 15***Investigation and prosecution**

1. Member States shall take the necessary measures to ensure that investigations into or the prosecution of the offences referred to in Articles 3 to 7 are not dependent on a report or accusation being made by the victim or by his or her representative, and that criminal proceedings may continue even if that person has withdrawn his or her statements.

2. Member States shall take the necessary measures to enable the prosecution of any of the offences referred to in Article 3, Article 4(2), (3), (5), (6) and (7) and of any serious offences referred to in Article 5(6) when child pornography as referred to in Article 2(c)(i) and (ii) has been used, for a sufficient period of time after the victim has reached the age of majority and which is commensurate with the gravity of the offence concerned.

3. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 7.

4. Member States shall take the necessary measures to enable investigative units or services to attempt to identify the victims of the offences referred to in Articles 3 to 7, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

*Article 16***Reporting suspicion of sexual abuse or sexual exploitation**

1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals whose main duty is to work with children do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of offences referred to in Articles 3 to 7.

2. Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith that any of the offences referred to in Articles 3 to 7 have been committed, to report this to the competent services.

Article 17

Jurisdiction and coordination of prosecution

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 3 to 7 where:

- (a) the offence is committed in whole or in part within their territory; or
- (b) the offender is one of their nationals.

2. A Member State shall inform the Commission where it decides to establish further jurisdiction over an offence referred to in Articles 3 to 7 committed outside its territory, *inter alia*, where:

- (a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;
- (b) the offence is committed for the benefit of a legal person established in its territory; or
- (c) the offender is an habitual resident in its territory.

3. Member States shall ensure that their jurisdiction includes situations where an offence referred to in Articles 5 and 6, and in so far as is relevant, in Articles 3 and 7, is committed by means of information and communication technology accessed from their territory, whether or not it is based on their territory.

4. For the prosecution of any of the offences referred to in Article 3(4), (5) and (6), Article 4(2), (3), (5), (6) and (7) and Article 5(6) committed outside the territory of the Member State concerned, as regards paragraph 1(b) of this Article, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the acts are a criminal offence at the place where they were performed.

5. For the prosecution of any of the offences referred to in Articles 3 to 7 committed outside the territory of the Member State concerned, as regards paragraph 1(b) of this Article, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the prosecution can only be initiated following a report made by

the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

Article 18

General provisions on assistance, support and protection measures for child victims

1. Child victims of the offences referred to in Articles 3 to 7 shall be provided assistance, support and protection in accordance with Articles 19 and 20, taking into account the best interests of the child.

2. Member States shall take the necessary measures to ensure that a child is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that a child might have been subject to any of the offences referred to in Articles 3 to 7.

3. Member States shall ensure that, where the age of a person subject to any of the offences referred to in Articles 3 to 7 is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 19 and 20.

Article 19

Assistance and support to victims

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive. Member States shall, in particular, take the necessary steps to ensure protection for children who report cases of abuse within their family.

2. Member States shall take the necessary measures to ensure that assistance and support for a child victim are not made conditional on the child victim's willingness to cooperate in the criminal investigation, prosecution or trial.

3. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims in enjoying their rights under this Directive, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns.

4. Child victims of any of the offences referred to in Articles 3 to 7 shall be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Framework Decision 2001/220/JHA.

5. Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of the child victim in enjoying the rights under this Directive when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family of the child victim.

Article 20

Protection of child victims in criminal investigations and proceedings

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a special representative for the child victim where, under national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied or separated from the family.

2. Member States shall ensure that child victims have, without delay, access to legal counselling and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations relating to any of the offences referred to in Articles 3 to 7:

- (a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
- (b) interviews with the child victim take place, where necessary, in premises designed or adapted for this purpose;
- (c) interviews with the child victim are carried out by or through professionals trained for this purpose;
- (d) the same persons, if possible and where appropriate, conduct all interviews with the child victim;
- (e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purpose of criminal investigations and proceedings;
- (f) the child victim may be accompanied by his or her legal representative or, where appropriate, by an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 3 to 7 all interviews with the child victim or, where appropriate, with a child witness, may be audio-visually

recorded and that such audio-visually recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 3 to 7, that it may be ordered that:

- (a) the hearing take place without the presence of the public;
- (b) the child victim be heard in the courtroom without being present, in particular through the use of appropriate communication technologies.

6. Member States shall take the necessary measures, where in the interest of child victims and taking into account other overriding interests, to protect the privacy, identity and image of child victims, and to prevent the public dissemination of any information that could lead to their identification.

Article 21

Measures against advertising abuse opportunities and child sex tourism

Member States shall take appropriate measures to prevent or prohibit:

- (a) the dissemination of material advertising the opportunity to commit any of the offences referred to in Articles 3 to 6; and
- (b) the organisation for others, whether or not for commercial purposes, of travel arrangements with the purpose of committing any of the offences referred to in Articles 3 to 5.

Article 22

Preventive intervention programmes or measures

Member States shall take the necessary measures to ensure that persons who fear that they might commit any of the offences referred to in Articles 3 to 7 may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed.

Article 23

Prevention

1. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of sexual exploitation of children.

2. Member States shall take appropriate action, including through the Internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of children, becoming victims of sexual abuse or exploitation.

3. Member States shall promote regular training for officials likely to come into contact with child victims of sexual abuse or exploitation, including front-line police officers, aimed at enabling them to identify and deal with child victims and potential child victims of sexual abuse or exploitation.

Article 24

Intervention programmes or measures on a voluntary basis in the course of or after criminal proceedings

1. Without prejudice to intervention programmes or measures imposed by the competent judicial authorities under national law, Member States shall take the necessary measures to ensure that effective intervention programmes or measures are made available to prevent and minimise the risks of repeated offences of a sexual nature against children. Such programmes or measures shall be accessible at any time during the criminal proceedings, inside and outside prison, in accordance with national law.

2. The intervention programmes or measures, referred to in paragraph 1 shall meet the specific developmental needs of children who sexually offend.

3. Member States shall take the necessary measures to ensure that the following persons may have access to the intervention programmes or measures referred to in paragraph 1:

(a) persons subject to criminal proceedings for any of the offences referred to in Articles 3 to 7, under conditions which are neither detrimental nor contrary to the rights of the defence or to the requirements of a fair and impartial trial, and, in particular, in compliance with the principle of the presumption of innocence; and

(b) persons convicted of any of the offences referred to in Articles 3 to 7.

4. Member States shall take the necessary measures to ensure that the persons referred to in paragraph 3 are subject to an assessment of the danger that they present and the possible risks of repetition of any of the offences referred to in Articles 3 to 7, with the aim of identifying appropriate intervention programmes or measures.

5. Member States shall take the necessary measures to ensure that the persons referred to in paragraph 3 to whom intervention programmes or measures in accordance with paragraph 4 have been proposed:

(a) are fully informed of the reasons for the proposal;

(b) consent to their participation in the programmes or measures with full knowledge of the facts;

(c) may refuse and, in the case of convicted persons, are made aware of the possible consequences of such a refusal.

Article 25

Measures against websites containing or disseminating child pornography

1. Member States shall take the necessary measures to ensure the prompt removal of web pages containing or disseminating child pornography hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory.

2. Member States may take measures to block access to web pages containing or disseminating child pornography towards the Internet users within their territory. These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate, and that users are informed of the reason for the restriction. Those safeguards shall also include the possibility of judicial redress.

Article 26

Replacement of Framework Decision 2004/68/JHA

Framework Decision 2004/68/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive without prejudice to the obligations of those Member States relating to the time limits for transposition of the Framework Decision into national law.

In relation to Member States participating in the adoption of this Directive, references to Framework Decision 2004/68/JHA shall be construed as references to this Directive.

Article 27

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 18 December 2013.

2. Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.

3. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 28

Reporting

1. The Commission shall, by 18 December 2015, submit a report to the European Parliament and the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by a legislative proposal.

2. The Commission shall, by 18 December 2015, submit a report to the European Parliament and the Council assessing the implementation of the measures referred to in Article 25.

Article 29

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 30

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 13 December 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

M. SZPUNAR

CORRIGENDA

Corrigendum to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA

(Official Journal of the European Union L 335 of 17 December 2011)

In the contents and in the title, on page 1:

for: '2011/92/EU',

read: '2011/93/EU'.

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 April 2011

on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/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 82(2) and Article 83(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Trafficking in human beings is a serious crime, often committed within the framework of organised crime, a gross violation of fundamental rights and explicitly prohibited by the Charter of Fundamental Rights of the European Union. Preventing and combating trafficking in human beings is a priority for the Union and the Member States.
- (2) This Directive is part of global action against trafficking in human beings, which includes action involving third countries as stated in the 'Action-oriented Paper on

strengthening the Union external dimension on action against trafficking in human beings; Towards global EU action against trafficking in human beings' approved by the Council on 30 November 2009. In this context, action should be pursued in third countries of origin and transfer of victims, with a view to raising awareness, reducing vulnerability, supporting and assisting victims, fighting the root causes of trafficking and supporting those third countries in developing appropriate anti-trafficking legislation.

- (3) This Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender-specific where appropriate. The 'push' and 'pull' factors may be different depending on the sectors concerned, such as trafficking in human beings into the sex industry or for labour exploitation in, for example, construction work, the agricultural sector or domestic servitude.

- (4) The Union is committed to the prevention of and fight against trafficking in human beings, and to the protection of the rights of trafficked persons. For this purpose, Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings ⁽³⁾, and an EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings ⁽⁴⁾ were adopted. Moreover, the Stockholm Programme — An open and secure Europe serving and protecting citizens ⁽⁵⁾, adopted by the European Council, gives a clear priority to the fight against trafficking in human beings. Other measures should be envisaged, such as support for the development of general common indicators of the Union for the identification of victims of trafficking, through the exchange of best practices between all the relevant actors, particularly public and private social services.

⁽¹⁾ Opinion of 21 October 2010 (not yet published in the Official Journal).

⁽²⁾ Position of the European Parliament of 14 December 2010 (not yet published in the Official Journal) and decision of the Council of 21 March 2011.

⁽³⁾ OJ L 203, 1.8.2002, p. 1.

⁽⁴⁾ OJ C 311, 9.12.2005, p. 1.

⁽⁵⁾ OJ C 115, 4.5.2010, p. 1.

- (5) The law enforcement authorities of the Member States should continue to cooperate in order to strengthen the fight against trafficking in human beings. In this regard, close cross-border cooperation, including the sharing of information and the sharing of best practices, as well as a continued open dialogue between the police, judicial and financial authorities of the Member States, is essential. The coordination of investigations and prosecutions of cases of trafficking in human beings should be facilitated by enhanced cooperation with Europol and Eurojust, the setting-up of joint investigation teams, as well as by the implementation of Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflict of jurisdiction in criminal proceedings⁽¹⁾.
- (6) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations in this field working with trafficked persons, in particular in policy-making initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of anti-trafficking measures.
- (7) This Directive adopts an integrated, holistic, and human rights approach to the fight against trafficking in human beings and when implementing it, Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities⁽²⁾ and Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals⁽³⁾ should be taken into consideration. More rigorous prevention, prosecution and protection of victims' rights, are major objectives of this Directive. This Directive also adopts contextual understandings of the different forms of trafficking and aims at ensuring that each form is tackled by means of the most efficient measures.
- (8) Children are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings. In the application of this Directive, the child's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child.
- (9) The 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings are crucial steps in the process of enhancing international cooperation against trafficking in human beings. It should be noted that the Council of Europe Convention contains an evaluation mechanism, composed of the Group of experts on action against trafficking in human beings (GRETA) and the Committee of the Parties. Coordination between international organisations with competence with regard to action against trafficking in human beings should be supported in order to avoid duplication of effort.
- (10) This Directive is without prejudice to the principle of non-refoulement in accordance with the 1951 Convention relating to the Status of Refugees (Geneva Convention), and is in accordance with Article 4 and Article 19(2) of the Charter of Fundamental Rights of the European Union.
- (11) In order to tackle recent developments in the phenomenon of trafficking in human beings, this Directive adopts a broader concept of what should be considered trafficking in human beings than under Framework Decision 2002/629/JHA and therefore includes additional forms of exploitation. Within the context of this Directive, forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No 29 concerning Forced or Compulsory Labour. Therefore, the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur. In the light of the relevant case-law, the validity of any possible consent to perform such labour or services should be evaluated on a case-by-case basis. However, when a child is concerned, no possible consent should ever be considered valid. The expression 'exploitation of criminal activities' should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain. The definition also covers trafficking in human beings for the purpose of the removal of organs, which constitutes a serious violation of human dignity and physical integrity, as well as, for instance, other behaviour such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings.
- (12) The levels of penalties in this Directive reflect the growing concern among Member States regarding the development of the phenomenon of trafficking in human beings. For this reason this Directive uses as a basis levels 3 and 4 of the Council conclusions of 24-25 April 2002 on the approach to apply regarding

⁽¹⁾ OJ L 328, 15.12.2009, p. 42.

⁽²⁾ OJ L 261, 6.8.2004, p. 19.

⁽³⁾ OJ L 168, 30.6.2009, p. 24.

approximation of penalties. When the offence is committed in certain circumstances, for example against a particularly vulnerable victim, the penalty should be more severe. In the context of this Directive, particularly vulnerable persons should include at least all children. Other factors that could be taken into account when assessing the vulnerability of a victim include, for example, gender, pregnancy, state of health and disability. When the offence is particularly grave, for example when the life of the victim has been endangered or the offence has involved serious violence such as torture, forced drug/medication usage, rape or other serious forms of psychological, physical or sexual violence, or has otherwise caused particularly serious harm to the victim, this should also be reflected in a more severe penalty. When, under this Directive, a reference is made to surrender, such reference should be interpreted in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States⁽¹⁾. The gravity of the offence committed could be taken into account within the framework of the execution of the sentence.

- (13) In combating trafficking in human beings, full use should be made of existing instruments on the seizure and confiscation of the proceeds of crime, such as the United Nations Convention against Transnational Organised Crime and the Protocols thereto, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime⁽²⁾, and Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property⁽³⁾. The use of seized and confiscated instrumentalities and the proceeds from the offences referred to in this Directive to support victims' assistance and protection, including compensation of victims and Union trans-border law enforcement counter-trafficking activities, should be encouraged.
- (14) Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.
- (15) To ensure the success of investigations and prosecutions of human trafficking offences, their initiation should not depend, in principle, on reporting or accusation by the victim. Where the nature of the act calls for it, prosecution should be allowed for a sufficient period of time after the victim has reached the age of majority. The length of the sufficient period of time for prosecution should be determined in accordance with respective national law. Law enforcement officials and prosecutors should be adequately trained, in particular with a view to enhancing international law enforcement and judicial cooperation. Those responsible for investigating and prosecuting such offences should also have access to the investigative tools used in organised crime or other serious crime cases. Such tools could include the interception of communications, covert surveillance including electronic surveillance, the monitoring of bank accounts and other financial investigations.
- (16) In order to ensure effective prosecution of international criminal groups whose centre of activity is in a Member State and which carry out trafficking in human beings in third countries, jurisdiction should be established over the offence of trafficking in human beings where the offender is a national of that Member State, and the offence is committed outside the territory of that Member State. Similarly, jurisdiction could also be established where the offender is an habitual resident of a Member State, the victim is a national or an habitual resident of a Member State, or the offence is committed for the benefit of a legal person established in the territory of a Member State, and the offence is committed outside the territory of that Member State.
- (17) While Directive 2004/81/EC provides for the issue of a residence permit to victims of trafficking in human beings who are third-country nationals, and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of the citizens of the Union and their family members to move and reside freely within the territory of the Member States⁽⁴⁾ regulates the exercise of the right to move and reside freely in the territory of the Member States by citizens of the Union and their families, including protection from expulsion, this Directive establishes specific protective measures for any victim of trafficking in human beings. Consequently, this Directive does not deal with the conditions of the residence of the victims of trafficking in human beings in the territory of the Member States.
- (18) It is necessary for victims of trafficking in human beings to be able to exercise their rights effectively. Therefore assistance and support should be available to them before, during and for an appropriate time after criminal proceedings. Member States should provide for resources to support victim assistance, support and protection. The assistance and support provided should

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

⁽²⁾ OJ L 182, 5.7.2001, p. 1.

⁽³⁾ OJ L 68, 15.3.2005, p. 49.

⁽⁴⁾ OJ L 158, 30.4.2004, p. 77.

include at least a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers. The practical implementation of such measures should, on the basis of an individual assessment carried out in accordance with national procedures, take into account the circumstances, cultural context and needs of the person concerned. A person should be provided with assistance and support as soon as there is a reasonable-grounds indication for believing that he or she might have been trafficked and irrespective of his or her willingness to act as a witness. In cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or expiry of the reflection period, the victim is not considered eligible for a residence permit or does not otherwise have lawful residence in that Member State, or if the victim has left the territory of that Member State, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive. Where necessary, assistance and support should continue for an appropriate period after the criminal proceedings have ended, for example if medical treatment is ongoing due to the severe physical or psychological consequences of the crime, or if the victim's safety is at risk due to the victim's statements in those criminal proceedings.

(19) Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings⁽¹⁾ establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. In addition, victims of trafficking in human beings should be given access without delay to legal counselling and, in accordance with the role of victims in the relevant justice systems, to legal representation, including for the purpose of claiming compensation. Such legal counselling and representation could also be provided by the competent authorities for the purpose of claiming compensation from the State. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them. Legal counselling should be provided by a person having received appropriate legal training without necessarily being a lawyer. Legal counselling and, in accordance with the role of victims in the relevant justice systems, legal representation should be provided free of charge, at least when the victim does not have sufficient financial resources, in a manner consistent with the internal procedures of Member States. As child victims in particular are unlikely to have such resources, legal counselling and legal representation would in practice be free of charge for them. Furthermore, on the basis of an individual risk assessment carried out in accordance with national procedures, victims should be protected from retaliation, from intimidation, and from the risk of being re-trafficked.

(20) Victims of trafficking who have already suffered the abuse and degrading treatment which trafficking

commonly entails, such as sexual exploitation, sexual abuse, rape, slavery-like practices or the removal of organs, should be protected from secondary victimisation and further trauma during the criminal proceedings. Unnecessary repetition of interviews during investigation, prosecution and trial should be avoided, for instance, where appropriate, through the production, as soon as possible in the proceedings, of video recordings of those interviews. To this end victims of trafficking should during criminal investigations and proceedings receive treatment that is appropriate to their individual needs. The assessment of their individual needs should take into consideration circumstances such as their age, whether they are pregnant, their health, a disability they may have and other personal circumstances, as well as the physical and psychological consequences of the criminal activity to which the victim was subjected. Whether and how the treatment is applied is to be decided in accordance with grounds defined by national law, rules of judicial discretion, practice and guidance, on a case-by-case basis.

(21) Assistance and support measures should be provided to victims on a consensual and informed basis. Victims should therefore be informed of the important aspects of those measures and they should not be imposed on the victims. A victim's refusal of assistance or support measures should not entail obligations for the competent authorities of the Member State concerned to provide the victim with alternative measures.

(22) In addition to measures available to all victims of trafficking in human beings, Member States should ensure that specific assistance, support and protective measures are available to child victims. Those measures should be provided in the best interests of the child and in accordance with the 1989 United Nations Convention on the Rights of the Child. Where the age of a person subject to trafficking is uncertain, and there are reasons to believe it is less than 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection. Assistance and support measures for child victims should focus on their physical and psycho-social recovery and on a durable solution for the person in question. Access to education would help children to be reintegrated into society. Given that child victims of trafficking are particularly vulnerable, additional protective measures should be available to protect them during interviews forming part of criminal investigations and proceedings.

(23) Particular attention should be paid to unaccompanied child victims of trafficking in human beings, as they need specific assistance and support due to their situation of particular vulnerability. From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures appropriate to the needs of the child and should ensure that relevant procedural safeguards apply. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed

⁽¹⁾ OJ L 82, 22.3.2001, p. 1.

in order to safeguard the minor's best interests. A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration into the country of origin or the country of return, integration into the host society, granting of international protection status or granting of other status in accordance with national law of the Member States.

- (24) When, in accordance with this Directive, a guardian and/or a representative are to be appointed for a child, those roles may be performed by the same person or by a legal person, an institution or an authority.
- (25) Member States should establish and/or strengthen policies to prevent trafficking in human beings, including measures to discourage and reduce the demand that fosters all forms of exploitation, and measures to reduce the risk of people becoming victims of trafficking in human beings, by means of research, including research into new forms of trafficking in human beings, information, awareness-raising, and education. In such initiatives, Member States should adopt a gender perspective and a child-rights approach. Officials likely to come into contact with victims or potential victims of trafficking in human beings should be adequately trained to identify and deal with such victims. That training obligation should be promoted for members of the following categories when they are likely to come into contact with victims: police officers, border guards, immigration officials, public prosecutors, lawyers, members of the judiciary and court officials, labour inspectors, social, child and health care personnel and consular staff, but could, depending on local circumstances, also involve other groups of public officials who are likely to encounter trafficking victims in their work.
- (26) Directive 2009/52/EC provides for sanctions for employers of illegally staying third-country nationals who, while not having been charged with or convicted of trafficking in human beings, use work or services exacted from a person with the knowledge that that person is a victim of such trafficking. In addition, Member States should take into consideration the possibility of imposing sanctions on the users of any service exacted from a victim, with the knowledge that the person has been trafficked. Such further criminalisation could cover the behaviour of employers of legally staying third-country nationals and Union citizens, as well as buyers of sexual services from any trafficked person, irrespective of their nationality.
- (27) National monitoring systems such as national rapporteurs or equivalent mechanisms should be established by Member States, in the way in which they consider appropriate according to their internal organisation, and taking into account the need for a minimum structure with identified tasks, in order to carry out assessments of trends in trafficking in human beings, gather statistics, measure the results of anti-trafficking actions, and regularly report. Such national rapporteurs or equivalent mechanisms are already constituted in an informal Union Network established by the Council Conclusions on establishing an informal EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings of 4 June 2009. An anti-trafficking coordinator would take part in the work of that Network, which provides the Union and the Member States with objective, reliable, comparable and up-to-date strategic information in the field of trafficking in human beings and exchanges experience and best practices in the field of preventing and combating trafficking in human beings at Union level. The European Parliament should be entitled to participate in the joint activities of the national rapporteurs or equivalent mechanisms.
- (28) In order to evaluate the results of anti-trafficking action, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics.
- (29) In the light of the Stockholm Programme and with a view to developing a consolidated Union strategy against trafficking in human beings aimed at further strengthening the commitment of, and efforts made, by the Union and the Member States to prevent and combat such trafficking, Member States should facilitate the tasks of an anti-trafficking coordinator, which may include for example improving coordination and coherence, avoiding duplication of effort, between Union institutions and agencies as well as between Member States and international actors, contributing to the development of existing or new Union policies and strategies relevant to the fight against trafficking in human beings or reporting to the Union institutions.
- (30) This Directive aims to amend and expand the provisions of Framework Decision 2002/629/JHA. Since the amendments to be made are of substantial number and nature, the Framework Decision should in the interests of clarity be replaced in its entirety in relation to Member States participating in the adoption of this Directive.
- (31) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public.
- (27) National monitoring systems such as national rapporteurs or equivalent mechanisms should be estab-

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

- (32) Since the objective of this Directive, namely to fight against trafficking in human beings, cannot be sufficiently achieved by the Member States and can therefore, 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 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (33) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the prohibition of slavery, forced labour and trafficking in human beings, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, the protection of personal data, the right to an effective remedy and to a fair trial and the principles of the legality and proportionality of criminal offences and penalties. In particular, this Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.
- (34) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Directive.
- (35) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (36) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.

Article 2

Offences concerning trafficking in human beings

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age.

Article 3

Incitement, aiding and abetting, and attempt

Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable.

Article 4

Penalties

1. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least five years of imprisonment.

2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:

- (a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;

- (b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime ⁽¹⁾;
- (c) deliberately or by gross negligence endangered the life of the victim; or
- (d) was committed by use of serious violence or has caused particularly serious harm to the victim.

3. Member States shall take the necessary measures to ensure that the fact that an offence referred to in Article 2 was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.

4. Member States shall take the necessary measures to ensure that an offence referred to in Article 3 is punishable by effective, proportionate and dissuasive penalties, which may entail surrender.

Article 5

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 2 and 3.

4. For the purpose of this Directive, 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

Article 6

Sanctions on legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is subject to effective, proportionate and dissuasive sanctions,

which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding-up;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 7

Seizure and confiscation

Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3.

Article 8

Non-prosecution or non-application of penalties to the victim

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Article 9

Investigation and prosecution

1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.

2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.

3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly.

4. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3.

⁽¹⁾ OJ L 300, 11.11.2008, p. 42.

Article 10

Jurisdiction

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 where:

- (a) the offence is committed in whole or in part within their territory; or
- (b) the offender is one of their nationals.

2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 2 and 3 committed outside its territory, *inter alia*, where:

- (a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;
- (b) the offence is committed for the benefit of a legal person established in its territory; or
- (c) the offender is an habitual resident in its territory.

3. For the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned, each Member State shall, in those cases referred to in point (b) of paragraph 1, and may, in those cases referred to in paragraph 2, take the necessary measures to ensure that its jurisdiction is not subject to either of the following conditions:

- (a) the acts are a criminal offence at the place where they were performed; or
- (b) the prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

Article 11

Assistance and support for victims of trafficking in human beings

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.

2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.

4. Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.

5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted⁽¹⁾ and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status⁽²⁾ or pursuant to other international instruments or other similar national rules.

7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

Article 12

Protection of victims of trafficking in human beings in criminal investigation and proceedings

1. The protection measures referred to in this Article shall apply in addition to the rights set out in Framework Decision 2001/220/JHA.

2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

⁽¹⁾ OJ L 304, 30.9.2004, p. 12.

⁽²⁾ OJ L 326, 13.12.2005, p. 13.

3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, *inter alia*, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.

4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:

- (a) unnecessary repetition of interviews during investigation, prosecution or trial;
- (b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
- (c) the giving of evidence in open court; and
- (d) unnecessary questioning concerning the victim's private life.

Article 13

General provisions on assistance, support and protection measures for child victims of trafficking in human beings

1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.

2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.

Article 14

Assistance and support to child victims

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views,

needs and concerns with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.

2. Member States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.

3. Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family.

4. This Article shall apply without prejudice to Article 11.

Article 15

Protection of child victims of trafficking in human beings in criminal investigations and proceedings

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative for a child victim of trafficking in human beings where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim.

2. Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:

- (a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
- (b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;

- (c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;
- (d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;
- (e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;
- (f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:

- (a) the hearing take place without the presence of the public; and
- (b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.

6. This Article shall apply without prejudice to Article 12.

Article 16

Assistance, support and protection for unaccompanied child victims of trafficking in human beings

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.

2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.

3. Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings.

4. Member States shall take the necessary measures to ensure that, in criminal investigations and proceedings, in accordance

with the role of victims in the relevant justice system, competent authorities appoint a representative where the child is unaccompanied or separated from its family.

5. This Article shall apply without prejudice to Articles 14 and 15.

Article 17

Compensation to victims

Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

Article 18

Prevention

1. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.

2. Member States shall take appropriate action, including through the Internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings.

3. Member States shall promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.

4. In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.

Article 19

National rapporteurs or equivalent mechanisms

Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.

*Article 20***Coordination of the Union strategy against trafficking in human beings**

In order to contribute to a coordinated and consolidated Union strategy against trafficking in human beings, Member States shall facilitate the tasks of an anti-trafficking coordinator (ATC). In particular, Member States shall transmit to the ATC the information referred to in Article 19, on the basis of which the ATC shall contribute to reporting carried out by the Commission every two years on the progress made in the fight against trafficking in human beings.

*Article 21***Replacement of Framework Decision 2002/629/JHA**

Framework Decision 2002/629/JHA on combating trafficking in human beings is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limit for transposition of the Framework Decision into national law.

In relation to Member States participating in the adoption of this Directive, references to the Framework Decision 2002/629/JHA shall be construed as references to this Directive.

*Article 22***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 April 2013.

2. Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.

3. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied

by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

*Article 23***Reporting**

1. The Commission shall, by 6 April 2015, submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken under Article 18(4), accompanied, if necessary, by legislative proposals.

2. The Commission shall, by 6 April 2016, submit a report to the European Parliament and the Council, assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, accompanied, if necessary, by adequate proposals.

*Article 24***Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

*Article 25***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 5 April 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

GYŐRI E.

COUNCIL DIRECTIVE 2002/90/EC
of 28 November 2002
defining the facilitation of unauthorised entry, transit and residence

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(a) and Article 63(3)(b) thereof,

Having regard to the initiative of the French Republic ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) One of the objectives of the European Union is the gradual creation of an area of freedom, security and justice, which means, *inter alia*, that illegal immigration must be combated.
- (2) Consequently, measures should be taken to combat the aiding of illegal immigration both in connection with unauthorised crossing of the border in the strict sense and for the purpose of sustaining networks which exploit human beings.
- (3) To that end it is essential to approximate existing legal provisions, in particular, on the one hand, the precise definition of the infringement in question and the cases of exemption, which is the subject of this Directive and, on the other hand, minimum rules for penalties, liability of legal persons and jurisdiction, which is the subject of Council framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence ⁽³⁾.
- (4) The purpose of this Directive is to provide a definition of the facilitation of illegal immigration and consequently to render more effective the implementation of framework Decision 2002/946/JHA in order to prevent that offence.
- (5) This Directive supplements other instruments adopted in order to combat illegal immigration, illegal employment, trafficking in human beings and the sexual exploitation of children.
- (6) As regards Iceland and Norway, this Directive constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ⁽⁴⁾, which fall within the area referred to in Article 1(E) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽⁵⁾.

(7) The United Kingdom and Ireland are taking part in the adoption and application of this Directive in accordance with the relevant provisions of the Treaties.

(8) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Given that this Directive builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Directive whether it will implement it in its national law,

HAS ADOPTED THIS DIRECTIVE:

Article 1

General infringement

1. Each Member State shall adopt appropriate sanctions on:
 - (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
 - (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.
2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

Article 2

Instigation, participation and attempt

Each Member State shall take the measures necessary to ensure that the sanctions referred to in Article 1 are also applicable to any person who:

- (a) is the instigator of,
- (b) is an accomplice in, or
- (c) attempts to commit

an infringement as referred to in Article 1(1)(a) or (b).

⁽¹⁾ OJ C 253, 4.9.2000, p. 1.

⁽²⁾ OJ C 276, 1.10.2001, p. 244.

⁽³⁾ See page 1 of this Official Journal.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁵⁾ OJ L 176, 10.7.1999, p. 31.

*Article 3***Sanctions**

Each Member State shall take the measures necessary to ensure that the infringements referred to in Articles 1 and 2 are subject to effective, proportionate and dissuasive sanctions.

*Article 4***Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 5 December 2004. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of their national law which they adopt in the field covered by this Directive, together with a table showing how the provisions of this Directive correspond to the national provisions adopted. The Commission shall inform the other Member States thereof.

*Article 5***Repeal**

Article 27(1) of the 1990 Schengen Convention shall be repealed as from 5 December 2004. Where a Member State implements this Directive pursuant to Article 4(1) in advance of that date, the said provision shall cease to apply to that Member State from the date of implementation.

*Article 6***Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

*Article 7***Addressees**

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 28 November 2002.

For the Council

The President

B. HAARDER

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION
of 28 November 2002
on the strengthening of the penal framework to prevent the facilitation of unauthorised entry,
transit and residence

(2002/946/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, and in particular Article 29, Article 31(e) and Article 34(2)(b) thereof,

Having regard to the initiative of the French Republic ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) One of the objectives of the European Union 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 this framework, measures should be taken to combat the aiding of illegal immigration both in connection with unauthorised crossing of the border in the strict sense and for the purpose of sustaining networks which exploit human beings.
- (3) To that end it is essential to approximate existing legal provisions, in particular, on the one hand, the precise definition of the infringement in question and the cases of exemption, which is the subject of Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence ⁽³⁾ and, on the other hand, minimum rules for penalties, liability of legal persons and jurisdiction, which is the subject of this framework Decision.
- (4) It is likewise essential not to confine possible actions to natural persons only but to provide for measures relating to the liability of legal persons.

- (5) This framework Decision supplements other instruments adopted in order to combat illegal immigration, illegal employment, trafficking in human beings and the sexual exploitation of children.

- (6) As regards Iceland and Norway, this framework Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ⁽⁴⁾, which fall within the area referred to in Article 1(E) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽⁵⁾.

- (7) The United Kingdom is taking part in this framework Decision in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽⁶⁾.

- (8) Ireland is taking part in this framework Decision in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 6(2) of 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* ⁽⁷⁾,

⁽¹⁾ OJ C 253, 4.9.2000, p. 6.

⁽²⁾ OJ C 276, 1.10.2001, p. 244.

⁽³⁾ See page 17 of this Official Journal.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁵⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁶⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁷⁾ OJ L 64, 7.3.2002, p. 20.

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Penalties

1. Each Member State shall take the measures necessary to ensure that the infringements defined in Articles 1 and 2 of Directive 2002/90/EC are punishable by effective, proportionate and dissuasive criminal penalties which may entail extradition.

2. Where appropriate, the criminal penalties covered in paragraph 1 may be accompanied by the following measures:

- confiscation of the means of transport used to commit the offence,
- a prohibition on practising directly or through an intermediary the occupational activity in the exercise of which the offence was committed,
- deportation.

3. Each Member State shall take the measures necessary to ensure that, when committed for financial gain, the infringements defined in Article 1(1)(a) and, to the extent relevant, Article 2(a) of Directive 2002/90/EC are punishable by custodial sentences with a maximum sentence of not less than eight years where they are committed in any of the following circumstances:

- the offence was committed as an activity of a criminal organisation as defined in Joint Action 98/733/JHA⁽¹⁾,
- the offence was committed while endangering the lives of the persons who are the subject of the offence.

4. If imperative to preserve the coherence of the national penalty system, the actions defined in paragraph 3 shall be punishable by custodial sentences with a maximum sentence of not less than six years, provided that it is among the most severe maximum sentences available for crimes of comparable gravity.

Article 2

Liability of legal persons

1. Each Member State shall take the measures necessary to ensure that legal persons can be held liable for the infringements referred to in Article 1(1) and which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a power of representation of the legal person,
- an authority to take decisions on behalf of the legal person, or

- an authority to exercise control within the legal person.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of the infringements referred to in Article 1(1) for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators or instigators of or accessories in the offences referred to in paragraph 1.

Article 3

Sanctions for legal persons

1. Each Member State shall take the measures necessary to ensure that a legal person held liable pursuant to Article 2(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order.

2. Each Member State shall take the measures necessary to ensure that a legal person held liable pursuant to Article 2(2) is punishable by effective, proportionate and dissuasive sanctions or measures.

Article 4

Jurisdiction

1. Each Member State shall take the measures necessary to establish its jurisdiction with regard to the infringements referred to in Article 1(1) and committed

- (a) in whole or in part within its territory;
- (b) by one of its nationals, or
- (c) for the benefit of a legal person established in the territory of that Member State.

2. Subject to the provisions of Article 5, any Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, the jurisdiction rule set out in:

- paragraph 1(b),
- paragraph 1(c).

⁽¹⁾ OJ L 351, 29.12.1998, p. 1.

3. Each Member State shall inform the Secretary-General of the Council in writing if it decides to apply paragraph 2, where appropriate with an indication of the specific circumstances or conditions in which its decision applies.

Article 5

Extradition and prosecution

1. (a) Any Member State which, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the infringements referred to in Article 1(1) when such infringements are committed by its own nationals outside its territory.
- (b) Each Member State shall, when one of its nationals is alleged to have committed in another Member State the infringements referred to in Article 1(1) and it does not extradite that person to that other Member State solely on the ground of his nationality, submit the case to its competent authorities for the purpose of prosecution, if appropriate. In order to enable prosecution to take place, the files, information and exhibits relating to the offence shall be transmitted in accordance with the procedures laid down in Article 6(2) of the European Convention on Extradition of 13 December 1957. The requesting Member State shall be informed of the prosecution initiated and of its outcome.

2. For the purpose of this Article, a 'national' of a Member State shall be construed in accordance with any declaration made by that State under Article 6(1)(b) and (c) of the European Convention on Extradition, where appropriate as amended by any declarations made with respect to the Convention relating to extradition between the Member States of the European Union ⁽¹⁾.

Article 6

International law on refugees

This framework Decision shall apply without prejudice to the protection afforded refugees and asylum seekers in accordance with international law on refugees or other international instruments relating to human rights, in particular Member States' compliance with their international obligations pursuant to Articles 31 and 33 of the 1951 Convention relating to the status of refugees, as amended by the Protocol of New York of 1967.

Article 7

Communication of information between the Member States

1. If a Member State is informed of infringements referred to in Article 1(1) which are in breach of the law on the entry and residence of aliens of another Member State, it shall inform the latter accordingly.

2. Any Member State which requests another Member State to prosecute, on the grounds of a breach of its own laws on the entry and residence of aliens, infringements referred to in Article 1(1) must specify, by means of an official report or a certificate from the competent authorities, the provisions of its law which have been breached.

Article 8

Territorial application

This framework Decision shall apply to Gibraltar.

Article 9

Implementation

1. Member States shall adopt the measures necessary to comply with the provisions of this framework Decision before 5 December 2004.

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 by this framework Decision. On the basis of a report established using this information by the Commission, the Council shall, before 5 June 2005, assess the extent to which Member States have complied with the provisions of this framework Decision.

Article 10

Repeal

The provisions of Article 27(2) and (3) of the 1990 Schengen Convention shall be repealed as from 5 December 2004. Where a Member State implements this framework Decision pursuant to Article 9(1) in advance of that date, the said provisions shall cease to apply to that Member State from the date of implementation.

Article 11

Entry into force

This framework Decision shall enter into force on the day of its publication in the Official Journal.

Done at Brussels, 28 November 2002.

For the Council

The President

B. HAARDER

⁽¹⁾ OJ C 313, 23.10.1996, p. 12.

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL DECISION 2005/671/JHA
of 20 September 2005
on the exchange of information and cooperation concerning terrorist offences

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 ⁽¹⁾,

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 ⁽²⁾ 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 ⁽³⁾;

⁽¹⁾ Opinion given on 7 June 2005 (not yet published in the Official Journal).

⁽²⁾ OJ L 16, 22.1.2003, p. 68.

⁽³⁾ OJ L 164, 22.6.2002, p. 3.

- (b) 'Europol Convention': the Convention of 26 July 1995 on the establishment of a European Police Office ⁽¹⁾;
- (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 ⁽²⁾;
- (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 ⁽³⁾.

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.

⁽¹⁾ OJ C 316, 27.11.1995, p. 2. Convention as last amended by the Protocol of 27.11.2003 (OJ C 2, 6.1.2004, p. 3).

⁽²⁾ OJ L 63, 6.3.2002, p. 1. Decision as amended by Council Decision 2003/659/JHA (OJ L 245, 29.9.2003, p. 44).

⁽³⁾ OJ L 344, 28.12.2001, p. 93. Common Position as last amended by Common Position 2005/220/CFSP (OJ L 69, 16.3.2005, p. 59).

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

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2008/841/JHA

of 24 October 2008

on the fight against organised crime

THE COUNCIL OF THE EUROPEAN UNION,

criminal offence to participate in a criminal organisation in the Member States of the European Union ⁽²⁾.

Having regard to the Treaty on European Union, and in particular Articles 29, 31(1)(e) and 34(2)(b) thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

(1) The objective of the Hague Programme is to improve the common capability of the Union and the Member States for the purpose, among others, of combating transnational organised crime. This objective is to be pursued by, in particular, the approximation of legislation. Closer cooperation between the Member States of the European Union is needed in order to counter the dangers and proliferation of criminal organisations and to respond effectively to citizens' expectations and Member States' own requirements. In this respect point 14 of the conclusions of the Brussels European Council of 4 and 5 November 2004 states that the citizens of Europe expect the European Union, while guaranteeing respect for fundamental freedoms and rights, to take a more effective, combined approach to cross-border problems such as organised crime.

(2) In its Communication of 29 March 2004 on measures to be taken to combat terrorism and other forms of serious crime, the Commission considered that the facilities available for combating organised crime in the EU needed to be strengthened and stated that it would draw up a Framework Decision to replace Joint Action 98/733/JHA of 21 December 1998 on making it a

(3) Point 3.3.2 of the Hague Programme states that the approximation of substantive criminal law serves the purpose of facilitating mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters and concerns areas of particularly serious crime with cross-border dimensions and that priority should be given to areas of crime that are specifically mentioned in the Treaties. The definition of offences relating to participation in a criminal organisation should therefore be approximated in the Member States. Thus, this Framework Decision should encompass crimes which are typically committed in a criminal organisation. It should provide, moreover, for the imposition of penalties corresponding to the seriousness of those offences, on natural and legal persons who committed them or are responsible for their commission.

(4) The obligations arising by virtue of Article 2(a) should be without prejudice to Member States' freedom to classify other groups of persons as criminal organisations, for example, groups whose purpose is not financial or other material gain.

(5) The obligations arising by virtue of Article 2(a) should be without prejudice to the Member States' freedom to interpret the term 'criminal activities' as implying the carrying out of material acts.

(6) The European Union should build on the important work done by international organisations, in particular the United Nations Convention Against Transnational Organised Crime (the 'Palermo Convention'), which was concluded, on behalf of the European Community, by Council Decision 2004/579/EC ⁽³⁾.

⁽¹⁾ Opinion delivered following non-compulsory consultation (not yet published in the Official Journal).

⁽²⁾ OJ L 351, 29.12.1998, p. 1.

⁽³⁾ OJ L 261, 6.8.2004, p. 69.

- (7) Since the objectives of this Framework Decision cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale 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 of the Treaty establishing European Community, as applied by the second paragraph of Article 2 of the Treaty on European Union. In accordance with the principle of proportionality this Framework Decision does not go beyond what is necessary to achieve those objectives.
- (8) This Framework Decision respects the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union, and in particular Articles 6 and 49 thereof. Nothing in this Framework Decision is intended to reduce or restrict national rules relating to fundamental rights or freedoms such as due process, the right to strike, freedom of assembly, of association, of the press or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate.
- (9) Joint Action 98/733/JHA should therefore be repealed,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision:

1. 'criminal organisation' means a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit;
 2. 'structured association' means an association that is not randomly formed for the immediate commission of an offence, nor does it need to have formally defined roles for its members, continuity of its membership, or a developed structure.
- (a) conduct by any person who, with intent and with knowledge of either the aim and general activity of the criminal organisation or its intention to commit the offences in question, actively takes part in the organisation's criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organisation's criminal activities;
- (b) conduct by any person consisting in an agreement with one or more persons that an activity should be pursued, which if carried out, would amount to the commission of offences referred to in Article 1, even if that person does not take part in the actual execution of the activity.

Article 3

Penalties

1. Each Member State shall take the necessary measures to ensure that:

- (a) the offence referred to in Article 2(a) is punishable by a maximum term of imprisonment of at least between two and five years; or
- (b) the offence referred to in Article 2(b) is punishable by the same maximum term of imprisonment as the offence at which the agreement is aimed, or by a maximum term of imprisonment of at least between two and five years.

2. Each Member State shall take the necessary measures to ensure that the fact that offences referred to in Article 2, as determined by this Member State, have been committed within the framework of a criminal organisation, may be regarded as an aggravating circumstance.

Article 4

Special circumstances

Each Member State may take the necessary measures to ensure that the penalties referred to in Article 3 may be reduced or that the offender may be exempted from penalties if he, for example:

- (a) renounces criminal activity; and
- (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
 - (i) prevent, end or mitigate the effects of the offence;
 - (ii) identify or bring to justice the other offenders;
 - (iii) find evidence;

Offences relating to participation in a criminal organisation

Each Member State shall take the necessary measures to ensure that one or both of the following types of conduct related to a criminal organisation are regarded as offences:

- (iv) deprive the criminal organisation of illicit resources or of the proceeds of its criminal activities; or
- (v) prevent further offences referred to in Article 2 from being committed.

Article 5

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Article 2 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Member States shall also take the necessary measures to ensure that legal persons may be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, by a person under its authority, of any of the offences referred to in Article 2 for the benefit of that legal person.

3. Liability of legal persons under paragraphs 1 and 2 shall be without prejudice to criminal proceedings against natural persons who are perpetrators of, or accessories to, any of the offences referred to in Article 2.

4. For the purpose of this Framework Decision 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

Article 6

Penalties for legal persons

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, for example:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;

- (c) placing under judicial supervision;
- (d) judicial winding-up;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(2) is punishable by penalties or measures which are effective, proportionate and dissuasive.

Article 7

Jurisdiction and coordination of prosecution

1. Each Member State shall ensure that its jurisdiction covers at least the cases in which the offences referred to in Article 2 were committed:

- (a) in whole or in part within its territory, wherever the criminal organisation is based or pursues its criminal activities;
- (b) by one of its nationals; or
- (c) for the benefit of a legal person established in the territory of that Member State.

A Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in (b) and (c) where the offences referred to in Article 2 are committed outside its territory.

2. When an offence referred to in Article 2 falls within the jurisdiction of more than one Member State and when any one of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders, with the aim, if possible, of centralising proceedings in a single Member State. To this end, Member States may have recourse to Eurojust or any other body or mechanism established within the European Union in order to facilitate cooperation between their judicial authorities and the coordination of their action. Special account shall be taken of the following factors:

- (a) the Member State in the territory of which the acts were committed;
- (b) the Member State of which the perpetrator is a national or resident;

(c) the Member State of the origin of the victims;

(d) the Member State in the territory of which the perpetrator was found.

3. A Member State which, under its law, does not as yet extradite or surrender its own nationals shall take the necessary measures to establish its jurisdiction over and, where appropriate, to prosecute the offence referred to in Article 2, when committed by one of its nationals outside its territory.

4. This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national legislation.

Article 8

Absence of requirement of a report or accusation by victims

Member States shall ensure that investigations into, or prosecution of, offences referred to in Article 2 are not dependent on a report or accusation made by a person subjected to the offence, at least as regards acts committed in the territory of the Member State.

Article 9

Repeal of existing provisions

Joint Action 98/733/JHA is hereby repealed.

References to participation in a criminal organisation within the meaning of Joint Action 98/733/JHA in measures adopted pursuant to Title VI of the Treaty on European Union and the Treaty establishing the European Community shall be construed as references to participation in a criminal organisation within the meaning of this Framework Decision.

Article 10

Implementation and reports

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision before 11 May 2010.

2. The Member States shall transmit to the General Secretariat of the Council and to the Commission, before 11 May 2010, 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 transmitted by the Commission, the Council shall, before 11 November 2012, assess the extent to which Member States have complied with the provisions of this Framework Decision.

Article 11

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 12

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, 24 October 2008.

For the Council

The President

M. ALLIOT-MARIE

DIRECTIVES

DIRECTIVE (EU) 2017/541 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2017

on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/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 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The Union is founded on the universal values of human dignity, freedom, equality and solidarity, and respect for human rights and fundamental freedoms. It is based on the principles of democracy and the rule of law, which are common to the Member States.
- (2) Acts of terrorism constitute one of the most serious violations of the universal values of human dignity, freedom, equality and solidarity, and enjoyment of human rights and fundamental freedoms on which the Union is founded. They also represent one of the most serious attacks on democracy and the rule of law, principles which are common to the Member States and on which the Union is based.
- (3) Council Framework Decision 2002/475/JHA ⁽³⁾ is the cornerstone of the Member States' criminal justice response to counter terrorism. A legal framework common to all Member States, and in particular, a harmonised definition of terrorist offences, serves as a benchmark for information exchange and cooperation between the competent national authorities under Council Framework Decision 2006/960/JHA ⁽⁴⁾, Council Decisions 2008/615/JHA ⁽⁵⁾ and 2005/671/JHA ⁽⁶⁾, Regulation (EU) No 603/2013 of the European Parliament and of the Council ⁽⁷⁾, and Council Framework Decisions 2002/584/JHA ⁽⁸⁾ and 2002/465/JHA ⁽⁹⁾.

⁽¹⁾ OJ C 177, 18.5.2016, p. 51.

⁽²⁾ Position of the European Parliament of 16 February 2017 (not yet published in the Official Journal) and decision of the Council of 7 March 2017.

⁽³⁾ Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

⁽⁴⁾ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p. 89).

⁽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 (OJ L 210, 6.8.2008, p. 1).

⁽⁶⁾ 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).

⁽⁷⁾ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).

⁽⁸⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

⁽⁹⁾ Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

- (4) The terrorist threat has grown and rapidly evolved in recent years. Individuals referred to as 'foreign terrorist fighters' travel abroad for the purpose of terrorism. Returning foreign terrorist fighters pose a heightened security threat to all Member States. Foreign terrorist fighters have been linked to recent attacks and plots in several Member States. In addition, the Union and its Member States face increased threats from individuals who are inspired or instructed by terrorist groups abroad but who remain within Europe.
- (5) In its Resolution 2178 (2014), the UN Security Council expressed its concern over the growing threat posed by foreign terrorist fighters and required all Member States of the UN to ensure that offences related to this phenomenon are punishable under national law. The Council of Europe has, in this respect, adopted in 2015 the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism.
- (6) Taking account of the evolution of terrorist threats to and legal obligations on the Union and Member States under international law, the definition of terrorist offences, of offences related to a terrorist group and of offences related to terrorist activities should be further approximated in all Member States, so that it covers conduct related to, in particular, foreign terrorist fighters and terrorist financing more comprehensively. These forms of conduct should also be punishable if committed through the internet, including social media.
- (7) Furthermore, the cross-border nature of terrorism requires a strong coordinated response and cooperation within and between the Member States, as well as with and among the competent Union agencies and bodies to counter terrorism, including Eurojust and Europol. To that end, efficient use of the available tools and resources for cooperation should be made, such as joint investigation teams and coordination meetings facilitated by Eurojust. The global character of terrorism necessitates an international answer, requiring the Union and its Member States to strengthen cooperation with relevant third countries. A strong coordinated response and cooperation is also necessary with a view to securing and obtaining electronic evidence.
- (8) This Directive exhaustively lists a number of serious crimes, such as attacks against a person's life, as intentional acts that can qualify as terrorist offences when and insofar as committed with a specific terrorist aim, namely to seriously intimidate a population, to unduly compel a government or an international organisation to perform or abstain from performing any act, or to seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation. The threat to commit such intentional acts should also be considered to be a terrorist offence when it is established, on the basis of objective circumstances, that such threat was made with any such terrorist aim. By contrast, acts aiming, for example, to compel a government to perform or abstain from performing any act, without however being included in the exhaustive list of serious crimes, are not considered to be terrorist offences in accordance with this Directive.
- (9) The offences related to terrorist activities are of a very serious nature as they have the potential to lead to the commission of terrorist offences and enable terrorists and terrorist groups to maintain and further develop their criminal activities, justifying the criminalisation of such conduct.
- (10) The offence of public provocation to commit a terrorist offence act comprises, inter alia, the glorification and justification of terrorism or the dissemination of messages or images online and offline, including those related to the victims of terrorism as a way to gather support for terrorist causes or to seriously intimidate the population. Such conduct should be punishable when it causes a danger that terrorist acts may be committed. In each concrete case, when considering whether such a danger is caused, the specific circumstances of the case should be taken into account, such as the author and the addressee of the message, as well as the context in which the act is committed. The significance and the credible nature of the danger should be also considered when applying the provision on public provocation in accordance with national law.
- (11) Criminalisation of receiving training for terrorism complements the existing offence of providing training and specifically addresses the threats resulting from those actively preparing for the commission of terrorist offences, including those ultimately acting alone. Receiving training for terrorism includes obtaining knowledge, documentation or practical skills. Self-study, including through the internet or consulting other teaching material, should also be considered to be receiving training for terrorism when resulting from active conduct and done with the intent to commit or contribute to the commission of a terrorist offence. In the context of all of the specific

circumstances of the case, this intention can for instance be inferred from the type of materials and the frequency of reference. Thus, downloading a manual to make explosives for the purpose of committing a terrorist offence could be considered to be receiving training for terrorism. By contrast, merely visiting websites or collecting materials for legitimate purposes, such as academic or research purposes, is not considered to be receiving training for terrorism under this Directive.

- (12) Considering the seriousness of the threat and the need, in particular, to stem the flow of foreign terrorist fighters, it is necessary to criminalise outbound travelling for the purpose of terrorism, namely not only the commission of terrorist offences and providing or receiving training but also the participation in the activities of a terrorist group. It is not indispensable to criminalise the act of travelling as such. Furthermore, travel to the territory of the Union for the purpose of terrorism presents a growing security threat. Member States may also decide to address terrorist threats arising from travel for the purpose of terrorism to the Member State concerned by criminalising preparatory acts, which may include planning or conspiracy, with a view to committing or contributing to a terrorist offence. Any act of facilitation of such travel should also be criminalised.
- (13) Illicit trade in firearms, oil, drugs, cigarettes, counterfeit goods and cultural objects, as well as trafficking in human beings, racketeering and extortion have become lucrative ways for terrorist groups to obtain funding. In this context, the increasing links between organised crime and terrorist groups constitute a growing security threat to the Union and should therefore be taken into account by the authorities of the Member States involved in criminal proceedings.
- (14) Directive (EU) 2015/849 of the European Parliament and of the Council ⁽¹⁾ establishes common rules on the prevention of the use of the Union's financial system for the purposes of money laundering or terrorist financing. In addition to this preventive approach, terrorist financing should be punishable in the Member States. Criminalisation should cover not only the financing of terrorist acts, but also the financing of a terrorist group, as well as other offences related to terrorist activities, such as the recruitment and training, or travel for the purpose of terrorism, with a view to disrupting the support structures facilitating the commission of terrorist offences.
- (15) The provision of material support for terrorism through persons engaging in or acting as intermediaries in the supply or movement of services, assets and goods, including trade transactions involving the entry into or exit from the Union, such as the sale, acquisition or exchange of a cultural object of archaeological, artistic, historical or scientific interest illegally removed from an area controlled by a terrorist group at the time of the removal, should be punishable, in the Member States, as aiding and abetting terrorism or as terrorist financing if performed with the knowledge that these operations or the proceeds thereof are intended to be used, in full or in part, for the purpose of terrorism or will benefit terrorist groups. Further measures may be necessary with a view to effectively combating the illicit trade in cultural objects as a source of income for terrorist groups.
- (16) The attempt to travel for the purpose of terrorism, to provide training for terrorism and to recruit for terrorism should be punishable.
- (17) With regard to the criminal offences provided for in this Directive, the notion of intention must apply to all the elements constituting those offences. The intentional nature of an act or omission may be inferred from objective, factual circumstances.
- (18) Penalties and sanctions should be provided for natural and legal persons being liable for such offences, which reflect the seriousness of such offences.
- (19) When recruitment and training for terrorism are directed towards a child, Member States should ensure that judges can take this circumstance into account when sentencing offenders, although there is no obligation on judges to increase the sentence. It remains within the discretion of the judge to assess that circumstance together with the other facts of the particular case.

⁽¹⁾ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

- (20) Jurisdictional rules should be established to ensure that the offences laid down in this Directive may be effectively prosecuted. In particular, it appears appropriate to establish jurisdiction for the offences committed by the providers of training for terrorism, whatever their nationality, in view of the possible effects of such conducts on the territory of the Union and of the close material connection between the offences of providing and receiving training for terrorism.
- (21) To ensure the success of investigations and the prosecution of terrorist offences, offences related to a terrorist group or offences related to terrorist activities, those responsible for investigating or prosecuting such offences should have the possibility to make use of effective investigative tools such as those which are used in combating organised crime or other serious crimes. The use of such tools, in accordance with national law, should be targeted and take into account the principle of proportionality and the nature and seriousness of the offences under investigation and should respect the right to the protection of personal data. Such tools should, where appropriate, include, for example, the search of any personal property, the interception of communications, covert surveillance including electronic surveillance, the taking and the keeping of audio recordings, in private or public vehicles and places, and of visual images of persons in public vehicles and places, and financial investigations.
- (22) An effective means of combating terrorism on the internet is to remove online content constituting a public provocation to commit a terrorist offence at its source. Member States should use their best endeavours to cooperate with third countries in seeking to secure the removal of online content constituting a public provocation to commit a terrorist offence from servers within their territory. However, when removal of such content at its source is not feasible, mechanisms may also be put in place to block access from Union territory to such content. The measures undertaken by Member States in accordance with this Directive in order to remove online content constituting a public provocation to commit a terrorist offence or, where this is not feasible, block access to such content could be based on public action, such as legislative, non-legislative or judicial action. In that context, this Directive is without prejudice to voluntary action taken by the internet industry to prevent the misuse of its services or to any support for such action by Member States, such as detecting and flagging terrorist content. Whichever basis for action or method is chosen, Member States should ensure that it provides an adequate level of legal certainty and predictability for users and service providers and the possibility of judicial redress in accordance with national law. Any such measures must take account of the rights of the end users and comply with existing legal and judicial procedures and the Charter of Fundamental Rights of the European Union (the Charter).
- (23) The removal of online content constituting a public provocation to commit a terrorist offence or, where it is not feasible, the blocking of access to such content, in accordance with this Directive, should be without prejudice to the rules laid down in Directive 2000/31/EC of the European Parliament and of the Council⁽¹⁾. In particular, no general obligation should be imposed on service providers to monitor the information which they transmit or store, nor to actively seek out facts or circumstances indicating illegal activity. Furthermore, hosting service providers should not be held liable as long as they do not have actual knowledge of illegal activity or information and are not aware of the facts or circumstances from which the illegal activity or information is apparent.
- (24) To combat terrorism effectively, efficient exchange of information considered to be relevant by the competent authorities for the prevention, detection, investigation or prosecution of terrorist offences between competent authorities and Union agencies, is crucial. Member States should ensure that information is exchanged in an effective and timely manner in accordance with national law and the existing Union legal framework, such as Decision 2005/671/JHA, Council Decision 2007/533/JHA⁽²⁾ and Directive (EU) 2016/681 of the European Parliament and of the Council⁽³⁾. When considering whether to exchange relevant information, national competent authorities should take into account the serious threat posed by terrorist offences.

⁽¹⁾ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

⁽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).

⁽³⁾ Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ L 119, 4.5.2016, p. 132).

- (25) To strengthen the existing framework on information exchange in combating terrorism, as set out in Decision 2005/671/JHA, Member States should ensure that relevant information gathered by their competent authorities in the framework of criminal proceedings, for example, law enforcement authorities, prosecutors or investigative judges, is made accessible to the respective competent authorities of another Member State to which they consider this information could be relevant. As a minimum, such relevant information should include, as appropriate, the information that is transmitted to Europol or Eurojust in accordance with Decision 2005/671/JHA. This is subject to Union rules on data protection, as laid down in Directive (EU) 2016/680 of the European Parliament and of the Council ⁽¹⁾ and without prejudice to Union rules on cooperation between competent national authorities in the framework of criminal proceedings, such as those laid down in Directive 2014/41/EU of the European Parliament and of the Council ⁽²⁾ or Framework Decision 2006/960/JHA.
- (26) Relevant information gathered by competent authorities of the Member States in the framework of criminal proceedings in connection with terrorist offences should be exchanged. The term 'criminal proceedings' is understood to cover all stages of the proceedings, from the moment a person is suspected or accused of having committed a criminal offence until the decision on the final determination of whether that person committed the criminal offence concerned has become definitive.
- (27) Member States should adopt measures of protection, support and assistance responding to the specific needs of victims of terrorism, in accordance with Directive 2012/29/EU of the European Parliament and the Council ⁽³⁾ and as further qualified by this Directive. A victim of terrorism is that defined in Article 2 of Directive 2012/29/EU, namely a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, insofar as that was directly caused by a terrorist offence, or a family member of a person whose death was directly caused by a terrorist offence and who has suffered harm as a result of that person's death. Family members of surviving victims of terrorism, as defined in that Article, have access to victim support services and protection measures in accordance with that Directive.
- (28) The assistance with victims' compensation claims is without prejudice and in addition to the assistance which victims of terrorism receive from assisting authorities in accordance with Council Directive 2004/80/EC ⁽⁴⁾. This is without prejudice to the national rules on legal representation for claiming compensation, including through legal aid arrangements, and any other relevant national rules on compensation.
- (29) Member States should ensure that a comprehensive response to the specific needs of victims of terrorism immediately after a terrorist attack and for as long as necessary is provided within the national emergency-response infrastructure. To that end, Member States may set up a single and updated website with all relevant information and an emergency support centre for victims and their family members providing for psychological first aid and emotional support. Initiatives of Member States in this respect should be supported by making full use of available common assistance mechanisms and resources at Union level. Support services should take into account that specific needs of victims of terrorism may evolve over time. In that regard, the Member States should ensure that support services address in the first place at least the emotional and psychological needs of the most vulnerable victims of terrorism, and inform all victims of terrorism about the availability of further emotional and psychological support including trauma support and counselling.
- (30) Member States should ensure that all victims of terrorism have access to information about victims' rights, available support services and compensation schemes in the Member State where the terrorist offence was committed. Member States concerned should take appropriate action to facilitate cooperation with each other in order to ensure that victims of terrorism who are residents of a Member State other than that where the terrorist offence was committed, have effective access to such information. Moreover the Member States should ensure that victims of terrorism have access to long-term support services in the Member State of their residence, even if the terrorist offence took place in another Member State.

⁽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⁾ 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).

⁽³⁾ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

⁽⁴⁾ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ L 261, 6.8.2004, p. 15).

- (31) As reflected in the revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism of 2014 and in the Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism of 2015, prevention of radicalisation and recruitment to terrorism, including radicalisation online, requires a long-term, proactive and comprehensive approach. Such approach should combine measures in the area of criminal justice with policies in the fields of education, social inclusion and integration, as well as the provision of effective deradicalisation or disengagement and exit or rehabilitation programmes, including in the prison and probation context. Member States should share good practices on effective measures and projects in this field, in particular as regards foreign terrorist fighters as well as returnees, where appropriate in cooperation with the Commission and the relevant Union agencies and bodies.
- (32) Member States should pursue their efforts to prevent and counter radicalisation leading to terrorism by coordinating, by sharing information and experience on national prevention policies, and by implementing or, as the case may be, updating national prevention policies taking into account their own needs, objectives and capabilities building on their own experiences. The Commission should, where appropriate, provide support to national, regional and local authorities in developing prevention policies.
- (33) Member States should, depending on the relevant needs and particular circumstances in each Member State, provide support to professionals, including civil society partners likely to come in contact with persons vulnerable to radicalisation. Such support measures may include, in particular, training and awareness-raising measures aimed at enabling them to identify and address signs of radicalisation. Such measures should, where appropriate, be taken in cooperation with private companies, relevant civil society organisations, local communities and other stakeholders.
- (34) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of the need for Union-wide harmonised rules, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (35) This Directive respects the principles recognised by Article 2 TEU, respects fundamental rights and freedoms and observes the principles recognised, in particular, by the Charter, including those set out in Titles II, III, V and VI thereof which encompass, inter alia, the right to liberty and security, freedom of expression and information, freedom of association and freedom of thought, conscience and religion, the general prohibition of discrimination, in particular on grounds of race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, the right to respect for private and family life and the right to protection of personal data, the principles of legality and proportionality of criminal offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law, the presumption of innocence as well as freedom of movement as set out in Article 21(1) of the Treaty on the Functioning of the European Union (TFEU) and in Directive 2004/38/EC of the European Parliament and of the Council ⁽¹⁾. This Directive has to be implemented in accordance with those rights and principles taking also into account the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other human rights obligations under international law.
- (36) This Directive is without prejudice to the Member States' obligations under Union law with regard to the procedural rights of suspects or accused persons in criminal proceedings.
- (37) This Directive should not have the effect of altering the rights, obligations and responsibilities of the Member States under international law, including under international humanitarian law. This Directive does not govern the activities of armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of those terms under that law, and, inasmuch as they are governed by other rules of international law, activities of the military forces of a State in the exercise of their official duties.
- (38) The provision of humanitarian activities by impartial humanitarian organisations recognised by international law, including international humanitarian law, do not fall within the scope of this Directive, while taking into account the case-law of the Court of Justice of the European Union.

⁽¹⁾ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

- (39) The implementation of criminal law measures adopted under this Directive should be proportional to the nature and circumstances of the offence, with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness, racism or discrimination.
- (40) Nothing in this Directive should be interpreted as being intended to reduce or restrict the dissemination of information for scientific, academic or reporting purposes. The expression of radical, polemic or controversial views in the public debate on sensitive political questions, falls outside the scope of this Directive and, in particular, of the definition of public provocation to commit terrorist offences.
- (41) In accordance with Articles 1 and 2 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 Directive and are not bound by it or subject to its application.
- (42) In accordance with Articles 1 and 2 of 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 Directive and is not bound by it or subject to its application.
- (43) This Directive should therefore replace Framework Decision 2002/475/JHA with regard to the Member States bound by this Directive and amend Decision 2005/671/JHA,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of terrorist offences, offences related to a terrorist group and offences related to terrorist activities, as well as measures of protection of, and support and assistance to, victims of terrorism.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) 'funds' means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit,
- (2) 'legal person' means any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations,
- (3) 'terrorist group' means a structured group of more than two persons, established for a period of time and acting in concert to commit terrorist offences; 'structured group' means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

TITLE II

TERRORIST OFFENCES AND OFFENCES RELATED TO A TERRORIST GROUP*Article 3***Terrorist offences**

1. Member States shall take the necessary measures to ensure that the following intentional acts, as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation, are defined as terrorist offences where committed with one of the aims listed in paragraph 2:

- (a) attacks upon a person's life which may cause death;
- (b) attacks upon the physical integrity of a person;
- (c) kidnapping or hostage-taking;
- (d) causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- (e) seizure of aircraft, ships or other means of public or goods transport;
- (f) manufacture, possession, acquisition, transport, supply or use of explosives or weapons, including chemical, biological, radiological or nuclear weapons, as well as research into, and development of, chemical, biological, radiological or nuclear weapons;
- (g) release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life;
- (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
- (i) illegal system interference, as referred to in Article 4 of Directive 2013/40/EU of the European Parliament and of the Council ⁽¹⁾ in cases where Article 9(3) or point (b) or (c) of Article 9(4) of that Directive applies, and illegal data interference, as referred to in Article 5 of that Directive in cases where point (c) of Article 9(4) of that Directive applies;
- (j) threatening to commit any of the acts listed in points (a) to (i).

2. The aims referred to in paragraph 1 are:

- (a) seriously intimidating a population;
- (b) unduly compelling a government or an international organisation to perform or abstain from performing any act;
- (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.

*Article 4***Offences relating to a terrorist group**

Member States shall take the necessary measures to ensure that the following acts, when committed intentionally, are punishable as a criminal offence:

- (a) directing a terrorist group;
- (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.

⁽¹⁾ Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ L 218, 14.8.2013, p. 8).

TITLE III

OFFENCES RELATED TO TERRORIST ACTIVITIES

*Article 5***Public provocation to commit a terrorist offence**

Member States shall take the necessary measures to ensure that the distribution, or otherwise making available by any means, whether online or offline, of a message to the public, with the intent to incite the commission of one of the offences listed in points (a) to (i) of Article 3(1), where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed, is punishable as a criminal offence when committed intentionally.

*Article 6***Recruitment for terrorism**

Member States shall take the necessary measures to ensure that soliciting another person to commit or contribute to the commission of one of the offences listed in points (a) to (i) of Article 3(1), or in Article 4 is punishable as a criminal offence when committed intentionally.

*Article 7***Providing training for terrorism**

Member States shall take the necessary measures to ensure that providing instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the offences listed in points (a) to (i) of Article 3(1), knowing that the skills provided are intended to be used for this purpose, is punishable as a criminal offence when committed intentionally.

*Article 8***Receiving training for terrorism**

Member States shall take the necessary measures to ensure that receiving instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the offences listed in points (a) to (i) of Article 3(1) is punishable as a criminal offence when committed intentionally.

*Article 9***Travelling for the purpose of terrorism**

1. Each Member State shall take the necessary measures to ensure that travelling to a country other than that Member State for the purpose of committing, or contributing to the commission of, a terrorist offence as referred to in Article 3, for the purpose of the participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group as referred to in Article 4, or for the purpose of the providing or receiving of training for terrorism as referred to in Articles 7 and 8 is punishable as a criminal offence when committed intentionally.

2. Each Member State shall take the necessary measures to ensure that one of the following conducts is punishable as a criminal offence when committed intentionally:

- (a) travelling to that Member State for the purpose of committing, or contributing to the commission of, a terrorist offence as referred to in Article 3, for the purpose of the participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group as referred to in Article 4, or for the purpose of the providing or receiving of training for terrorism as referred to in Articles 7 and 8; or
- (b) preparatory acts undertaken by a person entering that Member State with the intention to commit, or contribute to the commission of, a terrorist offence as referred to in Article 3.

*Article 10***Organising or otherwise facilitating travelling for the purpose of terrorism**

Member States shall take the necessary measures to ensure that any act of organisation or facilitation that assists any person in travelling for the purpose of terrorism, as referred to in Article 9(1) and point (a) of Article 9(2), knowing that the assistance thus rendered is for that purpose, is punishable as a criminal offence when committed intentionally.

*Article 11***Terrorist financing**

1. Member States shall take the necessary measures to ensure that providing or collecting funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to commit, or to contribute to the commission of, any of the offences referred to in Articles 3 to 10 is punishable as a criminal offence when committed intentionally.

2. Where the terrorist financing referred to in paragraph 1 of this Article concerns any of the offences laid down in Articles 3, 4 and 9, it shall not be necessary that the funds be in fact used, in full or in part, to commit, or to contribute to the commission of, any of those offences, nor shall it be required that the offender knows for which specific offence or offences the funds are to be used.

*Article 12***Other offences related to terrorist activities**

Member States shall take the necessary measures to ensure that offences related to terrorist activities include the following intentional acts:

- (a) aggravated theft with a view to committing one of the offences listed in Article 3;
- (b) extortion with a view to committing one of the offences listed in Article 3;
- (c) drawing up or using false administrative documents with a view to committing one of the offences listed in points (a) to (i) of Article 3(1), point (b) of Article 4, and Article 9.

TITLE IV

GENERAL PROVISIONS RELATING TO TERRORIST OFFENCES, OFFENCES RELATED TO A TERRORIST GROUP AND OFFENCES RELATED TO TERRORIST ACTIVITIES*Article 13***Relationship to terrorist offences**

For an offence referred to in Article 4 or Title III to be punishable, it shall not be necessary that a terrorist offence be actually committed, nor shall it be necessary, insofar as the offences referred to in Articles 5 to 10 and 12 are concerned, to establish a link to another specific offence laid down in this Directive.

*Article 14***Aiding and abetting, inciting and attempting**

1. Member States shall take the necessary measures to ensure that aiding and abetting an offence referred to in Articles 3 to 8, 11 and 12 is punishable.

2. Member States shall take the necessary measures to ensure that inciting an offence referred to in Articles 3 to 12 is punishable.

3. Member States shall take the necessary measures to ensure that attempting to commit an offence referred to in Articles 3, 6, 7, Article 9(1), point (a) of Article 9(2), and Articles 11 and 12, with the exception of possession as provided for in point (f) of Article 3(1) and the offence referred to in point (j) of Article 3(1), is punishable.

*Article 15***Penalties for natural persons**

1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 12 and 14 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail surrender or extradition.
2. Member States shall take the necessary measures to ensure that the terrorist offences referred to in Article 3 and offences referred to in Article 14, insofar as they relate to terrorist offences, are punishable by custodial sentences heavier than those impossible under national law for such offences in the absence of the special intent required pursuant to Article 3, except where the sentences impossible are already the maximum possible sentences under national law.
3. Member States shall take the necessary measures to ensure that offences listed in Article 4 are punishable by custodial sentences, with a maximum sentence of not less than 15 years for the offence referred to in point (a) of Article 4, and for the offences listed in point (b) of Article 4 a maximum sentence of not less than 8 years. Where the terrorist offence referred to in point (j) of Article 3(1) is committed by a person directing a terrorist group as referred to in point (a) of Article 4, the maximum sentence shall not be less than 8 years.
4. Member States shall take the necessary measures to ensure that when a criminal offence referred to in Article 6 or 7 is directed towards a child, this may, in accordance with national law, be taken into account when sentencing.

*Article 16***Mitigating circumstances**

Member States may take the necessary measures to ensure that the penalties referred to in Article 15 may be reduced if the offender:

- (a) renounces terrorist activity; and
- (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
 - (i) prevent or mitigate the effects of the offence;
 - (ii) identify or bring to justice the other offenders;
 - (iii) find evidence; or
 - (iv) prevent further offences referred to in Articles 3 to 12 and 14.

*Article 17***Liability of legal persons**

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 3 to 12 and 14 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:
 - (a) a power of representation of the legal person;
 - (b) an authority to take decisions on behalf of the legal person;
 - (c) an authority to exercise control within the legal person.
2. Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission of any of the offences referred to in Articles 3 to 12 and 14 for the benefit of that legal person by a person under its authority.
3. Liability of legal persons under paragraphs 1 and 2 of this Article shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in any of the offences referred to in Articles 3 to 12 and 14.

*Article 18***Sanctions for legal persons**

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 17 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

*Article 19***Jurisdiction and prosecution**

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 12 and 14 where:

- (a) the offence is committed in whole or in part in its territory;
- (b) the offence is committed on board a vessel flying its flag or an aircraft registered there;
- (c) the offender is one of its nationals or residents;
- (d) the offence is committed for the benefit of a legal person established in its territory;
- (e) the offence is committed against the institutions or people of the Member State in question or against an institution, body, office or agency of the Union based in that Member State.

Each Member State may extend its jurisdiction if the offence is committed in the territory of another Member State.

2. Each Member State may extend its jurisdiction over providing training for terrorism as referred to in Article 7, where the offender provides training to its nationals or residents, in cases where paragraph 1 of this Article is not applicable. The Member State shall inform the Commission thereof.

3. When an offence falls within the jurisdiction of more than one Member State and when any of the Member States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States may have recourse to Eurojust in order to facilitate cooperation between their judicial authorities and the coordination of their action.

Account shall be taken of the following factors:

- (a) the Member State shall be that in the territory of which the offence was committed;
- (b) the Member State shall be that of which the offender is a national or resident;
- (c) the Member State shall be the country of origin of the victims;
- (d) the Member State shall be that in the territory of which the offender was found.

4. Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred to in Articles 3 to 12 and 14 in cases where it refuses to surrender or extradite a person suspected or convicted of such an offence to another Member State or to a third country.
5. Each Member State shall ensure that its jurisdiction covers cases in which any of the offences referred to in Articles 4 and 14 has been committed in whole or in part within its territory, regardless of where the terrorist group is based or pursues its criminal activities.
6. This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national law.

Article 20

Investigative tools and confiscation

1. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 to 12.
2. Member States shall take the necessary measures to ensure that their competent authorities freeze or confiscate, as appropriate, in accordance with Directive 2014/42/EU of the European Parliament and of the Council ⁽¹⁾, the proceeds derived from and instrumentalities used or intended to be used in the commission or contribution to the commission of any of the offences referred to in this Directive.

Article 21

Measures against public provocation content online

1. Member States shall take the necessary measures to ensure the prompt removal of online content constituting a public provocation to commit a terrorist offence, as referred to in Article 5, that is hosted in their territory. They shall also endeavour to obtain the removal of such content hosted outside their territory.
2. Member States may, when removal of the content referred to in paragraph 1 at its source is not feasible, take measures to block access to such content towards the internet users within their territory.
3. Measures of removal and blocking must be set following transparent procedures and provide adequate safeguards, in particular to ensure that those measures are limited to what is necessary and proportionate and that users are informed of the reason for those measures. Safeguards relating to removal or blocking shall also include the possibility of judicial redress.

Article 22

Amendments to Decision 2005/671/JHA

Decision 2005/671/JHA is amended as follows:

- (1) in Article 1, point (a) is replaced by the following:

‘(a) “terrorist offences”: the offences referred to in Directive (EU) 2017/541 of the European Parliament and of the Council (*)

(*) Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).;

- (2) Article 2 is amended as follows:

- (a) paragraph 6 is replaced by the following:

‘6. Each Member State shall take the necessary measures to ensure that relevant information gathered by its competent authorities in the framework of criminal proceedings in connection with terrorist offences is

(1) Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

made accessible as soon as possible to the competent authorities of another Member State where the information could be used in the prevention, detection, investigation or prosecution of terrorist offences as referred to in Directive (EU) 2017/541, in that Member State, either upon request or spontaneously, and in accordance with national law and relevant international legal instruments.’;

(b) the following paragraphs are added:

‘7. Paragraph 6 is not applicable where the sharing of information would jeopardise current investigations or the safety of an individual, nor when it would be contrary to essential interests of the security of the Member State concerned.

8. Member States shall take the necessary measures to ensure that their competent authorities take, upon receiving the information referred to in paragraph 6, timely measures in accordance with national law, as appropriate.’.

Article 23

Fundamental rights and freedoms

1. This Directive shall not have the effect of modifying the obligations to respect fundamental rights and fundamental legal principles, as enshrined in Article 6 TEU.

2. Member States may establish conditions required by, and in accordance with, fundamental principles relating to freedom of the press and other media, governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where such conditions relate to the determination or limitation of liability.

TITLE V

PROVISIONS ON PROTECTION OF, SUPPORT TO, AND RIGHTS OF VICTIMS OF TERRORISM

Article 24

Assistance and support to victims of terrorism

1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Directive are not dependent on a report or accusation made by a victim of terrorism or other person subjected to the offence, at least if the acts were committed on the territory of the Member State.

2. Member States shall ensure that support services addressing the specific needs of victims of terrorism are in place in accordance with Directive 2012/29/EU and that they are available for victims of terrorism immediately after a terrorist attack and for as long as necessary. Such services shall be provided in addition to, or as an integrated part of, general victim support services, which may call on existing entities providing specialist support.

3. The support services shall have the ability to provide assistance and support to victims of terrorism in accordance with their specific needs. The services shall be confidential, free of charge and easily accessible to all victims of terrorism. They shall include in particular:

- (a) emotional and psychological support, such as trauma support and counselling;
- (b) provision of advice and information on any relevant legal, practical or financial matters, including facilitating the exercise of the right to information of victims of terrorism, as laid down in Article 26;
- (c) assistance with claims regarding compensation for victims of terrorism available under the national law of the Member State concerned.

4. Member States shall ensure that mechanisms or protocols are in place allowing for activation of support services for victims of terrorism within the framework of their national emergency-response infrastructures. Such mechanisms or protocols shall envisage the coordination of relevant authorities, agencies and bodies to be able to provide a comprehensive response to the needs of victims and their family members immediately after a terrorist attack and for as long as necessary, including adequate means facilitating the identification of and communication to victims and their families.

5. Member States shall ensure that adequate medical treatment is provided to victims of terrorism immediately after a terrorist attack and for as long as necessary. Member States shall retain the right to organise the provision of medical treatment to victims of terrorism in accordance with their national healthcare systems.
6. Member States shall ensure that victims of terrorism have access to legal aid in accordance with Article 13 of Directive 2012/29/EU, where they have the status of parties to criminal proceedings. Member States shall ensure that the severity and the circumstances of the criminal offence are duly reflected in the conditions and procedural rules under which victims of terrorism have access to legal aid in accordance with national law.
7. This Directive shall apply in addition, and without prejudice, to measures laid down in Directive 2012/29/EU.

Article 25

Protection of victims of terrorism

Member States shall ensure that measures are available to protect victims of terrorism and their family members, in accordance with Directive 2012/29/EU. When determining whether and to what extent they should benefit from protection measures in the course of criminal proceedings, particular attention shall be paid to the risk of intimidation and retaliation and to the need to protect the dignity and physical integrity of victims of terrorism, including during questioning and when testifying.

Article 26

Rights of victims of terrorism resident in another Member State

1. Member States shall ensure that victims of terrorism who are residents of a Member State other than that where the terrorist offence was committed have access to information regarding their rights, the available support services and compensation schemes in the Member State where the terrorist offence was committed. In this respect, Member States concerned shall take appropriate action to facilitate cooperation between their competent authorities or entities providing specialist support to ensure the effective access of victims of terrorism to such information.
2. Member States shall ensure that all victims of terrorism have access to the assistance and support services as laid down in points (a) and (b) of Article 24(3) on the territory of the Member State of their residence, even if the terrorist offence was committed in another Member State.

TITLE VI

FINAL PROVISIONS

Article 27

Replacement of Framework Decision 2002/475/JHA

Framework Decision 2002/475/JHA is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for transposition of that Framework Decision into national law.

With regard to the Member States bound by this Directive, references to Framework Decision 2002/475/JHA shall be construed as references to this Directive.

Article 28

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 8 September 2018. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 29

Reporting

1. The Commission shall, by 8 March 2020, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.

2. The Commission shall, by 8 September 2021, submit a report to the European Parliament and to the Council, assessing the added value of this Directive with regard to combating terrorism. The report shall also cover the impact of this Directive on fundamental rights and freedoms, including on non-discrimination, on the rule of law, and on the level of protection and assistance provided to victims of terrorism. The Commission shall take into account the information provided by Member States under Decision 2005/671/JHA and any other relevant information regarding the exercise of powers under counter-terrorism laws related to the transposition and implementation of this Directive. On the basis of this evaluation, the Commission shall, if necessary, decide on appropriate follow-up actions.

Article 30

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 31

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 15 March 2017.

For the European Parliament

The President

A. TAJANI

For the Council

The President

I. BORG

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2008/913/JHA

of 28 November 2008

on combating certain forms and expressions of racism and xenophobia by means of criminal law

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 31 and 34(2)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Whereas:

(1) Racism and xenophobia are direct violations of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles upon which the European Union is founded and which are common to the Member States.

(2) The Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice ⁽²⁾, the Conclusions of the Tampere European Council of 15 and 16 October 1999, the Resolution of the European Parliament of 20 September 2000 on the European Union's position at the World Conference Against Racism and the current situation in the Union ⁽³⁾ and the Communication from the Commission to the Council and the European Parliament on the biannual update of the Scoreboard to review progress on the creation of an area of 'freedom, security and justice' in the European Union (second half of 2000) call for action in this field. In the Hague Programme of 4 and 5 November 2004, the Council recalls its firm commitment to oppose any form of racism, anti-Semitism and xenophobia as already expressed by the European Council in December 2003.

(3) Council Joint Action 96/443/JHA of 15 July 1996 concerning action to combat racism and xenophobia ⁽⁴⁾ should be followed by further legislative action addressing the need for further approximation of law and regulations of Member States and for overcoming obstacles for efficient judicial cooperation which are mainly based on the divergence of legal approaches in the Member States.

(4) According to the evaluation of Joint Action 96/443/JHA and work carried out in other international fora, such as the Council of Europe, some difficulties have still been experienced regarding judicial cooperation and therefore there is a need for further approximation of Member States' criminal laws in order to ensure the effective implementation of comprehensive and clear legislation to combat racism and xenophobia.

(5) Racism and xenophobia constitute a threat against groups of persons which are the target of such behaviour. It is necessary to define a common criminal-law approach in the European Union to this phenomenon in order to ensure that the same behaviour constitutes an offence in all Member States and that effective, proportionate and dissuasive penalties are provided for natural and legal persons having committed or being liable for such offences.

(6) Member States acknowledge that combating racism and xenophobia requires various kinds of measures in a comprehensive framework and may not be limited to criminal matters. This Framework Decision is limited to combating particularly serious forms of racism and xenophobia by means of criminal law. Since the Member States' cultural and legal traditions are, to some extent, different, particularly in this field, full harmonisation of criminal laws is currently not possible.

⁽¹⁾ Opinion of 29 November 2007 (not yet published in the Official Journal).

⁽²⁾ OJ C 19, 23.1.1999, p. 1.

⁽³⁾ OJ C 146, 17.5.2001, p. 110.

⁽⁴⁾ OJ L 185, 24.7.1996, p. 5.

- (7) In this Framework Decision 'descent' should be understood as referring mainly to persons or groups of persons who descend from persons who could be identified by certain characteristics (such as race or colour), but not necessarily all of these characteristics still exist. In spite of that, because of their descent, such persons or groups of persons may be subject to hatred or violence.
- (8) 'Religion' should be understood as broadly referring to persons defined by reference to their religious convictions or beliefs.
- (9) 'Hatred' should be understood as referring to hatred based on race, colour, religion, descent or national or ethnic origin.
- (10) This Framework Decision does not prevent a Member State from adopting provisions in national law which extend Article 1(1)(c) and (d) to crimes directed against a group of persons defined by other criteria than race, colour, religion, descent or national or ethnic origin, such as social status or political convictions.
- (11) It should be ensured that investigations and prosecutions of offences involving racism and xenophobia are not dependent on reports or accusations made by victims, who are often particularly vulnerable and reluctant to initiate legal proceedings.
- (12) Approximation of criminal law should lead to combating racist and xenophobic offences more effectively, by promoting a full and effective judicial cooperation between Member States. The difficulties which may exist in this field should be taken into account by the Council when reviewing this Framework Decision with a view to considering whether further steps in this area are necessary.
- (13) Since the objective of this Framework Decision, namely ensuring that racist and xenophobic offences are sanctioned in all Member States by at least a minimum level of effective, proportionate and dissuasive criminal penalties, cannot be sufficiently achieved by the Member States individually, since such rules have to be common and compatible and since this objective can therefore be better achieved at the level of the European Union, the Union may adopt measures, in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and as set out in Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.
- (14) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the

Treaty on European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Articles 10 and 11 thereof, and reflected in the Charter of Fundamental Rights of the European Union, and notably Chapters II and VI thereof.

- (15) Considerations relating to freedom of association and freedom of expression, in particular freedom of the press and freedom of expression in other media have led in many Member States to procedural guarantees and to special rules in national law as to the determination or limitation of liability.
- (16) Joint Action 96/443/JHA should be repealed since, with the entry into force of the Treaty of Amsterdam, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ⁽¹⁾ and this Framework Decision, it becomes obsolete,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Offences concerning racism and xenophobia

1. Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:
- (a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;
- (b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material;
- (c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;
- (d) publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.

⁽¹⁾ OJ L 180, 19.7.2000, p. 22.

2. For the purpose of paragraph 1, Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting.

3. For the purpose of paragraph 1, the reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin.

4. Any Member State may, on adoption of this Framework Decision or later, make a statement that it will make punishable the act of denying or grossly trivialising the crimes referred to in paragraph 1(c) and/or (d) only if the crimes referred to in these paragraphs have been established by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court only.

Article 2

Instigation, aiding and abetting

1. Each Member State shall take the measures necessary to ensure that instigating the conduct referred to in Article 1(1)(c) and (d) is punishable.

2. Each Member State shall take the measures necessary to ensure that aiding and abetting in the commission of the conduct referred to in Article 1 is punishable.

Article 3

Criminal penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 1 and 2 is punishable by effective, proportionate and dissuasive criminal penalties.

2. Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 1 is punishable by criminal penalties of a maximum of at least between 1 and 3 years of imprisonment.

Article 4

Racist and xenophobic motivation

For offences other than those referred to in Articles 1 and 2, Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.

Article 5

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that a legal person can be held liable for the conduct referred to in Articles 1 and 2, committed for its benefit by any

person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Apart from the cases provided for in paragraph 1 of this Article, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission of the conduct referred to in Articles 1 and 2 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 of this Article shall not exclude criminal proceedings against natural persons who are perpetrators or accessories in the conduct referred to in Articles 1 and 2.

4. 'Legal person' means any entity having such status under the applicable national law, with the exception of States or other public bodies in the exercise of State authority and public international organisations.

Article 6

Penalties for legal persons

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order.

2. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(2) is punishable by effective, proportionate and dissuasive penalties or measures.

Article 7

Constitutional rules and fundamental principles

1. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles, including freedom of expression and association, as enshrined in Article 6 of the Treaty on European Union.

2. This Framework Decision shall not have the effect of requiring Member States to take measures in contradiction to fundamental principles relating to freedom of association and freedom of expression, in particular freedom of the press and the freedom of expression in other media as they result from constitutional traditions or rules governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability.

Article 8

Initiation of investigation or prosecution

Each Member State shall take the necessary measures to ensure that investigations into or prosecution of the conduct referred to in Articles 1 and 2 shall not be dependent on a report or an accusation made by a victim of the conduct, at least in the most serious cases where the conduct has been committed in its territory.

Article 9

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction with regard to the conduct referred to in Articles 1 and 2 where the conduct has been committed:

- (a) in whole or in part within its territory;
- (b) by one of its nationals; or
- (c) for the benefit of a legal person that has its head office in the territory of that Member State.

2. When establishing jurisdiction in accordance with paragraph 1(a), each Member State shall take the necessary measures to ensure that its jurisdiction extends to cases where the conduct is committed through an information system and:

- (a) the offender commits the conduct when physically present in its territory, whether or not the conduct involves material hosted on an information system in its territory;
- (b) the conduct involves material hosted on an information system in its territory, whether or not the offender commits the conduct when physically present in its territory.

3. A Member State may decide not to apply, or to apply only in specific cases or circumstances, the jurisdiction rule set out in paragraphs 1(b) and (c).

Article 10

Implementation and review

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 28 November 2010.

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 by the Council and a written report from the Commission, the Council shall, by 28 November 2013, assess the extent to which Member States have complied with the provisions of this Framework Decision.

3. Before 28 November 2013, the Council shall review this Framework Decision. For the preparation of this review, the Council shall ask Member States whether they have experienced difficulties in judicial cooperation with regard to the conduct under Article 1(1). In addition, the Council may request Eurojust to submit a report, on whether differences between national legislations have resulted in any problems regarding judicial cooperation between the Member States in this area.

Article 11

Repeal of Joint Action 96/443/JHA

Joint Action 96/443/JHA is hereby repealed.

Article 12

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 13

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, 28 November 2008.

For the Council

The President

M. ALLIOT-MARIE

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL DECISION

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

(2002/494/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Title VI of the Treaty on European Union, and in particular Article 30 and Article 34(2)(c) thereof,

Having regard to the initiative of the Kingdom of the Netherlands,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

(1) The International Criminal Tribunals for the former Yugoslavia and for Rwanda have since 1995 been investigating, prosecuting and bringing to justice violations of laws and customs of war, genocide and crimes against humanity.

(2) The Rome Statute of the International Criminal Court of 17 July 1998 affirms that the most serious crimes of concern to the international community as a whole, in particular genocide, crimes against humanity and war crimes, must not go unpunished and that their effective prosecution must be ensured by taking measures at national level and by enhancing international cooperation.

(3) The Rome Statute recalls that it is the duty of every State to exercise its criminal jurisdiction over those responsible for such international crimes.

(4) The Rome Statute emphasises that the International Criminal Court established under it is to be complementary to national criminal jurisdictions.

(5) All Member States of the European Union have either signed or ratified the Rome Statute.

(6) The investigation and prosecution of, and exchange of information on, genocide, crimes against humanity and

war crimes is to remain the responsibility of national authorities, except as affected by international law.

(7) Member States are being confronted with persons who were involved in such crimes and are seeking refuge within the European Union's frontiers.

(8) The successful outcome of effective investigation and prosecution of such crimes at national level depends to a high degree on close cooperation between the various authorities involved in combating them.

(9) It is essential that the relevant authorities of the States Parties to the Rome Statute, including the Member States of the European Union, cooperate closely in this connection.

(10) Close cooperation will be enhanced if the Member States make provision for direct communication between centralised, specialised contact points.

(11) Close cooperation between such contact points may provide a more complete overview of persons involved in such crimes, including the question of in which Member States they are the subject of investigation.

(12) The Member States, in Council Common Position 2001/443/CFSP of 11 June 2001 on the International Criminal Court ⁽²⁾, have expressed that the crimes within the jurisdiction of the International Criminal Court are of concern for all Member States, which are determined to cooperate for the prevention of those crimes and for putting an end to the impunity of the perpetrators thereof.

(13) This Decision does not affect any convention, agreement or arrangement regarding mutual assistance in criminal matters between judicial authorities,

⁽¹⁾ OJ C 295, 20.10.2001, p. 7.

⁽²⁾ Opinion delivered on 9 April 2002 (not yet published in the Official Journal).

HAS DECIDED AS FOLLOWS:

Article 1

Designation and notification of contact points

1. Each Member State shall designate a contact point for the exchange of information concerning the investigation of genocide, crimes against humanity and war crimes such as those defined in Articles 6, 7 and 8 of the Rome Statute of the International Criminal Court of 17 July 1998.
2. Each Member State shall notify the General Secretariat of the Council in writing of its contact point within the meaning of this Decision. The General Secretariat shall ensure that this notification is passed on to the Member States, and inform the Member States of any changes in these notifications.

Article 2

Collection and exchange of information

1. Each contact point's task shall be to provide on request, in accordance with the relevant arrangements between Member States and applicable national law, any available information that may be relevant in the context of investigations into genocide, crimes against humanity and war crimes as referred to in Article 1(1), or to facilitate cooperation with the competent national authorities.
2. Within the limits of the applicable national law, contact points may exchange information without a request to that effect.

Article 3

Informing the European Parliament

The Council will inform the European Parliament of the functioning and effectiveness of the European network of contact points in the context of the annual debate held by the European Parliament pursuant to Article 39 of the Treaty.

Article 4

Implementation

Member States shall ensure that they are able to cooperate fully in accordance with the provisions of this Decision at the latest one year after this Decision takes effect.

Article 5

Taking effect

This Decision shall take effect on the date of its adoption.

Done at Luxembourg, 13 June 2002.

For the Council

The President

M. RAJOY BREY

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL DECISION 2003/335/JHA
of 8 May 2003
on the investigation and prosecution of genocide, crimes against humanity and war crimes

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 30, 31 and 34(2)(c) 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 International Criminal Tribunals for the former Yugoslavia and for Rwanda have since 1995 been investigating, prosecuting and bringing to justice violations of international law in connection with war, genocide and crimes against humanity.
- (2) The Rome Statute of the International Criminal Court of 17 July 1998, which has been ratified by all Member States of the European Union, affirms that the most serious crimes of concern to the international community as a whole, in particular genocide, crimes against humanity and war crimes, must not go unpunished and that their effective prosecution must be ensured by taking measures at national level and by enhancing international cooperation.
- (3) The Rome Statute recalls that it is the duty of every State to exercise its criminal jurisdiction over those responsible for such international crimes.
- (4) The Rome Statute emphasises that the International Criminal Court established under it is to be complementary to national criminal jurisdictions. Effective investigation and, as appropriate, prosecution of genocide, crimes against humanity and war crimes should be ensured without interference with the jurisdiction of the International Criminal Court.
- (5) The investigation and prosecution of, and exchange of information on, genocide, crimes against humanity and war crimes is to remain the responsibility of national authorities, except as affected by international law.
- (6) Member States are being confronted on a regular basis with persons who were involved in such crimes and who are trying to enter and reside in the European Union.
- (7) The competent authorities of the Member States are to ensure that, where they receive information that a person who has applied for a residence permit is suspected of having committed or participated in the commission of genocide, crimes against humanity or war crimes, the relevant acts may be investigated, and, where justified, prosecuted in accordance with national law.
- (8) The relevant national law enforcement and immigration authorities, although having separate tasks and responsibilities, should cooperate very closely in order to enable effective investigation and prosecution of such crimes by the competent authorities that have jurisdiction at national level.
- (9) Member States should ensure that law enforcement authorities and immigration authorities have the appropriate resources and structures to enable their effective cooperation and the effective investigation and, as appropriate, prosecution of genocide, crimes against humanity and war crimes.
- (10) The successful outcome of effective investigation and prosecution of such crimes also requires close cooperation at transnational level between authorities of the States Parties to the Rome Statute, including the Member States.
- (11) On 13 June 2002, the Council adopted Decision 2002/494/JHA setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes ⁽³⁾. Member States should ensure that full use is made of the contact points to facilitate cooperation between the competent international authorities.

⁽¹⁾ OJ C 223, 19.9.2002, p. 19.

⁽²⁾ Opinion of 17 December 2002 (not yet published in the Official Journal).

⁽³⁾ OJ L 167, 26.6.2002, p. 1.

- (12) In Council Common Position 2001/443/CFSP of 11 June 2001 on the International Criminal Court ⁽¹⁾, the Member States declared that the crimes within the jurisdiction of the International Criminal Court are of concern for all Member States, which are determined to cooperate for the prevention of those crimes and for putting an end to the impunity of the perpetrators thereof,

HAS DECIDED AS FOLLOWS:

Article 1

Objective

The aim of this Decision is to increase cooperation between national units in order to maximise the ability of law enforcement authorities in different Member States to cooperate effectively in the field of investigation and prosecution of persons who have committed or participated in the commission of genocide, crimes against humanity or war crimes as defined in Articles 6, 7 and 8 of the Rome Statute of the International Criminal Court of 17 July 1998.

Article 2

Information to law enforcement authorities

1. The Member States shall take the necessary measures in order for the law enforcement authorities to be informed when facts are established which give rise to a suspicion that an applicant for a residence permit has committed crimes as referred to in Article 1 which may lead to prosecution in a Member State or in international criminal courts.
2. Member States shall take the necessary measures to ensure that the relevant national law enforcement and immigration authorities are able to exchange the information, which they require in order to carry out their tasks effectively.

Article 3

Investigation and prosecution

1. Member States shall assist one another in investigating and prosecuting the crimes referred to in Article 1 in accordance with relevant international agreements and national law.
2. Where, in connection with the processing of an application for a residence permit, the immigration authorities become aware of facts which give rise to a suspicion that the applicant has participated in crimes referred to in Article 1, and where it emerges that the applicant has previously sought permission to reside in another Member State, the law enforcement authorities may apply to the competent law enforcement authorities in

the latter Member State with a view to obtaining relevant information, including information from the immigration authorities.

3. Insofar as the law enforcement authorities in a Member State become aware that a person suspected of crimes as referred to in Article 1 is in another Member State, they shall inform the competent authorities in the latter Member State of their suspicions and the basis thereof. Such information shall be provided in accordance with relevant international agreements and national law.

Article 4

Structures

Member States shall consider the need to set up or designate specialist units within the competent law enforcement authorities with particular responsibility for investigating and, as appropriate, prosecuting the crimes in question.

Article 5

Coordination and periodic meetings

1. Member States shall coordinate ongoing efforts to investigate and prosecute persons suspected of having committed or participated in the commission of genocide, crimes against humanity or war crimes.
2. At the Presidency's initiative, the contact points designated under Article 1 of Decision 2002/494/JHA, shall meet at regular intervals with a view to exchanging information about experiences, practices and methods. These meetings may take place in conjunction with meetings within the European Judicial Network and, depending on the circumstances, representatives from the International Criminal Tribunals for the former Yugoslavia and for Rwanda, the International Criminal Court and other international bodies may also be invited to take part in such meetings.

Article 6

Compliance with data protection legislation

Any kind of exchange of information or other kind of processing of personal data under this Decision shall take place in full compliance with the requirements flowing from the applicable international and domestic data protection legislation.

Article 7

Implementation

Member States shall take the necessary measures to comply with this Decision by 8 May 2005.

⁽¹⁾ OJ L 155, 12.6.2001, p. 19.

*Article 8***Territorial application**

This Decision shall apply to Gibraltar.

*Article 9***Taking effect**

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 8 May 2003.

For the Council
The President
M. CHRISOCHOÏDIS

DIRECTIVE 2005/35/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 7 September 2005****on ship-source pollution and on the introduction of penalties for infringements**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) The Community's maritime safety policy is aimed at a high level of safety and environmental protection and is based on the understanding that all parties involved in the transport of goods by sea have a responsibility for ensuring that ships used in Community waters comply with applicable rules and standards.

(2) The material standards in all Member States for discharges of polluting substances from ships are based upon the Marpol 73/78 Convention; however these rules are being ignored on a daily basis by a very large number of ships sailing in Community waters, without corrective action being taken.

(3) The implementation of Marpol 73/78 shows discrepancies among Member States and there is thus a need to harmonise its implementation at Community level; in particular the practices of Member States relating to the imposition of penalties for discharges of polluting substances from ships differ significantly.

(4) Measures of a dissuasive nature form an integral part of the Community's maritime safety policy, as they ensure a link between the responsibility of each of the parties involved in the transport of polluting goods by sea and

their exposure to penalties; in order to achieve effective protection of the environment there is therefore a need for effective, dissuasive and proportionate penalties.

(5) To that end it is essential to approximate, by way of the proper legal instruments, existing legal provisions, in particular on the precise definition of the infringement in question, the cases of exemption and minimum rules for penalties, and on liability and jurisdiction.

(6) This Directive is supplemented by detailed rules on criminal offences and penalties as well as other provisions set out in Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal law framework for the enforcement of the law against ship-source pollution ⁽³⁾.

(7) Neither the international regime for the civil liability and compensation of oil pollution nor that relating to pollution by other hazardous or noxious substances provides sufficient dissuasive effects to discourage the parties involved in the transport of hazardous cargoes by sea from engaging in substandard practices; the required dissuasive effects can only be achieved through the introduction of penalties applying to any person who causes or contributes to marine pollution; penalties should be applicable not only to the shipowner or the master of the ship, but also the owner of the cargo, the classification society or any other person involved.

(8) Ship-source discharges of polluting substances should be regarded as infringements if committed with intent, recklessly or by serious negligence. These infringements are regarded as criminal offences by, and in the circumstances provided for in, Framework Decision 2005/667/JHA supplementing this Directive.

(9) Penalties for discharges of polluting substances from ships are not related to the civil liability of the parties concerned and are thus not subject to any rules relating to the limitation or channelling of civil liabilities, nor do they limit the efficient compensation of victims of pollution incidents.

⁽¹⁾ OJ C 220, 16.9.2003, p. 72.

⁽²⁾ Opinion of the European Parliament of 13 January 2004 (OJ C 92 E, 16.4.2004, p. 77), Council Common Position of 7 October 2004 (OJ C 25 E, 1.2.2005, p. 29), Position of the European Parliament of 23 February 2005 (not yet published in the Official Journal) and Council Decision of 12 July 2005.

⁽³⁾ See page 164 of this Official Journal.

(10) There is a need for further effective cooperation among Member States to ensure that discharges of polluting substances from ships are detected in time and that the offenders are identified. For this reason, the European Maritime Safety Agency set up by Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002⁽¹⁾ has a key role to play in working with the Member States in developing technical solutions and providing technical assistance relating to the implementation of this Directive and in assisting the Commission in the performance of any task assigned to it for the effective implementation of this Directive.

(11) In order better to prevent and combat marine pollution, synergies should be created between enforcement authorities such as national coastguard services. In this context, the Commission should undertake a feasibility study on a European coastguard dedicated to pollution prevention and response, making clear the costs and benefits. This study should, if appropriate, be followed by a proposal on a European coastguard.

(12) Where there is clear, objective evidence of a discharge causing major damage or a threat of major damage, Member States should submit the matter to their competent authorities with a view to instituting proceedings in accordance with Article 220 of the 1982 United Nations Convention on the Law of the Sea.

(13) The enforcement of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues⁽²⁾ is, together with this Directive, a key instrument in the set of measures to prevent ship-source pollution.

(14) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽³⁾.

(15) Since the objectives of this Directive, namely the incorporation of the international ship-source pollution standards into Community law and the establishment of penalties — criminal or administrative — for violation of them in order to ensure a high level of safety and environmental protection in maritime transport, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the

Community may adopt measures, 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 Directive does not go beyond what is necessary in order to achieve those objectives.

(16) This Directive fully respects the Charter of fundamental rights of the European Union; any person suspected of having committed an infringement must be guaranteed a fair and impartial hearing and the penalties must be proportional,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

1. The purpose of this Directive is to incorporate international standards for ship-source pollution into Community law and to ensure that persons responsible for discharges are subject to adequate penalties as referred to in Article 8, in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.

2. This Directive does not prevent Member States from taking more stringent measures against ship-source pollution in conformity with international law.

Article 2

Definitions

For the purpose of this Directive:

1. 'Marpol 73/78' shall mean the International Convention for the Prevention of Pollution from Ships, 1973 and its 1978 Protocol, in its up-to-date version;
2. 'polluting substances' shall mean substances covered by Annexes I (oil) and II (noxious liquid substances in bulk) to Marpol 73/78;
3. 'discharge' shall mean any release howsoever caused from a ship, as referred to in Article 2 of Marpol 73/78;
4. 'ship' shall mean a seagoing vessel, irrespective of its flag, of any type whatsoever operating in the marine environment and shall include hydrofoil boats, air-cushion vehicles, submersibles and floating craft.

⁽¹⁾ OJ L 208, 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No 724/2004 (OJ L 129, 29.4.2004, p. 1).

⁽²⁾ OJ L 332, 28.12.2000, p. 81. Directive as amended by Directive 2002/84/EC (OJ L 324, 29.11.2002, p. 53).

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

*Article 3***Scope**

1. This Directive shall apply, in accordance with international law, to discharges of polluting substances in:

- (a) the internal waters, including ports, of a Member State, in so far as the Marpol regime is applicable;
- (b) the territorial sea of a Member State;
- (c) straits used for international navigation subject to the regime of transit passage, as laid down in Part III, section 2, of the 1982 United Nations Convention on the Law of the Sea, to the extent that a Member State exercises jurisdiction over such straits;
- (d) the exclusive economic zone or equivalent zone of a Member State, established in accordance with international law; and
- (e) the high seas.

2. This Directive shall apply to discharges of polluting substances from any ship, irrespective of its flag, with the exception of any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

*Article 4***Infringements**

Member States shall ensure that ship-source discharges of polluting substances into any of the areas referred to in Article 3(1) are regarded as infringements if committed with intent, recklessly or by serious negligence. These infringements are regarded as criminal offences by, and in the circumstances provided for in, Framework Decision 2005/667/JHA supplementing this Directive.

*Article 5***Exceptions**

1. A discharge of polluting substances into any of the areas referred to in Article 3(1) shall not be regarded as an infringement if it satisfies the conditions set out in Annex I, Regulations 9, 10, 11(a) or 11(c) or in Annex II, Regulations 5, 6(a) or 6(c) of Marpol 73/78.

2. A discharge of polluting substances into the areas referred to in Article 3(1)(c), (d) and (e) shall not be regarded as an infringement for the owner, the master or the crew when acting under the master's responsibility if it satisfies the conditions set out in Annex I, Regulation 11(b) or in Annex II, Regulation 6(b) of Marpol 73/78.

*Article 6***Enforcement measures with respect to ships within a port of a Member State**

1. If irregularities or information give rise to a suspicion that a ship which is voluntarily within a port or at an off-shore terminal of a Member State has been engaged in or is engaging in a discharge of polluting substances into any of the areas referred to in Article 3(1), that Member State shall ensure that an appropriate inspection, taking into account the relevant guidelines adopted by the International Maritime Organisation (IMO), is undertaken in accordance with its national law.

2. In so far as the inspection referred to in paragraph 1 reveals facts that could indicate an infringement within the meaning of Article 4, the competent authorities of that Member State and of the flag State shall be informed.

*Article 7***Enforcement measures by coastal States with respect to ships in transit**

1. If the suspected discharge of polluting substances takes place in the areas referred to in Article 3(1)(b), (c), (d) or (e) and the ship which is suspected of the discharge does not call at a port of the Member State holding the information relating to the suspected discharge, the following shall apply:

- (a) If the next port of call of the ship is in another Member State, the Member States concerned shall cooperate closely in the inspection referred to in Article 6(1) and in deciding on the appropriate measures in respect of any such discharge;
- (b) If the next port of call of the ship is a port of a State outside the Community, the Member State shall take the necessary measures to ensure that the next port of call of the ship is informed about the suspected discharge and shall request the State of the next port of call to take the appropriate measures in respect of any such discharge.

2. Where there is clear, objective evidence that a ship navigating in the areas referred to in Article 3(1)(b) or (d) has, in the area referred to in Article 3(1)(d), committed an infringement resulting in a discharge causing major damage or a threat of major damage to the coastline or related interests of the Member State concerned, or to any resources of the areas referred to in Article 3(1)(b) or (d), that State shall, subject to Part XII, Section 7 of the 1982 United Nations Convention on the Law of the Sea and provided that the evidence so warrants, submit the matter to its competent authorities with a view to instituting proceedings, including detention of the ship, in accordance with its national law.

3. In any event, the authorities of the flag State shall be informed.

Article 8

Penalties

1. Member States shall take the necessary measures to ensure that infringements within the meaning of Article 4 are subject to effective, proportionate and dissuasive penalties, which may include criminal or administrative penalties.

2. Each Member State shall take the measures necessary to ensure that the penalties referred to in paragraph 1 apply to any person who is found responsible for an infringement within the meaning of Article 4.

Article 9

Compliance with international law

Member States shall apply the provisions of this Directive without any discrimination in form or in fact against foreign ships and in accordance with applicable international law, including Section 7 of Part XII of the 1982 United Nations Convention on the Law of the Sea, and they shall promptly notify the flag State of the vessel and any other State concerned of measures taken in accordance with this Directive.

Article 10

Accompanying measures

1. For the purposes of this Directive, Member States and the Commission shall cooperate, where appropriate, in close collaboration with the European Maritime Safety Agency and taking account of the action programme to respond to accidental or

deliberate marine pollution set up by Decision No 2850/2000/EC⁽¹⁾ and if appropriate, of the implementation of Directive 2000/59/EC in order to:

- (a) develop the necessary information systems required for the effective implementation of this Directive;
- (b) establish common practices and guidelines on the basis of those existing at international level, in particular for:
 - the monitoring and early identification of ships discharging polluting substances in violation of this Directive, including, where appropriate, on-board monitoring equipment,
 - reliable methods of tracing polluting substances in the sea to a particular ship, and
 - the effective enforcement of this Directive.

2. In accordance with its tasks as defined in Regulation (EC) No 1406/2002, the European Maritime Safety Agency shall:

- (a) work with the Member States in developing technical solutions and providing technical assistance in relation to the implementation of this Directive, in actions such as tracing discharges by satellite monitoring and surveillance;
- (b) assist the Commission in the implementation of this Directive, including, if appropriate, by means of visits to the Member States, in accordance with Article 3 of Regulation (EC) No 1406/2002.

Article 11

Feasibility Study

The Commission shall, before the end of 2006, submit to the European Parliament and the Council a feasibility study on a European coastguard dedicated to pollution prevention and response, making clear the costs and benefits.

Article 12

Reporting

Every three years, Member States shall transmit a report to the Commission on the application of this Directive by the competent authorities. On the basis of these reports, the Commission shall submit a Community report to the European Parliament and the Council. In this report, the Commission shall assess, *inter alia*, the desirability of revising or extending the scope of this Directive. It shall also describe the evolution of relevant case-law in the Member States and shall consider the possibility of creating a public database containing such relevant case-law.

⁽¹⁾ Decision No 2850/2000/EC of the European Parliament and of the Council of 20 December 2000 setting up a Community framework for cooperation in the field of accidental or deliberate marine pollution (OJ L 332, 28.12.2000, p. 1). Decision as amended by Decision No 787/2004/EC (OJ L 138, 30.4.2004, p. 12).

*Article 13***Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), established by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council, of 5 November 2002 ⁽¹⁾.

2. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

*Article 14***Provision of information**

The Commission shall regularly inform the Committee set up by Article 4 of Decision No 2850/2000/EC of any proposed measures or other relevant activities concerning the response to marine pollution.

*Article 15***Amendment procedure**

In accordance with Article 5 of Regulation (EC) No 2099/2002 and following the procedure referred to in Article 13 of this Directive, the COSS may exclude amendments to Marpol 73/78 from the scope of this Directive.

*Article 16***Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 March 2007 and forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article 17***Entry into force**

This Directive shall enter into force on the day following its publication in the *Official Journal of the European Union*.

*Article 18***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 7 September 2005.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

C. CLARKE

⁽¹⁾ OJ L 324, 29.11.2002, p. 1. Regulation as amended by Commission Regulation (EC) No 415/2004 (OJ L 68, 6.3.2004, p. 10).

ANNEX

Summary, for reference purposes, of the Marpol 73/78 discharge regulations relating to discharges of oil and noxious liquid substances, as referred to in Article 2.2**Part I: Oil (Marpol 73/78, Annex I)**

For the purposes of Marpol 73/78 Annex I, 'oil' means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals which are subject to the provisions of Marpol 73/78 Annex II) and 'oily mixture' means a mixture with any oil content.

Excerpts of the relevant provisions of Marpol 73/78 Annex I:

Regulation 9: Control of discharge of oil

1. Subject to the provisions of Regulations 10 and 11 of this Annex and paragraph 2 of this Regulation, any discharge into the sea of oil or oily mixtures from ships to which this Annex applies shall be prohibited except when all the following conditions are satisfied:
 - (a) for an oil tanker, except as provided for in subparagraph (b) of this paragraph:
 - (i) the tanker is not within a special area;
 - (ii) the tanker is more than 50 nautical miles from the nearest land;
 - (iii) the tanker is proceeding en route;
 - (iv) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;
 - (v) the total quantity of oil discharged into the sea does not exceed for existing tankers 1/15000 of the total quantity of the particular cargo of which the residue formed a part, and for new tankers 1/30000 of the total quantity of the particular cargo of which the residue formed a part; and
 - (vi) the tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by Regulation 15 of this Annex.
 - (b) from a ship of 400 tons gross tonnage and above other than an oil tanker and from machinery space bilges excluding cargo pump-room bilges of an oil tanker unless mixed with oil cargo residue:
 - (i) the ship is not within a special area;
 - (ii) the ship is proceeding en route;
 - (iii) the oil content of the effluent without dilution does not exceed 15 parts per million; and
 - (iv) the ship has in operation (monitoring, control and filtering equipment) as required by regulation 16 of this Annex.
2. In the case of a ship of less than 400 tons gross tonnage other than an oil tanker whilst outside the special area, the (flag State) Administration shall ensure that it is equipped as far as practicable and reasonable with installations to ensure the storage of oil residues on board and their discharge to reception facilities or into the sea in compliance with the requirements of paragraph (1)(b) of this Regulation.
3. [...].
4. The provisions of paragraph 1 of this Regulation shall not apply to the discharge of clean or segregated ballast or unprocessed oily mixtures which without dilution have an oil content not exceeding 15 parts per million and which do not originate from cargo pump-room bilges and are not mixed with oil cargo residues.
5. No discharge into the sea shall contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in this regulation.
6. The oil residues which cannot be discharged into the sea in compliance with paragraphs 1, 2 and 4 of this Regulation shall be retained on board or discharged to reception facilities.
7. [...].

Regulation 10: Methods for the prevention of oil pollution from ships while operating in special areas

1. For the purpose of this Annex, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, the 'Gulfs area', the Gulf of Aden area, the Antarctic area and the North-West European waters, (as further defined and specified).
2. Subject to the provisions of regulation 11 of this Annex:
 - (a) Any discharge into the sea of oil or oily mixture from any oil tanker and any ship of 400 tons gross tonnage and above other than an oil tanker shall be prohibited while in a special area. [...];
 - (b) [...] Any discharge into the sea of oil or oily mixture from a ship of less than 400 tons gross tonnage, other than an oil tanker, shall be prohibited while in a special area, except when the oil content of the effluent without dilution does not exceed 15 parts per million.
3. (a) The provisions of paragraph 2 of this Regulation shall not apply to the discharge of clean or segregated ballast.
 - (b) The provisions of subparagraph (2)(a) of this regulation shall not apply to the discharge of processed bilge water from machinery spaces, provided that all of the following conditions are satisfied:
 - (i) the bilge water does not originate from cargo pump-room bilges;
 - (ii) the bilge water is not mixed with oil cargo residues;
 - (iii) the ship is proceeding en route;
 - (iv) the oil content of the effluent without dilution does not exceed 15 parts per million;
 - (v) the ship has in operation oil filtering equipment complying with Regulation 16(5) of this Annex; and
 - (vi) the filtering system is equipped with a stopping device which will ensure that the discharge is automatically stopped when the oil content of the effluent exceeds 15 parts per million.
4. (a) No discharge into the sea shall contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in this regulation.
 - (b) The oil residues which cannot be discharged into the sea in compliance with paragraph 2 or 3 of this Regulation shall be retained on board or discharged to reception facilities.
5. Nothing in this Regulation shall prohibit a ship on a voyage only part of which is in a special area from discharging outside the special area in accordance with Regulation 9 of this Annex.
6. [...].
7. [...].
8. [...].

Regulation 11: Exceptions

Regulations 9 and 10 of this Annex shall not apply to:

- (a) the discharge into the sea of oil or oily mixture necessary for the purpose of securing the safety of a ship or saving life at sea; or
- (b) the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment:
 - (i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and
 - (ii) except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or

- (c) the discharge into the sea of substances containing oil, approved by the (flag State) administration, when being used for the purpose of combating specific pollution incidents in order to minimise the damage from pollution. Any such discharge shall be subject to the approval of any Government in whose jurisdiction it is contemplated the discharge will occur.

Part II: Noxious liquid substances (Marpol 73/78 Annex II)

Excerpts of the relevant provisions of Marpol 73/78 Annex II:

Regulation 3: Categorisation and listing of noxious liquid substances

1. For the purpose of the Regulations of this Annex, noxious liquid substances shall be divided into four categories as follows:
 - (a) Category A: noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a major hazard to either marine resources or human health or cause serious harm to amenities or other legitimate uses of the sea and therefore justify the application of stringent anti-pollution measures;
 - (b) Category B: noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a hazard to either marine resources or human health or cause harm to amenities or other legitimate uses of the sea and therefore justify the application of special anti-pollution measures;
 - (c) Category C: noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a minor hazard to either marine resources or human health or cause minor harm to amenities or other legitimate uses of the sea and therefore require special operational conditions;
 - (d) Category D: noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a recognisable hazard to either marine resources or human health or cause minimal harm to amenities or other legitimate uses of the sea and therefore require some attention in operational conditions.
2. [...].
3. [...].
4. [...].

(Further guidelines on the categorisation of substances, including a list of categorised substances are given in Regulation 3(2) to (4) and Regulation 4 and the Appendices to Marpol 73/78 Annex II)

Regulation 5: Discharge of noxious liquid substances

Category A, B and C substances outside special areas and Category D substances in all areas

Subject to the provisions of [...] Regulation 6 of this Annex,

1. The discharge into the sea of substances in Category A as defined in Regulation 3(1)(a) of this Annex or of those provisionally assessed as such or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited. If tanks containing such substances or mixtures are to be washed, the resulting residues shall be discharged to a reception facility until the concentration of the substance in the effluent to such facility is at or below 0,1 % by weight and until the tank is empty, with the exception of phosphorus, yellow or white, for which the residual concentration shall be 0,01 % by weight. Any water subsequently added to the tank may be discharged into the sea when all the following conditions are satisfied:
 - (a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (b) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land in a depth of water of not less than 25 m.

2. The discharge into the sea of substances in Category B as defined in Regulation 3(1)(b) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:
 - (a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (b) the procedures and arrangements for discharge are approved by the (flag State) administration. Such procedures and arrangements shall be based upon standards developed by the (IMO) and shall ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 1 part per million;
 - (c) the maximum quantity of cargo discharged from each tank and its associated piping system does not exceed the maximum quantity approved in accordance with the procedures referred to in subparagraph (b) of this paragraph, which shall in no case exceed the greater of 1 m³ or 1/3000 of the tank capacity in m³;
 - (d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (e) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.
3. The discharge into the sea of substances in Category C as defined in Regulation 3(1)(c) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:
 - (a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (b) the procedures and arrangements for discharge are approved by the (flag State) administration. Such procedures and arrangements shall be based upon standards developed by the (IMO) and shall ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 10 parts per million;
 - (c) the maximum quantity of cargo discharged from each tank and its associated piping system does not exceed the maximum quantity approved in accordance with the procedures referred to in subparagraph (b) of this paragraph, which shall in no case exceed the greater of 3 m³ or 1/1000 of the tank capacity in m³;
 - (d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (e) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.
4. The discharge into the sea of substances in Category D as defined in Regulation 3(1)(d) of this Annex, or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:
 - (a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (b) such mixtures are of a concentration not greater than one part of the substance in ten parts of water; and
 - (c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land.
5. Ventilation procedures approved by the (flag State) administration may be used to remove cargo residues from a tank. Such procedures shall be based upon standards developed by the (IMO). Any water subsequently introduced into the tank shall be regarded as clean and shall not be subject to paragraphs 1, 2, 3 or 4 of this Regulation.
6. The discharge into the sea of substances which have not been categorised, provisionally assessed, or evaluated as referred to in Regulation 4(1) of this Annex, or of ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited.

Category A, B and C substances within special areas (as defined in Marpol 73/78 Annex II, Regulation 1, including the Baltic Sea)

Subject to the provisions of [...] Regulation 6 of this Annex,

7. The discharge into the sea of substances in Category A as defined in Regulation 3(1)(a) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited. If tanks containing such substances or mixtures are to be washed, the resulting residues shall be discharged to a reception facility which the States bordering the special area shall provide in accordance with Regulation 7 of this Annex, until the concentration of the substance in the effluent to such facility is at or below 0,05 % by weight and until the tank is empty, with the exception of phosphorus, yellow or white, for which the residual concentration shall be 0,005 % by weight. Any water subsequently added to the tank may be discharged into the sea when all the following conditions are satisfied:
 - (a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (b) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.
8. The discharge into the sea of substances in Category B as defined in Regulation (3)(1)(b) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:
 - (a) the tank has been prewashed in accordance with the procedure approved by the (flag State) Administration and based on standards developed by the (IMO) and the resulting tank washings have been discharged to a reception facility;
 - (b) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (c) the procedures and arrangements for discharge and washings are approved by the (flag State) Administration. Such procedures and arrangements shall be based upon standards developed by the (IMO) and shall ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 1 part per million;
 - (d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (e) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.
9. The discharge into the sea of substances in Category C as defined in Regulation 3(1)(c) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:
 - (a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (b) the procedures and arrangements for discharge are approved by the (flag State) administration. Such procedures and arrangements shall be based upon standards developed by the (IMO) and shall ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 1 part per million;
 - (c) the maximum quantity of cargo discharged from each tank and its associated piping system does not exceed the maximum quantity approved in accordance with the procedures referred to in subparagraph (b) of this paragraph which shall in no case exceed the greater of 1 m³ or 1/3000 of the tank capacity in m³;

- (d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (e) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.
10. Ventilation procedures approved by the (flag State) administration may be used to remove cargo residues from a tank. Such procedures shall be based upon standards developed by the (IMO). Any water subsequently introduced into the tank shall be regarded as clean and shall not be subject to paragraphs 7, 8 or 9 of this Regulation.
 11. The discharge into the sea of substances which have not been categorised, provisionally assessed or evaluated as referred to in Regulation 4(1) of this Annex, or of ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited.
 12. Nothing in this regulation shall prohibit a ship from retaining on board the residues from a Category B or C cargo and discharging such residues into the sea outside a special area in accordance with paragraphs 2 or 3 of this Regulation, respectively.

Regulation 6: Exceptions

Regulation 5 of this Annex shall not apply to:

- (a) the discharge into the sea of noxious liquid substances or mixtures containing such substances necessary for the purpose of securing the safety of a ship or saving life at sea; or
 - (b) the discharge into the sea of noxious liquid substances or mixtures containing such substances resulting from damage to a ship or its equipment:
 - (i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and
 - (ii) except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or
 - (c) the discharge into the sea of noxious liquid substances or mixtures containing such substances, approved by the (flag State) administration, when being used for the purpose of combating specific pollution incidents in order to minimise the damage from pollution. Any such discharge shall be subject to the approval of any government in whose jurisdiction it is contemplated the discharge will occur.
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DIRECTIVES

DIRECTIVE 2008/99/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 November 2008

on the protection of the environment through criminal law

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) According to Article 174(2) of the Treaty, Community policy on the environment must aim at a high level of protection.

(2) The Community is concerned at the rise in environmental offences and at their effects, which are increasingly extending beyond the borders of the States in which the offences are committed. Such offences pose a threat to the environment and therefore call for an appropriate response.

(3) Experience has shown that the existing systems of penalties have not been sufficient to achieve complete compliance with the laws for the protection of the environment. Such compliance can and should be strengthened by the availability of criminal penalties, which demonstrate a social disapproval of a qualitatively different nature compared to administrative penalties or a compensation mechanism under civil law.

(4) Common rules on criminal offences make it possible to use effective methods of investigation and assistance within and between Member States.

(5) In order to achieve effective protection of the environment, there is a particular need for more dissuasive penalties for environmentally harmful activities, which typically cause or are likely to cause substantial damage to the air, including the stratosphere, to soil, water, animals or plants, including to the conservation of species.

(6) Failure to comply with a legal duty to act can have the same effect as active behaviour and should therefore also be subject to corresponding penalties.

(7) Therefore, such conduct should be considered a criminal offence throughout the Community when committed intentionally or with serious negligence.

(8) The legislation listed in the Annexes to this Directive contains provisions which should be subject to criminal law measures in order to ensure that the rules on environmental protection are fully effective.

(9) The obligations under this Directive only relate to the provisions of the legislation listed in the Annexes to this Directive which entail an obligation for Member States, when implementing that legislation, to provide for prohibitive measures.

(10) This Directive obliges Member States to provide for criminal penalties in their national legislation in respect of serious infringements of provisions of Community law on the protection of the environment. This Directive creates no obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases.

⁽¹⁾ OJ C 10, 15.1.2008, p. 47.

⁽²⁾ Opinion of the European Parliament of 21 May 2008 (not yet published in the Official Journal) and Council Decision of 24 October 2008.

- (11) This Directive is without prejudice to other systems of liability for environmental damage under Community law or national law.
- (12) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent measures regarding the effective criminal law protection of the environment. Such measures must be compatible with the Treaty.
- (13) Member States should provide information to the Commission on the implementation of this Directive, in order to enable it to evaluate the effect of this Directive.
- (14) Since the objective of this Directive, namely to ensure a more effective protection of the environment, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Community level, the Community may adopt measures, 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 Directive does not go beyond what is necessary in order to achieve that objective.
- (15) Whenever subsequent legislation on environmental matters is adopted, it should specify where appropriate that this Directive will apply. Where necessary, Article 3 should be amended.
- (16) This Directive respects the fundamental rights and observes the principles as recognised in particular by the Charter of Fundamental Rights of the European Union,
- (ii) with regard to activities covered by the Euratom Treaty, the legislation adopted pursuant to the Euratom Treaty and listed in Annex B; or
- (iii) a law, an administrative regulation of a Member State or a decision taken by a competent authority of a Member State that gives effect to the Community legislation referred to in (i) or (ii);
- (b) 'protected wild fauna and flora species' are:
- (i) for the purposes of Article 3(f), those listed in:
- Annex IV to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽¹⁾,
- Annex I to, and referred to in Article 4(2) of, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds ⁽²⁾;
- (ii) for the purposes of Article 3(g), those listed in Annex A or B to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein ⁽³⁾;
- (c) 'habitat within a protected site' means any habitat of species for which an area is classified as a special protection area pursuant to Article 4(1) or (2) of Directive 79/409/EEC, or any natural habitat or a habitat of species for which a site is designated as a special area of conservation pursuant to Article 4(4) of Directive 92/43/EEC;
- (d) 'legal person' means any legal entity having such status under the applicable national law, except for States or public bodies exercising State authority and for public international organisations.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes measures relating to criminal law in order to protect the environment more effectively.

Article 2

Definitions

For the purpose of this Directive:

(a) 'unlawful' means infringing:

- (i) the legislation adopted pursuant to the EC Treaty and listed in Annex A; or

Article 3

Offences

Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:

- (a) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;

⁽¹⁾ OJ L 206, 22.7.1992, p. 7.

⁽²⁾ OJ L 103, 25.4.1979, p. 1.

⁽³⁾ OJ L 61, 3.3.1997, p. 1.

- (b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste⁽¹⁾ and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;
- (d) the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (e) the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
- (g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
- (h) any conduct which causes the significant deterioration of a habitat within a protected site;
- (i) the production, importation, exportation, placing on the market or use of ozone-depleting substances.

⁽¹⁾ OJ L 190, 12.7.2006, p. 1.

Article 4

Inciting, aiding and abetting

Member States shall ensure that inciting, aiding and abetting the intentional conduct referred to in Article 3 is punishable as a criminal offence.

Article 5

Penalties

Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.

Article 6

Liability of legal persons

1. Member States shall ensure that legal persons can be held liable for offences referred to in Articles 3 and 4 where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, based on:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person;
or
- (c) an authority to exercise control within the legal person.

2. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in Articles 3 and 4 for the benefit of the legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 3 and 4.

Article 7

Penalties for legal persons

Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Article 6 are punishable by effective, proportionate and dissuasive penalties.

*Article 8***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 26 December 2010.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive and a table indicating the correlation between those provisions and this Directive.

*Article 9***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 10***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 19 November 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J.-P. JOUYET

ANNEX A

List of Community legislation adopted pursuant to the EC Treaty, the infringement of which constitutes unlawful conduct pursuant to Article 2(a)(i) of this Directive

- Council Directive 70/220/EEC of 20 March 1970 on the approximation of the laws of the Member States on measures to be taken against air pollution by emissions from motor vehicles ⁽¹⁾,
- Council Directive 72/306/EEC of 2 August 1972 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of pollutants from diesel engines for use in vehicles ⁽²⁾,
- Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils ⁽³⁾,
- Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water ⁽⁴⁾,
- Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations ⁽⁵⁾,
- Council Directive 77/537/EEC of 28 June 1977 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of pollutants from diesel engines for use in wheeled agricultural or forestry tractors ⁽⁶⁾,
- Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry ⁽⁷⁾,
- Council Directive 79/117/EEC of 21 December 1978 prohibiting the placing on the market and use of plant protection products containing certain active substances ⁽⁸⁾,
- Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds ⁽⁹⁾,
- Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry ⁽¹⁰⁾,
- Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges ⁽¹¹⁾,
- Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry ⁽¹²⁾,
- Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants ⁽¹³⁾,
- Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane ⁽¹⁴⁾,

⁽¹⁾ OJ L 76, 6.4.1970, p. 1.

⁽²⁾ OJ L 190, 20.8.1972, p. 1.

⁽³⁾ OJ L 194, 25.7.1975, p. 23.

⁽⁴⁾ OJ L 31, 5.2.1976, p. 1.

⁽⁵⁾ OJ L 262, 27.9.1976, p. 201.

⁽⁶⁾ OJ L 220, 29.8.1977, p. 38.

⁽⁷⁾ OJ L 54, 25.2.1978, p. 19.

⁽⁸⁾ OJ L 33, 8.2.1979, p. 36.

⁽⁹⁾ OJ L 103, 25.4.1979, p. 1.

⁽¹⁰⁾ OJ L 81, 27.3.1982, p. 29.

⁽¹¹⁾ OJ L 291, 24.10.1983, p. 1.

⁽¹²⁾ OJ L 74, 17.3.1984, p. 49.

⁽¹³⁾ OJ L 188, 16.7.1984, p. 20.

⁽¹⁴⁾ OJ L 274, 17.10.1984, p. 11.

- Council Directive 85/203/EEC of 7 March 1985 on air quality standards for nitrogen dioxide ⁽¹⁾,
- Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture ⁽²⁾,
- Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC ⁽³⁾,
- Council Directive 87/217/EEC of 19 March 1987 on the prevention and reduction of environmental pollution by asbestos ⁽⁴⁾,
- Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms ⁽⁵⁾,
- Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment ⁽⁶⁾,
- Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽⁷⁾,
- Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources ⁽⁸⁾,
- Council Directive 91/689/EEC of 12 December 1991 on hazardous waste ⁽⁹⁾,
- Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽¹⁰⁾,
- Council Directive 92/112/EEC of 15 December 1992 on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry ⁽¹¹⁾,
- Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft: the provisions amended by Directive 2003/44/EC ⁽¹²⁾,
- European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste ⁽¹³⁾,
- European Parliament and Council Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations ⁽¹⁴⁾,
- Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail ⁽¹⁵⁾,

⁽¹⁾ OJ L 87, 27.3.1985, p. 1.

⁽²⁾ OJ L 181, 4.7.1986, p. 6.

⁽³⁾ OJ L 181, 4.7.1986, p. 16.

⁽⁴⁾ OJ L 85, 28.3.1987, p. 40.

⁽⁵⁾ OJ L 117, 8.5.1990, p. 1.

⁽⁶⁾ OJ L 135, 30.5.1991, p. 40.

⁽⁷⁾ OJ L 230, 19.8.1991, p. 1.

⁽⁸⁾ OJ L 375, 31.12.1991, p. 1.

⁽⁹⁾ OJ L 377, 31.12.1991, p. 20.

⁽¹⁰⁾ OJ L 206, 22.7.1992, p. 7.

⁽¹¹⁾ OJ L 409, 31.12.1992, p. 11.

⁽¹²⁾ OJ L 214, 26.8.2003, p. 18.

⁽¹³⁾ OJ L 365, 31.12.1994, p. 10.

⁽¹⁴⁾ OJ L 365, 31.12.1994, p. 24.

⁽¹⁵⁾ OJ L 235, 17.9.1996, p. 25.

- Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) ⁽¹⁾,
- Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management ⁽²⁾,
- Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances ⁽³⁾,
- Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery ⁽⁴⁾,
- Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein ⁽⁵⁾,
- Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market ⁽⁶⁾,
- Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels ⁽⁷⁾,
- Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption ⁽⁸⁾,
- Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations ⁽⁹⁾,
- Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air ⁽¹⁰⁾,
- Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste ⁽¹¹⁾,
- Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels ⁽¹²⁾,
- Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end of life vehicles ⁽¹³⁾,
- Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁽¹⁴⁾,
- Directive 2000/69/EC of the European Parliament and of the Council of 16 November 2000 relating to limit values for benzene and carbon monoxide in ambient air ⁽¹⁵⁾,

⁽¹⁾ OJ L 243, 24.9.1996, p. 31.

⁽²⁾ OJ L 296, 21.11.1996, p. 55.

⁽³⁾ OJ L 10, 14.1.1997, p. 13.

⁽⁴⁾ OJ L 59, 27.2.1998, p. 1.

⁽⁵⁾ OJ L 61, 3.3.1997, p. 1.

⁽⁶⁾ OJ L 123, 24.4.1998, p. 1.

⁽⁷⁾ OJ L 350, 28.12.1998, p. 58.

⁽⁸⁾ OJ L 330, 5.12.1998, p. 32.

⁽⁹⁾ OJ L 85, 29.3.1999, p. 1.

⁽¹⁰⁾ OJ L 163, 29.6.1999, p. 41.

⁽¹¹⁾ OJ L 182, 16.7.1999, p. 1.

⁽¹²⁾ OJ L 121, 11.5.1999, p. 13.

⁽¹³⁾ OJ L 269, 21.10.2000, p. 34.

⁽¹⁴⁾ OJ L 327, 22.12.2000, p. 1.

⁽¹⁵⁾ OJ L 313, 13.12.2000, p. 12.

- Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste ⁽¹⁾,
- Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer ⁽²⁾,
- Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms ⁽³⁾,
- Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants ⁽⁴⁾,
- Directive 2002/3/EC of the European Parliament and of the Council of 12 February 2002 relating to ozone in ambient air ⁽⁵⁾,
- Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ⁽⁶⁾,
- Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) ⁽⁷⁾,
- Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air ⁽⁸⁾,
- Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents ⁽⁹⁾,
- Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants ⁽¹⁰⁾,
- Directive 2005/55/EC of the European Parliament and of the Council of 28 September 2005 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles ⁽¹¹⁾,
- Commission Directive 2005/78/EC of 14 November 2005 implementing Directive 2005/55/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles and amending Annexes I, II, III, IV and VI thereto ⁽¹²⁾,
- Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality ⁽¹³⁾,
- Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community ⁽¹⁴⁾,
- Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste ⁽¹⁵⁾,

⁽¹⁾ OJ L 332, 28.12.2000, p. 91.

⁽²⁾ OJ L 244, 29.9.2000, p. 1.

⁽³⁾ OJ L 106, 17.4.2001, p. 1.

⁽⁴⁾ OJ L 309, 27.11.2001, p. 1.

⁽⁵⁾ OJ L 67, 9.3.2002, p. 14.

⁽⁶⁾ OJ L 37, 13.2.2003, p. 19.

⁽⁷⁾ OJ L 37, 13.2.2003, p. 24.

⁽⁸⁾ OJ L 23, 26.1.2005, p. 3.

⁽⁹⁾ OJ L 104, 8.4.2004, p. 1.

⁽¹⁰⁾ OJ L 158, 30.4.2004, p. 7.

⁽¹¹⁾ OJ L 275, 20.10.2005, p. 1.

⁽¹²⁾ OJ L 313, 29.11.2005, p. 1.

⁽¹³⁾ OJ L 64, 4.3.2006, p. 37.

⁽¹⁴⁾ OJ L 64, 4.3.2006, p. 52.

⁽¹⁵⁾ OJ L 114, 27.4.2006, p. 9.

- Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries ⁽¹⁾,
- Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air conditioning systems in motor vehicles ⁽²⁾,
- Directive 2006/44/EC of the European Parliament and of the Council of 6 September 2006 on the quality of fresh waters needing protection or improvement in order to support fish life ⁽³⁾,
- Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators ⁽⁴⁾,
- Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration ⁽⁵⁾,
- Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases ⁽⁶⁾,
- Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste ⁽⁷⁾,
- Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information ⁽⁸⁾,
- Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply ⁽⁹⁾,
- Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control ⁽¹⁰⁾.

⁽¹⁾ OJ L 102, 11.4.2006, p. 15.
⁽²⁾ OJ L 161, 14.6.2006, p. 12.
⁽³⁾ OJ L 264, 25.9.2006, p. 20.
⁽⁴⁾ OJ L 266, 26.9.2006, p. 1.
⁽⁵⁾ OJ L 372, 27.12.2006, p. 19.
⁽⁶⁾ OJ L 161, 14.6.2006, p. 1.
⁽⁷⁾ OJ L 190, 12.7.2006, p. 1.
⁽⁸⁾ OJ L 171, 29.6.2007, p. 1.
⁽⁹⁾ OJ L 316, 4.12.2007, p. 6.
⁽¹⁰⁾ OJ L 24, 29.1.2008, p. 8.

ANNEX B

List of Community Legislation adopted pursuant to the Euratom Treaty, the infringement of which constitutes unlawful conduct pursuant to Article 2(a)(ii) of this Directive

- Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation ⁽¹⁾;
 - Council Directive 2003/122/Euratom of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources ⁽²⁾;
 - Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel ⁽³⁾.
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⁽¹⁾ OJ L 159, 29.6.1996, p. 1.

⁽²⁾ OJ L 346, 31.12.2003, p. 57.

⁽³⁾ OJ L 337, 5.12.2006, p. 21.

DIRECTIVES

DIRECTIVE 2009/123/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 October 2009

amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) The purpose of Directive 2005/35/EC ⁽³⁾ and of this Directive is to approximate the definition of ship-source pollution offences committed by natural or legal persons, the scope of their liability and the criminal nature of penalties that can be imposed for such criminal offences by natural persons.

(2) On 23 October 2007 the Court of Justice of the European Communities annulled ⁽⁴⁾ Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution ⁽⁵⁾, which had supplemented Directive 2005/35/EC with criminal-law measures. This Directive should fill the legal vacuum following the judgment.

(3) Criminal penalties, which demonstrate social disapproval of a different nature than administrative sanctions, strengthen compliance with the legislation on ship-source pollution in force and should be sufficiently severe to dissuade all potential polluters from any violation thereof.

(4) A consistent set of legislative measures has already been adopted at EU level to reinforce maritime safety and help prevent ship-source pollution. The legislation in question is addressed to flag States, ship owners and charterers, classification societies, port States and coastal States. The existing system of sanctions for illicit ship-source discharges of polluting substances, supplementing that legislation, needs to be further strengthened by the introduction of criminal penalties.

(5) Common rules on criminal penalties make it possible to use more effective methods of investigation and effective cooperation within and between Member States.

(6) The Member States should also apply effective, proportionate and dissuasive penalties to legal persons throughout the Community because frequently ship-source pollution offences are committed in the interest of legal persons or for their benefit.

(7) The applicability of Directive 2005/35/EC should not be subject to exceptions other than those set out in this Directive. Therefore, certain categories of natural and legal persons, such as cargo owners or classification societies should be included in the scope of that Directive.

(8) This Directive should oblige Member States to provide in their national legislation for criminal penalties in respect of those discharges of polluting substances to which this Directive applies. This Directive should not create obligations regarding the application of such penalties or any other available system of law enforcement, to individual cases.

⁽¹⁾ OJ C 77, 31.3.2009, p. 69.

⁽²⁾ Opinion of the European Parliament of 5 May 2009 (not yet published in the Official Journal) and Council Decision of 14 September 2009.

⁽³⁾ OJ L 255, 30.9.2005, p. 11.

⁽⁴⁾ Case C-440/05 Commission v Council, ECR [2007] I-9097.

⁽⁵⁾ OJ L 255, 30.9.2005, p. 164.

(9) Under this Directive, illicit ship-source discharges of polluting substances should be regarded as a criminal offence as long as they have been committed with intent, recklessly or with serious negligence and result in deterioration in the quality of water. Less serious cases of illicit ship-source discharges of polluting substances that do not cause deterioration in the quality of water need not be regarded as criminal offences. Under this Directive such discharges should be referred to as minor cases.

(10) Given the need to ensure a high level of safety and protection of the environment in the maritime transport sector, as well as the need to ensure the effectiveness of the principle whereby the polluting party pays for the damage caused to the environment, repeated minor cases, which do not individually but in conjunction result in deterioration in the quality of water, should be regarded as a criminal offence.

(11) This Directive is without prejudice to other liability systems for damage caused by ship-source pollution under Community, national or international law.

(12) Jurisdiction with regard to criminal offences should be established in accordance with the national law of Member States and in accordance with their obligations under international law.

(13) Member States should provide information to the Commission on the implementation of this Directive, in order to enable the Commission to evaluate its effect.

(14) Since the objectives of this Directive cannot be sufficiently achieved by the Member States acting alone, by reason of the cross-border damage which may be caused by the behaviour concerned, and, by reason of scale and effects of the proposed action, can therefore be better achieved at Community level, the Community may adopt measures, 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 Directive does not go beyond what is necessary in order to achieve those objectives.

(15) This Directive respects fundamental rights and complies with the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union.

(16) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interest

of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(17) Directive 2005/35/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2005/35/EC

Directive 2005/35/EC is hereby amended as follows:

1. the title is replaced by the following:

‘Directive of the European Parliament and of the Council on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences’;

2. Article 1(1) is replaced by the following:

‘1. The purpose of this Directive is to incorporate international standards for ship-source pollution into Community law and to ensure that persons responsible for discharges of polluting substances are subject to adequate penalties, including criminal penalties, in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.’;

3. the following point is added to Article 2:

‘5. “Legal person” shall mean any legal entity in possession of such status under applicable national law, other than States themselves or public bodies in the exercise of State authority or public international organisations.’;

4. Articles 4 and 5 are replaced by the following:

‘Article 4

Infringements

1. Member States shall ensure that ship-source discharges of polluting substances, including minor cases of such discharges, into any of the areas referred to in Article 3(1) are regarded as infringements if committed with intent, recklessly or with serious negligence.

2. Each Member State shall take the necessary measures to ensure that any natural or legal person having committed an infringement within the meaning of paragraph 1 can be held liable therefor.

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

*Article 5***Exceptions**

1. A discharge of polluting substances into any of the areas referred to in Article 3(1) shall not be regarded as an infringement, if it satisfies the conditions set out in Annex I, Regulations 15, 34, 4.1 or 4.3 or in Annex II, Regulations 13, 3.1.1 or 3.1.3 of Marpol 73/78.

2. A discharge of polluting substances into the areas referred to in Article 3(1)(c), (d) and (e) shall not be regarded as an infringement for the owner, the master or the crew, if it satisfies the conditions set out in Annex I, Regulation 4.2 or in Annex II, Regulation 3.1.2 of Marpol 73/78.;

5. after Article 5 the following Articles are inserted:

*'Article 5a***Criminal offences**

1. Member States shall ensure that infringements within the meaning of Articles 4 and 5 are regarded as criminal offences.

2. Paragraph 1 shall not apply to minor cases, where the act committed does not cause deterioration in the quality of water.

3. Repeated minor cases that do not individually but in conjunction result in deterioration in the quality of water shall be regarded as a criminal offence, if committed with intent, recklessly or with serious negligence.

*Article 5b***Inciting, aiding and abetting**

Member States shall ensure that any act of inciting, or aiding and abetting an offence committed with intent and referred to in Article 5a(1) and (3), is punishable as a criminal offence.;

6. Article 8 is replaced by the following:

*'Article 8***Penalties**

Each Member State shall take the necessary measures to ensure that infringements within the meaning of Articles 4 and 5 are punishable by effective, proportionate and dissuasive penalties.;

7. after Article 8 the following Articles are inserted:

*'Article 8a***Penalties against natural persons**

Each Member State shall take the necessary measures to ensure that the offences referred to in Article 5a(1), and (3) and Article 5b are punishable by effective, proportionate and dissuasive criminal penalties.

*Article 8b***Liability of legal persons**

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences referred to in Article 5a(1) and (3) and Article 5b, committed for their benefit by any natural person acting either individually or as part of an organ of the legal person, and who has a leading position within the structure of the legal person, based on:

(a) a power of representation of the legal person;

(b) authority to take decisions on behalf of the legal person;
or

(c) authority to exercise control within the legal person.

2. Each Member State shall also ensure that a legal person can be held liable where lack of supervision or control by a natural person referred to in paragraph 1 has made the commission of a criminal offence referred to in Article 5a(1) and (3) and Article 5b possible for the benefit of that legal person by a natural person under its authority.

3. The liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons involved as perpetrators, inciters or accessories in the criminal offences referred to in Article 5a(1) and (3) and Article 5b.

*Article 8c***Penalties against legal persons**

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 8b is punishable by effective, proportionate and dissuasive penalties.;

*Article 2***Transposition**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 November 2010. They shall forthwith communicate to the Commission the text of those measures.

When they are adopted by Member States, those measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 3

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 21 October 2009.

For the European Parliament
The President
J. BUZEK

For the Council
The President
C. MALMSTRÖM

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION 2004/757/JHA

of 25 october 2004

laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(e) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

(1) Illicit drug trafficking poses a threat to health, safety and the quality of life of citizens of the European Union, and to the legal economy, stability and security of the Member States.

(2) The need for legislative action to tackle illicit drug trafficking has been recognised in particular in the Action Plan of the Council and the Commission on how best to implement the provisions of the Amsterdam Treaty on an area of freedom, security and justice ⁽³⁾, adopted by the Justice and Home Affairs Council in Vienna on 3 December 1998, the conclusions of the Tampere European Council of 15 and 16 October 1999, in particular point 48 thereof, the European Union's Drugs Strategy (2000-2004) endorsed by the Helsinki European Council from 10 to 12 December 1999 and the European Union's Action Plan on Drugs (2000-2004) endorsed by the European Council in Santa Maria da Feira on 19 and 20 June 2000.

(3) It is necessary to adopt minimum rules relating to the constituent elements of the offences of illicit trafficking in drugs and precursors which will allow a common approach at European Union level to the fight against such trafficking.

(4) By virtue of the principle of subsidiarity, European Union action should focus on the most serious types of drug offence. The exclusion of certain types of behaviour as regards personal consumption from the scope of this Framework Decision does not constitute a Council guideline on how Member States should deal with these other cases in their national legislation.

(5) Penalties provided for by the Member States should be effective, proportionate and dissuasive, and include custodial sentences. To determine the level of penalties, factual elements such as the quantities and the type of drugs trafficked, and whether the offence was committed within the framework of a criminal organisation, should be taken into account.

(6) Member States should be allowed to make provision for reducing the penalties when the offender has supplied the competent authorities with valuable information.

(7) It is necessary to take measures to enable the confiscation of the proceeds of the offences referred to in this Framework Decision.

(8) Measures should be taken to ensure that legal persons can be held liable for the criminal offences referred to by this Framework Decision which are committed for their benefit.

(9) The effectiveness of the efforts made to tackle illicit drug trafficking depends essentially on the harmonisation of the national measures implementing this Framework Decision,

⁽¹⁾ OJ C 304 E, 30.10.2001, p. 172.

⁽²⁾ Opinion of 9 March 2004 (not yet published in the Official Journal).

⁽³⁾ OJ C 19, 23.1.1999, p. 1.

HAS DECIDED AS FOLLOWS:

Article 1

Definitions

For the purposes of this Framework Decision:

1. 'drugs': shall mean any of the substances covered by the following United Nations Conventions:

(a) the 1961 Single Convention on Narcotic Drugs (as amended by the 1972 Protocol);

(b) the 1971 Vienna Convention on Psychotropic Substances. It shall also include the substances subject to controls under Joint Action 97/396/JHA of 16 June 1997 concerning the information exchange risk assessment and the control of new synthetic drugs ⁽¹⁾;

2. 'precursors': shall mean any substance scheduled in the Community legislation giving effect to the obligations deriving from Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988;

3. 'legal person': shall mean any legal entity having such status under the applicable national law, except for States or other public bodies acting in the exercise of their sovereign rights and for public international organisations.

Article 2

Crimes linked to trafficking in drugs and precursors

1. Each Member State shall take the necessary measures to ensure that the following intentional conduct when committed without right is punishable:

(a) the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs;

(b) the cultivation of opium poppy, coca bush or cannabis plant;

(c) the possession or purchase of drugs with a view to conducting one of the activities listed in (a);

(d) the manufacture, transport or distribution of precursors, knowing that they are to be used in or for the illicit production or manufacture of drugs.

2. The conduct described in paragraph 1 shall not be included in the scope of this Framework Decision when it is committed by its perpetrators exclusively for their own personal consumption as defined by national law.

Article 3

Incitement, aiding and abetting and attempt

1. Each Member State shall take the necessary measures to make incitement to commit, aiding and abetting or attempting one of the offences referred to in Article 2 a criminal offence.

2. A Member State may exempt from criminal liability the attempt to offer or prepare drugs referred to in Article 2(1)(a) and the attempt to possess drugs referred to in Article 2(1)(c).

Article 4

Penalties

1. Each Member State shall take the measures necessary to ensure that the offences defined in Articles 2 and 3 are punishable by effective, proportionate and dissuasive criminal penalties.

Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2 are punishable by criminal penalties of a maximum of at least between one and three years of imprisonment.

2. Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2(1)(a), (b) and (c) are punishable by criminal penalties of a maximum of at least between 5 and 10 years of imprisonment in each of the following circumstances:

(a) the offence involves large quantities of drugs;

(b) the offence either involves those drugs which cause the most harm to health, or has resulted in significant damage to the health of a number of persons.

⁽¹⁾ OJ L 167, 25.6.1997, p. 1.

3. Each Member State shall take the necessary measures to ensure that the offences referred to in paragraph 2 are punishable by criminal penalties of a maximum of at least 10 years of deprivation of liberty, where the offence was committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union ⁽¹⁾.

4. Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2(1)(d) are punishable by criminal penalties of a maximum of at least between 5 and 10 years of deprivation of liberty, where the offence was committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA and the precursors are intended to be used in or for the production or manufacture of drugs under the circumstances referred to in paragraphs 2(a) or (b).

5. Without prejudice to the rights of victims and of other bona fide third parties, each Member State shall take the necessary measures to enable the confiscation of substances which are the object of offences referred to in Articles 2 and 3, instrumentalities used or intended to be used for these offences and proceeds from these offences or the confiscation of property the value of which corresponds to that of such proceeds, substances or instrumentalities.

The terms 'confiscation', 'instrumentalities', 'proceeds' and 'property' shall have the same meaning as in Article 1 of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Article 5

Particular circumstances

Notwithstanding Article 4, each Member State may take the necessary measures to ensure that the penalties referred to in Article 4 may be reduced if the offender:

- (a) renounces criminal activity relating to trafficking in drugs and precursors, and
- (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
 - (i) prevent or mitigate the effects of the offence,
 - (ii) identify or bring to justice the other offenders,

(iii) find evidence, or

(iv) prevent further offences referred to in Articles 2 and 3.

Article 6

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the criminal offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as a member of an organ of the legal person in question, who has a leading position within the legal person, based on one of the following:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person;
- (c) an authority to exercise control within the legal person.

2. Apart from the cases provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in any of the offences referred to in Articles 2 and 3.

Article 7

Sanctions for legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to tax relief or other benefits or public aid;
- (b) temporary or permanent disqualification from the pursuit of commercial activities;
- (c) placing under judicial supervision;

⁽¹⁾ OJ L 351, 29.12.1998, p. 1.

- (d) a judicial winding-up order;
- (e) temporary or permanent closure of establishments used for committing the offence;
- (f) in accordance with Article 4(5), the confiscation of substances which are the object of offences referred to in Articles 2 and 3, instrumentalities used or intended to be used for these offences and proceeds from these offences or the confiscation of property the value of which corresponds to that of such proceeds, substances or instrumentalities.

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6(2) is punishable by effective, proportionate and dissuasive sanctions or measures.

Article 8

Jurisdiction and prosecution

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 2 and 3 where:

- (a) the offence is committed in whole or in part within its territory;
- (b) the offender is one of its nationals; or
- (c) the offence is committed for the benefit of a legal person established in the territory of that Member State.

2. A Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) and 1(c) where the offence is committed outside its territory.

3. A Member State which, under its laws, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over and to prosecute, where appropriate, an offence referred to in Articles 2 and 3 when it is committed by one of its own nationals outside its territory.

4. Member States shall inform the General Secretariat of the Council and the Commission when they decide to apply

paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Article 9

Implementation and reports

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 12 May 2006.

2. By the deadline referred to in paragraph 1, 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. The Commission shall, by 12 May 2009, submit a report to the European Parliament and to the Council on the functioning of the implementation of the Framework Decision, including its effects on judicial cooperation in the field of illicit drug trafficking. Following this report, the Council shall assess, at the latest within six months after submission of the report, whether Member States have taken the necessary measures to comply with this Framework Decision.

Article 10

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 11

Entry into force

This Framework Decision shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 25 October 2004.

For the Council

The President

R. VERDONK

DIRECTIVE (EU) 2017/2103 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 15 November 2017

amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of ‘drug’ and repealing Council Decision 2005/387/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 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Council Framework Decision 2004/757/JHA ⁽³⁾ provides for a common approach to tackle illicit drug trafficking, which poses a threat to the health, safety and quality of life of citizens of the Union, to the legal economy and to the stability and security of the Member States. Framework Decision 2004/757/JHA sets out minimum common rules on the definition of drug trafficking offences and penalties in order to avoid problems arising in the cooperation between the judicial authorities and law enforcement agencies of Member States owing to the fact that the offence or offences in question are not punishable under the laws of both the requesting and the requested Member State.
- (2) Framework Decision 2004/757/JHA applies to the substances covered by the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and to the substances covered by the 1971 United Nations Convention on Psychotropic Substances (‘UN Conventions’), as well as to the synthetic drugs subjected to control measures across the Union pursuant to Council Joint Action 97/396/JHA ⁽⁴⁾, which pose public health risks comparable to those posed by the substances scheduled under the UN Conventions.
- (3) Framework Decision 2004/757/JHA should also apply to the substances subjected to control measures and criminal penalties pursuant to Council Decision 2005/387/JHA ⁽⁵⁾, which pose public health risks comparable to those posed by the substances scheduled under the UN Conventions.
- (4) New psychoactive substances, which imitate the effects of substances scheduled under the UN Conventions, are emerging frequently and are spreading rapidly in the Union. Certain new psychoactive substances pose severe public health and social risks. Regulation (EU) 2017/2101 of the European Parliament and of the Council ⁽⁶⁾ provides the framework for the exchange of information on new psychoactive substances and for a risk assessment procedure based on an initial report and risk assessment report drawn up to evaluate whether a new psychoactive substance poses severe public health and social risks. To effectively reduce the availability of new psychoactive substances that pose severe public health risks and, where applicable, severe social risks, and to deter trafficking in those substances across the Union, as well as the involvement of criminal organisations, those substances should be included in the definition of ‘drug’ in accordance with the provisions of this Directive and underpinned by proportionate criminal law provisions.

⁽¹⁾ OJ C 177, 11.6.2014, p. 52.

⁽²⁾ Position of the European Parliament of 17 April 2014 (not yet published in the Official Journal) and position of the Council at first reading of 25 September 2017 (not yet published in the Official Journal). Position of the European Parliament of 24 October 2017 (not yet published in the Official Journal).

⁽³⁾ Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ L 335, 11.11.2004, p. 8).

⁽⁴⁾ Joint Action 97/396/JHA of 16 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the information exchange, risk assessment and the control of new synthetic drugs (OJ L 167, 25.6.1997, p. 1).

⁽⁵⁾ Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances (OJ L 127, 20.5.2005, p. 32).

⁽⁶⁾ Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances (see page 1 of this Official Journal).

- (5) The new psychoactive substances included in the definition of 'drug' should therefore be covered by the Union criminal law provisions on illicit drug trafficking. This would also help streamline and clarify the Union legal framework, as the same criminal law provisions would apply to substances covered by the UN Conventions and to the most harmful new psychoactive substances. The definition of 'drug' in Framework Decision 2004/757/JHA should therefore be amended.
- (6) This Directive should establish the essential elements of the definition of 'drug', as well as the procedure and the criteria for the inclusion of new psychoactive substances in that definition. Furthermore, in order to include in the definition of 'drug' psychoactive substances which are already subject to control measures by Council decisions adopted in accordance with Joint Action 97/396/JHA and Decision 2005/387/JHA, an Annex containing a list of those psychoactive substances should be added to Framework Decision 2004/757/JHA.
- (7) However, in order to swiftly address the emergence and spread of harmful new psychoactive substances in the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of amending that Annex to include new psychoactive substances in the definition of 'drug'. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽¹⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (8) In order to swiftly address the emergence and spread of harmful new psychoactive substances in the Union, Member States should apply the provisions of Framework Decision 2004/757/JHA to new psychoactive substances which pose severe public health risks and, where applicable, severe social risks, as soon as possible but no later than six months from the entry into force of a delegated act amending the Annex to include them in the definition of 'drug'. Member States should, to the extent possible, make every effort to shorten that deadline.
- (9) Since the objective of this Directive, namely to extend the application of the Union criminal law provisions that apply to illicit drug trafficking to new psychoactive substances posing severe public health risks and, where applicable, severe social risks, cannot be sufficiently achieved by the Member States acting alone, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (10) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, and in particular the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the right not to be tried or punished twice in criminal proceedings for the same criminal offence and the principles of legality and proportionality of criminal offences and penalties.
- (11) As this Directive together with Regulation (EU) 2017/2101, is designed to replace the mechanism established by Decision 2005/387/JHA, that Decision should be repealed.
- (12) In accordance with Article 3 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, Ireland has notified its wish to take part in the adoption and application of this Directive.
- (13) In accordance with Articles 1 and 2 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, the United Kingdom is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (14) In accordance with Articles 1 and 2 of 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 Directive and is not bound by it or subject to its application.

⁽¹⁾ OJ L 123, 12.5.2016, p. 1.

(15) Framework Decision 2004/757/JHA should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Framework Decision 2004/757/JHA

Framework Decision 2004/757/JHA is amended as follows:

(1) Article 1 is amended as follows:

(a) point 1 is replaced by the following:

‘1. “drug” means any of the following:

(a) a substance covered by the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, or by the 1971 United Nations Convention on Psychotropic Substances;

(b) any of the substances listed in the Annex;’;

(b) the following points are added:

‘4. “new psychoactive substance” means a substance in pure form or in a preparation that is not covered by the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, or by the 1971 United Nations Convention on Psychotropic Substances but may pose health or social risks similar to those posed by the substances covered by those Conventions;

5. “preparation” means a mixture containing one or more new psychoactive substances.’;

(2) the following Articles are inserted:

‘Article 1a

Procedure for including new psychoactive substances in the definition of “drug”

1. Based on a risk assessment or combined risk assessment carried out pursuant to Article 5c of Regulation (EC) No 1920/2006 of the European Parliament and of the Council (*), and in accordance with the criteria set out in paragraph 2 of this Article, the Commission shall, without undue delay, adopt a delegated act in accordance with Article 8a amending the Annex to this Framework Decision in order to add the new psychoactive substance or substances to it and provide that the new psychoactive substance or substances pose severe public health risks and, where applicable, severe social risks at Union level, and that it is or they are included in the definition of “drug”.

2. When considering whether to adopt a delegated act as referred to in paragraph 1, the Commission shall take into account whether the extent or patterns of use of the new psychoactive substance and its availability and potential for diffusion within the Union are significant, and whether the harm to health caused by the consumption of the new psychoactive substance, associated with its acute or chronic toxicity and abuse liability or dependence-producing potential, is life-threatening. The harm to health is considered life-threatening if the new psychoactive substance is likely to cause death or lethal injury, severe disease, severe physical or mental impairment or a significant spread of diseases, including the transmission of blood-borne viruses.

In addition, the Commission shall take into account whether the social harm caused by the new psychoactive substance to individuals and to society is severe, and, in particular, whether the impact of the new psychoactive substance on social functioning and public order is such as to disrupt public order, or cause violent or anti-social behaviour, resulting in harm to the user or to other persons or damage to property, or whether criminal activities, including organised crime, associated with the new psychoactive substance are systematic, involve significant illicit profits or entail significant economic costs.

3. If, within six weeks of the date of receipt of the risk assessment report or the combined risk assessment report in accordance with Article 5c(6) of Regulation (EC) No 1920/2006, the Commission considers that it is not necessary to adopt a delegated act to include the new psychoactive substance or substances in the definition of "drug", it shall present a report to the European Parliament and to the Council explaining the reasons for not doing so.

4. As regards new psychoactive substances added to the Annex to this Framework Decision, Member States which have not yet done so shall bring into force the laws, regulations and administrative provisions necessary to apply the provisions of this Framework Decision to those new psychoactive substances as soon as possible but no later than six months after the entry into force of the delegated act amending the Annex. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Framework Decision or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 1b

National control measures

Without prejudice to the obligations imposed on the Member States under this Framework Decision, Member States may maintain or introduce in their territories, with regard to new psychoactive substances, any national control measures that they consider appropriate.

(*) Regulation (EC) No 1920/2006 of the European Parliament and of the Council of 12 December 2006 on the European Monitoring Centre for Drugs and Drug Addiction (OJ L 376, 27.12.2006, p. 1).;

(3) the following Article is inserted:

'Article 8a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 1a shall be conferred on the Commission for a period of five years from 22 November 2017. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 1a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (*).

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 1a shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

(*) OJ L 123, 12.5.2016, p. 1.;

(4) an Annex, as set out in the Annex to this Directive, is added.

Article 2

Transposition of this Directive

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 November 2018. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 3

Repeal of Decision 2005/387/JHA

1. Decision 2005/387/JHA is repealed with effect from 23 November 2018.
2. Notwithstanding paragraph 1, Decision 2005/387/JHA shall continue to apply to new psychoactive substances in respect of which a joint report, as referred to in Article 5 of that Decision, has been submitted before 23 November 2018.
3. The Commission shall adopt delegated acts in accordance with paragraphs 4 to 8 of this Article amending the Annex to Framework Decision 2004/757/JHA in order to add to it new psychoactive substances as referred to in paragraph 2 of this Article.
4. The power to adopt delegated acts referred to in paragraph 3 shall be conferred on the Commission for a period of two years from 22 November 2017.
5. The delegation of power referred to in paragraph 3 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
6. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
7. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
8. A delegated act adopted pursuant to paragraph 3 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 4

Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

*Article 5***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 15 November 2017.

For the European Parliament
The President
A. TAJANI

For the Council
The President
M. MAASIKAS

ANNEX

‘ANNEX

List of substances referred to in point (b) of point 1 of Article 1

1. P-Methylthioamphetamine or 4-Methylthioamphetamine, as referred to in Council Decision 1999/615/JHA ⁽¹⁾.
2. Paramethoxymethylamphetamine or N-methyl-1-(4-methoxyphenyl)-2-aminopropane, as referred to in Council Decision 2002/188/JHA ⁽²⁾.
3. 2,5-dimethoxy-4-iodophenethylamine, 2,5-dimethoxy-4-ethylthiophenethylamine, 2,5-dimethoxy-4-(n)-propylthiophenethylamine and 2,4,5-trimethoxyamphetamine, as referred to in Council Decision 2003/847/JHA ⁽³⁾.
4. 1-benzylpiperazine or 1-benzyl-1,4-diazacyclohexane or N-benzylpiperazine or benzylpiperazine, as referred to in Council Decision 2008/206/JHA ⁽⁴⁾.
5. 4-methylmethcathinone, as referred to in Council Decision 2010/759/EU ⁽⁵⁾.
6. 4-methyl-5-(4-methylphenyl)-4,5-dihydrooxazol-2-amine (4,4'-DMAR) and 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (MT-45), as referred to in Council Implementing Decision (EU) 2015/1873 ⁽⁶⁾.
7. 4-methylamphetamine, as referred to in Council Implementing Decision (EU) 2015/1874 ⁽⁷⁾.
8. 4-iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25I-NBOMe), 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (AH-7921), 3,4-methylenedioxypyrovalerone (MDPV) and 2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone (methoxetamine), as referred to in Council Implementing Decision (EU) 2015/1875 ⁽⁸⁾.
9. 5-(2-aminopropyl)indole, as referred to in Council Implementing Decision (EU) 2015/1876 ⁽⁹⁾.
10. 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one (α-pyrrolidinovalerophenone, α-PVP), as referred to in Council Implementing Decision (EU) 2016/1070 ⁽¹⁰⁾.
11. Methyl 2-[[1-(cyclohexylmethyl)-1*H*-indole-3-carbonyl]amino]-3,3-dimethylbutanoate (MDMB-CHMICA), as referred to in Council Implementing Decision (EU) 2017/369 ⁽¹¹⁾.
12. N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide (acryloylfentanyl), as referred to in Council Implementing Decision (EU) 2017/1774 ⁽¹²⁾.

⁽¹⁾ Council Decision 1999/615/JHA of 13 September 1999 defining 4-MTA as a new synthetic drug which is to be made subject to control measures and criminal penalties (OJ L 244, 16.9.1999, p. 1).

⁽²⁾ Council Decision 2002/188/JHA of 28 February 2002 concerning control measures and criminal sanctions in respect of the new synthetic drug PMMA (OJ L 63, 6.3.2002, p. 14).

⁽³⁾ Council Decision 2003/847/JHA of 27 November 2003 concerning control measures and criminal sanctions in respect of the new synthetic drugs 2C-I, 2C-T-2, 2C-T-7 and TMA-2 (OJ L 321, 6.12.2003, p. 64).

⁽⁴⁾ Council Decision 2008/206/JHA of 3 March 2008 on defining 1-benzylpiperazine (BZP) as a new psychoactive substance which is to be made subject to control measures and criminal provisions (OJ L 63, 7.3.2008, p. 45).

⁽⁵⁾ Council Decision 2010/759/EU of 2 December 2010 on submitting 4-methylmethcathinone (mephedrone) to control measures (OJ L 322, 8.12.2010, p. 44).

⁽⁶⁾ Council Implementing Decision (EU) 2015/1873 of 8 October 2015 on subjecting 4-methyl-5-(4-methylphenyl)-4,5-dihydrooxazol-2-amine (4,4'-DMAR) and 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (MT-45) to control measures (OJ L 275, 20.10.2015, p. 32).

⁽⁷⁾ Council Implementing Decision (EU) 2015/1874 of 8 October 2015 on subjecting 4-methylamphetamine to control measures (OJ L 275, 20.10.2015, p. 35).

⁽⁸⁾ Council Implementing Decision (EU) 2015/1875 of 8 October 2015 on subjecting 4-iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25I-NBOMe), 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (AH-7921), 3,4-methylenedioxypyrovalerone (MDPV) and 2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone (methoxetamine) to control measures (OJ L 275, 20.10.2015, p. 38).

⁽⁹⁾ Council Implementing Decision (EU) 2015/1876 of 8 October 2015 on subjecting 5-(2-aminopropyl)indole to control measures (OJ L 275, 20.10.2015, p. 43).

⁽¹⁰⁾ Council Implementing Decision (EU) 2016/1070 of 27 June 2016 on subjecting 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one (α-pyrrolidinovalerophenone, α-PVP) to control measures (OJ L 178, 2.7.2016, p. 18).

⁽¹¹⁾ Council Implementing Decision (EU) 2017/369 of 27 February 2017 on subjecting methyl 2-[[1-(cyclohexylmethyl)-1*H*-indole-3-carbonyl]amino]-3,3-dimethylbutanoate (MDMB-CHMICA) to control measures (OJ L 56, 3.3.2017, p. 210).

⁽¹²⁾ Council Implementing Decision (EU) 2017/1774 of 25 September 2017 on subjecting N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide (acryloylfentanyl) to control measures (OJ L 251, 29.9.2017, p. 21).

VI. OTHER TEXTS

(Acts adopted under Title VI of the Treaty on European Union)

JOINT ACTION

of 5 December 1997

adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime

(97/827/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3(2)(b) thereof,

Having regard to the report from the High-Level Group on Organized Crime approved by the Amsterdam European Council on 16 and 17 June 1997, and in particular Recommendation No 15 of the Action Plan,

Having regard to the Council's conclusions on the said report,

Having regard to experience within the International Financial Action Task Force on Money Laundering,

Having regard to the Council Decision of 26 June 1997 on the rules applicable to national experts on detachment to the General Secretariat of the Council in the context of the implementation of the plan to step up the fight against organized crime,

Whereas there is a need to improve the implementation at national level of the instruments adopted within the framework of the Union and elsewhere, particularly with a view to combating organized crime;

Whereas such implementation is primarily the responsibility of each Member State and whereas, in the framework of their concertation within the Union, Member States encourage each other to improve the application of the instruments of cooperation subscribed to at international level;

Whereas it is also desirable to establish a mechanism which, as an extension of such concertation, enables Member States to evaluate on a basis of equality and mutual confidence the implementation by each of them of instruments of cooperation intended to combat international organized crime;

Having examined the views of the European Parliament ⁽¹⁾, following consultation carried out by the Presidency in accordance with Article K.6 of the Treaty,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Objective

1. Without prejudice to the competence of the Community, a mechanism for peer evaluation of the application and implementation at national level of Union and other international acts and instruments in criminal matters, of the resulting legislation and practices at national level and of international cooperation actions in the fight against organized crime in the Member States shall be established in accordance with the detailed rules set out below.

2. Each Member State shall undertake to ensure that its national authorities cooperate fully with the evaluation teams set up under this Joint Action with a view to its

⁽¹⁾ Opinion delivered on 20 November 1997 (not yet published in the Official Journal).

implementation, with due regard for the rules of law and ethics applicable at national level.

Article 2

Evaluation subjects

1. Each year, the specific subject of the evaluation as well as the order in which Member States are to be evaluated, at a rate of at least five per year, shall be defined, on a proposal from the Presidency, by the members of the Multidisciplinary Working Party on Organized Crime (MDW).
2. The evaluation shall be prepared by the Presidency of the Council, assisted by the General Secretariat of the Council. The Commission shall be fully involved in the preparatory work.
3. The first year of evaluations shall begin no later than three months after the entry into force of this Joint Action.

Article 3

Designation of experts

1. Each Member State shall send the General Secretariat of the Council, at the Presidency's initiative, the names of one to three experts having substantial experience of the subject to which the evaluation relates in the field of combating organized crime, in particular in a law-enforcement service such as the police, customs, a judicial or other public authority who are prepared to participate in at least one evaluation exercise.
2. The Presidency shall draw up a list of the experts designated by the Member States and shall forward it to the members of the MDW.

Article 4

Evaluation team

On the basis of the list referred to in Article 3 (2), the Presidency shall choose a team of three experts for each Member State to be evaluated, ensuring that they are not nationals of the Member State in question. The names of the experts chosen shall be notified to the MDW. These experts shall constitute the evaluation team. Depending on the subjects to be evaluated, the Commission may take part in the proceedings of the teams of experts. The evaluation team shall be assisted in all its tasks by the General Secretariat of the Council.

Article 5

Preparation of the questionnaire

The Presidency shall, with the assistance of the General Secretariat of the Council, draw up a questionnaire for the purposes of evaluating all Member States in the framework of the objective defined in Article 2 (1) and shall submit it to the MDW for approval. The questionnaire shall be designed to establish all information useful for the conduct of the evaluation. The Member State being evaluated shall ensure that it replies to the questionnaire in the time allowed and as fully as possible and attaches where necessary all legal provisions and technical and practical data required.

Article 6

On-the-spot evaluation

Once it has received the reply to the questionnaire, the evaluation team shall visit the Member State being evaluated in order to meet the political, administrative, police, customs and judicial authorities or any other relevant body in accordance with a programme of visits arranged by the Member State visited which takes account of the wishes expressed by the evaluation team.

Article 7

Preparation of the draft report

No later than one month after the visit referred to in Article 6, the evaluation team shall draw up a draft report and submit it to the Member State evaluated for its opinion. If it deems appropriate, it shall amend its report in the light of the comments made by the Member State evaluated.

Article 8

Discussion and adoption of the report

1. The Presidency shall forward the draft report, which shall be confidential, to the members of the MDW, together with any of the comments of the Member State evaluated which were not accepted by the evaluation team.
2. The MDW meeting shall begin with a presentation of the draft report by the members of the evaluation team. The representative of the Member State evaluated shall then provide any comment, information or explanation he deems necessary. The MDW shall then discuss the draft report and adopt its conclusions by consensus.
3. The Presidency shall inform the Council once a year of the results of the evaluation exercises. The Council

may, where it sees fit, address any recommendations to the Member State concerned and may invite it to report back to the Council on the progress it has made by a deadline to be set by the Council.

4. In compliance with Article 9 (2), the Presidency shall inform the European Parliament each year of the implementation of the evaluation mechanism.

5. At the end of a complete evaluation exercise, the Council shall take the appropriate measures.

Article 9

Confidentiality

1. The experts on the evaluation teams shall be required to respect the confidentiality of any information they receive in connection with their task. Member States must therefore ensure that the experts they appoint under Article 3 have an appropriate security level, where appropriate.

2. The report drawn up within the framework of this Joint Action shall be confidential. However, the Member State evaluated may publish the report on its own responsibility. It must obtain the Council's consent if it wishes to publish only parts of it.

Article 10

Review of the mechanism

No later than at the end of the first evaluation of all the Member States, the Council shall examine the detailed rules and scope of the mechanism and shall, if appropriate, make adjustments to this Joint Action.

Article 11

Entry into force

This Joint Action shall enter into force on the day of its publication in the Official Journal.

Article 12

Publication in the Official Journal

This Joint Action shall be published in the Official Journal.

Done at Brussels, 5 December 1997.

For the Council

The President

M. FISCHBACH

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)****(Text with EEA relevance)**

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 16 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union (the 'Charter') and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that everyone has the right to the protection of personal data concerning him or her.
- (2) The principles of, and rules on the protection of natural persons with regard to the processing of their personal data should, whatever their nationality or residence, respect their fundamental rights and freedoms, in particular their right to the protection of personal data. This Regulation is intended to contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, to the strengthening and the convergence of the economies within the internal market, and to the well-being of natural persons.
- (3) Directive 95/46/EC of the European Parliament and of the Council ⁽⁴⁾ seeks to harmonise the protection of fundamental rights and freedoms of natural persons in respect of processing activities and to ensure the free flow of personal data between Member States.

⁽¹⁾ OJ C 229, 31.7.2012, p. 90.

⁽²⁾ OJ C 391, 18.12.2012, p. 127.

⁽³⁾ Position of the European Parliament of 12 March 2014 (not yet published in the Official Journal) and position of the Council at first reading of 8 April 2016 (not yet published in the Official Journal). Position of the European Parliament of 14 April 2016.

⁽⁴⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

- (4) The processing of personal data should be designed to serve mankind. The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality. This Regulation respects all fundamental rights and observes the freedoms and principles recognised in the Charter as enshrined in the Treaties, in particular the respect for private and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom to conduct a business, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity.
- (5) The economic and social integration resulting from the functioning of the internal market has led to a substantial increase in cross-border flows of personal data. The exchange of personal data between public and private actors, including natural persons, associations and undertakings across the Union has increased. National authorities in the Member States are being called upon by Union law to cooperate and exchange personal data so as to be able to perform their duties or carry out tasks on behalf of an authority in another Member State.
- (6) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of the collection and sharing of personal data has increased significantly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Natural persons increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and should further facilitate the free flow of personal data within the Union and the transfer to third countries and international organisations, while ensuring a high level of the protection of personal data.
- (7) Those developments require a strong and more coherent data protection framework in the Union, backed by strong enforcement, given the importance of creating the trust that will allow the digital economy to develop across the internal market. Natural persons should have control of their own personal data. Legal and practical certainty for natural persons, economic operators and public authorities should be enhanced.
- (8) Where this Regulation provides for specifications or restrictions of its rules by Member State law, Member States may, as far as necessary for coherence and for making the national provisions comprehensible to the persons to whom they apply, incorporate elements of this Regulation into their national law.
- (9) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the implementation of data protection across the Union, legal uncertainty or a widespread public perception that there are significant risks to the protection of natural persons, in particular with regard to online activity. Differences in the level of protection of the rights and freedoms of natural persons, in particular the right to the protection of personal data, with regard to the processing of personal data in the Member States may prevent the free flow of personal data throughout the Union. Those differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. Such a difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.
- (10) In order to ensure a consistent and high level of protection of natural persons and to remove the obstacles to flows of personal data within the Union, the level of protection of the rights and freedoms of natural persons with regard to the processing of such data should be equivalent in all Member States. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union. Regarding the processing of personal data for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Member States should be allowed to maintain or introduce national provisions to further specify the application of the rules of this Regulation. In conjunction with the general and horizontal law on data protection implementing Directive 95/46/EC, Member States have several sector-specific laws in areas that need more specific provisions. This Regulation also provides a margin of manoeuvre for Member States to specify its rules, including for the processing of special categories of personal data ('sensitive data'). To that extent, this Regulation does not exclude Member State law that sets out the circumstances for specific processing situations, including determining more precisely the conditions under which the processing of personal data is lawful.

- (11) Effective protection of personal data throughout the Union requires the strengthening and setting out in detail of the rights of data subjects and the obligations of those who process and determine the processing of personal data, as well as equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for infringements in the Member States.
- (12) Article 16(2) TFEU mandates the European Parliament and the Council to lay down the rules relating to the protection of natural persons with regard to the processing of personal data and the rules relating to the free movement of personal data.
- (13) In order to ensure a consistent level of protection for natural persons throughout the Union and to prevent divergences hampering the free movement of personal data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide natural persons in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective cooperation between the supervisory authorities of different Member States. The proper functioning of the internal market requires that the free movement of personal data within the Union is not restricted or prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data. To take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a derogation for organisations with fewer than 250 employees with regard to record-keeping. In addition, the Union institutions and bodies, and Member States and their supervisory authorities, are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw from Article 2 of the Annex to Commission Recommendation 2003/361/EC ⁽¹⁾.
- (14) The protection afforded by this Regulation should apply to natural persons, whatever their nationality or place of residence, in relation to the processing of their personal data. This Regulation does not cover the processing of personal data which concerns legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person.
- (15) In order to prevent creating a serious risk of circumvention, the protection of natural persons should be technologically neutral and should not depend on the techniques used. The protection of natural persons should apply to the processing of personal data by automated means, as well as to manual processing, if the personal data are contained or are intended to be contained in a filing system. Files or sets of files, as well as their cover pages, which are not structured according to specific criteria should not fall within the scope of this Regulation.
- (16) This Regulation does not apply to issues of protection of fundamental rights and freedoms or the free flow of personal data related to activities which fall outside the scope of Union law, such as activities concerning national security. This Regulation does not apply to the processing of personal data by the Member States when carrying out activities in relation to the common foreign and security policy of the Union.
- (17) Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾ applies to the processing of personal data by the Union institutions, bodies, offices and agencies. Regulation (EC) No 45/2001 and other Union legal acts applicable to such processing of personal data should be adapted to the principles and rules established in this Regulation and applied in the light of this Regulation. In order to provide a strong and coherent data protection framework in the Union, the necessary adaptations of Regulation (EC) No 45/2001 should follow after the adoption of this Regulation, in order to allow application at the same time as this Regulation.
- (18) This Regulation does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity and thus with no connection to a professional or commercial activity. Personal or

⁽¹⁾ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (C(2003) 1422) (OJ L 124, 20.5.2003, p. 36).

⁽²⁾ 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).

household activities could include correspondence and the holding of addresses, or social networking and online activity undertaken within the context of such activities. However, this Regulation applies to controllers or processors which provide the means for processing personal data for such personal or household activities.

- (19) 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, including the safeguarding against and the prevention of threats to public security and the free movement of such data, is the subject of a specific Union legal act. This Regulation should not, therefore, apply to processing activities for those purposes. However, personal data processed by public authorities under this Regulation should, when used for those purposes, be governed by a more specific Union legal act, namely Directive (EU) 2016/680 of the European Parliament and of the Council ⁽¹⁾. Member States may entrust competent authorities within the meaning of Directive (EU) 2016/680 with tasks which are not necessarily carried out for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and prevention of threats to public security, so that the processing of personal data for those other purposes, in so far as it is within the scope of Union law, falls within the scope of this Regulation.

With regard to the processing of personal data by those competent authorities for purposes falling within scope of this Regulation, Member States should be able to maintain or introduce more specific provisions to adapt the application of the rules of this Regulation. Such provisions may determine more precisely specific requirements for the processing of personal data by those competent authorities for those other purposes, taking into account the constitutional, organisational and administrative structure of the respective Member State. When the processing of personal data by private bodies falls within the scope of this Regulation, this Regulation should provide for the possibility for Member States under specific conditions to restrict by law certain obligations and rights when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard specific important interests including public security and 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. This is relevant for instance in the framework of anti-money laundering or the activities of forensic laboratories.

- (20) While this Regulation applies, *inter alia*, to the activities of courts and other judicial authorities, Union or Member State law could specify the processing operations and processing procedures in relation to the processing of personal data by courts and other judicial authorities. The competence of the supervisory authorities should not cover the processing of personal data when courts are acting in their judicial capacity, in order to safeguard the independence of the judiciary in the performance of its judicial tasks, including decision-making. It should be possible to entrust supervision of such data processing operations to specific bodies within the judicial system of the Member State, which should, in particular ensure compliance with the rules of this Regulation, enhance awareness among members of the judiciary of their obligations under this Regulation and handle complaints in relation to such data processing operations.
- (21) This Regulation is without prejudice to the application of Directive 2000/31/EC of the European Parliament and of the Council ⁽²⁾, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive. That Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between Member States.
- (22) Any processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union should be carried out in accordance with this Regulation, regardless of whether the processing itself takes place within the Union. Establishment implies the effective and real exercise of activity through stable arrangements. The legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in that respect.

⁽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 prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data and repealing Council Framework Decision 2008/977/JHA (see page 89 of this Official Journal).

⁽²⁾ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

- (23) In order to ensure that natural persons are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects who are in the Union by a controller or a processor not established in the Union should be subject to this Regulation where the processing activities are related to offering goods or services to such data subjects irrespective of whether connected to a payment. In order to determine whether such a controller or processor is offering goods or services to data subjects who are in the Union, it should be ascertained whether it is apparent that the controller or processor envisages offering services to data subjects in one or more Member States in the Union. Whereas the mere accessibility of the controller's, processor's or an intermediary's website in the Union, of an email address or of other contact details, or the use of a language generally used in the third country where the controller is established, is insufficient to ascertain such intention, factors such as the use of a language or a currency generally used in one or more Member States with the possibility of ordering goods and services in that other language, or the mentioning of customers or users who are in the Union, may make it apparent that the controller envisages offering goods or services to data subjects in the Union.
- (24) The processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union should also be subject to this Regulation when it is related to the monitoring of the behaviour of such data subjects in so far as their behaviour takes place within the Union. In order to determine whether a processing activity can be considered to monitor the behaviour of data subjects, it should be ascertained whether natural persons are tracked on the internet including potential subsequent use of personal data processing techniques which consist of profiling a natural person, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.
- (25) Where Member State law applies by virtue of public international law, this Regulation should also apply to a controller not established in the Union, such as in a Member State's diplomatic mission or consular post.
- (26) The principles of data protection should apply to any information concerning an identified or identifiable natural person. Personal data which have undergone pseudonymisation, which could be attributed to a natural person by the use of additional information should be considered to be information on an identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments. The principles of data protection should therefore not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable. This Regulation does not therefore concern the processing of such anonymous information, including for statistical or research purposes.
- (27) This Regulation does not apply to the personal data of deceased persons. Member States may provide for rules regarding the processing of personal data of deceased persons.
- (28) The application of pseudonymisation to personal data can reduce the risks to the data subjects concerned and help controllers and processors to meet their data-protection obligations. The explicit introduction of 'pseudonymisation' in this Regulation is not intended to preclude any other measures of data protection.
- (29) In order to create incentives to apply pseudonymisation when processing personal data, measures of pseudonymisation should, whilst allowing general analysis, be possible within the same controller when that controller has taken technical and organisational measures necessary to ensure, for the processing concerned, that this Regulation is implemented, and that additional information for attributing the personal data to a specific data subject is kept separately. The controller processing the personal data should indicate the authorised persons within the same controller.

- (30) Natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, such as internet protocol addresses, cookie identifiers or other identifiers such as radio frequency identification tags. This may leave traces which, in particular when combined with unique identifiers and other information received by the servers, may be used to create profiles of the natural persons and identify them.
- (31) Public authorities to which personal data are disclosed in accordance with a legal obligation for the exercise of their official mission, such as tax and customs authorities, financial investigation units, independent administrative authorities, or financial market authorities responsible for the regulation and supervision of securities markets should not be regarded as recipients if they receive personal data which are necessary to carry out a particular inquiry in the general interest, in accordance with Union or Member State law. The requests for disclosure sent by the public authorities should always be in writing, reasoned and occasional and should not concern the entirety of a filing system or lead to the interconnection of filing systems. The processing of personal data by those public authorities should comply with the applicable data-protection rules according to the purposes of the processing.
- (32) Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Silence, pre-ticked boxes or inactivity should not therefore constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be given for all of them. If the data subject's consent is to be given following a request by electronic means, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.
- (33) It is often not possible to fully identify the purpose of personal data processing for scientific research purposes at the time of data collection. Therefore, data subjects should be allowed to give their consent to certain areas of scientific research when in keeping with recognised ethical standards for scientific research. Data subjects should have the opportunity to give their consent only to certain areas of research or parts of research projects to the extent allowed by the intended purpose.
- (34) Genetic data should be defined as personal data relating to the inherited or acquired genetic characteristics of a natural person which result from the analysis of a biological sample from the natural person in question, in particular chromosomal, deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis, or from the analysis of another element enabling equivalent information to be obtained.
- (35) Personal data concerning health should include all data pertaining to the health status of a data subject which reveal information relating to the past, current or future physical or mental health status of the data subject. This includes information about the natural person collected in the course of the registration for, or the provision of, health care services as referred to in Directive 2011/24/EU of the European Parliament and of the Council ⁽¹⁾ to that natural person; a number, symbol or particular assigned to a natural person to uniquely identify the natural person for health purposes; information derived from the testing or examination of a body part or bodily substance, including from genetic data and biological samples; and any information on, for example, a disease, disability, disease risk, medical history, clinical treatment or the physiological or biomedical state of the data subject independent of its source, for example from a physician or other health professional, a hospital, a medical device or an in vitro diagnostic test.
- (36) The main establishment of a controller in the Union should be the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union, in which case that other establishment should be considered to be

⁽¹⁾ Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).

the main establishment. The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes and means of processing through stable arrangements. That criterion should not depend on whether the processing of personal data is carried out at that location. The presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute a main establishment and are therefore not determining criteria for a main establishment. The main establishment of the processor should be the place of its central administration in the Union or, if it has no central administration in the Union, the place where the main processing activities take place in the Union. In cases involving both the controller and the processor, the competent lead supervisory authority should remain the supervisory authority of the Member State where the controller has its main establishment, but the supervisory authority of the processor should be considered to be a supervisory authority concerned and that supervisory authority should participate in the cooperation procedure provided for by this Regulation. In any case, the supervisory authorities of the Member State or Member States where the processor has one or more establishments should not be considered to be supervisory authorities concerned where the draft decision concerns only the controller. Where the processing is carried out by a group of undertakings, the main establishment of the controlling undertaking should be considered to be the main establishment of the group of undertakings, except where the purposes and means of processing are determined by another undertaking.

- (37) A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exert a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented. An undertaking which controls the processing of personal data in undertakings affiliated to it should be regarded, together with those undertakings, as a group of undertakings.
- (38) Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child. The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.
- (39) Any processing of personal data should be lawful and fair. It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed. The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language be used. That principle concerns, in particular, information to the data subjects on the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in respect of the natural persons concerned and their right to obtain confirmation and communication of personal data concerning them which are being processed. Natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of personal data and how to exercise their rights in relation to such processing. In particular, the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. The personal data should be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, ensuring that the period for which the personal data are stored is limited to a strict minimum. Personal data should be processed only if the purpose of the processing could not reasonably be fulfilled by other means. In order to ensure that the personal data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. Personal data should be processed in a manner that ensures appropriate security and confidentiality of the personal data, including for preventing unauthorised access to or use of personal data and the equipment used for the processing.
- (40) In order for processing to be lawful, personal data should be processed on the basis of the consent of the data subject concerned or some other legitimate basis, laid down by law, either in this Regulation or in other Union or

Member State law as referred to in this Regulation, including the necessity for compliance with the legal obligation to which the controller is subject or the necessity for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.

- (41) Where this Regulation refers to a legal basis or a legislative measure, this does not necessarily require a legislative act adopted by a parliament, without prejudice to requirements pursuant to the constitutional order of the Member State concerned. However, such a legal basis or legislative measure should be clear and precise and its application should be foreseeable to persons subject to it, in accordance with the case-law of the Court of Justice of the European Union (the 'Court of Justice') and the European Court of Human Rights.
- (42) Where processing is based on the data subject's consent, the controller should be able to demonstrate that the data subject has given consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware of the fact that and the extent to which consent is given. In accordance with Council Directive 93/13/EEC ⁽¹⁾ a declaration of consent pre-formulated by the controller should be provided in an intelligible and easily accessible form, using clear and plain language and it should not contain unfair terms. For consent to be informed, the data subject should be aware at least of the identity of the controller and the purposes of the processing for which the personal data are intended. Consent should not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.
- (43) In order to ensure that consent is freely given, consent should not provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority and it is therefore unlikely that consent was freely given in all the circumstances of that specific situation. Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case, or if the performance of a contract, including the provision of a service, is dependent on the consent despite such consent not being necessary for such performance.
- (44) Processing should be lawful where it is necessary in the context of a contract or the intention to enter into a contract.
- (45) Where processing is carried out in accordance with a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority, the processing should have a basis in Union or Member State law. This Regulation does not require a specific law for each individual processing. A law as a basis for several processing operations based on a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority may be sufficient. It should also be for Union or Member State law to determine the purpose of processing. Furthermore, that law could specify the general conditions of this Regulation governing the lawfulness of personal data processing, establish specifications for determining the controller, the type of personal data which are subject to the processing, the data subjects concerned, the entities to which the personal data may be disclosed, the purpose limitations, the storage period and other measures to ensure lawful and fair processing. It should also be for Union or Member State law to determine whether the controller performing a task carried out in the public interest or in the exercise of official authority should be a public authority or another natural or legal person governed by public law, or, where it is in the public interest to do so, including for health purposes such as public health and social protection and the management of health care services, by private law, such as a professional association.
- (46) The processing of personal data should also be regarded to be lawful where it is necessary to protect an interest which is essential for the life of the data subject or that of another natural person. Processing of personal data

⁽¹⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

based on the vital interest of another natural person should in principle take place only where the processing cannot be manifestly based on another legal basis. Some types of processing may serve both important grounds of public interest and the vital interests of the data subject as for instance when processing is necessary for humanitarian purposes, including for monitoring epidemics and their spread or in situations of humanitarian emergencies, in particular in situations of natural and man-made disasters.

- (47) The legitimate interests of a controller, including those of a controller to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller. Such legitimate interest could exist for example where there is a relevant and appropriate relationship between the data subject and the controller in situations such as where the data subject is a client or in the service of the controller. At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for that purpose may take place. The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing. Given that it is for the legislator to provide by law for the legal basis for public authorities to process personal data, that legal basis should not apply to the processing by public authorities in the performance of their tasks. The processing of personal data strictly necessary for the purposes of preventing fraud also constitutes a legitimate interest of the data controller concerned. The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.
- (48) Controllers that are part of a group of undertakings or institutions affiliated to a central body may have a legitimate interest in transmitting personal data within the group of undertakings for internal administrative purposes, including the processing of clients' or employees' personal data. The general principles for the transfer of personal data, within a group of undertakings, to an undertaking located in a third country remain unaffected.
- (49) The processing of personal data to the extent strictly necessary and proportionate for the purposes of ensuring network and information security, i.e. the ability of a network or an information system to resist, at a given level of confidence, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted personal data, and the security of the related services offered by, or accessible via, those networks and systems, by public authorities, by computer emergency response teams (CERTs), computer security incident response teams (CSIRTs), by providers of electronic communications networks and services and by providers of security technologies and services, constitutes a legitimate interest of the data controller concerned. This could, for example, include preventing unauthorised access to electronic communications networks and malicious code distribution and stopping 'denial of service' attacks and damage to computer and electronic communication systems.
- (50) The processing of personal data for purposes other than those for which the personal data were initially collected should be allowed only where the processing is compatible with the purposes for which the personal data were initially collected. In such a case, no legal basis separate from that which allowed the collection of the personal data is required. If the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Union or Member State law may determine and specify the tasks and purposes for which the further processing should be regarded as compatible and lawful. Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be considered to be compatible lawful processing operations. The legal basis provided by Union or Member State law for the processing of personal data may also provide a legal basis for further processing. In order to ascertain whether a purpose of further processing is compatible with the purpose for which the personal data are initially collected, the controller, after having met all the requirements for the lawfulness of the original processing, should take into account, inter alia: any link between those purposes and the purposes of the intended further processing; the context in which the personal data have been collected, in particular the reasonable expectations of data subjects based on their relationship with the controller as to their

further use; the nature of the personal data; the consequences of the intended further processing for data subjects; and the existence of appropriate safeguards in both the original and intended further processing operations.

Where the data subject has given consent or the processing is based on Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard, in particular, important objectives of general public interest, the controller should be allowed to further process the personal data irrespective of the compatibility of the purposes. In any case, the application of the principles set out in this Regulation and in particular the information of the data subject on those other purposes and on his or her rights including the right to object, should be ensured. Indicating possible criminal acts or threats to public security by the controller and transmitting the relevant personal data in individual cases or in several cases relating to the same criminal act or threats to public security to a competent authority should be regarded as being in the legitimate interest pursued by the controller. However, such transmission in the legitimate interest of the controller or further processing of personal data should be prohibited if the processing is not compatible with a legal, professional or other binding obligation of secrecy.

- (51) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms. Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term 'racial origin' in this Regulation does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human races. The processing of photographs should not systematically be considered to be processing of special categories of personal data as they are covered by the definition of biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person. Such personal data should not be processed, unless processing is allowed in specific cases set out in this Regulation, taking into account that Member States law may lay down specific provisions on data protection in order to adapt the application of the rules of this Regulation for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. In addition to the specific requirements for such processing, the general principles and other rules of this Regulation should apply, in particular as regards the conditions for lawful processing. Derogations from the general prohibition for processing such special categories of personal data should be explicitly provided, inter alia, where the data subject gives his or her explicit consent or in respect of specific needs in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.
- (52) Derogating from the prohibition on processing special categories of personal data should also be allowed when provided for in Union or Member State law and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where it is in the public interest to do so, in particular processing personal data in the field of employment law, social protection law including pensions and for health security, monitoring and alert purposes, the prevention or control of communicable diseases and other serious threats to health. Such a derogation may be made for health purposes, including public health and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. A derogation should also allow the processing of such personal data where necessary for the establishment, exercise or defence of legal claims, whether in court proceedings or in an administrative or out-of-court procedure.
- (53) Special categories of personal data which merit higher protection should be processed for health-related purposes only where necessary to achieve those purposes for the benefit of natural persons and society as a whole, in particular in the context of the management of health or social care services and systems, including processing by the management and central national health authorities of such data for the purpose of quality control, management information and the general national and local supervision of the health or social care system, and ensuring continuity of health or social care and cross-border healthcare or health security, monitoring and alert purposes, or for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, based on Union or Member State law which has to meet an objective of public interest, as well as for studies conducted in the public interest in the area of public health. Therefore, this Regulation should provide for harmonised conditions for the processing of special categories of personal data concerning health, in respect of specific needs, in particular where the processing of such data is carried out for certain health-related purposes

by persons subject to a legal obligation of professional secrecy. Union or Member State law should provide for specific and suitable measures so as to protect the fundamental rights and the personal data of natural persons. Member States should be allowed to maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health. However, this should not hamper the free flow of personal data within the Union when those conditions apply to cross-border processing of such data.

- (54) The processing of special categories of personal data may be necessary for reasons of public interest in the areas of public health without consent of the data subject. Such processing should be subject to suitable and specific measures so as to protect the rights and freedoms of natural persons. In that context, 'public health' should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council⁽¹⁾, namely all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, health care needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality. Such processing of data concerning health for reasons of public interest should not result in personal data being processed for other purposes by third parties such as employers or insurance and banking companies.
- (55) Moreover, the processing of personal data by official authorities for the purpose of achieving the aims, laid down by constitutional law or by international public law, of officially recognised religious associations, is carried out on grounds of public interest.
- (56) Where in the course of electoral activities, the operation of the democratic system in a Member State requires that political parties compile personal data on people's political opinions, the processing of such data may be permitted for reasons of public interest, provided that appropriate safeguards are established.
- (57) If the personal data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. However, the controller should not refuse to take additional information provided by the data subject in order to support the exercise of his or her rights. Identification should include the digital identification of a data subject, for example through authentication mechanism such as the same credentials, used by the data subject to log-in to the on-line service offered by the data controller.
- (58) The principle of transparency requires that any information addressed to the public or to the data subject be concise, easily accessible and easy to understand, and that clear and plain language and, additionally, where appropriate, visualisation be used. Such information could be provided in electronic form, for example, when addressed to the public, through a website. This is of particular relevance in situations where the proliferation of actors and the technological complexity of practice make it difficult for the data subject to know and understand whether, by whom and for what purpose personal data relating to him or her are being collected, such as in the case of online advertising. Given that children merit specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand.
- (59) Modalities should be provided for facilitating the exercise of the data subject's rights under this Regulation, including mechanisms to request and, if applicable, obtain, free of charge, in particular, access to and rectification or erasure of personal data and the exercise of the right to object. The controller should also provide means for requests to be made electronically, especially where personal data are processed by electronic means. The controller should be obliged to respond to requests from the data subject without undue delay and at the latest within one month and to give reasons where the controller does not intend to comply with any such requests.

⁽¹⁾ Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70).

- (60) The principles of fair and transparent processing require that the data subject be informed of the existence of the processing operation and its purposes. The controller should provide the data subject with any further information necessary to ensure fair and transparent processing taking into account the specific circumstances and context in which the personal data are processed. Furthermore, the data subject should be informed of the existence of profiling and the consequences of such profiling. Where the personal data are collected from the data subject, the data subject should also be informed whether he or she is obliged to provide the personal data and of the consequences, where he or she does not provide such data. That information may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner, a meaningful overview of the intended processing. Where the icons are presented electronically, they should be machine-readable.
- (61) The information in relation to the processing of personal data relating to the data subject should be given to him or her at the time of collection from the data subject, or, where the personal data are obtained from another source, within a reasonable period, depending on the circumstances of the case. Where personal data can be legitimately disclosed to another recipient, the data subject should be informed when the personal data are first disclosed to the recipient. Where the controller intends to process the personal data for a purpose other than that for which they were collected, the controller should provide the data subject prior to that further processing with information on that other purpose and other necessary information. Where the origin of the personal data cannot be provided to the data subject because various sources have been used, general information should be provided.
- (62) However, it is not necessary to impose the obligation to provide information where the data subject already possesses the information, where the recording or disclosure of the personal data is expressly laid down by law or where the provision of information to the data subject proves to be impossible or would involve a disproportionate effort. The latter could in particular be the case where processing is carried out for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. In that regard, the number of data subjects, the age of the data and any appropriate safeguards adopted should be taken into consideration.
- (63) A data subject should have the right of access to personal data which have been collected concerning him or her, and to exercise that right easily and at reasonable intervals, in order to be aware of, and verify, the lawfulness of the processing. This includes the right for data subjects to have access to data concerning their health, for example the data in their medical records containing information such as diagnoses, examination results, assessments by treating physicians and any treatment or interventions provided. Every data subject should therefore have the right to know and obtain communication in particular with regard to the purposes for which the personal data are processed, where possible the period for which the personal data are processed, the recipients of the personal data, the logic involved in any automatic personal data processing and, at least when based on profiling, the consequences of such processing. Where possible, the controller should be able to provide remote access to a secure system which would provide the data subject with direct access to his or her personal data. That right should not adversely affect the rights or freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of those considerations should not be a refusal to provide all information to the data subject. Where the controller processes a large quantity of information concerning the data subject, the controller should be able to request that, before the information is delivered, the data subject specify the information or processing activities to which the request relates.
- (64) The controller should use all reasonable measures to verify the identity of a data subject who requests access, in particular in the context of online services and online identifiers. A controller should not retain personal data for the sole purpose of being able to react to potential requests.
- (65) A data subject should have the right to have personal data concerning him or her rectified and a 'right to be forgotten' where the retention of such data infringes this Regulation or Union or Member State law to which the controller is subject. In particular, a data subject should have the right to have his or her personal data erased and no longer processed where the personal data are no longer necessary in relation to the purposes for which they are collected or otherwise processed, where a data subject has withdrawn his or her consent or objects to the processing of personal data concerning him or her, or where the processing of his or her personal data does not otherwise comply with this Regulation. That right is relevant in particular where the data subject has given

his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child. However, the further retention of the personal data should be lawful where it is necessary, for exercising the right of freedom of expression and information, for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims.

- (66) To strengthen the right to be forgotten in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public should be obliged to inform the controllers which are processing such personal data to erase any links to, or copies or replications of those personal data. In doing so, that controller should take reasonable steps, taking into account available technology and the means available to the controller, including technical measures, to inform the controllers which are processing the personal data of the data subject's request.
- (67) Methods by which to restrict the processing of personal data could include, inter alia, temporarily moving the selected data to another processing system, making the selected personal data unavailable to users, or temporarily removing published data from a website. In automated filing systems, the restriction of processing should in principle be ensured by technical means in such a manner that the personal data are not subject to further processing operations and cannot be changed. The fact that the processing of personal data is restricted should be clearly indicated in the system.
- (68) To further strengthen the control over his or her own data, where the processing of personal data is carried out by automated means, the data subject should also be allowed to receive personal data concerning him or her which he or she has provided to a controller in a structured, commonly used, machine-readable and interoperable format, and to transmit it to another controller. Data controllers should be encouraged to develop interoperable formats that enable data portability. That right should apply where the data subject provided the personal data on the basis of his or her consent or the processing is necessary for the performance of a contract. It should not apply where processing is based on a legal ground other than consent or contract. By its very nature, that right should not be exercised against controllers processing personal data in the exercise of their public duties. It should therefore not apply where the processing of the personal data is necessary for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of an official authority vested in the controller. The data subject's right to transmit or receive personal data concerning him or her should not create an obligation for the controllers to adopt or maintain processing systems which are technically compatible. Where, in a certain set of personal data, more than one data subject is concerned, the right to receive the personal data should be without prejudice to the rights and freedoms of other data subjects in accordance with this Regulation. Furthermore, that right should not prejudice the right of the data subject to obtain the erasure of personal data and the limitations of that right as set out in this Regulation and should, in particular, not imply the erasure of personal data concerning the data subject which have been provided by him or her for the performance of a contract to the extent that and for as long as the personal data are necessary for the performance of that contract. Where technically feasible, the data subject should have the right to have the personal data transmitted directly from one controller to another.
- (69) Where personal data might lawfully be processed because processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, or on grounds of the legitimate interests of a controller or a third party, a data subject should, nevertheless, be entitled to object to the processing of any personal data relating to his or her particular situation. It should be for the controller to demonstrate that its compelling legitimate interest overrides the interests or the fundamental rights and freedoms of the data subject.
- (70) Where personal data are processed for the purposes of direct marketing, the data subject should have the right to object to such processing, including profiling to the extent that it is related to such direct marketing, whether with regard to initial or further processing, at any time and free of charge. That right should be explicitly brought to the attention of the data subject and presented clearly and separately from any other information.

- (71) The data subject should have the right not to be subject to a decision, which may include a measure, evaluating personal aspects relating to him or her which is based solely on automated processing and which produces legal effects concerning him or her or similarly significantly affects him or her, such as automatic refusal of an online credit application or e-recruiting practices without any human intervention. Such processing includes 'profiling' that consists of any form of automated processing of personal data evaluating the personal aspects relating to a natural person, in particular to analyse or predict aspects concerning the data subject's performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, where it produces legal effects concerning him or her or similarly significantly affects him or her. However, decision-making based on such processing, including profiling, should be allowed where expressly authorised by Union or Member State law to which the controller is subject, including for fraud and tax-evasion monitoring and prevention purposes conducted in accordance with the regulations, standards and recommendations of Union institutions or national oversight bodies and to ensure the security and reliability of a service provided by the controller, or necessary for the entering or performance of a contract between the data subject and a controller, or when the data subject has given his or her explicit consent. In any case, such processing should be subject to suitable safeguards, which should include specific information to the data subject and the right to obtain human intervention, to express his or her point of view, to obtain an explanation of the decision reached after such assessment and to challenge the decision. Such measure should not concern a child.

In order to ensure fair and transparent processing in respect of the data subject, taking into account the specific circumstances and context in which the personal data are processed, the controller should use appropriate mathematical or statistical procedures for the profiling, implement technical and organisational measures appropriate to ensure, in particular, that factors which result in inaccuracies in personal data are corrected and the risk of errors is minimised, secure personal data in a manner that takes account of the potential risks involved for the interests and rights of the data subject and that prevents, inter alia, discriminatory effects on natural persons on the basis of racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic or health status or sexual orientation, or that result in measures having such an effect. Automated decision-making and profiling based on special categories of personal data should be allowed only under specific conditions.

- (72) Profiling is subject to the rules of this Regulation governing the processing of personal data, such as the legal grounds for processing or data protection principles. The European Data Protection Board established by this Regulation (the 'Board') should be able to issue guidance in that context.
- (73) Restrictions concerning specific principles and the rights of information, access to and rectification or erasure of personal data, the right to data portability, the right to object, decisions based on profiling, as well as the communication of a personal data breach to a data subject and certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or manmade disasters, the prevention, investigation and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, or of breaches of ethics for regulated professions, other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, the keeping of public registers kept for reasons of general public interest, further processing of archived personal data to provide specific information related to the political behaviour under former totalitarian state regimes or the protection of the data subject or the rights and freedoms of others, including social protection, public health and humanitarian purposes. Those restrictions should be in accordance with the requirements set out in the Charter and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (74) The responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should be obliged to implement appropriate and effective measures and be able to demonstrate the compliance of processing activities with this Regulation, including the effectiveness of the measures. Those measures should take into account the nature, scope, context and purposes of the processing and the risk to the rights and freedoms of natural persons.

- (75) The risk to the rights and freedoms of natural persons, of varying likelihood and severity, may result from personal data processing which could lead to physical, material or non-material damage, in particular: where the processing may give rise to discrimination, identity theft or fraud, financial loss, damage to the reputation, loss of confidentiality of personal data protected by professional secrecy, unauthorised reversal of pseudonymisation, or any other significant economic or social disadvantage; where data subjects might be deprived of their rights and freedoms or prevented from exercising control over their personal data; where personal data are processed which reveal racial or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, and the processing of genetic data, data concerning health or data concerning sex life or criminal convictions and offences or related security measures; where personal aspects are evaluated, in particular analysing or predicting aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, in order to create or use personal profiles; where personal data of vulnerable natural persons, in particular of children, are processed; or where processing involves a large amount of personal data and affects a large number of data subjects.
- (76) The likelihood and severity of the risk to the rights and freedoms of the data subject should be determined by reference to the nature, scope, context and purposes of the processing. Risk should be evaluated on the basis of an objective assessment, by which it is established whether data processing operations involve a risk or a high risk.
- (77) Guidance on the implementation of appropriate measures and on the demonstration of compliance by the controller or the processor, especially as regards the identification of the risk related to the processing, their assessment in terms of origin, nature, likelihood and severity, and the identification of best practices to mitigate the risk, could be provided in particular by means of approved codes of conduct, approved certifications, guidelines provided by the Board or indications provided by a data protection officer. The Board may also issue guidelines on processing operations that are considered to be unlikely to result in a high risk to the rights and freedoms of natural persons and indicate what measures may be sufficient in such cases to address such risk.
- (78) The protection of the rights and freedoms of natural persons with regard to the processing of personal data require that appropriate technical and organisational measures be taken to ensure that the requirements of this Regulation are met. In order to be able to demonstrate compliance with this Regulation, the controller should adopt internal policies and implement measures which meet in particular the principles of data protection by design and data protection by default. Such measures could consist, inter alia, of minimising the processing of personal data, pseudonymising personal data as soon as possible, transparency with regard to the functions and processing of personal data, enabling the data subject to monitor the data processing, enabling the controller to create and improve security features. When developing, designing, selecting and using applications, services and products that are based on the processing of personal data or process personal data to fulfil their task, producers of the products, services and applications should be encouraged to take into account the right to data protection when developing and designing such products, services and applications and, with due regard to the state of the art, to make sure that controllers and processors are able to fulfil their data protection obligations. The principles of data protection by design and by default should also be taken into consideration in the context of public tenders.
- (79) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processors, also in relation to the monitoring by and measures of supervisory authorities, requires a clear allocation of the responsibilities under this Regulation, including where a controller determines the purposes and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.
- (80) Where a controller or a processor not established in the Union is processing personal data of data subjects who are in the Union whose processing activities are related to the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union, or to the monitoring of their behaviour as far as their behaviour takes place within the Union, the controller or the processor should designate a representative, unless the processing is occasional, does not include processing, on a large scale, of special categories of personal data or the processing of personal data relating to criminal convictions and offences, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the

nature, context, scope and purposes of the processing or if the controller is a public authority or body. The representative should act on behalf of the controller or the processor and may be addressed by any supervisory authority. The representative should be explicitly designated by a written mandate of the controller or of the processor to act on its behalf with regard to its obligations under this Regulation. The designation of such a representative does not affect the responsibility or liability of the controller or of the processor under this Regulation. Such a representative should perform its tasks according to the mandate received from the controller or processor, including cooperating with the competent supervisory authorities with regard to any action taken to ensure compliance with this Regulation. The designated representative should be subject to enforcement proceedings in the event of non-compliance by the controller or processor.

- (81) To ensure compliance with the requirements of this Regulation in respect of the processing to be carried out by the processor on behalf of the controller, when entrusting a processor with processing activities, the controller should use only processors providing sufficient guarantees, in particular in terms of expert knowledge, reliability and resources, to implement technical and organisational measures which will meet the requirements of this Regulation, including for the security of processing. The adherence of the processor to an approved code of conduct or an approved certification mechanism may be used as an element to demonstrate compliance with the obligations of the controller. The carrying-out of processing by a processor should be governed by a contract or other legal act under Union or Member State law, binding the processor to the controller, setting out the subject-matter and duration of the processing, the nature and purposes of the processing, the type of personal data and categories of data subjects, taking into account the specific tasks and responsibilities of the processor in the context of the processing to be carried out and the risk to the rights and freedoms of the data subject. The controller and processor may choose to use an individual contract or standard contractual clauses which are adopted either directly by the Commission or by a supervisory authority in accordance with the consistency mechanism and then adopted by the Commission. After the completion of the processing on behalf of the controller, the processor should, at the choice of the controller, return or delete the personal data, unless there is a requirement to store the personal data under Union or Member State law to which the processor is subject.
- (82) In order to demonstrate compliance with this Regulation, the controller or processor should maintain records of processing activities under its responsibility. Each controller and processor should be obliged to cooperate with the supervisory authority and make those records, on request, available to it, so that it might serve for monitoring those processing operations.
- (83) In order to maintain security and to prevent processing in infringement of this Regulation, the controller or processor should evaluate the risks inherent in the processing and implement measures to mitigate those risks, such as encryption. Those measures should ensure an appropriate level of security, including confidentiality, taking into account the state of the art and the costs of implementation in relation to the risks and the nature of the personal data to be protected. In assessing data security risk, consideration should be given to the risks that are presented by personal data processing, such as accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed which may in particular lead to physical, material or non-material damage.
- (84) In order to enhance compliance with this Regulation where processing operations are likely to result in a high risk to the rights and freedoms of natural persons, the controller should be responsible for the carrying-out of a data protection impact assessment to evaluate, in particular, the origin, nature, particularity and severity of that risk. The outcome of the assessment should be taken into account when determining the appropriate measures to be taken in order to demonstrate that the processing of personal data complies with this Regulation. Where a data-protection impact assessment indicates that processing operations involve a high risk which the controller cannot mitigate by appropriate measures in terms of available technology and costs of implementation, a consultation of the supervisory authority should take place prior to the processing.
- (85) A personal data breach may, if not addressed in an appropriate and timely manner, result in physical, material or non-material damage to natural persons such as loss of control over their personal data or limitation of their rights, discrimination, identity theft or fraud, financial loss, unauthorised reversal of pseudonymisation, damage to reputation, loss of confidentiality of personal data protected by professional secrecy or any other significant economic or social disadvantage to the natural person concerned. Therefore, as soon as the controller becomes

aware that a personal data breach has occurred, the controller should notify the personal data breach to the supervisory authority without undue delay and, where feasible, not later than 72 hours after having become aware of it, unless the controller is able to demonstrate, in accordance with the accountability principle, that the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where such notification cannot be achieved within 72 hours, the reasons for the delay should accompany the notification and information may be provided in phases without undue further delay.

- (86) The controller should communicate to the data subject a personal data breach, without undue delay, where that personal data breach is likely to result in a high risk to the rights and freedoms of the natural person in order to allow him or her to take the necessary precautions. The communication should describe the nature of the personal data breach as well as recommendations for the natural person concerned to mitigate potential adverse effects. Such communications to data subjects should be made as soon as reasonably feasible and in close cooperation with the supervisory authority, respecting guidance provided by it or by other relevant authorities such as law-enforcement authorities. For example, the need to mitigate an immediate risk of damage would call for prompt communication with data subjects whereas the need to implement appropriate measures against continuing or similar personal data breaches may justify more time for communication.
- (87) It should be ascertained whether all appropriate technological protection and organisational measures have been implemented to establish immediately whether a personal data breach has taken place and to inform promptly the supervisory authority and the data subject. The fact that the notification was made without undue delay should be established taking into account in particular the nature and gravity of the personal data breach and its consequences and adverse effects for the data subject. Such notification may result in an intervention of the supervisory authority in accordance with its tasks and powers laid down in this Regulation.
- (88) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of that breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law-enforcement authorities where early disclosure could unnecessarily hamper the investigation of the circumstances of a personal data breach.
- (89) Directive 95/46/EC provided for a general obligation to notify the processing of personal data to the supervisory authorities. While that obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Such indiscriminate general notification obligations should therefore be abolished, and replaced by effective procedures and mechanisms which focus instead on those types of processing operations which are likely to result in a high risk to the rights and freedoms of natural persons by virtue of their nature, scope, context and purposes. Such types of processing operations may be those which in, particular, involve using new technologies, or are of a new kind and where no data protection impact assessment has been carried out before by the controller, or where they become necessary in the light of the time that has elapsed since the initial processing.
- (90) In such cases, a data protection impact assessment should be carried out by the controller prior to the processing in order to assess the particular likelihood and severity of the high risk, taking into account the nature, scope, context and purposes of the processing and the sources of the risk. That impact assessment should include, in particular, the measures, safeguards and mechanisms envisaged for mitigating that risk, ensuring the protection of personal data and demonstrating compliance with this Regulation.
- (91) This should in particular apply to large-scale processing operations which aim to process a considerable amount of personal data at regional, national or supranational level and which could affect a large number of data subjects and which are likely to result in a high risk, for example, on account of their sensitivity, where in accordance with the achieved state of technological knowledge a new technology is used on a large scale as well as to other processing operations which result in a high risk to the rights and freedoms of data subjects, in particular where those operations render it more difficult for data subjects to exercise their rights. A data

protection impact assessment should also be made where personal data are processed for taking decisions regarding specific natural persons following any systematic and extensive evaluation of personal aspects relating to natural persons based on profiling those data or following the processing of special categories of personal data, biometric data, or data on criminal convictions and offences or related security measures. A data protection impact assessment is equally required for monitoring publicly accessible areas on a large scale, especially when using optic-electronic devices or for any other operations where the competent supervisory authority considers that the processing is likely to result in a high risk to the rights and freedoms of data subjects, in particular because they prevent data subjects from exercising a right or using a service or a contract, or because they are carried out systematically on a large scale. The processing of personal data should not be considered to be on a large scale if the processing concerns personal data from patients or clients by an individual physician, other health care professional or lawyer. In such cases, a data protection impact assessment should not be mandatory.

- (92) There are circumstances under which it may be reasonable and economical for the subject of a data protection impact assessment to be broader than a single project, for example where public authorities or bodies intend to establish a common application or processing platform or where several controllers plan to introduce a common application or processing environment across an industry sector or segment or for a widely used horizontal activity.
- (93) In the context of the adoption of the Member State law on which the performance of the tasks of the public authority or public body is based and which regulates the specific processing operation or set of operations in question, Member States may deem it necessary to carry out such assessment prior to the processing activities.
- (94) Where a data protection impact assessment indicates that the processing would, in the absence of safeguards, security measures and mechanisms to mitigate the risk, result in a high risk to the rights and freedoms of natural persons and the controller is of the opinion that the risk cannot be mitigated by reasonable means in terms of available technologies and costs of implementation, the supervisory authority should be consulted prior to the start of processing activities. Such high risk is likely to result from certain types of processing and the extent and frequency of processing, which may result also in a realisation of damage or interference with the rights and freedoms of the natural person. The supervisory authority should respond to the request for consultation within a specified period. However, the absence of a reaction of the supervisory authority within that period should be without prejudice to any intervention of the supervisory authority in accordance with its tasks and powers laid down in this Regulation, including the power to prohibit processing operations. As part of that consultation process, the outcome of a data protection impact assessment carried out with regard to the processing at issue may be submitted to the supervisory authority, in particular the measures envisaged to mitigate the risk to the rights and freedoms of natural persons.
- (95) The processor should assist the controller, where necessary and upon request, in ensuring compliance with the obligations deriving from the carrying out of data protection impact assessments and from prior consultation of the supervisory authority.
- (96) A consultation of the supervisory authority should also take place in the course of the preparation of a legislative or regulatory measure which provides for the processing of personal data, in order to ensure compliance of the intended processing with this Regulation and in particular to mitigate the risk involved for the data subject.
- (97) Where the processing is carried out by a public authority, except for courts or independent judicial authorities when acting in their judicial capacity, where, in the private sector, processing is carried out by a controller whose core activities consist of processing operations that require regular and systematic monitoring of the data subjects on a large scale, or where the core activities of the controller or the processor consist of processing on a large scale of special categories of personal data and data relating to criminal convictions and offences, a person with expert knowledge of data protection law and practices should assist the controller or processor to monitor internal compliance with this Regulation. In the private sector, the core activities of a controller relate to its primary activities and do not relate to the processing of personal data as ancillary activities. The necessary level of expert knowledge should be determined in particular according to the data processing operations carried out

and the protection required for the personal data processed by the controller or the processor. Such data protection officers, whether or not they are an employee of the controller, should be in a position to perform their duties and tasks in an independent manner.

- (98) Associations or other bodies representing categories of controllers or processors should be encouraged to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors and the specific needs of micro, small and medium enterprises. In particular, such codes of conduct could calibrate the obligations of controllers and processors, taking into account the risk likely to result from the processing for the rights and freedoms of natural persons.
- (99) When drawing up a code of conduct, or when amending or extending such a code, associations and other bodies representing categories of controllers or processors should consult relevant stakeholders, including data subjects where feasible, and have regard to submissions received and views expressed in response to such consultations.
- (100) In order to enhance transparency and compliance with this Regulation, the establishment of certification mechanisms and data protection seals and marks should be encouraged, allowing data subjects to quickly assess the level of data protection of relevant products and services.
- (101) Flows of personal data to and from countries outside the Union and international organisations are necessary for the expansion of international trade and international cooperation. The increase in such flows has raised new challenges and concerns with regard to the protection of personal data. However, when personal data are transferred from the Union to controllers, processors or other recipients in third countries or to international organisations, the level of protection of natural persons ensured in the Union by this Regulation should not be undermined, including in cases of onward transfers of personal data from the third country or international organisation to controllers, processors in the same or another third country or international organisation. In any event, transfers to third countries and international organisations may only be carried out in full compliance with this Regulation. A transfer could take place only if, subject to the other provisions of this Regulation, the conditions laid down in the provisions of this Regulation relating to the transfer of personal data to third countries or international organisations are complied with by the controller or processor.
- (102) This Regulation is without prejudice to international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects. Member States may conclude international agreements which involve the transfer of personal data to third countries or international organisations, as far as such agreements do not affect this Regulation or any other provisions of Union law and include an appropriate level of protection for the fundamental rights of the data subjects.
- (103) The Commission may decide with effect for the entire Union that a third country, a territory or specified sector within a third country, or an international organisation, offers an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third country or international organisation which is considered to provide such level of protection. In such cases, transfers of personal data to that third country or international organisation may take place without the need to obtain any further authorisation. The Commission may also decide, having given notice and a full statement setting out the reasons to the third country or international organisation, to revoke such a decision.
- (104) In line with the fundamental values on which the Union is founded, in particular the protection of human rights, the Commission should, in its assessment of the third country, or of a territory or specified sector within a third country, take into account how a particular third country respects the rule of law, access to justice as well as international human rights norms and standards and its general and sectoral law, including legislation concerning public security, defence and national security as well as public order and criminal law. The adoption of an adequacy decision with regard to a territory or a specified sector in a third country should take into account clear and objective criteria, such as specific processing activities and the scope of applicable legal standards and legislation in force in the third country. The third country should offer guarantees ensuring an adequate level of

protection essentially equivalent to that ensured within the Union, in particular where personal data are processed in one or several specific sectors. In particular, the third country should ensure effective independent data protection supervision and should provide for cooperation mechanisms with the Member States' data protection authorities, and the data subjects should be provided with effective and enforceable rights and effective administrative and judicial redress.

- (105) Apart from the international commitments the third country or international organisation has entered into, the Commission should take account of obligations arising from the third country's or international organisation's participation in multilateral or regional systems in particular in relation to the protection of personal data, as well as the implementation of such obligations. In particular, the third country's accession to the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data and its Additional Protocol should be taken into account. The Commission should consult the Board when assessing the level of protection in third countries or international organisations.
- (106) The Commission should monitor the functioning of decisions on the level of protection in a third country, a territory or specified sector within a third country, or an international organisation, and monitor the functioning of decisions adopted on the basis of Article 25(6) or Article 26(4) of Directive 95/46/EC. In its adequacy decisions, the Commission should provide for a periodic review mechanism of their functioning. That periodic review should be conducted in consultation with the third country or international organisation in question and take into account all relevant developments in the third country or international organisation. For the purposes of monitoring and of carrying out the periodic reviews, the Commission should take into consideration the views and findings of the European Parliament and of the Council as well as of other relevant bodies and sources. The Commission should evaluate, within a reasonable time, the functioning of the latter decisions and report any relevant findings to the Committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾ as established under this Regulation, to the European Parliament and to the Council.
- (107) The Commission may recognise that a third country, a territory or a specified sector within a third country, or an international organisation no longer ensures an adequate level of data protection. Consequently the transfer of personal data to that third country or international organisation should be prohibited, unless the requirements in this Regulation relating to transfers subject to appropriate safeguards, including binding corporate rules, and derogations for specific situations are fulfilled. In that case, provision should be made for consultations between the Commission and such third countries or international organisations. The Commission should, in a timely manner, inform the third country or international organisation of the reasons and enter into consultations with it in order to remedy the situation.
- (108) In the absence of an adequacy decision, the controller or processor should take measures to compensate for the lack of data protection in a third country by way of appropriate safeguards for the data subject. Such appropriate safeguards may consist of making use of binding corporate rules, standard data protection clauses adopted by the Commission, standard data protection clauses adopted by a supervisory authority or contractual clauses authorised by a supervisory authority. Those safeguards should ensure compliance with data protection requirements and the rights of the data subjects appropriate to processing within the Union, including the availability of enforceable data subject rights and of effective legal remedies, including to obtain effective administrative or judicial redress and to claim compensation, in the Union or in a third country. They should relate in particular to compliance with the general principles relating to personal data processing, the principles of data protection by design and by default. Transfers may also be carried out by public authorities or bodies with public authorities or bodies in third countries or with international organisations with corresponding duties or functions, including on the basis of provisions to be inserted into administrative arrangements, such as a memorandum of understanding, providing for enforceable and effective rights for data subjects. Authorisation by the competent supervisory authority should be obtained when the safeguards are provided for in administrative arrangements that are not legally binding.
- (109) The possibility for the controller or processor to use standard data-protection clauses adopted by the Commission or by a supervisory authority should prevent controllers or processors neither from including the

⁽¹⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

standard data-protection clauses in a wider contract, such as a contract between the processor and another processor, nor from adding other clauses or additional safeguards provided that they do not contradict, directly or indirectly, the standard contractual clauses adopted by the Commission or by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects. Controllers and processors should be encouraged to provide additional safeguards via contractual commitments that supplement standard protection clauses.

- (110) A group of undertakings, or a group of enterprises engaged in a joint economic activity, should be able to make use of approved binding corporate rules for its international transfers from the Union to organisations within the same group of undertakings, or group of enterprises engaged in a joint economic activity, provided that such corporate rules include all essential principles and enforceable rights to ensure appropriate safeguards for transfers or categories of transfers of personal data.
- (111) Provisions should be made for the possibility for transfers in certain circumstances where the data subject has given his or her explicit consent, where the transfer is occasional and necessary in relation to a contract or a legal claim, regardless of whether in a judicial procedure or whether in an administrative or any out-of-court procedure, including procedures before regulatory bodies. Provision should also be made for the possibility for transfers where important grounds of public interest laid down by Union or Member State law so require or where the transfer is made from a register established by law and intended for consultation by the public or persons having a legitimate interest. In the latter case, such a transfer should not involve the entirety of the personal data or entire categories of the data contained in the register and, when the register is intended for consultation by persons having a legitimate interest, the transfer should be made only at the request of those persons or, if they are to be the recipients, taking into full account the interests and fundamental rights of the data subject.
- (112) Those derogations should in particular apply to data transfers required and necessary for important reasons of public interest, for example in cases of international data exchange between competition authorities, tax or customs administrations, between financial supervisory authorities, between services competent for social security matters, or for public health, for example in the case of contact tracing for contagious diseases or in order to reduce and/or eliminate doping in sport. A transfer of personal data should also be regarded as lawful where it is necessary to protect an interest which is essential for the data subject's or another person's vital interests, including physical integrity or life, if the data subject is incapable of giving consent. In the absence of an adequacy decision, Union or Member State law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of data to a third country or an international organisation. Member States should notify such provisions to the Commission. Any transfer to an international humanitarian organisation of personal data of a data subject who is physically or legally incapable of giving consent, with a view to accomplishing a task incumbent under the Geneva Conventions or to complying with international humanitarian law applicable in armed conflicts, could be considered to be necessary for an important reason of public interest or because it is in the vital interest of the data subject.
- (113) Transfers which can be qualified as not repetitive and that only concern a limited number of data subjects, could also be possible for the purposes of the compelling legitimate interests pursued by the controller, when those interests are not overridden by the interests or rights and freedoms of the data subject and when the controller has assessed all the circumstances surrounding the data transfer. The controller should give particular consideration to the nature of the personal data, the purpose and duration of the proposed processing operation or operations, as well as the situation in the country of origin, the third country and the country of final destination, and should provide suitable safeguards to protect fundamental rights and freedoms of natural persons with regard to the processing of their personal data. Such transfers should be possible only in residual cases where none of the other grounds for transfer are applicable. For scientific or historical research purposes or statistical purposes, the legitimate expectations of society for an increase of knowledge should be taken into consideration. The controller should inform the supervisory authority and the data subject about the transfer.
- (114) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller or processor should make use of solutions that provide data subjects with enforceable and effective rights as regards the processing of their data in the Union once those data have been transferred so that that they will continue to benefit from fundamental rights and safeguards.

- (115) Some third countries adopt laws, regulations and other legal acts which purport to directly regulate the processing activities of natural and legal persons under the jurisdiction of the Member States. This may include judgments of courts or tribunals or decisions of administrative authorities in third countries requiring a controller or processor to transfer or disclose personal data, and which are not based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State. The extraterritorial application of those laws, regulations and other legal acts may be in breach of international law and may impede the attainment of the protection of natural persons ensured in the Union by this Regulation. Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may be the case, *inter alia*, where disclosure is necessary for an important ground of public interest recognised in Union or Member State law to which the controller is subject.
- (116) When personal data moves across borders outside the Union it may put at increased risk the ability of natural persons to exercise data protection rights in particular to protect themselves from the unlawful use or disclosure of that information. At the same time, supervisory authorities may find that they are unable to pursue complaints or conduct investigations relating to the activities outside their borders. Their efforts to work together in the cross-border context may also be hampered by insufficient preventative or remedial powers, inconsistent legal regimes, and practical obstacles like resource constraints. Therefore, there is a need to promote closer cooperation among data protection supervisory authorities to help them exchange information and carry out investigations with their international counterparts. For the purposes of developing international cooperation mechanisms to facilitate and provide international mutual assistance for the enforcement of legislation for the protection of personal data, the Commission and the supervisory authorities should exchange information and cooperate in activities related to the exercise of their powers with competent authorities in third countries, based on reciprocity and in accordance with this Regulation.
- (117) The establishment of supervisory authorities in Member States, empowered to perform their tasks and exercise their powers with complete independence, is an essential component of the protection of natural persons with regard to the processing of their personal data. Member States should be able to establish more than one supervisory authority, to reflect their constitutional, organisational and administrative structure.
- (118) The independence of supervisory authorities should not mean that the supervisory authorities cannot be subject to control or monitoring mechanisms regarding their financial expenditure or to judicial review.
- (119) Where a Member State establishes several supervisory authorities, it should establish by law mechanisms for ensuring the effective participation of those supervisory authorities in the consistency mechanism. That Member State should in particular designate the supervisory authority which functions as a single contact point for the effective participation of those authorities in the mechanism, to ensure swift and smooth cooperation with other supervisory authorities, the Board and the Commission.
- (120) Each supervisory authority should be provided with the financial and human resources, premises and infrastructure necessary for the effective performance of their tasks, including those related to mutual assistance and cooperation with other supervisory authorities throughout the Union. Each supervisory authority should have a separate, public annual budget, which may be part of the overall state or national budget.
- (121) The general conditions for the member or members of the supervisory authority should be laid down by law in each Member State and should in particular provide that those members are to be appointed, by means of a transparent procedure, either by the parliament, government or the head of State of the Member State on the basis of a proposal from the government, a member of the government, the parliament or a chamber of the parliament, or by an independent body entrusted under Member State law. In order to ensure the independence of the supervisory authority, the member or members should act with integrity, refrain from any action that is incompatible with their duties and should not, during their term of office, engage in any incompatible occupation, whether gainful or not. The supervisory authority should have its own staff, chosen by the supervisory authority or an independent body established by Member State law, which should be subject to the exclusive direction of the member or members of the supervisory authority.
- (122) Each supervisory authority should be competent on the territory of its own Member State to exercise the powers and to perform the tasks conferred on it in accordance with this Regulation. This should cover in particular the

processing in the context of the activities of an establishment of the controller or processor on the territory of its own Member State, the processing of personal data carried out by public authorities or private bodies acting in the public interest, processing affecting data subjects on its territory or processing carried out by a controller or processor not established in the Union when targeting data subjects residing on its territory. This should include handling complaints lodged by a data subject, conducting investigations on the application of this Regulation and promoting public awareness of the risks, rules, safeguards and rights in relation to the processing of personal data.

- (123) The supervisory authorities should monitor the application of the provisions pursuant to this Regulation and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the internal market. For that purpose, the supervisory authorities should cooperate with each other and with the Commission, without the need for any agreement between Member States on the provision of mutual assistance or on such cooperation.
- (124) Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union and the controller or processor is established in more than one Member State, or where processing taking place in the context of the activities of a single establishment of a controller or processor in the Union substantially affects or is likely to substantially affect data subjects in more than one Member State, the supervisory authority for the main establishment of the controller or processor or for the single establishment of the controller or processor should act as lead authority. It should cooperate with the other authorities concerned, because the controller or processor has an establishment on the territory of their Member State, because data subjects residing on their territory are substantially affected, or because a complaint has been lodged with them. Also where a data subject not residing in that Member State has lodged a complaint, the supervisory authority with which such complaint has been lodged should also be a supervisory authority concerned. Within its tasks to issue guidelines on any question covering the application of this Regulation, the Board should be able to issue guidelines in particular on the criteria to be taken into account in order to ascertain whether the processing in question substantially affects data subjects in more than one Member State and on what constitutes a relevant and reasoned objection.
- (125) The lead authority should be competent to adopt binding decisions regarding measures applying the powers conferred on it in accordance with this Regulation. In its capacity as lead authority, the supervisory authority should closely involve and coordinate the supervisory authorities concerned in the decision-making process. Where the decision is to reject the complaint by the data subject in whole or in part, that decision should be adopted by the supervisory authority with which the complaint has been lodged.
- (126) The decision should be agreed jointly by the lead supervisory authority and the supervisory authorities concerned and should be directed towards the main or single establishment of the controller or processor and be binding on the controller and processor. The controller or processor should take the necessary measures to ensure compliance with this Regulation and the implementation of the decision notified by the lead supervisory authority to the main establishment of the controller or processor as regards the processing activities in the Union.
- (127) Each supervisory authority not acting as the lead supervisory authority should be competent to handle local cases where the controller or processor is established in more than one Member State, but the subject matter of the specific processing concerns only processing carried out in a single Member State and involves only data subjects in that single Member State, for example, where the subject matter concerns the processing of employees' personal data in the specific employment context of a Member State. In such cases, the supervisory authority should inform the lead supervisory authority without delay about the matter. After being informed, the lead supervisory authority should decide, whether it will handle the case pursuant to the provision on cooperation between the lead supervisory authority and other supervisory authorities concerned ('one-stop-shop mechanism'), or whether the supervisory authority which informed it should handle the case at local level. When deciding whether it will handle the case, the lead supervisory authority should take into account whether there is an establishment of the controller or processor in the Member State of the supervisory authority which informed it in order to ensure effective enforcement of a decision *vis-à-vis* the controller or processor. Where the lead supervisory authority decides to handle the case, the supervisory authority which informed it should have the

possibility to submit a draft for a decision, of which the lead supervisory authority should take utmost account when preparing its draft decision in that one-stop-shop mechanism.

- (128) The rules on the lead supervisory authority and the one-stop-shop mechanism should not apply where the processing is carried out by public authorities or private bodies in the public interest. In such cases the only supervisory authority competent to exercise the powers conferred to it in accordance with this Regulation should be the supervisory authority of the Member State where the public authority or private body is established.
- (129) In order to ensure consistent monitoring and enforcement of this Regulation throughout the Union, the supervisory authorities should have in each Member State the same tasks and effective powers, including powers of investigation, corrective powers and sanctions, and authorisation and advisory powers, in particular in cases of complaints from natural persons, and without prejudice to the powers of prosecutorial authorities under Member State law, to bring infringements of this Regulation to the attention of the judicial authorities and engage in legal proceedings. Such powers should also include the power to impose a temporary or definitive limitation, including a ban, on processing. Member States may specify other tasks related to the protection of personal data under this Regulation. The powers of supervisory authorities should be exercised in accordance with appropriate procedural safeguards set out in Union and Member State law, impartially, fairly and within a reasonable time. In particular each measure should be appropriate, necessary and proportionate in view of ensuring compliance with this Regulation, taking into account the circumstances of each individual case, respect the right of every person to be heard before any individual measure which would affect him or her adversely is taken and avoid superfluous costs and excessive inconveniences for the persons concerned. Investigatory powers as regards access to premises should be exercised in accordance with specific requirements in Member State procedural law, such as the requirement to obtain a prior judicial authorisation. Each legally binding measure of the supervisory authority should be in writing, be clear and unambiguous, indicate the supervisory authority which has issued the measure, the date of issue of the measure, bear the signature of the head, or a member of the supervisory authority authorised by him or her, give the reasons for the measure, and refer to the right of an effective remedy. This should not preclude additional requirements pursuant to Member State procedural law. The adoption of a legally binding decision implies that it may give rise to judicial review in the Member State of the supervisory authority that adopted the decision.
- (130) Where the supervisory authority with which the complaint has been lodged is not the lead supervisory authority, the lead supervisory authority should closely cooperate with the supervisory authority with which the complaint has been lodged in accordance with the provisions on cooperation and consistency laid down in this Regulation. In such cases, the lead supervisory authority should, when taking measures intended to produce legal effects, including the imposition of administrative fines, take utmost account of the view of the supervisory authority with which the complaint has been lodged and which should remain competent to carry out any investigation on the territory of its own Member State in liaison with the competent supervisory authority.
- (131) Where another supervisory authority should act as a lead supervisory authority for the processing activities of the controller or processor but the concrete subject matter of a complaint or the possible infringement concerns only processing activities of the controller or processor in the Member State where the complaint has been lodged or the possible infringement detected and the matter does not substantially affect or is not likely to substantially affect data subjects in other Member States, the supervisory authority receiving a complaint or detecting or being informed otherwise of situations that entail possible infringements of this Regulation should seek an amicable settlement with the controller and, if this proves unsuccessful, exercise its full range of powers. This should include: specific processing carried out in the territory of the Member State of the supervisory authority or with regard to data subjects on the territory of that Member State; processing that is carried out in the context of an offer of goods or services specifically aimed at data subjects in the territory of the Member State of the supervisory authority; or processing that has to be assessed taking into account relevant legal obligations under Member State law.
- (132) Awareness-raising activities by supervisory authorities addressed to the public should include specific measures directed at controllers and processors, including micro, small and medium-sized enterprises, as well as natural persons in particular in the educational context.

- (133) The supervisory authorities should assist each other in performing their tasks and provide mutual assistance, so as to ensure the consistent application and enforcement of this Regulation in the internal market. A supervisory authority requesting mutual assistance may adopt a provisional measure if it receives no response to a request for mutual assistance within one month of the receipt of that request by the other supervisory authority.
- (134) Each supervisory authority should, where appropriate, participate in joint operations with other supervisory authorities. The requested supervisory authority should be obliged to respond to the request within a specified time period.
- (135) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for cooperation between the supervisory authorities should be established. That mechanism should in particular apply where a supervisory authority intends to adopt a measure intended to produce legal effects as regards processing operations which substantially affect a significant number of data subjects in several Member States. It should also apply where any supervisory authority concerned or the Commission requests that such matter should be handled in the consistency mechanism. That mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.
- (136) In applying the consistency mechanism, the Board should, within a determined period of time, issue an opinion, if a majority of its members so decides or if so requested by any supervisory authority concerned or the Commission. The Board should also be empowered to adopt legally binding decisions where there are disputes between supervisory authorities. For that purpose, it should issue, in principle by a two-thirds majority of its members, legally binding decisions in clearly specified cases where there are conflicting views among supervisory authorities, in particular in the cooperation mechanism between the lead supervisory authority and supervisory authorities concerned on the merits of the case, in particular whether there is an infringement of this Regulation.
- (137) There may be an urgent need to act in order to protect the rights and freedoms of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded. A supervisory authority should therefore be able to adopt duly justified provisional measures on its territory with a specified period of validity which should not exceed three months.
- (138) The application of such mechanism should be a condition for the lawfulness of a measure intended to produce legal effects by a supervisory authority in those cases where its application is mandatory. In other cases of cross-border relevance, the cooperation mechanism between the lead supervisory authority and supervisory authorities concerned should be applied and mutual assistance and joint operations might be carried out between the supervisory authorities concerned on a bilateral or multilateral basis without triggering the consistency mechanism.
- (139) In order to promote the consistent application of this Regulation, the Board should be set up as an independent body of the Union. To fulfil its objectives, the Board should have legal personality. The Board should be represented by its Chair. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of the head of a supervisory authority of each Member State and the European Data Protection Supervisor or their respective representatives. The Commission should participate in the Board's activities without voting rights and the European Data Protection Supervisor should have specific voting rights. The Board should contribute to the consistent application of this Regulation throughout the Union, including by advising the Commission, in particular on the level of protection in third countries or international organisations, and promoting cooperation of the supervisory authorities throughout the Union. The Board should act independently when performing its tasks.
- (140) The Board should be assisted by a secretariat provided by the European Data Protection Supervisor. The staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the Board by this Regulation should perform its tasks exclusively under the instructions of, and report to, the Chair of the Board.
- (141) Every data subject should have the right to lodge a complaint with a single supervisory authority, in particular in the Member State of his or her habitual residence, and the right to an effective judicial remedy in accordance

with Article 47 of the Charter if the data subject considers that his or her rights under this Regulation are infringed or where the supervisory authority does not act on a complaint, partially or wholly rejects or dismisses a complaint or does not act where such action is necessary to protect the rights of the data subject. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject. In order to facilitate the submission of complaints, each supervisory authority should take measures such as providing a complaint submission form which can also be completed electronically, without excluding other means of communication.

- (142) Where a data subject considers that his or her rights under this Regulation are infringed, he or she should have the right to mandate a not-for-profit body, organisation or association which is constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest and is active in the field of the protection of personal data to lodge a complaint on his or her behalf with a supervisory authority, exercise the right to a judicial remedy on behalf of data subjects or, if provided for in Member State law, exercise the right to receive compensation on behalf of data subjects. A Member State may provide for such a body, organisation or association to have the right to lodge a complaint in that Member State, independently of a data subject's mandate, and the right to an effective judicial remedy where it has reasons to consider that the rights of a data subject have been infringed as a result of the processing of personal data which infringes this Regulation. That body, organisation or association may not be allowed to claim compensation on a data subject's behalf independently of the data subject's mandate.
- (143) Any natural or legal person has the right to bring an action for annulment of decisions of the Board before the Court of Justice under the conditions provided for in Article 263 TFEU. As addressees of such decisions, the supervisory authorities concerned which wish to challenge them have to bring action within two months of being notified of them, in accordance with Article 263 TFEU. Where decisions of the Board are of direct and individual concern to a controller, processor or complainant, the latter may bring an action for annulment against those decisions within two months of their publication on the website of the Board, in accordance with Article 263 TFEU. Without prejudice to this right under Article 263 TFEU, each natural or legal person should have an effective judicial remedy before the competent national court against a decision of a supervisory authority which produces legal effects concerning that person. Such a decision concerns in particular the exercise of investigative, corrective and authorisation powers by the supervisory authority or the dismissal or rejection of complaints. However, the right to an effective judicial remedy does not encompass measures taken by supervisory authorities which are not legally binding, such as opinions issued by or advice provided by the supervisory authority. Proceedings against a supervisory authority should be brought before the courts of the Member State where the supervisory authority is established and should be conducted in accordance with that Member State's procedural law. Those courts should exercise full jurisdiction, which should include jurisdiction to examine all questions of fact and law relevant to the dispute before them.

Where a complaint has been rejected or dismissed by a supervisory authority, the complainant may bring proceedings before the courts in the same Member State. In the context of judicial remedies relating to the application of this Regulation, national courts which consider a decision on the question necessary to enable them to give judgment, may, or in the case provided for in Article 267 TFEU, must, request the Court of Justice to give a preliminary ruling on the interpretation of Union law, including this Regulation. Furthermore, where a decision of a supervisory authority implementing a decision of the Board is challenged before a national court and the validity of the decision of the Board is at issue, that national court does not have the power to declare the Board's decision invalid but must refer the question of validity to the Court of Justice in accordance with Article 267 TFEU as interpreted by the Court of Justice, where it considers the decision invalid. However, a national court may not refer a question on the validity of the decision of the Board at the request of a natural or legal person which had the opportunity to bring an action for annulment of that decision, in particular if it was directly and individually concerned by that decision, but had not done so within the period laid down in Article 263 TFEU.

- (144) Where a court seized of proceedings against a decision by a supervisory authority has reason to believe that proceedings concerning the same processing, such as the same subject matter as regards processing by the same controller or processor, or the same cause of action, are brought before a competent court in another Member State, it should contact that court in order to confirm the existence of such related proceedings. If related proceedings are pending before a court in another Member State, any court other than the court first

seized may stay its proceedings or may, on request of one of the parties, decline jurisdiction in favour of the court first seized if that court has jurisdiction over the proceedings in question and its law permits the consolidation of such related proceedings. Proceedings are deemed to be related where they are so closely connected that it is expedient to hear and determine them together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.

- (145) For proceedings against a controller or processor, the plaintiff should have the choice to bring the action before the courts of the Member States where the controller or processor has an establishment or where the data subject resides, unless the controller is a public authority of a Member State acting in the exercise of its public powers.
- (146) The controller or processor should compensate any damage which a person may suffer as a result of processing that infringes this Regulation. The controller or processor should be exempt from liability if it proves that it is not in any way responsible for the damage. The concept of damage should be broadly interpreted in the light of the case-law of the Court of Justice in a manner which fully reflects the objectives of this Regulation. This is without prejudice to any claims for damage deriving from the violation of other rules in Union or Member State law. Processing that infringes this Regulation also includes processing that infringes delegated and implementing acts adopted in accordance with this Regulation and Member State law specifying rules of this Regulation. Data subjects should receive full and effective compensation for the damage they have suffered. Where controllers or processors are involved in the same processing, each controller or processor should be held liable for the entire damage. However, where they are joined to the same judicial proceedings, in accordance with Member State law, compensation may be apportioned according to the responsibility of each controller or processor for the damage caused by the processing, provided that full and effective compensation of the data subject who suffered the damage is ensured. Any controller or processor which has paid full compensation may subsequently institute recourse proceedings against other controllers or processors involved in the same processing.
- (147) Where specific rules on jurisdiction are contained in this Regulation, in particular as regards proceedings seeking a judicial remedy including compensation, against a controller or processor, general jurisdiction rules such as those of Regulation (EU) No 1215/2012 of the European Parliament and of the Council ⁽¹⁾ should not prejudice the application of such specific rules.
- (148) In order to strengthen the enforcement of the rules of this Regulation, penalties including administrative fines should be imposed for any infringement of this Regulation, in addition to, or instead of appropriate measures imposed by the supervisory authority pursuant to this Regulation. In a case of a minor infringement or if the fine likely to be imposed would constitute a disproportionate burden to a natural person, a reprimand may be issued instead of a fine. Due regard should however be given to the nature, gravity and duration of the infringement, the intentional character of the infringement, actions taken to mitigate the damage suffered, degree of responsibility or any relevant previous infringements, the manner in which the infringement became known to the supervisory authority, compliance with measures ordered against the controller or processor, adherence to a code of conduct and any other aggravating or mitigating factor. The imposition of penalties including administrative fines should be subject to appropriate procedural safeguards in accordance with the general principles of Union law and the Charter, including effective judicial protection and due process.
- (149) Member States should be able to lay down the rules on criminal penalties for infringements of this Regulation, including for infringements of national rules adopted pursuant to and within the limits of this Regulation. Those criminal penalties may also allow for the deprivation of the profits obtained through infringements of this Regulation. However, the imposition of criminal penalties for infringements of such national rules and of administrative penalties should not lead to a breach of the principle of *ne bis in idem*, as interpreted by the Court of Justice.
- (150) In order to strengthen and harmonise administrative penalties for infringements of this Regulation, each supervisory authority should have the power to impose administrative fines. This Regulation should indicate

⁽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).

infringements and the upper limit and criteria for setting the related administrative fines, which should be determined by the competent supervisory authority in each individual case, taking into account all relevant circumstances of the specific situation, with due regard in particular to the nature, gravity and duration of the infringement and of its consequences and the measures taken to ensure compliance with the obligations under this Regulation and to prevent or mitigate the consequences of the infringement. Where administrative fines are imposed on an undertaking, an undertaking should be understood to be an undertaking in accordance with Articles 101 and 102 TFEU for those purposes. Where administrative fines are imposed on persons that are not an undertaking, the supervisory authority should take account of the general level of income in the Member State as well as the economic situation of the person in considering the appropriate amount of the fine. The consistency mechanism may also be used to promote a consistent application of administrative fines. It should be for the Member States to determine whether and to which extent public authorities should be subject to administrative fines. Imposing an administrative fine or giving a warning does not affect the application of other powers of the supervisory authorities or of other penalties under this Regulation.

- (151) The legal systems of Denmark and Estonia do not allow for administrative fines as set out in this Regulation. The rules on administrative fines may be applied in such a manner that in Denmark the fine is imposed by competent national courts as a criminal penalty and in Estonia the fine is imposed by the supervisory authority in the framework of a misdemeanour procedure, provided that such an application of the rules in those Member States has an equivalent effect to administrative fines imposed by supervisory authorities. Therefore the competent national courts should take into account the recommendation by the supervisory authority initiating the fine. In any event, the fines imposed should be effective, proportionate and dissuasive.
- (152) Where this Regulation does not harmonise administrative penalties or where necessary in other cases, for example in cases of serious infringements of this Regulation, Member States should implement a system which provides for effective, proportionate and dissuasive penalties. The nature of such penalties, criminal or administrative, should be determined by Member State law.
- (153) Member States law should reconcile the rules governing freedom of expression and information, including journalistic, academic, artistic and or literary expression with the right to the protection of personal data pursuant to this Regulation. The processing of personal data solely for journalistic purposes, or for the purposes of academic, artistic or literary expression should be subject to derogations or exemptions from certain provisions of this Regulation if necessary to reconcile the right to the protection of personal data with the right to freedom of expression and information, as enshrined in Article 11 of the Charter. This should apply in particular to the processing of personal data in the audiovisual field and in news archives and press libraries. Therefore, Member States should adopt legislative measures which lay down the exemptions and derogations necessary for the purpose of balancing those fundamental rights. Member States should adopt such exemptions and derogations on general principles, the rights of the data subject, the controller and the processor, the transfer of personal data to third countries or international organisations, the independent supervisory authorities, cooperation and consistency, and specific data-processing situations. Where such exemptions or derogations differ from one Member State to another, the law of the Member State to which the controller is subject should apply. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly.
- (154) This Regulation allows the principle of public access to official documents to be taken into account when applying this Regulation. Public access to official documents may be considered to be in the public interest. Personal data in documents held by a public authority or a public body should be able to be publicly disclosed by that authority or body if the disclosure is provided for by Union or Member State law to which the public authority or public body is subject. Such laws should reconcile public access to official documents and the reuse of public sector information with the right to the protection of personal data and may therefore provide for the necessary reconciliation with the right to the protection of personal data pursuant to this Regulation. The reference to public authorities and bodies should in that context include all authorities or other bodies covered by Member State law on public access to documents. Directive 2003/98/EC of the European Parliament and of the Council ⁽¹⁾ leaves intact and in no way affects the level of protection of natural persons with regard to the

⁽¹⁾ Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90).

processing of personal data under the provisions of Union and Member State law, and in particular does not alter the obligations and rights set out in this Regulation. In particular, that Directive should not apply to documents to which access is excluded or restricted by virtue of the access regimes on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data the re-use of which has been provided for by law as being incompatible with the law concerning the protection of natural persons with regard to the processing of personal data.

- (155) Member State law or collective agreements, including ‘works agreements’, may provide for specific rules on the processing of employees’ personal data in the employment context, in particular for the conditions under which personal data in the employment context may be processed on the basis of the consent of the employee, the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.
- (156) The processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be subject to appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation. Those safeguards should ensure that technical and organisational measures are in place in order to ensure, in particular, the principle of data minimisation. The further processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is to be carried out when the controller has assessed the feasibility to fulfil those purposes by processing data which do not permit or no longer permit the identification of data subjects, provided that appropriate safeguards exist (such as, for instance, pseudonymisation of the data). Member States should provide for appropriate safeguards for the processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. Member States should be authorised to provide, under specific conditions and subject to appropriate safeguards for data subjects, specifications and derogations with regard to the information requirements and rights to rectification, to erasure, to be forgotten, to restriction of processing, to data portability, and to object when processing personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. The conditions and safeguards in question may entail specific procedures for data subjects to exercise those rights if this is appropriate in the light of the purposes sought by the specific processing along with technical and organisational measures aimed at minimising the processing of personal data in pursuance of the proportionality and necessity principles. The processing of personal data for scientific purposes should also comply with other relevant legislation such as on clinical trials.
- (157) By coupling information from registries, researchers can obtain new knowledge of great value with regard to widespread medical conditions such as cardiovascular disease, cancer and depression. On the basis of registries, research results can be enhanced, as they draw on a larger population. Within social science, research on the basis of registries enables researchers to obtain essential knowledge about the long-term correlation of a number of social conditions such as unemployment and education with other life conditions. Research results obtained through registries provide solid, high-quality knowledge which can provide the basis for the formulation and implementation of knowledge-based policy, improve the quality of life for a number of people and improve the efficiency of social services. In order to facilitate scientific research, personal data can be processed for scientific research purposes, subject to appropriate conditions and safeguards set out in Union or Member State law.
- (158) Where personal data are processed for archiving purposes, this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons. Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest. Member States should also be authorised to provide for the further processing of personal data for archiving purposes, for example with a view to providing specific information related to the political behaviour under former totalitarian state regimes, genocide, crimes against humanity, in particular the Holocaust, or war crimes.

- (159) Where personal data are processed for scientific research purposes, this Regulation should also apply to that processing. For the purposes of this Regulation, the processing of personal data for scientific research purposes should be interpreted in a broad manner including for example technological development and demonstration, fundamental research, applied research and privately funded research. In addition, it should take into account the Union's objective under Article 179(1) TFEU of achieving a European Research Area. Scientific research purposes should also include studies conducted in the public interest in the area of public health. To meet the specificities of processing personal data for scientific research purposes, specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific research purposes. If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation should apply in view of those measures.
- (160) Where personal data are processed for historical research purposes, this Regulation should also apply to that processing. This should also include historical research and research for genealogical purposes, bearing in mind that this Regulation should not apply to deceased persons.
- (161) For the purpose of consenting to the participation in scientific research activities in clinical trials, the relevant provisions of Regulation (EU) No 536/2014 of the European Parliament and of the Council ⁽¹⁾ should apply.
- (162) Where personal data are processed for statistical purposes, this Regulation should apply to that processing. Union or Member State law should, within the limits of this Regulation, determine statistical content, control of access, specifications for the processing of personal data for statistical purposes and appropriate measures to safeguard the rights and freedoms of the data subject and for ensuring statistical confidentiality. Statistical purposes mean any operation of collection and the processing of personal data necessary for statistical surveys or for the production of statistical results. Those statistical results may further be used for different purposes, including a scientific research purpose. The statistical purpose implies that the result of processing for statistical purposes is not personal data, but aggregate data, and that this result or the personal data are not used in support of measures or decisions regarding any particular natural person.
- (163) The confidential information which the Union and national statistical authorities collect for the production of official European and official national statistics should be protected. European statistics should be developed, produced and disseminated in accordance with the statistical principles as set out in Article 338(2) TFEU, while national statistics should also comply with Member State law. Regulation (EC) No 223/2009 of the European Parliament and of the Council ⁽²⁾ provides further specifications on statistical confidentiality for European statistics.
- (164) As regards the powers of the supervisory authorities to obtain from the controller or processor access to personal data and access to their premises, Member States may adopt by law, within the limits of this Regulation, specific rules in order to safeguard the professional or other equivalent secrecy obligations, in so far as necessary to reconcile the right to the protection of personal data with an obligation of professional secrecy. This is without prejudice to existing Member State obligations to adopt rules on professional secrecy where required by Union law.
- (165) This Regulation respects and does not prejudice the status under existing constitutional law of churches and religious associations or communities in the Member States, as recognised in Article 17 TFEU.
- (166) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement

⁽¹⁾ Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC (OJ L 158, 27.5.2014, p. 1).

⁽²⁾ Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

of personal data within the Union, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. In particular, delegated acts should be adopted in respect of criteria and requirements for certification mechanisms, information to be presented by standardised icons and procedures for providing such icons. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (167) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission when provided for by this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. In that context, the Commission should consider specific measures for micro, small and medium-sized enterprises.
- (168) The examination procedure should be used for the adoption of implementing acts on standard contractual clauses between controllers and processors and between processors; codes of conduct; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country, a territory or a specified sector within that third country, or an international organisation; standard protection clauses; formats and procedures for the exchange of information by electronic means between controllers, processors and supervisory authorities for binding corporate rules; mutual assistance; and arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board.
- (169) The Commission should adopt immediately applicable implementing acts where available evidence reveals that a third country, a territory or a specified sector within that third country, or an international organisation does not ensure an adequate level of protection, and imperative grounds of urgency so require.
- (170) Since the objective of this Regulation, namely to ensure an equivalent level of protection of natural persons and the free flow of personal data throughout the Union, cannot be sufficiently achieved by the Member States and can rather, by reason of the scale or 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 of the Treaty on European Union (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.
- (171) Directive 95/46/EC should be repealed by this Regulation. Processing already under way on the date of application of this Regulation should be brought into conformity with this Regulation within the period of two years after which this Regulation enters into force. Where processing is based on consent pursuant to Directive 95/46/EC, it is not necessary for the data subject to give his or her consent again if the manner in which the consent has been given is in line with the conditions of this Regulation, so as to allow the controller to continue such processing after the date of application of this Regulation. Commission decisions adopted and authorisations by supervisory authorities based on Directive 95/46/EC remain in force until amended, replaced or repealed.
- (172) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 7 March 2012 ⁽¹⁾.
- (173) This Regulation should apply to all matters concerning the protection of fundamental rights and freedoms *vis-à-vis* the processing of personal data which are not subject to specific obligations with the same objective set out in Directive 2002/58/EC of the European Parliament and of the Council ⁽²⁾, including the obligations on the controller and the rights of natural persons. In order to clarify the relationship between this Regulation and Directive 2002/58/EC, that Directive should be amended accordingly. Once this Regulation is adopted, Directive 2002/58/EC should be reviewed in particular in order to ensure consistency with this Regulation,

⁽¹⁾ OJ C 192, 30.6.2012, p. 7.

⁽²⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

HAVE ADOPTED THIS REGULATION:

CHAPTER I

General provisions

Article 1

Subject-matter and objectives

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.
2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.
3. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

Article 2

Material scope

1. This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.
2. This Regulation does not apply to the processing of personal data:
 - (a) in the course of an activity which falls outside the scope of Union law;
 - (b) by the Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the TEU;
 - (c) by a natural person in the course of a purely personal or household activity;
 - (d) by competent authorities 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.
3. For the processing of personal data by the Union institutions, bodies, offices and agencies, Regulation (EC) No 45/2001 applies. Regulation (EC) No 45/2001 and other Union legal acts applicable to such processing of personal data shall be adapted to the principles and rules of this Regulation in accordance with Article 98.
4. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.

Article 3

Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:

- (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
- (b) the monitoring of their behaviour as far as their behaviour takes place within the Union.

3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law.

Article 4

Definitions

For the purposes of this Regulation:

- (1) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (2) 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- (3) 'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future;
- (4) 'profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;
- (5) 'pseudonymisation' means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;
- (6) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;
- (7) 'controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;
- (8) 'processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
- (9) 'recipient' means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the

framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;

- (10) 'third party' means a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, under the direct authority of the controller or processor, are authorised to process personal data;
- (11) 'consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;
- (12) 'personal data breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- (13) 'genetic data' means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;
- (14) 'biometric data' means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
- (15) 'data concerning health' means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;
- (16) 'main establishment' means:
 - (a) as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment;
 - (b) as regards a processor with establishments in more than one Member State, the place of its central administration in the Union, or, if the processor has no central administration in the Union, the establishment of the processor in the Union where the main processing activities in the context of the activities of an establishment of the processor take place to the extent that the processor is subject to specific obligations under this Regulation;
- (17) 'representative' means a natural or legal person established in the Union who, designated by the controller or processor in writing pursuant to Article 27, represents the controller or processor with regard to their respective obligations under this Regulation;
- (18) 'enterprise' means a natural or legal person engaged in an economic activity, irrespective of its legal form, including partnerships or associations regularly engaged in an economic activity;
- (19) 'group of undertakings' means a controlling undertaking and its controlled undertakings;
- (20) 'binding corporate rules' means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings, or group of enterprises engaged in a joint economic activity;
- (21) 'supervisory authority' means an independent public authority which is established by a Member State pursuant to Article 51;

- (22) ‘supervisory authority concerned’ means a supervisory authority which is concerned by the processing of personal data because:
- (a) the controller or processor is established on the territory of the Member State of that supervisory authority;
 - (b) data subjects residing in the Member State of that supervisory authority are substantially affected or likely to be substantially affected by the processing; or
 - (c) a complaint has been lodged with that supervisory authority;
- (23) ‘cross-border processing’ means either:
- (a) processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or
 - (b) processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State.
- (24) ‘relevant and reasoned objection’ means an objection to a draft decision as to whether there is an infringement of this Regulation, or whether envisaged action in relation to the controller or processor complies with this Regulation, which clearly demonstrates the significance of the risks posed by the draft decision as regards the fundamental rights and freedoms of data subjects and, where applicable, the free flow of personal data within the Union;
- (25) ‘information society service’ means a service as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council ⁽¹⁾;
- (26) ‘international organisation’ means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.

CHAPTER II

Principles

Article 5

Principles relating to processing of personal data

1. Personal data shall be:
 - (a) processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’);
 - (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes (‘purpose limitation’);
 - (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimisation’);
 - (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (‘accuracy’);

⁽¹⁾ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');
 - (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').
2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

Article 6

Lawfulness of processing

1. Processing shall be lawful only if and to the extent that at least one of the following applies:
- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
 - (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
 - (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
 - (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
 - (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
 - (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

2. Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to processing for compliance with points (c) and (e) of paragraph 1 by determining more precisely specific requirements for the processing and other measures to ensure lawful and fair processing including for other specific processing situations as provided for in Chapter IX.

3. The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by:

- (a) Union law; or
- (b) Member State law to which the controller is subject.

The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. That legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific

processing situations as provided for in Chapter IX. The Union or the Member State law shall meet an objective of public interest and be proportionate to the legitimate aim pursued.

4. Where the processing for a purpose other than that for which the personal data have been collected is not based on the data subject's consent or on a Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23(1), the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the personal data are initially collected, take into account, *inter alia*:

- (a) any link between the purposes for which the personal data have been collected and the purposes of the intended further processing;
- (b) the context in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller;
- (c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9, or whether personal data related to criminal convictions and offences are processed, pursuant to Article 10;
- (d) the possible consequences of the intended further processing for data subjects;
- (e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.

Article 7

Conditions for consent

1. Where processing is based on consent, the controller shall be able to demonstrate that the data subject has consented to processing of his or her personal data.
2. If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language. Any part of such a declaration which constitutes an infringement of this Regulation shall not be binding.
3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the data subject shall be informed thereof. It shall be as easy to withdraw as to give consent.
4. When assessing whether consent is freely given, utmost account shall be taken of whether, *inter alia*, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.

Article 8

Conditions applicable to child's consent in relation to information society services

1. Where point (a) of Article 6(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.

2. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

3. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.

Article 9

Processing of special categories of personal data

1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.

2. Paragraph 1 shall not apply if one of the following applies:

- (a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;
- (b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;
- (c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
- (d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;
- (e) processing relates to personal data which are manifestly made public by the data subject;
- (f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;
- (g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;
- (h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;
- (i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;

- (j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.
3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.
4. Member States may maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health.

Article 10

Processing of personal data relating to criminal convictions and offences

Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.

Article 11

Processing which does not require identification

1. If the purposes for which a controller processes personal data do not or do no longer require the identification of a data subject by the controller, the controller shall not be obliged to maintain, acquire or process additional information in order to identify the data subject for the sole purpose of complying with this Regulation.
2. Where, in cases referred to in paragraph 1 of this Article, the controller is able to demonstrate that it is not in a position to identify the data subject, the controller shall inform the data subject accordingly, if possible. In such cases, Articles 15 to 20 shall not apply except where the data subject, for the purpose of exercising his or her rights under those articles, provides additional information enabling his or her identification.

CHAPTER III

Rights of the data subject

Section 1

Transparency and modalities

Article 12

Transparent information, communication and modalities for the exercise of the rights of the data subject

1. The controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and 34 relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, including, where appropriate, by electronic means. When requested by the data subject, the information may be provided orally, provided that the identity of the data subject is proven by other means.

2. The controller shall facilitate the exercise of data subject rights under Articles 15 to 22. In the cases referred to in Article 11(2), the controller shall not refuse to act on the request of the data subject for exercising his or her rights under Articles 15 to 22, unless the controller demonstrates that it is not in a position to identify the data subject.

3. The controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. Where the data subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.

4. If the controller does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy.

5. Information provided under Articles 13 and 14 and any communication and any actions taken under Articles 15 to 22 and 34 shall be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either:

- (a) charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the action requested; or
- (b) refuse to act on the request.

The controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

6. Without prejudice to Article 11, where the controller has reasonable doubts concerning the identity of the natural person making the request referred to in Articles 15 to 21, the controller may request the provision of additional information necessary to confirm the identity of the data subject.

7. The information to be provided to data subjects pursuant to Articles 13 and 14 may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner a meaningful overview of the intended processing. Where the icons are presented electronically they shall be machine-readable.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 92 for the purpose of determining the information to be presented by the icons and the procedures for providing standardised icons.

Section 2

Information and access to personal data

Article 13

Information to be provided where personal data are collected from the data subject

1. Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with all of the following information:

- (a) the identity and the contact details of the controller and, where applicable, of the controller's representative;
- (b) the contact details of the data protection officer, where applicable;
- (c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;

- (d) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;
- (e) the recipients or categories of recipients of the personal data, if any;
- (f) where applicable, the fact that the controller intends to transfer personal data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.

2. In addition to the information referred to in paragraph 1, the controller shall, at the time when personal data are obtained, provide the data subject with the following further information necessary to ensure fair and transparent processing:

- (a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;
- (b) the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject or to object to processing as well as the right to data portability;
- (c) where the processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
- (d) the right to lodge a complaint with a supervisory authority;
- (e) whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the personal data and of the possible consequences of failure to provide such data;
- (f) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

3. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were collected, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.

4. Paragraphs 1, 2 and 3 shall not apply where and insofar as the data subject already has the information.

Article 14

Information to be provided where personal data have not been obtained from the data subject

1. Where personal data have not been obtained from the data subject, the controller shall provide the data subject with the following information:

- (a) the identity and the contact details of the controller and, where applicable, of the controller's representative;
- (b) the contact details of the data protection officer, where applicable;
- (c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;
- (d) the categories of personal data concerned;
- (e) the recipients or categories of recipients of the personal data, if any;

- (f) where applicable, that the controller intends to transfer personal data to a recipient in a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means to obtain a copy of them or where they have been made available.
2. In addition to the information referred to in paragraph 1, the controller shall provide the data subject with the following information necessary to ensure fair and transparent processing in respect of the data subject:
- (a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;
 - (b) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;
 - (c) the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject and to object to processing as well as the right to data portability;
 - (d) where processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
 - (e) the right to lodge a complaint with a supervisory authority;
 - (f) from which source the personal data originate, and if applicable, whether it came from publicly accessible sources;
 - (g) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
3. The controller shall provide the information referred to in paragraphs 1 and 2:
- (a) within a reasonable period after obtaining the personal data, but at the latest within one month, having regard to the specific circumstances in which the personal data are processed;
 - (b) if the personal data are to be used for communication with the data subject, at the latest at the time of the first communication to that data subject; or
 - (c) if a disclosure to another recipient is envisaged, at the latest when the personal data are first disclosed.
4. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were obtained, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.
5. Paragraphs 1 to 4 shall not apply where and insofar as:
- (a) the data subject already has the information;
 - (b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to the conditions and safeguards referred to in Article 89(1) or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available;
 - (c) obtaining or disclosure is expressly laid down by Union or Member State law to which the controller is subject and which provides appropriate measures to protect the data subject's legitimate interests; or
 - (d) where the personal data must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy.

*Article 15***Right of access by the data subject**

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:

- (a) the purposes of the processing;
- (b) the categories of personal data concerned;
- (c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;
- (d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
- (e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
- (f) the right to lodge a complaint with a supervisory authority;
- (g) where the personal data are not collected from the data subject, any available information as to their source;
- (h) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

2. Where personal data are transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to Article 46 relating to the transfer.

3. The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.

4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

*Section 3***Rectification and erasure***Article 16***Right to rectification**

The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.

*Article 17***Right to erasure ('right to be forgotten')**

1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

- (a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;
- (c) the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);
- (d) the personal data have been unlawfully processed;
- (e) the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;
- (f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).

2. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.

3. Paragraphs 1 and 2 shall not apply to the extent that processing is necessary:

- (a) for exercising the right of freedom of expression and information;
- (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (c) for reasons of public interest in the area of public health in accordance with points (h) and (i) of Article 9(2) as well as Article 9(3);
- (d) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing; or
- (e) for the establishment, exercise or defence of legal claims.

Article 18

Right to restriction of processing

1. The data subject shall have the right to obtain from the controller restriction of processing where one of the following applies:

- (a) the accuracy of the personal data is contested by the data subject, for a period enabling the controller to verify the accuracy of the personal data;
- (b) the processing is unlawful and the data subject opposes the erasure of the personal data and requests the restriction of their use instead;
- (c) the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims;
- (d) the data subject has objected to processing pursuant to Article 21(1) pending the verification whether the legitimate grounds of the controller override those of the data subject.

2. Where processing has been restricted under paragraph 1, such personal data shall, with the exception of storage, only be processed with the data subject's consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest of the Union or of a Member State.

3. A data subject who has obtained restriction of processing pursuant to paragraph 1 shall be informed by the controller before the restriction of processing is lifted.

Article 19

Notification obligation regarding rectification or erasure of personal data or restriction of processing

The controller shall communicate any rectification or erasure of personal data or restriction of processing carried out in accordance with Article 16, Article 17(1) and Article 18 to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests it.

Article 20

Right to data portability

1. The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided, where:
 - (a) the processing is based on consent pursuant to point (a) of Article 6(1) or point (a) of Article 9(2) or on a contract pursuant to point (b) of Article 6(1); and
 - (b) the processing is carried out by automated means.
2. In exercising his or her right to data portability pursuant to paragraph 1, the data subject shall have the right to have the personal data transmitted directly from one controller to another, where technically feasible.
3. The exercise of the right referred to in paragraph 1 of this Article shall be without prejudice to Article 17. That right shall not apply to processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
4. The right referred to in paragraph 1 shall not adversely affect the rights and freedoms of others.

Section 4

Right to object and automated individual decision-making

Article 21

Right to object

1. The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on point (e) or (f) of Article 6(1), including profiling based on those provisions. The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.
2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object at any time to processing of personal data concerning him or her for such marketing, which includes profiling to the extent that it is related to such direct marketing.
3. Where the data subject objects to processing for direct marketing purposes, the personal data shall no longer be processed for such purposes.

4. At the latest at the time of the first communication with the data subject, the right referred to in paragraphs 1 and 2 shall be explicitly brought to the attention of the data subject and shall be presented clearly and separately from any other information.
5. In the context of the use of information society services, and notwithstanding Directive 2002/58/EC, the data subject may exercise his or her right to object by automated means using technical specifications.
6. Where personal data are processed for scientific or historical research purposes or statistical purposes pursuant to Article 89(1), the data subject, on grounds relating to his or her particular situation, shall have the right to object to processing of personal data concerning him or her, unless the processing is necessary for the performance of a task carried out for reasons of public interest.

Article 22

Automated individual decision-making, including profiling

1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.
2. Paragraph 1 shall not apply if the decision:
 - (a) is necessary for entering into, or performance of, a contract between the data subject and a data controller;
 - (b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or
 - (c) is based on the data subject's explicit consent.
3. In the cases referred to in points (a) and (c) of paragraph 2, the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.
4. Decisions referred to in paragraph 2 shall not be based on special categories of personal data referred to in Article 9(1), unless point (a) or (g) of Article 9(2) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

Section 5

Restrictions

Article 23

Restrictions

1. Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:
 - (a) national security;
 - (b) defence;
 - (c) public security;

- (d) 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;
- (e) other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security;
- (f) the protection of judicial independence and judicial proceedings;
- (g) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
- (h) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points (a) to (e) and (g);
- (i) the protection of the data subject or the rights and freedoms of others;
- (j) the enforcement of civil law claims.

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least, where relevant, as to:

- (a) the purposes of the processing or categories of processing;
- (b) the categories of personal data;
- (c) the scope of the restrictions introduced;
- (d) the safeguards to prevent abuse or unlawful access or transfer;
- (e) the specification of the controller or categories of controllers;
- (f) the storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;
- (g) the risks to the rights and freedoms of data subjects; and
- (h) the right of data subjects to be informed about the restriction, unless that may be prejudicial to the purpose of the restriction.

CHAPTER IV

Controller and processor

Section 1

General obligations

Article 24

Responsibility of the controller

1. Taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the controller shall implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with this Regulation. Those measures shall be reviewed and updated where necessary.

2. Where proportionate in relation to processing activities, the measures referred to in paragraph 1 shall include the implementation of appropriate data protection policies by the controller.

3. Adherence to approved codes of conduct as referred to in Article 40 or approved certification mechanisms as referred to in Article 42 may be used as an element by which to demonstrate compliance with the obligations of the controller.

Article 25

Data protection by design and by default

1. Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data-protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing in order to meet the requirements of this Regulation and protect the rights of data subjects.
2. The controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default personal data are not made accessible without the individual's intervention to an indefinite number of natural persons.
3. An approved certification mechanism pursuant to Article 42 may be used as an element to demonstrate compliance with the requirements set out in paragraphs 1 and 2 of this Article.

Article 26

Joint controllers

1. Where two or more controllers jointly determine the purposes and means of processing, they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 13 and 14, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject. The arrangement may designate a contact point for data subjects.
2. The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers *vis-à-vis* the data subjects. The essence of the arrangement shall be made available to the data subject.
3. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his or her rights under this Regulation in respect of and against each of the controllers.

Article 27

Representatives of controllers or processors not established in the Union

1. Where Article 3(2) applies, the controller or the processor shall designate in writing a representative in the Union.
2. The obligation laid down in paragraph 1 of this Article shall not apply to:
 - (a) processing which is occasional, does not include, on a large scale, processing of special categories of data as referred to in Article 9(1) or processing of personal data relating to criminal convictions and offences referred to in Article 10, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing; or
 - (b) a public authority or body.

3. The representative shall be established in one of the Member States where the data subjects, whose personal data are processed in relation to the offering of goods or services to them, or whose behaviour is monitored, are.
4. The representative shall be mandated by the controller or processor to be addressed in addition to or instead of the controller or the processor by, in particular, supervisory authorities and data subjects, on all issues related to processing, for the purposes of ensuring compliance with this Regulation.
5. The designation of a representative by the controller or processor shall be without prejudice to legal actions which could be initiated against the controller or the processor themselves.

Article 28

Processor

1. Where processing is to be carried out on behalf of a controller, the controller shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.
2. The processor shall not engage another processor without prior specific or general written authorisation of the controller. In the case of general written authorisation, the processor shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes.
3. Processing by a processor shall be governed by a contract or other legal act under Union or Member State law, that is binding on the processor with regard to the controller and that sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller. That contract or other legal act shall stipulate, in particular, that the processor:
 - (a) processes the personal data only on documented instructions from the controller, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
 - (b) ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (c) takes all measures required pursuant to Article 32;
 - (d) respects the conditions referred to in paragraphs 2 and 4 for engaging another processor;
 - (e) taking into account the nature of the processing, assists the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;
 - (f) assists the controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 taking into account the nature of processing and the information available to the processor;
 - (g) at the choice of the controller, deletes or returns all the personal data to the controller after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data;
 - (h) makes available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

With regard to point (h) of the first subparagraph, the processor shall immediately inform the controller if, in its opinion, an instruction infringes this Regulation or other Union or Member State data protection provisions.

4. Where a processor engages another processor for carrying out specific processing activities on behalf of the controller, the same data protection obligations as set out in the contract or other legal act between the controller and the processor as referred to in paragraph 3 shall be imposed on that other processor by way of a contract or other legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of this Regulation. Where that other processor fails to fulfil its data protection obligations, the initial processor shall remain fully liable to the controller for the performance of that other processor's obligations.

5. Adherence of a processor to an approved code of conduct as referred to in Article 40 or an approved certification mechanism as referred to in Article 42 may be used as an element by which to demonstrate sufficient guarantees as referred to in paragraphs 1 and 4 of this Article.

6. Without prejudice to an individual contract between the controller and the processor, the contract or the other legal act referred to in paragraphs 3 and 4 of this Article may be based, in whole or in part, on standard contractual clauses referred to in paragraphs 7 and 8 of this Article, including when they are part of a certification granted to the controller or processor pursuant to Articles 42 and 43.

7. The Commission may lay down standard contractual clauses for the matters referred to in paragraph 3 and 4 of this Article and in accordance with the examination procedure referred to in Article 93(2).

8. A supervisory authority may adopt standard contractual clauses for the matters referred to in paragraph 3 and 4 of this Article and in accordance with the consistency mechanism referred to in Article 63.

9. The contract or the other legal act referred to in paragraphs 3 and 4 shall be in writing, including in electronic form.

10. Without prejudice to Articles 82, 83 and 84, if a processor infringes this Regulation by determining the purposes and means of processing, the processor shall be considered to be a controller in respect of that processing.

Article 29

Processing under the authority of the controller or processor

The processor and any person acting under the authority of the controller or of the processor, who has access to personal data, shall not process those data except on instructions from the controller, unless required to do so by Union or Member State law.

Article 30

Records of processing activities

1. Each controller and, where applicable, the controller's representative, shall maintain a record of processing activities under its responsibility. That record shall contain all of the following information:

- (a) the name and contact details of the controller and, where applicable, the joint controller, the controller's representative and the data protection officer;
- (b) the purposes of the processing;
- (c) a description of the categories of data subjects and of the categories of personal data;

- (d) the categories of recipients to whom the personal data have been or will be disclosed including recipients in third countries or international organisations;
 - (e) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1), the documentation of suitable safeguards;
 - (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 32(1).
2. Each processor and, where applicable, the processor's representative shall maintain a record of all categories of processing activities carried out on behalf of a controller, containing:
- (a) the name and contact details of the processor or processors and of each controller on behalf of which the processor is acting, and, where applicable, of the controller's or the processor's representative, and the data protection officer;
 - (b) the categories of processing carried out on behalf of each controller;
 - (c) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1), the documentation of suitable safeguards;
 - (d) where possible, a general description of the technical and organisational security measures referred to in Article 32(1).
3. The records referred to in paragraphs 1 and 2 shall be in writing, including in electronic form.
4. The controller or the processor and, where applicable, the controller's or the processor's representative, shall make the record available to the supervisory authority on request.
5. The obligations referred to in paragraphs 1 and 2 shall not apply to an enterprise or an organisation employing fewer than 250 persons unless the processing it carries out is likely to result in a risk to the rights and freedoms of data subjects, the processing is not occasional, or the processing includes special categories of data as referred to in Article 9(1) or personal data relating to criminal convictions and offences referred to in Article 10.

Article 31

Cooperation with the supervisory authority

The controller and the processor and, where applicable, their representatives, shall cooperate, on request, with the supervisory authority in the performance of its tasks.

Section 2

Security of personal data

Article 32

Security of processing

1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:
- (a) the pseudonymisation and encryption of personal data;

- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
 - (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
2. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.
3. Adherence to an approved code of conduct as referred to in Article 40 or an approved certification mechanism as referred to in Article 42 may be used as an element by which to demonstrate compliance with the requirements set out in paragraph 1 of this Article.
4. The controller and processor shall take steps to ensure that any natural person acting under the authority of the controller or the processor who has access to personal data does not process them except on instructions from the controller, unless he or she is required to do so by Union or Member State law.

Article 33

Notification of a personal data breach to the supervisory authority

1. In the case of a personal data breach, the controller shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the supervisory authority competent in accordance with Article 55, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification to the supervisory authority is not made within 72 hours, it shall be accompanied by reasons for the delay.
2. The processor shall notify the controller without undue delay after becoming aware of a personal data breach.
3. The notification referred to in paragraph 1 shall at least:
- (a) describe the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
 - (b) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
 - (c) describe the likely consequences of the personal data breach;
 - (d) describe the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.
4. Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.
5. The controller shall document any personal data breaches, comprising the facts relating to the personal data breach, its effects and the remedial action taken. That documentation shall enable the supervisory authority to verify compliance with this Article.

Article 34

Communication of a personal data breach to the data subject

1. When the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall communicate the personal data breach to the data subject without undue delay.

2. The communication to the data subject referred to in paragraph 1 of this Article shall describe in clear and plain language the nature of the personal data breach and contain at least the information and measures referred to in points (b), (c) and (d) of Article 33(3).
3. The communication to the data subject referred to in paragraph 1 shall not be required if any of the following conditions are met:
 - (a) the controller has implemented appropriate technical and organisational protection measures, and those measures were applied to the personal data affected by the personal data breach, in particular those that render the personal data unintelligible to any person who is not authorised to access it, such as encryption;
 - (b) the controller has taken subsequent measures which ensure that the high risk to the rights and freedoms of data subjects referred to in paragraph 1 is no longer likely to materialise;
 - (c) it would involve disproportionate effort. In such a case, there shall instead be a public communication or similar measure whereby the data subjects are informed in an equally effective manner.
4. If the controller has not already communicated the personal data breach to the data subject, the supervisory authority, having considered the likelihood of the personal data breach resulting in a high risk, may require it to do so or may decide that any of the conditions referred to in paragraph 3 are met.

Section 3

Data protection impact assessment and prior consultation

Article 35

Data protection impact assessment

1. Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.
2. The controller shall seek the advice of the data protection officer, where designated, when carrying out a data protection impact assessment.
3. A data protection impact assessment referred to in paragraph 1 shall in particular be required in the case of:
 - (a) a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person;
 - (b) processing on a large scale of special categories of data referred to in Article 9(1), or of personal data relating to criminal convictions and offences referred to in Article 10; or
 - (c) a systematic monitoring of a publicly accessible area on a large scale.
4. The supervisory authority shall establish and make public a list of the kind of processing operations which are subject to the requirement for a data protection impact assessment pursuant to paragraph 1. The supervisory authority shall communicate those lists to the Board referred to in Article 68.
5. The supervisory authority may also establish and make public a list of the kind of processing operations for which no data protection impact assessment is required. The supervisory authority shall communicate those lists to the Board.
6. Prior to the adoption of the lists referred to in paragraphs 4 and 5, the competent supervisory authority shall apply the consistency mechanism referred to in Article 63 where such lists involve processing activities which are related to the offering of goods or services to data subjects or to the monitoring of their behaviour in several Member States, or may substantially affect the free movement of personal data within the Union.

7. The assessment shall contain at least:
 - (a) a systematic description of the envisaged processing operations and the purposes of the processing, including, where applicable, the legitimate interest pursued by the controller;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;
 - (c) an assessment of the risks to the rights and freedoms of data subjects referred to in paragraph 1; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation taking into account the rights and legitimate interests of data subjects and other persons concerned.
8. Compliance with approved codes of conduct referred to in Article 40 by the relevant controllers or processors shall be taken into due account in assessing the impact of the processing operations performed by such controllers or processors, in particular for the purposes of a data protection impact assessment.
9. Where appropriate, the controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of processing operations.
10. Where processing pursuant to point (c) or (e) of Article 6(1) has a legal basis in Union law or in the law of the Member State to which the controller is subject, that law regulates the specific processing operation or set of operations in question, and a data protection impact assessment has already been carried out as part of a general impact assessment in the context of the adoption of that legal basis, paragraphs 1 to 7 shall not apply unless Member States deem it to be necessary to carry out such an assessment prior to processing activities.
11. Where necessary, the controller shall carry out a review to assess if processing is performed in accordance with the data protection impact assessment at least when there is a change of the risk represented by processing operations.

Article 36

Prior consultation

1. The controller shall consult the supervisory authority prior to processing where a data protection impact assessment under Article 35 indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.
2. Where the supervisory authority is of the opinion that the intended processing referred to in paragraph 1 would infringe this Regulation, in particular where the controller has insufficiently identified or mitigated the risk, the supervisory authority shall, within period of up to eight weeks of receipt of the request for consultation, provide written advice to the controller and, where applicable to the processor, and may use any of its powers referred to in Article 58. That period may be extended by six weeks, taking into account the complexity of the intended processing. The supervisory authority shall inform the controller and, where applicable, the processor, of any such extension within one month of receipt of the request for consultation together with the reasons for the delay. Those periods may be suspended until the supervisory authority has obtained information it has requested for the purposes of the consultation.
3. When consulting the supervisory authority pursuant to paragraph 1, the controller shall provide the supervisory authority with:
 - (a) where applicable, the respective responsibilities of the controller, joint controllers and processors involved in the processing, in particular for processing within a group of undertakings;
 - (b) the purposes and means of the intended processing;
 - (c) the measures and safeguards provided to protect the rights and freedoms of data subjects pursuant to this Regulation;
 - (d) where applicable, the contact details of the data protection officer;

- (e) the data protection impact assessment provided for in Article 35; and
- (f) any other information requested by the supervisory authority.

4. Member States shall consult the supervisory authority during the preparation of a proposal for a legislative measure to be adopted by a national parliament, or of a regulatory measure based on such a legislative measure, which relates to processing.

5. Notwithstanding paragraph 1, Member State law may require controllers to consult with, and obtain prior authorisation from, the supervisory authority in relation to processing by a controller for the performance of a task carried out by the controller in the public interest, including processing in relation to social protection and public health.

Section 4

Data protection officer

Article 37

Designation of the data protection officer

1. The controller and the processor shall designate a data protection officer in any case where:
 - (a) the processing is carried out by a public authority or body, except for courts acting in their judicial capacity;
 - (b) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; or
 - (c) the core activities of the controller or the processor consist of processing on a large scale of special categories of data pursuant to Article 9 and personal data relating to criminal convictions and offences referred to in Article 10.
2. A group of undertakings may appoint a single data protection officer provided that a data protection officer is easily accessible from each establishment.
3. Where the controller or the processor is a public authority or body, a single data protection officer may be designated for several such authorities or bodies, taking account of their organisational structure and size.
4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may or, where required by Union or Member State law shall, designate a data protection officer. The data protection officer may act for such associations and other bodies representing controllers or processors.
5. The data protection officer shall be designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in Article 39.
6. The data protection officer may be a staff member of the controller or processor, or fulfil the tasks on the basis of a service contract.
7. The controller or the processor shall publish the contact details of the data protection officer and communicate them to the supervisory authority.

Article 38

Position of the data protection officer

1. The controller and the processor 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. The controller and processor shall support the data protection officer in performing the tasks referred to in Article 39 by providing resources necessary to carry out those tasks and access to personal data and processing operations, and to maintain his or her expert knowledge.
3. The controller and processor shall ensure that the data protection officer does not receive any instructions regarding the exercise of those tasks. He or she shall not be dismissed or penalised by the controller or the processor for performing his tasks. The data protection officer shall directly report to the highest management level of the controller or the processor.
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.
5. The data protection officer shall be bound by secrecy or confidentiality concerning the performance of his or her tasks, in accordance with Union or Member State law.
6. The data protection officer may fulfil other tasks and duties. The controller or processor shall ensure that any such tasks and duties do not result in a conflict of interests.

Article 39

Tasks of the data protection officer

1. The data protection officer shall have at least the following tasks:
 - (a) to inform and advise the controller or the processor and the employees who carry out processing of their obligations pursuant to this Regulation and to other Union or Member State data protection provisions;
 - (b) to monitor compliance with this Regulation, with other Union or Member State data protection provisions and with the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits;
 - (c) to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 35;
 - (d) to cooperate with the supervisory authority;
 - (e) to act as the contact point for the supervisory authority on issues relating to processing, including the prior consultation referred to in Article 36, and to consult, where appropriate, with regard to any other matter.
2. The data protection officer shall in the performance of his or her tasks have due regard to the risk associated with processing operations, taking into account the nature, scope, context and purposes of processing.

Section 5

Codes of conduct and certification

Article 40

Codes of conduct

1. The Member States, the supervisory authorities, the Board and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various processing sectors and the specific needs of micro, small and medium-sized enterprises.
2. Associations and other bodies representing categories of controllers or processors may prepare codes of conduct, or amend or extend such codes, for the purpose of specifying the application of this Regulation, such as with regard to:
 - (a) fair and transparent processing;

- (b) the legitimate interests pursued by controllers in specific contexts;
- (c) the collection of personal data;
- (d) the pseudonymisation of personal data;
- (e) the information provided to the public and to data subjects;
- (f) the exercise of the rights of data subjects;
- (g) the information provided to, and the protection of, children, and the manner in which the consent of the holders of parental responsibility over children is to be obtained;
- (h) the measures and procedures referred to in Articles 24 and 25 and the measures to ensure security of processing referred to in Article 32;
- (i) the notification of personal data breaches to supervisory authorities and the communication of such personal data breaches to data subjects;
- (j) the transfer of personal data to third countries or international organisations; or
- (k) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with regard to processing, without prejudice to the rights of data subjects pursuant to Articles 77 and 79.

3. In addition to adherence by controllers or processors subject to this Regulation, codes of conduct approved pursuant to paragraph 5 of this Article and having general validity pursuant to paragraph 9 of this Article may also be adhered to by controllers or processors that are not subject to this Regulation pursuant to Article 3 in order to provide appropriate safeguards within the framework of personal data transfers to third countries or international organisations under the terms referred to in point (e) of Article 46(2). Such controllers or processors shall make binding and enforceable commitments, via contractual or other legally binding instruments, to apply those appropriate safeguards including with regard to the rights of data subjects.

4. A code of conduct referred to in paragraph 2 of this Article shall contain mechanisms which enable the body referred to in Article 41(1) to carry out the mandatory monitoring of compliance with its provisions by the controllers or processors which undertake to apply it, without prejudice to the tasks and powers of supervisory authorities competent pursuant to Article 55 or 56.

5. Associations and other bodies referred to in paragraph 2 of this Article which intend to prepare a code of conduct or to amend or extend an existing code shall submit the draft code, amendment or extension to the supervisory authority which is competent pursuant to Article 55. The supervisory authority shall provide an opinion on whether the draft code, amendment or extension complies with this Regulation and shall approve that draft code, amendment or extension if it finds that it provides sufficient appropriate safeguards.

6. Where the draft code, or amendment or extension is approved in accordance with paragraph 5, and where the code of conduct concerned does not relate to processing activities in several Member States, the supervisory authority shall register and publish the code.

7. Where a draft code of conduct relates to processing activities in several Member States, the supervisory authority which is competent pursuant to Article 55 shall, before approving the draft code, amendment or extension, submit it in the procedure referred to in Article 63 to the Board which shall provide an opinion on whether the draft code, amendment or extension complies with this Regulation or, in the situation referred to in paragraph 3 of this Article, provides appropriate safeguards.

8. Where the opinion referred to in paragraph 7 confirms that the draft code, amendment or extension complies with this Regulation, or, in the situation referred to in paragraph 3, provides appropriate safeguards, the Board shall submit its opinion to the Commission.

9. The Commission may, by way of implementing acts, decide that the approved code of conduct, amendment or extension submitted to it pursuant to paragraph 8 of this Article have general validity within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 93(2).

10. The Commission shall ensure appropriate publicity for the approved codes which have been decided as having general validity in accordance with paragraph 9.

11. The Board shall collate all approved codes of conduct, amendments and extensions in a register and shall make them publicly available by way of appropriate means.

Article 41

Monitoring of approved codes of conduct

1. Without prejudice to the tasks and powers of the competent supervisory authority under Articles 57 and 58, the monitoring of compliance with a code of conduct pursuant to Article 40 may be carried out by a body which has an appropriate level of expertise in relation to the subject-matter of the code and is accredited for that purpose by the competent supervisory authority.

2. A body as referred to in paragraph 1 may be accredited to monitor compliance with a code of conduct where that body has:

- (a) demonstrated its independence and expertise in relation to the subject-matter of the code to the satisfaction of the competent supervisory authority;
- (b) established procedures which allow it to assess the eligibility of controllers and processors concerned to apply the code, to monitor their compliance with its provisions and to periodically review its operation;
- (c) established procedures and structures to handle complaints about infringements of the code or the manner in which the code has been, or is being, implemented by a controller or processor, and to make those procedures and structures transparent to data subjects and the public; and
- (d) demonstrated to the satisfaction of the competent supervisory authority that its tasks and duties do not result in a conflict of interests.

3. The competent supervisory authority shall submit the draft criteria for accreditation of a body as referred to in paragraph 1 of this Article to the Board pursuant to the consistency mechanism referred to in Article 63.

4. Without prejudice to the tasks and powers of the competent supervisory authority and the provisions of Chapter VIII, a body as referred to in paragraph 1 of this Article shall, subject to appropriate safeguards, take appropriate action in cases of infringement of the code by a controller or processor, including suspension or exclusion of the controller or processor concerned from the code. It shall inform the competent supervisory authority of such actions and the reasons for taking them.

5. The competent supervisory authority shall revoke the accreditation of a body as referred to in paragraph 1 if the conditions for accreditation are not, or are no longer, met or where actions taken by the body infringe this Regulation.

6. This Article shall not apply to processing carried out by public authorities and bodies.

Article 42

Certification

1. The Member States, the supervisory authorities, the Board and the Commission shall encourage, in particular at Union level, the establishment of data protection certification mechanisms and of data protection seals and marks, for the purpose of demonstrating compliance with this Regulation of processing operations by controllers and processors. The specific needs of micro, small and medium-sized enterprises shall be taken into account.

2. In addition to adherence by controllers or processors subject to this Regulation, data protection certification mechanisms, seals or marks approved pursuant to paragraph 5 of this Article may be established for the purpose of demonstrating the existence of appropriate safeguards provided by controllers or processors that are not subject to this Regulation pursuant to Article 3 within the framework of personal data transfers to third countries or international organisations under the terms referred to in point (f) of Article 46(2). Such controllers or processors shall make binding and enforceable commitments, via contractual or other legally binding instruments, to apply those appropriate safeguards, including with regard to the rights of data subjects.
3. The certification shall be voluntary and available via a process that is transparent.
4. A certification pursuant to this Article does not reduce the responsibility of the controller or the processor for compliance with this Regulation and is without prejudice to the tasks and powers of the supervisory authorities which are competent pursuant to Article 55 or 56.
5. A certification pursuant to this Article shall be issued by the certification bodies referred to in Article 43 or by the competent supervisory authority, on the basis of criteria approved by that competent supervisory authority pursuant to Article 58(3) or by the Board pursuant to Article 63. Where the criteria are approved by the Board, this may result in a common certification, the European Data Protection Seal.
6. The controller or processor which submits its processing to the certification mechanism shall provide the certification body referred to in Article 43, or where applicable, the competent supervisory authority, with all information and access to its processing activities which are necessary to conduct the certification procedure.
7. Certification shall be issued to a controller or processor for a maximum period of three years and may be renewed, under the same conditions, provided that the relevant requirements continue to be met. Certification shall be withdrawn, as applicable, by the certification bodies referred to in Article 43 or by the competent supervisory authority where the requirements for the certification are not or are no longer met.
8. The Board shall collate all certification mechanisms and data protection seals and marks in a register and shall make them publicly available by any appropriate means.

Article 43

Certification bodies

1. Without prejudice to the tasks and powers of the competent supervisory authority under Articles 57 and 58, certification bodies which have an appropriate level of expertise in relation to data protection shall, after informing the supervisory authority in order to allow it to exercise its powers pursuant to point (h) of Article 58(2) where necessary, issue and renew certification. Member States shall ensure that those certification bodies are accredited by one or both of the following:
 - (a) the supervisory authority which is competent pursuant to Article 55 or 56;
 - (b) the national accreditation body named in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council ⁽¹⁾ in accordance with EN-ISO/IEC 17065/2012 and with the additional requirements established by the supervisory authority which is competent pursuant to Article 55 or 56.
2. Certification bodies referred to in paragraph 1 shall be accredited in accordance with that paragraph only where they have:
 - (a) demonstrated their independence and expertise in relation to the subject-matter of the certification to the satisfaction of the competent supervisory authority;

⁽¹⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

- (b) undertaken to respect the criteria referred to in Article 42(5) and approved by the supervisory authority which is competent pursuant to Article 55 or 56 or by the Board pursuant to Article 63;
- (c) established procedures for the issuing, periodic review and withdrawal of data protection certification, seals and marks;
- (d) established procedures and structures to handle complaints about infringements of the certification or the manner in which the certification has been, or is being, implemented by the controller or processor, and to make those procedures and structures transparent to data subjects and the public; and
- (e) demonstrated, to the satisfaction of the competent supervisory authority, that their tasks and duties do not result in a conflict of interests.

3. The accreditation of certification bodies as referred to in paragraphs 1 and 2 of this Article shall take place on the basis of criteria approved by the supervisory authority which is competent pursuant to Article 55 or 56 or by the Board pursuant to Article 63. In the case of accreditation pursuant to point (b) of paragraph 1 of this Article, those requirements shall complement those envisaged in Regulation (EC) No 765/2008 and the technical rules that describe the methods and procedures of the certification bodies.

4. The certification bodies referred to in paragraph 1 shall be responsible for the proper assessment leading to the certification or the withdrawal of such certification without prejudice to the responsibility of the controller or processor for compliance with this Regulation. The accreditation shall be issued for a maximum period of five years and may be renewed on the same conditions provided that the certification body meets the requirements set out in this Article.

5. The certification bodies referred to in paragraph 1 shall provide the competent supervisory authorities with the reasons for granting or withdrawing the requested certification.

6. The requirements referred to in paragraph 3 of this Article and the criteria referred to in Article 42(5) shall be made public by the supervisory authority in an easily accessible form. The supervisory authorities shall also transmit those requirements and criteria to the Board. The Board shall collate all certification mechanisms and data protection seals in a register and shall make them publicly available by any appropriate means.

7. Without prejudice to Chapter VIII, the competent supervisory authority or the national accreditation body shall revoke an accreditation of a certification body pursuant to paragraph 1 of this Article where the conditions for the accreditation are not, or are no longer, met or where actions taken by a certification body infringe this Regulation.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 92 for the purpose of specifying the requirements to be taken into account for the data protection certification mechanisms referred to in Article 42(1).

9. The Commission may adopt implementing acts laying down technical standards for certification mechanisms and data protection seals and marks, and mechanisms to promote and recognise those certification mechanisms, seals and marks. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

CHAPTER V

Transfers of personal data to third countries or international organisations

Article 44

General principle for transfers

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation shall take place only if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation. All provisions in this Chapter shall be applied in order to ensure that the level of protection of natural persons guaranteed by this Regulation is not undermined.

Article 45

Transfers on the basis of an adequacy decision

1. A transfer of personal data to a third country or an international organisation may take place where the Commission has decided 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. Such a transfer shall not require any specific authorisation.

2. When assessing the adequacy of the level of protection, the Commission shall, in particular, take account of the following elements:

- (a) the rule of law, respect for human rights and fundamental freedoms, relevant legislation, both general and sectoral, including concerning public security, defence, national security and criminal law and the access of public authorities to personal data, as well as the implementation of such legislation, data protection rules, professional rules and security measures, including rules for the onward transfer of personal data to another third country or international organisation which are complied with in that country or international organisation, case-law, as well as effective and enforceable data subject rights and effective administrative and judicial redress for the data subjects whose personal data are being transferred;
- (b) the existence and effective functioning of one or more independent supervisory authorities in the third country or to which an international organisation is subject, with responsibility for ensuring and enforcing compliance with the data protection rules, including adequate enforcement powers, for assisting and advising the data subjects in exercising their rights and for cooperation with the supervisory authorities of the Member States; and
- (c) the international commitments the third country or international organisation concerned has entered into, or other obligations arising from legally binding conventions or instruments as well as from its participation in multilateral or regional systems, in particular in relation to the protection of personal data.

3. The Commission, after assessing the adequacy of the level of protection, may decide, by means of implementing act, that a third country, a territory or one or more specified sectors within a third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2 of this Article. The implementing act shall provide for a mechanism for a periodic review, at least every four years, which shall take into account all relevant developments in the third country or international organisation. The implementing act shall specify its territorial and sectoral application and, where applicable, identify the supervisory authority or authorities referred to in point (b) of paragraph 2 of this Article. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 93(2).

4. The Commission shall, on an ongoing basis, monitor developments in third countries and international organisations that could affect the functioning of decisions adopted pursuant to paragraph 3 of this Article and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC.

5. The Commission shall, where available information reveals, in particular following the review referred to in paragraph 3 of this Article, that a third country, a territory or one or more specified sectors within a third country, or an international organisation no longer ensures an adequate level of protection within the meaning of paragraph 2 of this Article, to the extent necessary, repeal, amend or suspend the decision referred to in paragraph 3 of this Article by means of implementing acts without retro-active effect. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 93(3).

6. The Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation giving rise to the decision made pursuant to paragraph 5.

7. A decision pursuant to paragraph 5 of this Article is without prejudice to transfers of personal data to the third country, a territory or one or more specified sectors within that third country, or the international organisation in question pursuant to Articles 46 to 49.

8. The Commission shall publish in the *Official Journal of the European Union* and on its website a list of the third countries, territories and specified sectors within a third country and international organisations for which it has decided that an adequate level of protection is or is no longer ensured.

9. Decisions adopted by the Commission on the basis of Article 25(6) of Directive 95/46/EC shall remain in force until amended, replaced or repealed by a Commission Decision adopted in accordance with paragraph 3 or 5 of this Article.

Article 46

Transfers subject to appropriate safeguards

1. In the absence of a decision pursuant to Article 45(3), a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available.

2. The appropriate safeguards referred to in paragraph 1 may be provided for, without requiring any specific authorisation from a supervisory authority, by:

- (a) a legally binding and enforceable instrument between public authorities or bodies;
- (b) binding corporate rules in accordance with Article 47;
- (c) standard data protection clauses adopted by the Commission in accordance with the examination procedure referred to in Article 93(2);
- (d) standard data protection clauses adopted by a supervisory authority and approved by the Commission pursuant to the examination procedure referred to in Article 93(2);
- (e) an approved code of conduct pursuant to Article 40 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects' rights; or
- (f) an approved certification mechanism pursuant to Article 42 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects' rights.

3. Subject to the authorisation from the competent supervisory authority, the appropriate safeguards referred to in paragraph 1 may also be provided for, in particular, by:

- (a) contractual clauses between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organisation; or
- (b) provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights.

4. The supervisory authority shall apply the consistency mechanism referred to in Article 63 in the cases referred to in paragraph 3 of this Article.

5. Authorisations by a Member State or supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid until amended, replaced or repealed, if necessary, by that supervisory authority. Decisions adopted by the Commission on the basis of Article 26(4) of Directive 95/46/EC shall remain in force until amended, replaced or repealed, if necessary, by a Commission Decision adopted in accordance with paragraph 2 of this Article.

Article 47

Binding corporate rules

1. The competent supervisory authority shall approve binding corporate rules in accordance with the consistency mechanism set out in Article 63, provided that they:

- (a) are legally binding and apply to and are enforced by every member concerned of the group of undertakings, or group of enterprises engaged in a joint economic activity, including their employees;

- (b) expressly confer enforceable rights on data subjects with regard to the processing of their personal data; and
 - (c) fulfil the requirements laid down in paragraph 2.
2. The binding corporate rules referred to in paragraph 1 shall specify at least:
- (a) the structure and contact details of the group of undertakings, or group of enterprises engaged in a joint economic activity and of each of its members;
 - (b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question;
 - (c) their legally binding nature, both internally and externally;
 - (d) the application of the general data protection principles, in particular purpose limitation, data minimisation, limited storage periods, data quality, data protection by design and by default, legal basis for processing, processing of special categories of personal data, measures to ensure data security, and the requirements in respect of onward transfers to bodies not bound by the binding corporate rules;
 - (e) the rights of data subjects in regard to processing and the means to exercise those rights, including the right not to be subject to decisions based solely on automated processing, including profiling in accordance with Article 22, the right to lodge a complaint with the competent supervisory authority and before the competent courts of the Member States in accordance with Article 79, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules;
 - (f) the acceptance by the controller or processor established on the territory of a Member State of liability for any breaches of the binding corporate rules by any member concerned not established in the Union; the controller or the processor shall be exempt from that liability, in whole or in part, only if it proves that that member is not responsible for the event giving rise to the damage;
 - (g) how the information on the binding corporate rules, in particular on the provisions referred to in points (d), (e) and (f) of this paragraph is provided to the data subjects in addition to Articles 13 and 14;
 - (h) the tasks of any data protection officer designated in accordance with Article 37 or any other person or entity in charge of the monitoring compliance with the binding corporate rules within the group of undertakings, or group of enterprises engaged in a joint economic activity, as well as monitoring training and complaint-handling;
 - (i) the complaint procedures;
 - (j) the mechanisms within the group of undertakings, or group of enterprises engaged in a joint economic activity for ensuring the verification of compliance with the binding corporate rules. Such mechanisms shall include data protection audits and methods for ensuring corrective actions to protect the rights of the data subject. Results of such verification should be communicated to the person or entity referred to in point (h) and to the board of the controlling undertaking of a group of undertakings, or of the group of enterprises engaged in a joint economic activity, and should be available upon request to the competent supervisory authority;
 - (k) the mechanisms for reporting and recording changes to the rules and reporting those changes to the supervisory authority;
 - (l) the cooperation mechanism with the supervisory authority to ensure compliance by any member of the group of undertakings, or group of enterprises engaged in a joint economic activity, in particular by making available to the supervisory authority the results of verifications of the measures referred to in point (j);
 - (m) the mechanisms for reporting to the competent supervisory authority any legal requirements to which a member of the group of undertakings, or group of enterprises engaged in a joint economic activity is subject in a third country which are likely to have a substantial adverse effect on the guarantees provided by the binding corporate rules; and
 - (n) the appropriate data protection training to personnel having permanent or regular access to personal data.

3. The Commission may specify the format and procedures for the exchange of information between controllers, processors and supervisory authorities for binding corporate rules within the meaning of this Article. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 93(2).

Article 48

Transfers or disclosures not authorised by Union law

Any judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a controller or processor to transfer or disclose personal data may only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State, without prejudice to other grounds for transfer pursuant to this Chapter.

Article 49

Derogations for specific situations

1. In the absence of an adequacy decision pursuant to Article 45(3), or of appropriate safeguards pursuant to Article 46, including binding corporate rules, a transfer or a set of transfers of personal data to a third country or an international organisation shall take place only on one of the following conditions:

- (a) the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards;
- (b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request;
- (c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person;
- (d) the transfer is necessary for important reasons of public interest;
- (e) the transfer is necessary for the establishment, exercise or defence of legal claims;
- (f) the transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent;
- (g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down by Union or Member State law for consultation are fulfilled in the particular case.

Where a transfer could not be based on a provision in Article 45 or 46, including the provisions on binding corporate rules, and none of the derogations for a specific situation referred to in the first subparagraph of this paragraph is applicable, a transfer to a third country or an international organisation may take place only if the transfer is not repetitive, concerns only a limited number of data subjects, is necessary for the purposes of compelling legitimate interests pursued by the controller which are not overridden by the interests or rights and freedoms of the data subject, and the controller has assessed all the circumstances surrounding the data transfer and has on the basis of that assessment provided suitable safeguards with regard to the protection of personal data. The controller shall inform the supervisory authority of the transfer. The controller shall, in addition to providing the information referred to in Articles 13 and 14, inform the data subject of the transfer and on the compelling legitimate interests pursued.

2. A transfer pursuant to point (g) of the first subparagraph of paragraph 1 shall not involve the entirety of the personal data or entire categories of the personal data contained in the register. Where the register is intended for consultation by persons having a legitimate interest, the transfer shall be made only at the request of those persons or if they are to be the recipients.

3. Points (a), (b) and (c) of the first subparagraph of paragraph 1 and the second subparagraph thereof shall not apply to activities carried out by public authorities in the exercise of their public powers.
4. The public interest referred to in point (d) of the first subparagraph of paragraph 1 shall be recognised in Union law or in the law of the Member State to which the controller is subject.
5. In the absence of an adequacy decision, Union or Member State law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of personal data to a third country or an international organisation. Member States shall notify such provisions to the Commission.
6. The controller or processor shall document the assessment as well as the suitable safeguards referred to in the second subparagraph of paragraph 1 of this Article in the records referred to in Article 30.

Article 50

International cooperation for the protection of personal data

In relation to third countries and international organisations, the Commission and supervisory authorities shall take appropriate steps to:

- (a) develop international cooperation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data;
- (b) provide international mutual assistance in the enforcement of legislation for the protection of personal data, including through notification, complaint referral, investigative assistance and information exchange, subject to appropriate safeguards for the protection of personal data and other fundamental rights and freedoms;
- (c) engage relevant stakeholders in discussion and activities aimed at furthering international cooperation in the enforcement of legislation for the protection of personal data;
- (d) promote the exchange and documentation of personal data protection legislation and practice, including on jurisdictional conflicts with third countries.

CHAPTER VI

Independent supervisory authorities

Section 1

Independent status

Article 51

Supervisory authority

1. Each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of this Regulation, in order to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the Union ('supervisory authority').
2. Each supervisory authority shall contribute to the consistent application of this Regulation throughout the Union. For that purpose, the supervisory authorities shall cooperate with each other and the Commission in accordance with Chapter VII.
3. Where more than one supervisory authority is established in a Member State, that Member State shall designate the supervisory authority which is to represent those authorities in the Board and shall set out the mechanism to ensure compliance by the other authorities with the rules relating to the consistency mechanism referred to in Article 63.
4. Each Member State shall notify to the Commission the provisions of its law which it adopts pursuant to this Chapter, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

*Article 52***Independence**

1. Each supervisory authority shall act with complete independence in performing its tasks and exercising its powers in accordance with this Regulation.
2. The member or members of each supervisory authority shall, in the performance of their tasks and exercise of their powers in accordance with this Regulation, remain free from external influence, whether direct or indirect, and shall neither seek nor take instructions from anybody.
3. Member or members of each supervisory authority shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.
4. Each Member State shall ensure that each supervisory authority is provided with the human, technical and financial resources, premises and infrastructure necessary for the effective performance of its tasks and exercise of its powers, including those to be carried out in the context of mutual assistance, cooperation and participation in the Board.
5. Each Member State shall ensure that each supervisory authority chooses and has its own staff which shall be subject to the exclusive direction of the member or members of the supervisory authority concerned.
6. Each Member State shall ensure that each supervisory authority is subject to financial control which does not affect its independence and that it has separate, public annual budgets, which may be part of the overall state or national budget.

*Article 53***General conditions for the members of the supervisory authority**

1. Member States shall provide for each member of their supervisory authorities to be appointed by means of a transparent procedure by:
 - their parliament;
 - their government;
 - their head of State; or
 - an independent body entrusted with the appointment under Member State law.
2. Each member shall have the qualifications, experience and skills, in particular in the area of the protection of personal data, required to perform its duties and exercise its powers.
3. The duties of a member shall end in the event of the expiry of the term of office, resignation or compulsory retirement, in accordance with the law of the Member State concerned.
4. A member shall be dismissed only in cases of serious misconduct or if the member no longer fulfils the conditions required for the performance of the duties.

*Article 54***Rules on the establishment of the supervisory authority**

1. Each Member State shall provide by law for all of the following:
 - (a) the establishment of each supervisory authority;

- (b) the qualifications and eligibility conditions required to be appointed as member of each supervisory authority;
- (c) the rules and procedures for the appointment of the member or members of each supervisory authority;
- (d) the duration of the term of the member or members of each supervisory authority of no less than four years, except for the first appointment after 24 May 2016, part of which may take place for a shorter period where that is necessary to protect the independence of the supervisory authority by means of a staggered appointment procedure;
- (e) whether and, if so, for how many terms the member or members of each supervisory authority is eligible for reappointment;
- (f) the conditions governing the obligations of the member or members and staff of each supervisory authority, prohibitions on actions, occupations and benefits incompatible therewith during and after the term of office and rules governing the cessation of employment.

2. The member or members and the staff of each supervisory authority shall, in accordance with Union or Member State law, be subject to a duty of professional secrecy both during and after their term of office, with regard to any confidential information which has come to their knowledge in the course of the performance of their tasks or exercise of their powers. During their term of office, that duty of professional secrecy shall in particular apply to reporting by natural persons of infringements of this Regulation.

Section 2

Competence, tasks and powers

Article 55

Competence

1. Each supervisory authority shall be competent for the performance of the tasks assigned to and the exercise of the powers conferred on it in accordance with this Regulation on the territory of its own Member State.
2. Where processing is carried out by public authorities or private bodies acting on the basis of point (c) or (e) of Article 6(1), the supervisory authority of the Member State concerned shall be competent. In such cases Article 56 does not apply.
3. Supervisory authorities shall not be competent to supervise processing operations of courts acting in their judicial capacity.

Article 56

Competence of the lead supervisory authority

1. Without prejudice to Article 55, the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60.
2. By derogation from paragraph 1, each supervisory authority shall be competent to handle a complaint lodged with it or a possible infringement of this Regulation, if the subject matter relates only to an establishment in its Member State or substantially affects data subjects only in its Member State.
3. In the cases referred to in paragraph 2 of this Article, the supervisory authority shall inform the lead supervisory authority without delay on that matter. Within a period of three weeks after being informed the lead supervisory authority shall decide whether or not it will handle the case in accordance with the procedure provided in Article 60, taking into account whether or not there is an establishment of the controller or processor in the Member State of which the supervisory authority informed it.

4. Where the lead supervisory authority decides to handle the case, the procedure provided in Article 60 shall apply. The supervisory authority which informed the lead supervisory authority may submit to the lead supervisory authority a draft for a decision. The lead supervisory authority shall take utmost account of that draft when preparing the draft decision referred to in Article 60(3).
5. Where the lead supervisory authority decides not to handle the case, the supervisory authority which informed the lead supervisory authority shall handle it according to Articles 61 and 62.
6. The lead supervisory authority shall be the sole interlocutor of the controller or processor for the cross-border processing carried out by that controller or processor.

Article 57

Tasks

1. Without prejudice to other tasks set out under this Regulation, each supervisory authority shall on its territory:
 - (a) monitor and enforce the application of this Regulation;
 - (b) promote public awareness and understanding of the risks, rules, safeguards and rights in relation to processing. Activities addressed specifically to children shall receive specific attention;
 - (c) advise, in accordance with Member State law, the national parliament, the government, and other institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to processing;
 - (d) promote the awareness of controllers and processors of their obligations under this Regulation;
 - (e) upon request, provide information to any data subject concerning the exercise of their rights under this Regulation and, if appropriate, cooperate with the supervisory authorities in other Member States to that end;
 - (f) handle complaints lodged by a data subject, or by a body, organisation or association in accordance with Article 80, and investigate, to the extent appropriate, the subject matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;
 - (g) cooperate with, including sharing information and provide mutual assistance to, other supervisory authorities with a view to ensuring the consistency of application and enforcement of this Regulation;
 - (h) conduct investigations on the application of this Regulation, including on the basis of information received from another supervisory authority or other public authority;
 - (i) monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies and commercial practices;
 - (j) adopt standard contractual clauses referred to in Article 28(8) and in point (d) of Article 46(2);
 - (k) establish and maintain a list in relation to the requirement for data protection impact assessment pursuant to Article 35(4);
 - (l) give advice on the processing operations referred to in Article 36(2);
 - (m) encourage the drawing up of codes of conduct pursuant to Article 40(1) and provide an opinion and approve such codes of conduct which provide sufficient safeguards, pursuant to Article 40(5);
 - (n) encourage the establishment of data protection certification mechanisms and of data protection seals and marks pursuant to Article 42(1), and approve the criteria of certification pursuant to Article 42(5);
 - (o) where applicable, carry out a periodic review of certifications issued in accordance with Article 42(7);

- (p) draft and publish the criteria for accreditation of a body for monitoring codes of conduct pursuant to Article 41 and of a certification body pursuant to Article 43;
- (q) conduct the accreditation of a body for monitoring codes of conduct pursuant to Article 41 and of a certification body pursuant to Article 43;
- (r) authorise contractual clauses and provisions referred to in Article 46(3);
- (s) approve binding corporate rules pursuant to Article 47;
- (t) contribute to the activities of the Board;
- (u) keep internal records of infringements of this Regulation and of measures taken in accordance with Article 58(2); and
- (v) fulfil any other tasks related to the protection of personal data.

2. Each supervisory authority shall facilitate the submission of complaints referred to in point (f) of paragraph 1 by measures such as a complaint submission form which can also be completed electronically, without excluding other means of communication.

3. The performance of the tasks of each supervisory authority shall be free of charge for the data subject and, where applicable, for the data protection officer.

4. Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the supervisory authority may charge a reasonable fee based on administrative costs, or refuse to act on the request. The supervisory authority shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

Article 58

Powers

1. Each supervisory authority shall have all of the following investigative powers:

- (a) to order the controller and the processor, and, where applicable, the controller's or the processor's representative to provide any information it requires for the performance of its tasks;
- (b) to carry out investigations in the form of data protection audits;
- (c) to carry out a review on certifications issued pursuant to Article 42(7);
- (d) to notify the controller or the processor of an alleged infringement of this Regulation;
- (e) to obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of its tasks;
- (f) to obtain access to any premises of the controller and the processor, including to any data processing equipment and means, in accordance with Union or Member State procedural law.

2. Each supervisory authority shall have all of the following corrective powers:

- (a) to issue warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation;
- (b) to issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation;
- (c) to order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation;

- (d) to order the controller or processor to bring processing operations into compliance with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;
- (e) to order the controller to communicate a personal data breach to the data subject;
- (f) to impose a temporary or definitive limitation including a ban on processing;
- (g) to order the rectification or erasure of personal data or restriction of processing pursuant to Articles 16, 17 and 18 and the notification of such actions to recipients to whom the personal data have been disclosed pursuant to Article 17(2) and Article 19;
- (h) to withdraw a certification or to order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or to order the certification body not to issue certification if the requirements for the certification are not or are no longer met;
- (i) to impose an administrative fine pursuant to Article 83, in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case;
- (j) to order the suspension of data flows to a recipient in a third country or to an international organisation.

3. Each supervisory authority shall have all of the following authorisation and advisory powers:

- (a) to advise the controller in accordance with the prior consultation procedure referred to in Article 36;
- (b) to issue, on its own initiative or on request, opinions to the national parliament, the Member State government or, in accordance with Member State law, to other institutions and bodies as well as to the public on any issue related to the protection of personal data;
- (c) to authorise processing referred to in Article 36(5), if the law of the Member State requires such prior authorisation;
- (d) to issue an opinion and approve draft codes of conduct pursuant to Article 40(5);
- (e) to accredit certification bodies pursuant to Article 43;
- (f) to issue certifications and approve criteria of certification in accordance with Article 42(5);
- (g) to adopt standard data protection clauses referred to in Article 28(8) and in point (d) of Article 46(2);
- (h) to authorise contractual clauses referred to in point (a) of Article 46(3);
- (i) to authorise administrative arrangements referred to in point (b) of Article 46(3);
- (j) to approve binding corporate rules pursuant to Article 47.

4. The exercise of the powers conferred on the supervisory authority pursuant to this Article shall be subject to appropriate safeguards, including effective judicial remedy and due process, set out in Union and Member State law in accordance with the Charter.

5. Each Member State shall provide by law that its supervisory authority shall have the power to bring infringements of this Regulation to the attention of the judicial authorities and where appropriate, to commence or engage otherwise in legal proceedings, in order to enforce the provisions of this Regulation.

6. Each Member State may provide by law that its supervisory authority shall have additional powers to those referred to in paragraphs 1, 2 and 3. The exercise of those powers shall not impair the effective operation of Chapter VII.

Article 59

Activity reports

Each supervisory authority shall draw up an annual report on its activities, which may include a list of types of infringement notified and types of measures taken in accordance with Article 58(2). Those reports shall be transmitted to the national parliament, the government and other authorities as designated by Member State law. They shall be made available to the public, to the Commission and to the Board.

CHAPTER VII

Cooperation and consistency

Section 1

Cooperation*Article 60***Cooperation between the lead supervisory authority and the other supervisory authorities concerned**

1. The lead supervisory authority shall cooperate with the other supervisory authorities concerned in accordance with this Article in an endeavour to reach consensus. The lead supervisory authority and the supervisory authorities concerned shall exchange all relevant information with each other.
2. The lead supervisory authority may request at any time other supervisory authorities concerned to provide mutual assistance pursuant to Article 61 and may conduct joint operations pursuant to Article 62, in particular for carrying out investigations or for monitoring the implementation of a measure concerning a controller or processor established in another Member State.
3. The lead supervisory authority shall, without delay, communicate the relevant information on the matter to the other supervisory authorities concerned. It shall without delay submit a draft decision to the other supervisory authorities concerned for their opinion and take due account of their views.
4. Where any of the other supervisory authorities concerned within a period of four weeks after having been consulted in accordance with paragraph 3 of this Article, expresses a relevant and reasoned objection to the draft decision, the lead supervisory authority shall, if it does not follow the relevant and reasoned objection or is of the opinion that the objection is not relevant or reasoned, submit the matter to the consistency mechanism referred to in Article 63.
5. Where the lead supervisory authority intends to follow the relevant and reasoned objection made, it shall submit to the other supervisory authorities concerned a revised draft decision for their opinion. That revised draft decision shall be subject to the procedure referred to in paragraph 4 within a period of two weeks.
6. Where none of the other supervisory authorities concerned has objected to the draft decision submitted by the lead supervisory authority within the period referred to in paragraphs 4 and 5, the lead supervisory authority and the supervisory authorities concerned shall be deemed to be in agreement with that draft decision and shall be bound by it.
7. The lead supervisory authority shall adopt and notify the decision to the main establishment or single establishment of the controller or processor, as the case may be and inform the other supervisory authorities concerned and the Board of the decision in question, including a summary of the relevant facts and grounds. The supervisory authority with which a complaint has been lodged shall inform the complainant on the decision.
8. By derogation from paragraph 7, where a complaint is dismissed or rejected, the supervisory authority with which the complaint was lodged shall adopt the decision and notify it to the complainant and shall inform the controller thereof.
9. Where the lead supervisory authority and the supervisory authorities concerned agree to dismiss or reject parts of a complaint and to act on other parts of that complaint, a separate decision shall be adopted for each of those parts of the matter. The lead supervisory authority shall adopt the decision for the part concerning actions in relation to the controller, shall notify it to the main establishment or single establishment of the controller or processor on the territory of its Member State and shall inform the complainant thereof, while the supervisory authority of the complainant shall adopt the decision for the part concerning dismissal or rejection of that complaint, and shall notify it to that complainant and shall inform the controller or processor thereof.
10. After being notified of the decision of the lead supervisory authority pursuant to paragraphs 7 and 9, the controller or processor shall take the necessary measures to ensure compliance with the decision as regards processing activities in the context of all its establishments in the Union. The controller or processor shall notify the measures taken for complying with the decision to the lead supervisory authority, which shall inform the other supervisory authorities concerned.

11. Where, in exceptional circumstances, a supervisory authority concerned has reasons to consider that there is an urgent need to act in order to protect the interests of data subjects, the urgency procedure referred to in Article 66 shall apply.

12. The lead supervisory authority and the other supervisory authorities concerned shall supply the information required under this Article to each other by electronic means, using a standardised format.

Article 61

Mutual assistance

1. Supervisory authorities shall provide each other with relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective cooperation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and investigations.

2. Each supervisory authority shall take all appropriate measures required to reply to a request of another supervisory authority without undue delay and no later than one month after receiving the request. Such measures may include, in particular, the transmission of relevant information on the conduct of an investigation.

3. Requests for assistance shall contain all the necessary information, including the purpose of and reasons for the request. Information exchanged shall be used only for the purpose for which it was requested.

4. The requested supervisory authority shall not refuse to comply with the request unless:

- (a) it is not competent for the subject-matter of the request or for the measures it is requested to execute; or
- (b) compliance with the request would infringe this Regulation or Union or Member State law to which the supervisory authority receiving the request is subject.

5. The requested supervisory authority shall inform the requesting supervisory authority of the results or, as the case may be, of the progress of the measures taken in order to respond to the request. The requested supervisory authority shall provide reasons for any refusal to comply with a request pursuant to paragraph 4.

6. Requested supervisory authorities shall, as a rule, supply the information requested by other supervisory authorities by electronic means, using a standardised format.

7. Requested supervisory authorities shall not charge a fee for any action taken by them pursuant to a request for mutual assistance. Supervisory authorities may agree on rules to indemnify each other for specific expenditure arising from the provision of mutual assistance in exceptional circumstances.

8. Where a supervisory authority does not provide the information referred to in paragraph 5 of this Article within one month of receiving the request of another supervisory authority, the requesting supervisory authority may adopt a provisional measure on the territory of its Member State in accordance with Article 55(1). In that case, the urgent need to act under Article 66(1) shall be presumed to be met and require an urgent binding decision from the Board pursuant to Article 66(2).

9. The Commission may, by means of implementing acts, specify the format and procedures for mutual assistance referred to in this Article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board, in particular the standardised format referred to in paragraph 6 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

Article 62

Joint operations of supervisory authorities

1. The supervisory authorities shall, where appropriate, conduct joint operations including joint investigations and joint enforcement measures in which members or staff of the supervisory authorities of other Member States are involved.

2. Where the controller or processor has establishments in several Member States or where a significant number of data subjects in more than one Member State are likely to be substantially affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in joint operations. The supervisory authority which is competent pursuant to Article 56(1) or (4) shall invite the supervisory authority of each of those Member States to take part in the joint operations and shall respond without delay to the request of a supervisory authority to participate.
3. A supervisory authority may, in accordance with Member State law, and with the seconding supervisory authority's authorisation, confer powers, including investigative powers on the seconding supervisory authority's members or staff involved in joint operations or, in so far as the law of the Member State of the host supervisory authority permits, allow the seconding supervisory authority's members or staff to exercise their investigative powers in accordance with the law of the Member State of the seconding supervisory authority. Such investigative powers may be exercised only under the guidance and in the presence of members or staff of the host supervisory authority. The seconding supervisory authority's members or staff shall be subject to the Member State law of the host supervisory authority.
4. Where, in accordance with paragraph 1, staff of a seconding supervisory authority operate in another Member State, the Member State of the host supervisory authority shall assume responsibility for their actions, including liability, for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.
5. The Member State in whose territory the damage was caused shall make good such damage under the conditions applicable to damage caused by its own staff. The Member State of the seconding supervisory authority whose staff has caused damage to any person in the territory of another Member State shall reimburse that other Member State in full any sums it has paid to the persons entitled on their behalf.
6. Without prejudice to the exercise of its rights *vis-à-vis* third parties and with the exception of paragraph 5, each Member State shall refrain, in the case provided for in paragraph 1, from requesting reimbursement from another Member State in relation to damage referred to in paragraph 4.
7. Where a joint operation is intended and a supervisory authority does not, within one month, comply with the obligation laid down in the second sentence of paragraph 2 of this Article, the other supervisory authorities may adopt a provisional measure on the territory of its Member State in accordance with Article 55. In that case, the urgent need to act under Article 66(1) shall be presumed to be met and require an opinion or an urgent binding decision from the Board pursuant to Article 66(2).

Section 2

Consistency

Article 63

Consistency mechanism

In order to contribute to the consistent application of this Regulation throughout the Union, the supervisory authorities shall cooperate with each other and, where relevant, with the Commission, through the consistency mechanism as set out in this Section.

Article 64

Opinion of the Board

1. The Board shall issue an opinion where a competent supervisory authority intends to adopt any of the measures below. To that end, the competent supervisory authority shall communicate the draft decision to the Board, when it:
 - (a) aims to adopt a list of the processing operations subject to the requirement for a data protection impact assessment pursuant to Article 35(4);
 - (b) concerns a matter pursuant to Article 40(7) whether a draft code of conduct or an amendment or extension to a code of conduct complies with this Regulation;

- (c) aims to approve the criteria for accreditation of a body pursuant to Article 41(3) or a certification body pursuant to Article 43(3);
- (d) aims to determine standard data protection clauses referred to in point (d) of Article 46(2) and in Article 28(8);
- (e) aims to authorise contractual clauses referred to in point (a) of Article 46(3); or
- (f) aims to approve binding corporate rules within the meaning of Article 47.

2. Any supervisory authority, the Chair of the Board or the Commission may request that any matter of general application or producing effects in more than one Member State be examined by the Board with a view to obtaining an opinion, in particular where a competent supervisory authority does not comply with the obligations for mutual assistance in accordance with Article 61 or for joint operations in accordance with Article 62.

3. In the cases referred to in paragraphs 1 and 2, the Board shall issue an opinion on the matter submitted to it provided that it has not already issued an opinion on the same matter. That opinion shall be adopted within eight weeks by simple majority of the members of the Board. That period may be extended by a further six weeks, taking into account the complexity of the subject matter. Regarding the draft decision referred to in paragraph 1 circulated to the members of the Board in accordance with paragraph 5, a member which has not objected within a reasonable period indicated by the Chair, shall be deemed to be in agreement with the draft decision.

4. Supervisory authorities and the Commission shall, without undue delay, communicate by electronic means to the Board, using a standardised format any relevant information, including as the case may be a summary of the facts, the draft decision, the grounds which make the enactment of such measure necessary, and the views of other supervisory authorities concerned.

5. The Chair of the Board shall, without undue delay inform by electronic means:

- (a) the members of the Board and the Commission of any relevant information which has been communicated to it using a standardised format. The secretariat of the Board shall, where necessary, provide translations of relevant information; and
- (b) the supervisory authority referred to, as the case may be, in paragraphs 1 and 2, and the Commission of the opinion and make it public.

6. The competent supervisory authority shall not adopt its draft decision referred to in paragraph 1 within the period referred to in paragraph 3.

7. The supervisory authority referred to in paragraph 1 shall take utmost account of the opinion of the Board and shall, within two weeks after receiving the opinion, communicate to the Chair of the Board by electronic means whether it will maintain or amend its draft decision and, if any, the amended draft decision, using a standardised format.

8. Where the supervisory authority concerned informs the Chair of the Board within the period referred to in paragraph 7 of this Article that it does not intend to follow the opinion of the Board, in whole or in part, providing the relevant grounds, Article 65(1) shall apply.

Article 65

Dispute resolution by the Board

1. In order to ensure the correct and consistent application of this Regulation in individual cases, the Board shall adopt a binding decision in the following cases:

- (a) where, in a case referred to in Article 60(4), a supervisory authority concerned has raised a relevant and reasoned objection to a draft decision of the lead authority or the lead authority has rejected such an objection as being not relevant or reasoned. The binding decision shall concern all the matters which are the subject of the relevant and reasoned objection, in particular whether there is an infringement of this Regulation;

- (b) where there are conflicting views on which of the supervisory authorities concerned is competent for the main establishment;
- (c) where a competent supervisory authority does not request the opinion of the Board in the cases referred to in Article 64(1), or does not follow the opinion of the Board issued under Article 64. In that case, any supervisory authority concerned or the Commission may communicate the matter to the Board.

2. The decision referred to in paragraph 1 shall be adopted within one month from the referral of the subject-matter by a two-thirds majority of the members of the Board. That period may be extended by a further month on account of the complexity of the subject-matter. The decision referred to in paragraph 1 shall be reasoned and addressed to the lead supervisory authority and all the supervisory authorities concerned and binding on them.

3. Where the Board has been unable to adopt a decision within the periods referred to in paragraph 2, it shall adopt its decision within two weeks following the expiration of the second month referred to in paragraph 2 by a simple majority of the members of the Board. Where the members of the Board are split, the decision shall be adopted by the vote of its Chair.

4. The supervisory authorities concerned shall not adopt a decision on the subject matter submitted to the Board under paragraph 1 during the periods referred to in paragraphs 2 and 3.

5. The Chair of the Board shall notify, without undue delay, the decision referred to in paragraph 1 to the supervisory authorities concerned. It shall inform the Commission thereof. The decision shall be published on the website of the Board without delay after the supervisory authority has notified the final decision referred to in paragraph 6.

6. The lead supervisory authority or, as the case may be, the supervisory authority with which the complaint has been lodged shall adopt its final decision on the basis of the decision referred to in paragraph 1 of this Article, without undue delay and at the latest by one month after the Board has notified its decision. The lead supervisory authority or, as the case may be, the supervisory authority with which the complaint has been lodged, shall inform the Board of the date when its final decision is notified respectively to the controller or the processor and to the data subject. The final decision of the supervisory authorities concerned shall be adopted under the terms of Article 60(7), (8) and (9). The final decision shall refer to the decision referred to in paragraph 1 of this Article and shall specify that the decision referred to in that paragraph will be published on the website of the Board in accordance with paragraph 5 of this Article. The final decision shall attach the decision referred to in paragraph 1 of this Article.

Article 66

Urgency procedure

1. In exceptional circumstances, where a supervisory authority concerned considers that there is an urgent need to act in order to protect the rights and freedoms of data subjects, it may, by way of derogation from the consistency mechanism referred to in Articles 63, 64 and 65 or the procedure referred to in Article 60, immediately adopt provisional measures intended to produce legal effects on its own territory with a specified period of validity which shall not exceed three months. The supervisory authority shall, without delay, communicate those measures and the reasons for adopting them to the other supervisory authorities concerned, to the Board and to the Commission.

2. Where a supervisory authority has taken a measure pursuant to paragraph 1 and considers that final measures need urgently be adopted, it may request an urgent opinion or an urgent binding decision from the Board, giving reasons for requesting such opinion or decision.

3. Any supervisory authority may request an urgent opinion or an urgent binding decision, as the case may be, from the Board where a competent supervisory authority has not taken an appropriate measure in a situation where there is an urgent need to act, in order to protect the rights and freedoms of data subjects, giving reasons for requesting such opinion or decision, including for the urgent need to act.

4. By derogation from Article 64(3) and Article 65(2), an urgent opinion or an urgent binding decision referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the Board.

*Article 67***Exchange of information**

The Commission may adopt implementing acts of general scope in order to specify the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board, in particular the standardised format referred to in Article 64.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

*Section 3***European data protection board***Article 68***European Data Protection Board**

1. The European Data Protection Board (the 'Board') is hereby established as a body of the Union and shall have legal personality.
2. The Board shall be represented by its Chair.
3. The Board shall be composed of the head of one supervisory authority of each Member State and of the European Data Protection Supervisor, or their respective representatives.
4. Where in a Member State more than one supervisory authority is responsible for monitoring the application of the provisions pursuant to this Regulation, a joint representative shall be appointed in accordance with that Member State's law.
5. The Commission shall have the right to participate in the activities and meetings of the Board without voting right. The Commission shall designate a representative. The Chair of the Board shall communicate to the Commission the activities of the Board.
6. In the cases referred to in Article 65, the European Data Protection Supervisor shall have voting rights only on decisions which concern principles and rules applicable to the Union institutions, bodies, offices and agencies which correspond in substance to those of this Regulation.

*Article 69***Independence**

1. The Board shall act independently when performing its tasks or exercising its powers pursuant to Articles 70 and 71.
2. Without prejudice to requests by the Commission referred to in point (b) of Article 70(1) and in Article 70(2), the Board shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from anybody.

*Article 70***Tasks of the Board**

1. The Board shall ensure the consistent application of this Regulation. To that end, the Board shall, on its own initiative or, where relevant, at the request of the Commission, in particular:
 - (a) monitor and ensure the correct application of this Regulation in the cases provided for in Articles 64 and 65 without prejudice to the tasks of national supervisory authorities;

- (b) advise the Commission on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;
- (c) advise the Commission on the format and procedures for the exchange of information between controllers, processors and supervisory authorities for binding corporate rules;
- (d) issue guidelines, recommendations, and best practices on procedures for erasing links, copies or replications of personal data from publicly available communication services as referred to in Article 17(2);
- (e) examine, on its own initiative, on request of one of its members or on request of the Commission, any question covering the application of this Regulation and issue guidelines, recommendations and best practices in order to encourage consistent application of this Regulation;
- (f) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for further specifying the criteria and conditions for decisions based on profiling pursuant to Article 22(2);
- (g) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for establishing the personal data breaches and determining the undue delay referred to in Article 33(1) and (2) and for the particular circumstances in which a controller or a processor is required to notify the personal data breach;
- (h) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph as to the circumstances in which a personal data breach is likely to result in a high risk to the rights and freedoms of the natural persons referred to in Article 34(1).
- (i) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for the purpose of further specifying the criteria and requirements for personal data transfers based on binding corporate rules adhered to by controllers and binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned referred to in Article 47;
- (j) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for the purpose of further specifying the criteria and requirements for the personal data transfers on the basis of Article 49(1);
- (k) draw up guidelines for supervisory authorities concerning the application of measures referred to in Article 58(1), (2) and (3) and the setting of administrative fines pursuant to Article 83;
- (l) review the practical application of the guidelines, recommendations and best practices referred to in points (e) and (f);
- (m) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for establishing common procedures for reporting by natural persons of infringements of this Regulation pursuant to Article 54(2);
- (n) encourage the drawing-up of codes of conduct and the establishment of data protection certification mechanisms and data protection seals and marks pursuant to Articles 40 and 42;
- (o) carry out the accreditation of certification bodies and its periodic review pursuant to Article 43 and maintain a public register of accredited bodies pursuant to Article 43(6) and of the accredited controllers or processors established in third countries pursuant to Article 42(7);
- (p) specify the requirements referred to in Article 43(3) with a view to the accreditation of certification bodies under Article 42;
- (q) provide the Commission with an opinion on the certification requirements referred to in Article 43(8);
- (r) provide the Commission with an opinion on the icons referred to in Article 12(7);
- (s) provide the Commission with an opinion for the assessment of the adequacy of the level of protection in a third country or international organisation, including for the assessment whether a third country, a territory or one or more specified sectors within that third country, or an international organisation no longer ensures an adequate level of protection. To that end, the Commission shall provide the Board with all necessary documentation, including correspondence with the government of the third country, with regard to that third country, territory or specified sector, or with the international organisation.

- (t) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 64(1), on matters submitted pursuant to Article 64(2) and to issue binding decisions pursuant to Article 65, including in cases referred to in Article 66;
 - (u) promote the cooperation and the effective bilateral and multilateral exchange of information and best practices between the supervisory authorities;
 - (v) promote common training programmes and facilitate personnel exchanges between the supervisory authorities and, where appropriate, with the supervisory authorities of third countries or with international organisations;
 - (w) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide.
 - (x) issue opinions on codes of conduct drawn up at Union level pursuant to Article 40(9); and
 - (y) maintain a publicly accessible electronic register of decisions taken by supervisory authorities and courts on issues handled in the consistency mechanism.
2. Where the Commission requests advice from the Board, it may indicate a time limit, taking into account the urgency of the matter.
3. The Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and to the committee referred to in Article 93 and make them public.
4. The Board shall, where appropriate, consult interested parties and give them the opportunity to comment within a reasonable period. The Board shall, without prejudice to Article 76, make the results of the consultation procedure publicly available.

Article 71

Reports

1. The Board shall draw up an annual report regarding the protection of natural persons with regard to processing in the Union and, where relevant, in third countries and international organisations. The report shall be made public and be transmitted to the European Parliament, to the Council and to the Commission.
2. The annual report shall include a review of the practical application of the guidelines, recommendations and best practices referred to in point (l) of Article 70(1) as well as of the binding decisions referred to in Article 65.

Article 72

Procedure

1. The Board shall take decisions by a simple majority of its members, unless otherwise provided for in this Regulation.
2. The Board shall adopt its own rules of procedure by a two-thirds majority of its members and organise its own operational arrangements.

Article 73

Chair

1. The Board shall elect a chair and two deputy chairs from amongst its members by simple majority.
2. The term of office of the Chair and of the deputy chairs shall be five years and be renewable once.

*Article 74***Tasks of the Chair**

1. The Chair shall have the following tasks:
 - (a) to convene the meetings of the Board and prepare its agenda;
 - (b) to notify decisions adopted by the Board pursuant to Article 65 to the lead supervisory authority and the supervisory authorities concerned;
 - (c) to ensure the timely performance of the tasks of the Board, in particular in relation to the consistency mechanism referred to in Article 63.
2. The Board shall lay down the allocation of tasks between the Chair and the deputy chairs in its rules of procedure.

*Article 75***Secretariat**

1. The Board shall have a secretariat, which shall be provided by the European Data Protection Supervisor.
2. The secretariat shall perform its tasks exclusively under the instructions of the Chair of the Board.
3. The staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the Board by this Regulation shall be subject to separate reporting lines from the staff involved in carrying out tasks conferred on the European Data Protection Supervisor.
4. Where appropriate, the Board and the European Data Protection Supervisor shall establish and publish a Memorandum of Understanding implementing this Article, determining the terms of their cooperation, and applicable to the staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the Board by this Regulation.
5. The secretariat shall provide analytical, administrative and logistical support to the Board.
6. The secretariat shall be responsible in particular for:
 - (a) the day-to-day business of the Board;
 - (b) communication between the members of the Board, its Chair and the Commission;
 - (c) communication with other institutions and the public;
 - (d) the use of electronic means for the internal and external communication;
 - (e) the translation of relevant information;
 - (f) the preparation and follow-up of the meetings of the Board;
 - (g) the preparation, drafting and publication of opinions, decisions on the settlement of disputes between supervisory authorities and other texts adopted by the Board.

*Article 76***Confidentiality**

1. The discussions of the Board shall be confidential where the Board deems it necessary, as provided for in its rules of procedure.

2. Access to documents submitted to members of the Board, experts and representatives of third parties shall be governed by Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹⁾.

CHAPTER VIII

Remedies, liability and penalties

Article 77

Right to lodge a complaint with a supervisory authority

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement if the data subject considers that the processing of personal data relating to him or her infringes this Regulation.
2. The supervisory authority with which the complaint has been lodged shall inform the complainant on the progress and the outcome of the complaint including the possibility of a judicial remedy pursuant to Article 78.

Article 78

Right to an effective judicial remedy against a supervisory authority

1. Without prejudice to any other administrative or non-judicial remedy, each natural or legal person shall have the right to an effective judicial remedy against a legally binding decision of a supervisory authority concerning them.
2. Without prejudice to any other administrative or non-judicial remedy, each data subject shall have the right to an effective judicial remedy where the supervisory authority which is competent pursuant to Articles 55 and 56 does not handle a complaint or does not inform the data subject within three months on the progress or outcome of the complaint lodged pursuant to Article 77.
3. Proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.
4. Where proceedings are brought against a decision of a supervisory authority which was preceded by an opinion or a decision of the Board in the consistency mechanism, the supervisory authority shall forward that opinion or decision to the court.

Article 79

Right to an effective judicial remedy against a controller or processor

1. Without prejudice to any available administrative or non-judicial remedy, including the right to lodge a complaint with a supervisory authority pursuant to Article 77, each data subject shall have the right to an effective judicial remedy where he or she considers that his or her rights under this Regulation have been infringed as a result of the processing of his or her personal data in non-compliance with this Regulation.
2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has his or her habitual residence, unless the controller or processor is a public authority of a Member State acting in the exercise of its public powers.

⁽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).

*Article 80***Representation of data subjects**

1. The data subject shall have the right to mandate a not-for-profit body, organisation or association which has been properly constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest, and is active in the field of the protection of data subjects' rights and freedoms with regard to the protection of their personal data to lodge the complaint on his or her behalf, to exercise the rights referred to in Articles 77, 78 and 79 on his or her behalf, and to exercise the right to receive compensation referred to in Article 82 on his or her behalf where provided for by Member State law.
2. Member States may provide that any body, organisation or association referred to in paragraph 1 of this Article, independently of a data subject's mandate, has the right to lodge, in that Member State, a complaint with the supervisory authority which is competent pursuant to Article 77 and to exercise the rights referred to in Articles 78 and 79 if it considers that the rights of a data subject under this Regulation have been infringed as a result of the processing.

*Article 81***Suspension of proceedings**

1. Where a competent court of a Member State has information on proceedings, concerning the same subject matter as regards processing by the same controller or processor, that are pending in a court in another Member State, it shall contact that court in the other Member State to confirm the existence of such proceedings.
2. Where proceedings concerning the same subject matter as regards processing of the same controller or processor are pending in a court in another Member State, any competent court other than the court first seized may suspend its proceedings.
3. Where those proceedings are pending at first instance, any court other than the court first seized may also, on the application of one of the parties, decline jurisdiction if the court first seized has jurisdiction over the actions in question and its law permits the consolidation thereof.

*Article 82***Right to compensation and liability**

1. Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.
2. Any controller involved in processing shall be liable for the damage caused by processing which infringes this Regulation. A processor shall be liable for the damage caused by processing only where it has not complied with obligations of this Regulation specifically directed to processors or where it has acted outside or contrary to lawful instructions of the controller.
3. A controller or processor shall be exempt from liability under paragraph 2 if it proves that it is not in any way responsible for the event giving rise to the damage.
4. Where more than one controller or processor, or both a controller and a processor, are involved in the same processing and where they are, under paragraphs 2 and 3, responsible for any damage caused by processing, each controller or processor shall be held liable for the entire damage in order to ensure effective compensation of the data subject.
5. Where a controller or processor has, in accordance with paragraph 4, paid full compensation for the damage suffered, that controller or processor shall be entitled to claim back from the other controllers or processors involved in the same processing that part of the compensation corresponding to their part of responsibility for the damage, in accordance with the conditions set out in paragraph 2.

6. Court proceedings for exercising the right to receive compensation shall be brought before the courts competent under the law of the Member State referred to in Article 79(2).

Article 83

General conditions for imposing administrative fines

1. Each supervisory authority shall ensure that the imposition of administrative fines pursuant to this Article in respect of infringements of this Regulation referred to in paragraphs 4, 5 and 6 shall in each individual case be effective, proportionate and dissuasive.

2. Administrative fines shall, depending on the circumstances of each individual case, be imposed in addition to, or instead of, measures referred to in points (a) to (h) and (j) of Article 58(2). When deciding whether to impose an administrative fine and deciding on the amount of the administrative fine in each individual case due regard shall be given to the following:

- (a) the nature, gravity and duration of the infringement taking into account the nature scope or purpose of the processing concerned as well as the number of data subjects affected and the level of damage suffered by them;
- (b) the intentional or negligent character of the infringement;
- (c) any action taken by the controller or processor to mitigate the damage suffered by data subjects;
- (d) the degree of responsibility of the controller or processor taking into account technical and organisational measures implemented by them pursuant to Articles 25 and 32;
- (e) any relevant previous infringements by the controller or processor;
- (f) the degree of cooperation with the supervisory authority, in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- (g) the categories of personal data affected by the infringement;
- (h) the manner in which the infringement became known to the supervisory authority, in particular whether, and if so to what extent, the controller or processor notified the infringement;
- (i) where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned with regard to the same subject-matter, compliance with those measures;
- (j) adherence to approved codes of conduct pursuant to Article 40 or approved certification mechanisms pursuant to Article 42; and
- (k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement.

3. If a controller or processor intentionally or negligently, for the same or linked processing operations, infringes several provisions of this Regulation, the total amount of the administrative fine shall not exceed the amount specified for the gravest infringement.

4. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 10 000 000 EUR, or in the case of an undertaking, up to 2 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:

- (a) the obligations of the controller and the processor pursuant to Articles 8, 11, 25 to 39 and 42 and 43;
- (b) the obligations of the certification body pursuant to Articles 42 and 43;
- (c) the obligations of the monitoring body pursuant to Article 41(4).

5. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:

- (a) the basic principles for processing, including conditions for consent, pursuant to Articles 5, 6, 7 and 9;
- (b) the data subjects' rights pursuant to Articles 12 to 22;
- (c) the transfers of personal data to a recipient in a third country or an international organisation pursuant to Articles 44 to 49;
- (d) any obligations pursuant to Member State law adopted under Chapter IX;
- (e) non-compliance with an order or a temporary or definitive limitation on processing or the suspension of data flows by the supervisory authority pursuant to Article 58(2) or failure to provide access in violation of Article 58(1).

6. Non-compliance with an order by the supervisory authority as referred to in Article 58(2) shall, in accordance with paragraph 2 of this Article, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher.

7. Without prejudice to the corrective powers of supervisory authorities pursuant to Article 58(2), each Member State may lay down the rules on whether and to what extent administrative fines may be imposed on public authorities and bodies established in that Member State.

8. The exercise by the supervisory authority of its powers under this Article shall be subject to appropriate procedural safeguards in accordance with Union and Member State law, including effective judicial remedy and due process.

9. Where the legal system of the Member State does not provide for administrative fines, this Article may be applied in such a manner that the fine is initiated by the competent supervisory authority and imposed by competent national courts, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative fines imposed by supervisory authorities. In any event, the fines imposed shall be effective, proportionate and dissuasive. Those Member States shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by 25 May 2018 and, without delay, any subsequent amendment law or amendment affecting them.

Article 84

Penalties

1. Member States shall lay down the rules on other penalties applicable to infringements of this Regulation in particular for infringements which are not subject to administrative fines pursuant to Article 83, and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.

2. Each Member State shall notify to the Commission the provisions of its law which it adopts pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

CHAPTER IX

Provisions relating to specific processing situations

Article 85

Processing and freedom of expression and information

1. Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression.

2. For processing carried out for journalistic purposes or the purpose of academic artistic or literary expression, Member States shall provide for exemptions or derogations from Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organisations), Chapter VI (independent supervisory authorities), Chapter VII (cooperation and consistency) and Chapter IX (specific data processing situations) if they are necessary to reconcile the right to the protection of personal data with the freedom of expression and information.

3. Each Member State shall notify to the Commission the provisions of its law which it has adopted pursuant to paragraph 2 and, without delay, any subsequent amendment law or amendment affecting them.

Article 86

Processing and public access to official documents

Personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation.

Article 87

Processing of the national identification number

Member States may further determine the specific conditions for the processing of a national identification number or any other identifier of general application. In that case the national identification number or any other identifier of general application shall be used only under appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation.

Article 88

Processing in the context of employment

1. Member States may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, protection of employer's or customer's property and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

2. Those rules shall include suitable and specific measures to safeguard the data subject's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity and monitoring systems at the work place.

3. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

Article 89

Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

1. Processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, shall be subject to appropriate safeguards, in accordance with this Regulation, for the rights and freedoms of the data subject. Those safeguards shall ensure that technical and organisational measures are in place in particular in

order to ensure respect for the principle of data minimisation. Those measures may include pseudonymisation provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.

2. Where personal data are processed for scientific or historical research purposes or statistical purposes, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 18 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.

3. Where personal data are processed for archiving purposes in the public interest, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 18, 19, 20 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.

4. Where processing referred to in paragraphs 2 and 3 serves at the same time another purpose, the derogations shall apply only to processing for the purposes referred to in those paragraphs.

Article 90

Obligations of secrecy

1. Member States may adopt specific rules to set out the powers of the supervisory authorities laid down in points (e) and (f) of Article 58(1) in relation to controllers or processors that are subject, under Union or Member State law or rules established by national competent bodies, to an obligation of professional secrecy or other equivalent obligations of secrecy where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. Those rules shall apply only with regard to personal data which the controller or processor has received as a result of or has obtained in an activity covered by that obligation of secrecy.

2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

Article 91

Existing data protection rules of churches and religious associations

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of natural persons with regard to processing, such rules may continue to apply, provided that they are brought into line with this Regulation.

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 of this Article shall be subject to the supervision of an independent supervisory authority, which may be specific, provided that it fulfils the conditions laid down in Chapter VI of this Regulation.

CHAPTER X

Delegated acts and implementing acts

Article 92

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 12(8) and Article 43(8) shall be conferred on the Commission for an indeterminate period of time from 24 May 2016.
3. The delegation of power referred to in Article 12(8) and Article 43(8) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following that of its publication in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 12(8) and Article 43(8) shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Article 93

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

CHAPTER XI

Final provisions

Article 94

Repeal of Directive 95/46/EC

1. Directive 95/46/EC is repealed with effect from 25 May 2018.
2. References to the repealed Directive shall be construed as references to this Regulation. References to the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC shall be construed as references to the European Data Protection Board established by this Regulation.

Article 95

Relationship with Directive 2002/58/EC

This Regulation shall not impose additional obligations on natural or legal persons in relation to processing in connection with the provision of publicly available electronic communications services in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in Directive 2002/58/EC.

*Article 96***Relationship with previously concluded Agreements**

International agreements involving the transfer of personal data to third countries or international organisations which were concluded by Member States prior to 24 May 2016, and which comply with Union law as applicable prior to that date, shall remain in force until amended, replaced or revoked.

*Article 97***Commission reports**

1. By 25 May 2020 and every four years thereafter, the Commission shall submit a report on the evaluation and review of this Regulation to the European Parliament and to the Council. The reports shall be made public.
2. In the context of the evaluations and reviews referred to in paragraph 1, the Commission shall examine, in particular, the application and functioning of:
 - (a) Chapter V on the transfer of personal data to third countries or international organisations with particular regard to decisions adopted pursuant to Article 45(3) of this Regulation and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC;
 - (b) Chapter VII on cooperation and consistency.
3. For the purpose of paragraph 1, the Commission may request information from Member States and supervisory authorities.
4. In carrying out the evaluations and reviews referred to in paragraphs 1 and 2, the Commission shall take into account the positions and findings of the European Parliament, of the Council, and of other relevant bodies or sources.
5. The Commission shall, if necessary, submit appropriate proposals to amend this Regulation, in particular taking into account developments in information technology and in the light of the state of progress in the information society.

*Article 98***Review of other Union legal acts on data protection**

The Commission shall, if appropriate, submit legislative proposals with a view to amending other Union legal acts on the protection of personal data, in order to ensure uniform and consistent protection of natural persons with regard to processing. This shall in particular concern the rules relating to the protection of natural persons with regard to processing by Union institutions, bodies, offices and agencies and on the free movement of such data.

*Article 99***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 25 May 2018.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 April 2016.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

J.A. HENNIS-PLASSCHAERT

DIRECTIVES

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

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 16(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Committee of the Regions ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that everyone has the right to the protection of personal data concerning him or her.
- (2) The principles of, and rules on the protection of natural persons with regard to the processing of their personal data should, whatever their nationality or residence, respect their fundamental rights and freedoms, in particular their right to the protection of personal data. This Directive is intended to contribute to the accomplishment of an area of freedom, security and justice.
- (3) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of the collection and sharing of personal data has increased significantly. Technology allows personal data to be processed on an unprecedented scale in order to pursue activities such as the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.
- (4) The free flow of personal data between competent authorities 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 within the Union and the transfer of such personal data to third countries and international organisations, should be facilitated while ensuring a high level of protection of personal data. Those developments require the building of a strong and more coherent framework for the protection of personal data in the Union, backed by strong enforcement.
- (5) Directive 95/46/EC of the European Parliament and of the Council ⁽³⁾ applies to all processing of personal data in Member States in both the public and the private sectors. However, it does not apply to the processing of personal data in the course of an activity which falls outside the scope of Community law, such as activities in the areas of judicial cooperation in criminal matters and police cooperation.

⁽¹⁾ OJ C 391, 18.12.2012, p. 127.

⁽²⁾ Position of the European Parliament of 12 March 2014 (not yet published in the Official Journal) and position of the Council at first reading of 8 April 2016 (not yet published in the Official Journal). Position of the European Parliament of 14 April 2016.

⁽³⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

- (6) Council Framework Decision 2008/977/JHA ⁽¹⁾ applies in the areas of judicial cooperation in criminal matters and police cooperation. The scope of application of that Framework Decision is limited to the processing of personal data transmitted or made available between Member States.
- (7) Ensuring a consistent and high level of protection of the personal data of natural persons and facilitating the exchange of personal data between competent authorities of Member States is crucial in order to ensure effective judicial cooperation in criminal matters and police cooperation. To that end, the level of protection of the rights and freedoms 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, including the safeguarding against and the prevention of threats to public security, should be equivalent in all Member States. Effective protection of personal data throughout the Union requires the strengthening of the rights of data subjects and of the obligations of those who process personal data, as well as equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data in the Member States.
- (8) Article 16(2) TFEU mandates the European Parliament and the Council to lay down the rules relating to the protection of natural persons with regard to the processing of personal data and the rules relating to the free movement of personal data.
- (9) On that basis, Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽²⁾ lays down general rules to protect natural persons in relation to the processing of personal data and to ensure the free movement of personal data within the Union.
- (10) In Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and the free movement of personal data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU may prove necessary because of the specific nature of those fields.
- (11) It is therefore appropriate for those fields to be addressed by a directive that lays down the specific rules relating to 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, including the safeguarding against and the prevention of threats to public security, respecting the specific nature of those activities. Such competent authorities may include not only public authorities such as the judicial authorities, the police or other law-enforcement authorities but also any other body or entity entrusted by Member State law to exercise public authority and public powers for the purposes of this Directive. Where such a body or entity processes personal data for purposes other than for the purposes of this Directive, Regulation (EU) 2016/679 applies. Regulation (EU) 2016/679 therefore applies in cases where a body or entity collects personal data for other purposes and further processes those personal data in order to comply with a legal obligation to which it is subject. For example, for the purposes of investigation detection or prosecution of criminal offences financial institutions retain certain personal data which are processed by them, and provide those personal data only to the competent national authorities in specific cases and in accordance with Member State law. A body or entity which processes personal data on behalf of such authorities within the scope of this Directive should be bound by a contract or other legal act and by the provisions applicable to processors pursuant to this Directive, while the application of Regulation (EU) 2016/679 remains unaffected for the processing of personal data by the processor outside the scope of this Directive.
- (12) The activities carried out by the police or other law-enforcement authorities are focused mainly on the prevention, investigation, detection or prosecution of criminal offences, including police activities without prior knowledge if an incident is a criminal offence or not. Such activities can also include the exercise of authority by taking coercive measures such as police activities at demonstrations, major sporting events and riots. They also include maintaining law and order as a task conferred on the police or other law-enforcement authorities where

⁽¹⁾ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

⁽²⁾ Regulation (EU) 2016/679 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 and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) (see page 1 of this Official Journal).

necessary to safeguard against and prevent threats to public security and to fundamental interests of the society protected by law which may lead to a criminal offence. Member States may entrust competent authorities with other tasks which are not necessarily carried out for the purposes of the prevention, investigation, detection or prosecution of criminal offences, including the safeguarding against and the prevention of threats to public security, so that the processing of personal data for those other purposes, in so far as it is within the scope of Union law, falls within the scope of Regulation (EU) 2016/679.

- (13) A criminal offence within the meaning of this Directive should be an autonomous concept of Union law as interpreted by the Court of Justice of the European Union (the 'Court of Justice').
- (14) Since this Directive should not apply to the processing of personal data in the course of an activity which falls outside the scope of Union law, activities concerning national security, activities of agencies or units dealing with national security issues and the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the Treaty on European Union (TEU) should not be considered to be activities falling within the scope of this Directive.
- (15) 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 competent authorities, this Directive should provide for 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. The approximation of Member States' laws should not result in any lessening of the personal data protection they afford but should, on the contrary, seek to ensure a high level of protection within the Union. Member States should not be precluded from providing higher safeguards than those established in this Directive for the protection of the rights and freedoms of the data subject with regard to the processing of personal data by competent authorities.
- (16) This Directive is without prejudice to the principle of public access to official documents. Under Regulation (EU) 2016/679 personal data in official documents held by a public authority or a public or private body for the performance of a task carried out in the public interest may be disclosed by that authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data.
- (17) The protection afforded by this Directive should apply to natural persons, whatever their nationality or place of residence, in relation to the processing of their personal data.
- (18) In order to prevent creating a serious risk of circumvention, the protection of natural persons should be technologically neutral and should not depend on the techniques used. The protection of natural persons should apply to the processing of personal data by automated means, as well as to manual processing, if the personal data are contained or are intended to be contained in a filing system. Files or sets of files, as well as their cover pages, which are not structured according to specific criteria should not fall within the scope of this Directive.
- (19) Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾ applies to the processing of personal data by the Union institutions, bodies, offices and agencies. Regulation (EC) No 45/2001 and other Union legal acts applicable to such processing of personal data should be adapted to the principles and rules established in Regulation (EU) 2016/679.
- (20) This Directive does not preclude Member States from specifying processing operations and processing procedures in national rules on criminal procedures in relation to the processing of personal data by courts and other judicial authorities, in particular as regards personal data contained in a judicial decision or in records in relation to criminal proceedings.

⁽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).

- (21) The principles of data protection should apply to any information concerning an identified or identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments. The principles of data protection should therefore not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is no longer identifiable.
- (22) Public authorities to which personal data are disclosed in accordance with a legal obligation for the exercise of their official mission, such as tax and customs authorities, financial investigation units, independent administrative authorities, or financial market authorities responsible for the regulation and supervision of securities markets should not be regarded as recipients if they receive personal data which are necessary to carry out a particular inquiry in the general interest, in accordance with Union or Member State law. The requests for disclosure sent by the public authorities should always be in writing, reasoned and occasional and should not concern the entirety of a filing system or lead to the interconnection of filing systems. The processing of personal data by those public authorities should comply with the applicable data protection rules according to the purposes of the processing.
- (23) Genetic data should be defined as personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or health of that natural person and which result from the analysis of a biological sample from the natural person in question, in particular chromosomal, deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis, or from the analysis of another element enabling equivalent information to be obtained. Considering the complexity and sensitivity of genetic information, there is a great risk of misuse and re-use for various purposes by the controller. Any discrimination based on genetic features should in principle be prohibited.
- (24) Personal data concerning health should include all data pertaining to the health status of a data subject which reveal information relating to the past, current or future physical or mental health status of the data subject. This includes information about the natural person collected in the course of the registration for, or the provision of, health care services as referred to in Directive 2011/24/EU of the European Parliament and of the Council ⁽¹⁾ to that natural person; a number, symbol or particular assigned to a natural person to uniquely identify the natural person for health purposes; information derived from the testing or examination of a body part or bodily substance, including from genetic data and biological samples; and any information on, for example, a disease, disability, disease risk, medical history, clinical treatment or the physiological or biomedical state of the data subject independent of its source, for example from a physician or other health professional, a hospital, a medical device or an in vitro diagnostic test.
- (25) 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 whilst ensuring respect for fundamental rights and freedoms regarding the automatic processing of personal data. Where personal data are transferred from the Union to Interpol, and to countries which have delegated members to Interpol, this Directive, in particular the provisions on international transfers, should apply. This Directive should be without prejudice to the specific rules laid down in Council Common Position 2005/69/JHA ⁽²⁾ and Council Decision 2007/533/JHA ⁽³⁾.
- (26) Any processing of personal data must be lawful, fair and transparent in relation to the natural persons concerned, and only processed for specific purposes laid down by law. This does not in itself prevent the law-enforcement authorities from carrying out activities such as covert investigations or video surveillance. Such activities can be done for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the

⁽¹⁾ Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).

⁽²⁾ Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol (OJ L 27, 29.1.2005, p. 61).

⁽³⁾ 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).

execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, as long as they are laid down by law and constitute a necessary and proportionate measure in a democratic society with due regard for the legitimate interests of the natural person concerned. The data protection principle of fair processing is a distinct notion from the right to a fair trial as defined in Article 47 of the Charter and in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of their personal data and how to exercise their rights in relation to the processing. In particular, the specific purposes for which the personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. The personal data should be adequate and relevant for the purposes for which they are processed. It should, in particular, be ensured that the personal data collected are not excessive and not kept longer than is necessary for the purpose for which they are processed. Personal data should be processed only if the purpose of the processing could not reasonably be fulfilled by other means. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review. Member States should lay down appropriate safeguards for personal data stored for longer periods for archiving in the public interest, scientific, statistical or historical use.

- (27) For the prevention, investigation and prosecution of criminal offences, it is necessary for competent authorities to process personal data collected in the context of the prevention, investigation, detection or prosecution of specific criminal offences beyond that context in order to develop an understanding of criminal activities and to make links between different criminal offences detected.
- (28) In order to maintain security in relation to processing and to prevent processing in infringement of this Directive, personal data should be processed in a manner that ensures an appropriate level of security and confidentiality, including by preventing unauthorised access to or use of personal data and the equipment used for the processing, and that takes into account available state of the art and technology, the costs of implementation in relation to the risks and the nature of the personal data to be protected.
- (29) Personal data should be collected for specified, explicit and legitimate purposes within the scope of this Directive and should not be processed for purposes incompatible with 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. If personal data are processed by the same or another controller for a purpose within the scope of this Directive other than that for which it has been collected, such processing should be permitted under the condition that such processing is authorised in accordance with applicable legal provisions and is necessary for and proportionate to that other purpose.
- (30) The principle of accuracy of data should be applied while taking account of the nature and purpose of the processing concerned. In particular in judicial proceedings, statements containing personal data are based on the subjective perception of natural persons and are not always verifiable. Consequently, the requirement of accuracy should not appertain to the accuracy of a statement but merely to the fact that a specific statement has been made.
- (31) It is inherent to the processing of personal data in the areas of judicial cooperation in criminal matters and police cooperation that personal data relating to different categories of data subjects are processed. Therefore, a clear distinction should, where applicable and as far as possible, be made between personal data of different categories of data subjects such as: suspects; persons convicted of a criminal offence; victims and other parties, such as witnesses; persons possessing relevant information or contacts; and associates of suspects and convicted criminals. This should not prevent the application of the right of presumption of innocence as guaranteed by the Charter and by the ECHR, as interpreted in the case-law of the Court of Justice and by the European Court of Human Rights respectively.
- (32) The competent authorities should ensure that personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available. In order to ensure the protection of natural persons, the accuracy, completeness or the extent to which the personal data are up to date and the reliability of the personal data transmitted or made available, the competent authorities should, as far as possible, add necessary information in all transmissions of personal data.
- (33) Where this Directive refers to Member State law, a legal basis or a legislative measure, this does not necessarily require a legislative act adopted by a parliament, without prejudice to requirements pursuant to the constitutional

order of the Member State concerned. However, such a Member State law, legal basis or legislative measure should be clear and precise and its application foreseeable for those subject to it, as required by the case-law of the Court of Justice and the European Court of Human Rights. Member State law regulating the processing of personal data within the scope of this Directive should specify at least the objectives, the personal data to be processed, the purposes of the processing and procedures for preserving the integrity and confidentiality of personal data and procedures for its destruction, thus providing sufficient guarantees against the risk of abuse and arbitrariness.

- (34) 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, including the safeguarding against and the prevention of threats to public security, should cover any operation or set of operations which are performed upon personal data or sets of personal data for those purposes, whether by automated means or otherwise, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, alignment or combination, restriction of processing, erasure or destruction. In particular, the rules of this Directive should apply to the transmission of personal data for the purposes of this Directive to a recipient not subject to this Directive. Such a recipient should encompass a natural or legal person, public authority, agency or any other body to which personal data are lawfully disclosed by the competent authority. Where personal data were initially collected by a competent authority for one of the purposes of this Directive, Regulation (EU) 2016/679 should apply to the processing of those data for purposes other than the purposes of this Directive where such processing is authorised by Union or Member State law. In particular, the rules of Regulation (EU) 2016/679 should apply to the transmission of personal data for purposes outside the scope of this Directive. For the processing of personal data by a recipient that is not a competent authority or that is not acting as such within the meaning of this Directive and to which personal data are lawfully disclosed by a competent authority, Regulation (EU) 2016/679 should apply. While implementing this Directive, Member States should also be able to further specify the application of the rules of Regulation (EU) 2016/679, subject to the conditions set out therein.
- (35) In order to be lawful, the processing of personal data under this Directive should be necessary for the performance of a task carried out in the public interest by a competent authority based on Union or Member State law 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. Those activities should cover the protection of vital interests of the data subject. The performance of the tasks of preventing, investigating, detecting or prosecuting criminal offences institutionally conferred by law to the competent authorities allows them to require or order natural persons to comply with requests made. In such a case, the consent of the data subject, as defined in Regulation (EU) 2016/679, should not provide a legal ground for processing personal data by competent authorities. Where the data subject is required to comply with a legal obligation, the data subject has no genuine and free choice, so that the reaction of the data subject could not be considered to be a freely given indication of his or her wishes. This should not preclude Member States from providing, by law, that the data subject may agree to the processing of his or her personal data for the purposes of this Directive, such as DNA tests in criminal investigations or the monitoring of his or her location with electronic tags for the execution of criminal penalties.
- (36) Member States should provide that where Union or Member State law applicable to the transmitting competent authority provides for specific conditions applicable in specific circumstances to the processing of personal data, such as the use of handling codes, the transmitting competent authority should inform the recipient of such personal data of those conditions and the requirement to respect them. Such conditions could, for example, include a prohibition against transmitting the personal data further to others, or using them for purposes other than those for which they were transmitted to the recipient, or informing the data subject in the case of a limitation of the right of information without the prior approval of the transmitting competent authority. Those obligations should also apply to transfers by the transmitting competent authority to recipients in third countries or international organisations. Member States should ensure that the transmitting competent authority does not apply such conditions to recipients in other Member States or to agencies, offices and bodies established pursuant to Chapters 4 and 5 of Title V of the TFEU other than those applicable to similar data transmissions within the Member State of that competent authority.
- (37) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms. Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term 'racial origin' in this Directive does not imply an acceptance by the Union of theories which attempt

to determine the existence of separate human races. Such personal data should not be processed, unless processing is subject to appropriate safeguards for the rights and freedoms of the data subject laid down by law and is allowed in cases authorised by law; where not already authorised by such a law, the processing is necessary to protect the vital interests of the data subject or of another person; or the processing relates to data which are manifestly made public by the data subject. Appropriate safeguards for the rights and freedoms of the data subject could include the possibility to collect those data only in connection with other data on the natural person concerned, the possibility to secure the data collected adequately, stricter rules on the access of staff of the competent authority to the data and the prohibition of transmission of those data. The processing of such data should also be allowed by law where the data subject has explicitly agreed to the processing that is particularly intrusive to him or her. However, the consent of the data subject should not provide in itself a legal ground for processing such sensitive personal data by competent authorities.

- (38) The data subject should have the right not to be subject to a decision evaluating personal aspects relating to him or her which is based solely on automated processing and which produces adverse legal effects concerning, or significantly affects, him or her. In any case, such processing should be subject to suitable safeguards, including the provision of specific information to the data subject and the right to obtain human intervention, in particular to express his or her point of view, to obtain an explanation of the decision reached after such assessment or to challenge the decision. Profiling that results in discrimination against natural persons on the basis of personal data which are by their nature particularly sensitive in relation to fundamental rights and freedoms should be prohibited under the conditions laid down in Articles 21 and 52 of the Charter.
- (39) In order to enable him or her to exercise his or her rights, any information to the data subject should be easily accessible, including on the website of the controller, and easy to understand, using clear and plain language. Such information should be adapted to the needs of vulnerable persons such as children.
- (40) Modalities should be provided for facilitating the exercise of the data subject's rights under the provisions adopted pursuant to this Directive, including mechanisms to request and, if applicable, obtain, free of charge, in particular, access to and rectification or erasure of personal data and restriction of processing. The controller should be obliged to respond to requests of the data subject without undue delay, unless the controller applies limitations to data subject rights in accordance with this Directive. Moreover, if requests are manifestly unfounded or excessive, such as where the data subject unreasonably and repetitiously requests information or where the data subject abuses his or her right to receive information, for example, by providing false or misleading information when making the request, the controller should be able to charge a reasonable fee or refuse to act on the request.
- (41) Where the controller requests the provision of additional information necessary to confirm the identity of the data subject, that information should be processed only for that specific purpose and should not be stored for longer than needed for that purpose.
- (42) At least the following information should be made available to the data subject: the identity of the controller, the existence of the processing operation, the purposes of the processing, the right to lodge a complaint and the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing. This could take place on the website of the competent authority. In addition, in specific cases and in order to enable the exercise of his or her rights, the data subject should be informed of the legal basis for the processing and of how long the data will be stored, in so far as such further information is necessary, taking into account the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject.
- (43) A natural person should have the right of access to data which has been collected concerning him or her, and to exercise this right easily and at reasonable intervals, in order to be aware of and verify the lawfulness of the processing. Every data subject should therefore have the right to know, and obtain communications about, the purposes for which the data are processed, the period during which the data are processed and the recipients of the data, including those in third countries. Where such communications include information as to the origin of the personal data, the information should not reveal the identity of natural persons, in particular confidential sources. For that right to be complied with, it is sufficient that the data subject be in possession of a full summary of those data in an intelligible form, that is to say a form which allows that data subject to become aware of those data and to verify that they are accurate and processed in accordance with this Directive, so that it

is possible for him or her to exercise the rights conferred on him or her by this Directive. Such a summary could be provided in the form of a copy of the personal data undergoing processing.

- (44) Member States should be able to adopt legislative measures delaying, restricting or omitting the information to data subjects or restricting, wholly or partly, the access to their personal data to the extent that and as long as such a measure constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and the legitimate interests of the natural person concerned, to avoid obstructing official or legal inquiries, investigations or procedures, to avoid prejudicing the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, to protect public security or national security, or to protect the rights and freedoms of others. The controller should assess, by way of a concrete and individual examination of each case, whether the right of access should be partially or completely restricted.
- (45) Any refusal or restriction of access should in principle be set out in writing to the data subject and include the factual or legal reasons on which the decision is based.
- (46) Any restriction of the rights of the data subject must comply with the Charter and with the ECHR, as interpreted in the case-law of the Court of Justice and by the European Court of Human Rights respectively, and in particular respect the essence of those rights and freedoms.
- (47) A natural person should have the right to have inaccurate personal data concerning him or her rectified, in particular where it relates to facts, and the right to erasure where the processing of such data infringes this Directive. However, the right to rectification should not affect, for example, the content of a witness testimony. A natural person should also have the right to restriction of processing where he or she contests the accuracy of personal data and its accuracy or inaccuracy cannot be ascertained or where the personal data have to be maintained for purpose of evidence. In particular, instead of erasing personal data, processing should be restricted if in a specific case there are reasonable grounds to believe that erasure could affect the legitimate interests of the data subject. In such a case, restricted data should be processed only for the purpose which prevented their erasure. Methods to restrict the processing of personal data could include, inter alia, moving the selected data to another processing system, for example for archiving purposes, or making the selected data unavailable. In automated filing systems the restriction of processing should in principle be ensured by technical means. The fact that the processing of personal data is restricted should be indicated in the system in such a manner that it is clear that the processing of the personal data is restricted. Such rectification or erasure of personal data or restriction of processing should be communicated to recipients to whom the data have been disclosed and to the competent authorities from which the inaccurate data originated. The controllers should also abstain from further dissemination of such data.
- (48) Where the controller denies a data subject his or her right to information, access to or rectification or erasure of personal data or restriction of processing, the data subject should have the right to request that the national supervisory authority verify the lawfulness of the processing. The data subject should be informed of that right. Where the supervisory authority acts on behalf of the data subject, the data subject should be informed by the supervisory authority at least that all necessary verifications or reviews by the supervisory authority have taken place. The supervisory authority should also inform the data subject of the right to seek a judicial remedy.
- (49) Where the personal data are processed in the course of a criminal investigation and court proceedings in criminal matters, Member States should be able to provide that the exercise the right to information, access to and rectification or erasure of personal data and restriction of processing is carried out in accordance with national rules on judicial proceedings.
- (50) The responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should be obliged to implement appropriate and effective measures and should be able to demonstrate that processing activities are in compliance with this Directive. Such measures should take into account the nature, scope, context and purposes of the processing and the risk to the rights and freedoms of natural persons. The measures taken by the controller should include drawing up and implementing specific safeguards in respect of the treatment of personal data of vulnerable natural persons, such as children.
- (51) The risk to the rights and freedoms of natural persons, of varying likelihood and severity, may result from data processing which could lead to physical, material or non-material damage, in particular: where the processing may give rise to discrimination, identity theft or fraud, financial loss, damage to the reputation, loss of confidentiality of data protected by professional secrecy, unauthorised reversal of pseudonymisation or any other

significant economic or social disadvantage; where data subjects might be deprived of their rights and freedoms or from exercising control over their personal data; where personal data are processed which reveal racial or ethnic origin, political opinions, religion or philosophical beliefs or trade union membership; where genetic data or biometric data are processed in order to uniquely identify a person or where data concerning health or data concerning sex life and sexual orientation or criminal convictions and offences or related security measures are processed; where personal aspects are evaluated, in particular analysing and predicting aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, in order to create or use personal profiles; where personal data of vulnerable natural persons, in particular children, are processed; or where processing involves a large amount of personal data and affects a large number of data subjects.

- (52) The likelihood and severity of the risk should be determined by reference to the nature, scope, context and purposes of the processing. Risk should be evaluated on the basis of an objective assessment, through which it is established whether data-processing operations involve a high risk. A high risk is a particular risk of prejudice to the rights and freedoms of data subjects.
- (53) The protection of the rights and freedoms of natural persons with regard to the processing of personal data requires that appropriate technical and organisational measures are taken, to ensure that the requirements of this Directive are met. The implementation of such measures should not depend solely on economic considerations. In order to be able to demonstrate compliance with this Directive, the controller should adopt internal policies and implement measures which adhere in particular to the principles of data protection by design and data protection by default. Where the controller has carried out a data protection impact assessment pursuant to this Directive, the results should be taken into account when developing those measures and procedures. The measures could consist, inter alia, of the use of pseudonymisation, as early as possible. The use of pseudonymisation for the purposes of this Directive can serve as a tool that could facilitate, in particular, the free flow of personal data within the area of freedom, security and justice.
- (54) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processors, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities set out in this Directive, including where a controller determines the purposes and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.
- (55) The carrying-out of processing by a processor should be governed by a legal act including a contract binding the processor to the controller and stipulating, in particular, that the processor should act only on instructions from the controller. The processor should take into account the principle of data protection by design and by default.
- (56) In order to demonstrate compliance with this Directive, the controller or processor should maintain records regarding all categories of processing activities under its responsibility. Each controller and processor should be obliged to cooperate with the supervisory authority and make those records available to it on request, so that they might serve for monitoring those processing operations. The controller or the processor 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.
- (57) Logs should be kept at least for operations in automated processing systems such as collection, alteration, consultation, disclosure including transfers, combination or erasure. The identification of the person who consulted or disclosed personal data should be logged and from that identification it should be possible to establish the justification for the processing operations. The logs should solely be used for the verification of the lawfulness of the processing, self-monitoring, for ensuring data integrity and data security and criminal proceedings. Self-monitoring also includes internal disciplinary proceedings of competent authorities.
- (58) A data protection impact assessment should be carried out by the controller where the processing operations are likely to result in a high risk to the rights and freedoms of data subjects by virtue of their nature, scope or purposes, which should include, in particular, the measures, safeguards and mechanisms envisaged to ensure the protection of personal data and to demonstrate compliance with this Directive. Impact assessments should cover relevant systems and processes of processing operations, but not individual cases.

- (59) In order to ensure effective protection of the rights and freedoms of data subjects, the controller or processor should consult the supervisory authority, in certain cases, prior to the processing.
- (60) In order to maintain security and to prevent processing that infringes this Directive, the controller or processor should evaluate the risks inherent in the processing and should implement measures to mitigate those risks, such as encryption. Such measures should ensure an appropriate level of security, including confidentiality and take into account the state of the art, the costs of implementation in relation to the risk and the nature of the personal data to be protected. In assessing data security risks, consideration should be given to the risks that are presented by data processing, such as the accidental or unlawful destruction, loss, alteration or unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed, which may, in particular, lead to physical, material or non-material damage. The controller and processor should ensure that the processing of personal data is not carried out by unauthorised persons.
- (61) A personal data breach may, if not addressed in an appropriate and timely manner, result in physical, material or non-material damage to natural persons such as loss of control over their personal data or limitation of their rights, discrimination, identity theft or fraud, financial loss, unauthorised reversal of pseudonymisation, damage to reputation, loss of confidentiality of personal data protected by professional secrecy or any other significant economic or social disadvantage to the natural person concerned. Therefore, as soon as the controller becomes aware that a personal data breach has occurred, the controller should notify the personal data breach to the supervisory authority without undue delay and, where feasible, not later than 72 hours after having become aware of it, unless the controller is able to demonstrate, in accordance with the accountability principle, that the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where such notification cannot be achieved within 72 hours, the reasons for the delay should accompany the notification and information may be provided in phases without undue further delay.
- (62) Natural persons should be informed without undue delay where the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, in order to allow them to take the necessary precautions. The communication should describe the nature of the personal data breach and include recommendations for the natural person concerned to mitigate potential adverse effects. Communication to data subjects should be made as soon as reasonably feasible, in close cooperation with the supervisory authority, and respecting guidance provided by it or other relevant authorities. For example, the need to mitigate an immediate risk of damage would call for a prompt communication to data subjects, whereas the need to implement appropriate measures against continuing or similar data breaches may justify more time for the communication. Where avoiding obstruction of official or legal inquiries, investigations or procedures, avoiding prejudice to the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties, protecting public security, protecting national security or protecting the rights and freedoms of others cannot be achieved by delaying or restricting the communication of a personal data breach to the natural person concerned, such communication could, in exceptional circumstances, be omitted.
- (63) The controller should designate a person who would assist it in monitoring internal compliance with the provisions adopted pursuant to this Directive, except where a Member State decides to exempt courts and other independent judicial authorities when acting in their judicial capacity. That person could be a member of the existing staff of the controller who received special training in data protection law and practice in order to acquire expert knowledge in that field. The necessary level of expert knowledge should be determined, in particular, according to the data processing carried out and the protection required for the personal data processed by the controller. His or her task could be carried out on a part-time or full-time basis. A data protection officer may be appointed jointly by several controllers, taking into account their organisational structure and size, for example in the case of shared resources in central units. That person can also be appointed to different positions within the structure of the relevant controllers. That person should help the controller and the employees processing personal data by informing and advising them on compliance with their relevant data protection obligations. Such data protection officers should be in a position to perform their duties and tasks in an independent manner in accordance with Member State law.
- (64) Member States 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 Directive. A transfer should be carried out only by competent authorities acting as controllers, except where processors are explicitly instructed to transfer on behalf of controllers. 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. Where personal data are transferred from the Union to controllers, to processors or to other recipients in third countries or international organisations, the level of protection of natural persons provided for in the Union by this Directive should not be undermined, including in cases of onward transfers of personal data from the third country or international organisation to controllers or processors in the same or in another third country or international organisation.

- (65) Where personal data are transferred from a Member State to third countries or international organisations, such a transfer should, in principle, take place only after the Member State from which the data were obtained has given its authorisation to the transfer. The interests of efficient law-enforcement cooperation require that where the nature of a threat to the public security of a Member State or a third country or to the essential interests of a Member State is so immediate as to render it impossible to obtain prior authorisation in good time, the competent authority should be able to transfer the relevant personal data to the third country or international organisation concerned without such a prior authorisation. Member States should provide that any specific conditions concerning the transfer should be communicated to third countries or international organisations. Onward transfers of personal data should be subject to prior authorisation by the competent authority that carried out the original transfer. When deciding on a request for the authorisation of an onward transfer, the competent authority that carried out the original transfer should take due account of all relevant factors, including the seriousness of the criminal offence, the specific conditions subject to which, and the purpose for which, the data was originally transferred, the nature and conditions of the execution of the criminal penalty, and the level of personal data protection in the third country or an international organisation to which personal data are onward transferred. The competent authority that carried out the original transfer should also be able to subject the onward transfer to specific conditions. Such specific conditions can be described, for example, in handling codes.
- (66) The Commission should be able to decide with effect for the entire Union that certain third countries, a territory or one or more specified sectors within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations which are considered to provide such a level of protection. In such cases, transfers of personal data to those countries should be able to take place without the need to obtain any specific authorisation, except where another Member State from which the data were obtained has to give its authorisation to the transfer.
- (67) In line with the fundamental values on which the Union is founded, in particular the protection of human rights, the Commission should, in its assessment of the third country, or of a territory or specified sector within a third country, take into account how a particular third country respects the rule of law, access to justice as well as international human rights norms and standards and its general and sectoral law, including legislation concerning public security, defence and national security, as well as public order and criminal law. The adoption of an adequacy decision with regard to a territory or a specified sector in a third country should take into account clear and objective criteria, such as specific processing activities and the scope of applicable legal standards and legislation in force in the third country. The third country should offer guarantees ensuring an adequate level of protection essentially equivalent to that ensured within the Union, in particular where data are processed in one or several specific sectors. In particular, the third country should ensure effective independent data protection supervision and provide for cooperation mechanisms with the Member States' data protection authorities, and the data subjects should be provided with effective and enforceable rights and effective administrative and judicial redress.
- (68) Apart from the international commitments the third country or international organisation has entered into, the Commission should also take account of obligations arising from the third country's or international organisation's participation in multilateral or regional systems, in particular in relation to the protection of personal data, as well as the implementation of such obligations. In particular the third country's accession to the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data and its Additional Protocol should be taken into account. The Commission should consult with

the European Data Protection Board established by Regulation (EU) 2016/679 (the 'Board') when assessing the level of protection in third countries or international organisations. The Commission should also take into account any relevant Commission adequacy decision adopted in accordance with Article 45 of Regulation (EU) 2016/679.

- (69) The Commission should monitor the functioning of decisions on the level of protection in a third country, a territory or a specified sector within a third country, or an international organisation. In its adequacy decisions, the Commission should provide for a periodic review mechanism of their functioning. That periodic review should be undertaken in consultation with the third country or international organisation in question and should take into account all relevant developments in the third country or international organisation.
- (70) The Commission should also be able to recognise that a third country, a territory or a specified sector within a third country, or an international organisation, no longer ensures an adequate level of data protection. Consequently, the transfer of personal data to that third country or international organisation should be prohibited unless the requirements in this Directive relating to transfers subject to appropriate safeguards and derogations for specific situations are fulfilled. Provision should be made for procedures for consultations between the Commission and such third countries or international organisations. The Commission should, in a timely manner, inform the third country or international organisation of the reasons and enter into consultations with it in order to remedy the situation.
- (71) Transfers not based on such 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 the controller 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. The controller should be able to take into account cooperation agreements concluded between Europol or 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. The controller 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, the controller 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, the controller should be able to require additional safeguards.
- (72) 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 supervisory authority on request in order to monitor the lawfulness of the transfer.
- (73) Competent authorities of Member States apply bilateral or multilateral international agreements in force, concluded with third countries in the field of judicial cooperation in criminal matters and police cooperation, for the exchange of relevant information to allow them to perform their legally assigned tasks. In principle, this takes place through, or at least with, the cooperation of the authorities competent in the third countries concerned for the purposes of this Directive, sometimes even in the absence of a bilateral or multilateral international agreement. However, in specific individual cases, the regular procedures requiring contacting such an authority in the third country may be ineffective or inappropriate, in particular because the transfer could not be carried out in a timely manner, or because that authority in the third country does not respect the rule of law or international human rights norms and standards, so that competent authorities of Member States could decide to transfer personal data directly to recipients established in those third countries. This may be the case where there is an urgent need to transfer personal data to save the life of a person who is in danger of becoming a victim of a criminal offence or in the interest of preventing an imminent perpetration of a crime, including terrorism. Even if

such a transfer between competent authorities and recipients established in third countries should take place only in specific individual cases, this Directive should provide for conditions to regulate such cases. Those provisions should not be considered to be derogations from any existing bilateral or multilateral international agreements in the field of judicial cooperation in criminal matters and police cooperation. Those rules should apply in addition to the other rules of this Directive, in particular those on the lawfulness of processing and Chapter V.

- (74) Where personal data move across borders it may put at increased risk the ability of natural persons to exercise data protection rights to protect themselves from the unlawful use or disclosure of those data. At the same time, supervisory authorities may find that they are unable to pursue complaints or conduct investigations relating to the activities outside their borders. Their efforts to work together in the cross-border context may also be hampered by insufficient preventative or remedial powers and inconsistent legal regimes. Therefore, there is a need to promote closer cooperation among data protection supervisory authorities to help them exchange information with their foreign counterparts.
- (75) The establishment in Member States of supervisory authorities that are able to exercise their functions with complete independence is an essential component of the protection of natural persons with regard to the processing of their personal data. The supervisory authorities should monitor the application of the provisions adopted pursuant to this Directive and should contribute to their consistent application throughout the Union in order to protect natural persons with regard to the processing of their personal data. To that end, the supervisory authorities should cooperate with each other and with the Commission.
- (76) Member States may entrust a supervisory authority already established under Regulation (EU) 2016/679 with the responsibility for the tasks to be performed by the national supervisory authorities to be established under this Directive.
- (77) Member States should be allowed to establish more than one supervisory authority to reflect their constitutional, organisational and administrative structure. Each supervisory authority should be provided with the financial and human resources, premises and infrastructure, which are necessary for the effective performance of their tasks, including for the tasks related to mutual assistance and cooperation with other supervisory authorities throughout the Union. Each supervisory authority should have a separate, public annual budget, which may be part of the overall state or national budget.
- (78) Supervisory authorities should be subject to independent control or monitoring mechanisms regarding their financial expenditure, provided that such financial control does not affect their independence.
- (79) The general conditions for the member or members of the supervisory authority should be laid down by Member State law and should in particular provide that those members should be either appointed by the parliament or the government or the head of State of the Member State based on a proposal from the government or a member of the government, or the parliament or its chamber, or by an independent body entrusted by Member State law with the appointment by means of a transparent procedure. In order to ensure the independence of the supervisory authority, the member or members should act with integrity, should refrain from any action incompatible with their duties and should not, during their term of office, engage in any incompatible occupation, whether gainful or not. In order to ensure the independence of the supervisory authority, the staff should be chosen by the supervisory authority which may include an intervention by an independent body entrusted by Member State law.
- (80) While this Directive applies also to the activities of national courts and other judicial authorities, the competence of the supervisory authorities should not cover the processing of personal data where courts are acting in their judicial capacity, in order to safeguard the independence of judges in the performance of their judicial tasks. That exemption should be limited to judicial activities in court cases and not apply to other activities where judges might be involved in accordance with Member State law. Member States should also be able to provide that the competence of the supervisory authority does not cover the processing of personal data of other independent judicial authorities when acting in their judicial capacity, for example public prosecutor's office. In any event, the compliance with the rules of this Directive by the courts and other independent judicial authorities is always subject to independent supervision in accordance with Article 8(3) of the Charter.

- (81) Each supervisory authority should handle complaints lodged by any data subject and should investigate the matter or transmit it to the competent supervisory authority. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be provided to the data subject.
- (82) In order to ensure effective, reliable and consistent monitoring of compliance with and enforcement of this Directive throughout the Union pursuant to the TFEU as interpreted by the Court of Justice, the supervisory authorities should have in each Member State the same tasks and effective powers, including investigative, corrective, and advisory powers which constitute necessary means to perform their tasks. However, their powers should not interfere with specific rules for criminal proceedings, including investigation and prosecution of criminal offences, or the independence of the judiciary. Without prejudice to the powers of prosecutorial authorities under Member State law, supervisory authorities should also have the power to bring infringements of this Directive to the attention of the judicial authorities or to engage in legal proceedings. The powers of supervisory authorities should be exercised in accordance with appropriate procedural safeguards laid down by Union and Member State law, impartially, fairly and within a reasonable time. In particular each measure should be appropriate, necessary and proportionate in view of ensuring compliance with this Directive, taking into account the circumstances of each individual case, respect the right of every person to be heard before any individual measure that would adversely affect the person concerned is taken, and avoiding superfluous costs and excessive inconvenience to the person concerned. Investigative powers as regards access to premises should be exercised in accordance with specific requirements in Member State law, such as the requirement to obtain a prior judicial authorisation. The adoption of a legally binding decision should be subject to judicial review in the Member State of the supervisory authority that adopted the decision.
- (83) The supervisory authorities should assist one another in performing their tasks and provide mutual assistance, so as to ensure the consistent application and enforcement of the provisions adopted pursuant to this Directive.
- (84) The Board should contribute to the consistent application of this Directive throughout the Union, including advising the Commission and promoting the cooperation of the supervisory authorities throughout the Union.
- (85) Every data subject should have the right to lodge a complaint with a single supervisory authority and to an effective judicial remedy in accordance with Article 47 of the Charter where the data subject considers that his or her rights under provisions adopted pursuant to this Directive are infringed or where the supervisory authority does not act on a complaint, partially or wholly rejects or dismisses a complaint or does not act where such action is necessary to protect the rights of the data subject. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The competent supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be provided to the data subject. In order to facilitate the submission of complaints, each supervisory authority should take measures such as providing a complaint submission form which can also be completed electronically, without excluding other means of communication.
- (86) Each natural or legal person should have the right to an effective judicial remedy before the competent national court against a decision of a supervisory authority which produces legal effects concerning that person. Such a decision concerns in particular the exercise of investigative, corrective and authorisation powers by the supervisory authority or the dismissal or rejection of complaints. However, that right does not encompass other measures of supervisory authorities which are not legally binding, such as opinions issued by or advice provided by the supervisory authority. Proceedings against a supervisory authority should be brought before the courts of the Member State where the supervisory authority is established and should be conducted in accordance with Member State law. Those courts should exercise full jurisdiction which should include jurisdiction to examine all questions of fact and law relevant to the dispute before it.
- (87) Where a data subject considers that his or her rights under this Directive are infringed, he or she should have the right to mandate a body which aims to protect the rights and interests of data subjects in relation to the

protection of their personal data and is constituted according to Member State law to lodge a complaint on his or her behalf with a supervisory authority and to exercise the right to a judicial remedy. The right of representation of data subjects should be without prejudice to Member State procedural law which may require mandatory representation of data subjects by a lawyer, as defined in Council Directive 77/249/EEC ⁽¹⁾, before national courts.

- (88) Any damage which a person may suffer as a result of processing that infringes the provisions adopted pursuant to this Directive should be compensated by the controller or any other authority competent under Member State law. The concept of damage should be broadly interpreted in the light of the case-law of the Court of Justice in a manner which fully reflects the objectives of this Directive. This is without prejudice to any claims for damage deriving from the violation of other rules in Union or Member State law. When reference is made to processing that is unlawful or that infringes the provisions adopted pursuant to this Directive it also covers processing that infringes implementing acts adopted pursuant to this Directive. Data subjects should receive full and effective compensation for the damage that they have suffered.
- (89) Penalties should be imposed on any natural or legal person, whether governed by private or public law, who infringes this Directive. Member States should ensure that the penalties are effective, proportionate and dissuasive and should take all measures to implement the penalties.
- (90) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission with regard to the adequate level of protection afforded by a third country, a territory or a specified sector within a third country, or an international organisation and the format and procedures for mutual assistance and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽²⁾.
- (91) The examination procedure should be used for the adoption of implementing acts on the adequate level of protection afforded by a third country, a territory or a specified sector within a third country, or an international organisation and on the format and procedures for mutual assistance and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board, given that those acts are of a general scope.
- (92) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to a third country, a territory or a specified sector within a third country, or an international organisation which no longer ensure an adequate level of protection, imperative grounds of urgency so require.
- (93) Since the objectives of this Directive, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free exchange of personal data by competent authorities within the Union, cannot be sufficiently achieved by the Member States and can rather, by reason of the scale or 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 of the TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives
- (94) Specific provisions of acts of the Union adopted in the field of judicial cooperation in criminal matters and police cooperation which were adopted prior to the date of the adoption of this Directive, regulating the processing of personal data between Member States or the access of designated authorities of Member States to information

⁽¹⁾ Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, 26.3.1977, p. 17).

⁽²⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

systems established pursuant to the Treaties, should remain unaffected, such as, for example, the specific provisions concerning the protection of personal data applied pursuant to Council Decision 2008/615/JHA ⁽¹⁾, or Article 23 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union ⁽²⁾. Since Article 8 of the Charter and Article 16 TFEU require that the fundamental right to the protection of personal data be ensured in a consistent manner throughout the Union, the Commission should evaluate the situation with regard to the relationship between this Directive and the acts adopted prior to the date of adoption of this Directive regulating the processing of personal data between Member States or the access of designated authorities of Member States to information systems established pursuant to the Treaties, in order to assess the need for alignment of those specific provisions with this Directive. Where appropriate, the Commission should make proposals with a view to ensuring consistent legal rules relating to the processing of personal data.

- (95) In order to ensure a comprehensive and consistent protection of personal data in the Union, international agreements which were concluded by Member States prior to the date of entry into force of this Directive and which comply with the relevant Union law applicable prior to that date should remain in force until amended, replaced or revoked.
- (96) Member States should be allowed a period of not more than two years from the date of entry into force of this Directive to transpose it. Processing already under way on that date should be brought into conformity with this Directive within the period of two years after which this Directive enters into force. However, where such processing complies with the Union law applicable prior to the date of entry into force of this Directive, the requirements of this Directive concerning the prior consultation of the supervisory authority should not apply to the processing operations already under way on that date given that those requirements, by their very nature, are to be met prior to the processing. Where Member States use the longer implementation period expiring seven years after the date of entry into force of this Directive for meeting the logging obligations for automated processing systems set up prior to that date, the controller or the processor should have in place effective methods for demonstrating the lawfulness of the data processing, for enabling self-monitoring and for ensuring data integrity and data security, such as logs or other forms of records.
- (97) This Directive is without prejudice to the rules on combating the sexual abuse and sexual exploitation of children and child pornography as laid down in Directive 2011/93/EU of the European Parliament and of the Council ⁽³⁾.
- (98) Framework Decision 2008/977/JHA should therefore be repealed.
- (99) In accordance with Article 6a of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, as annexed to the TEU and to the TFEU, the United Kingdom and Ireland are not bound by the rules laid down in this Directive which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU where the United Kingdom and Ireland are not bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down on the basis of Article 16 TFEU.
- (100) In accordance with Articles 2 and 2a of Protocol No 22 on the position of Denmark, as annexed to the TEU and to the TFEU, Denmark is not bound by the rules laid down in this Directive or subject to their application which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU. Given that this Directive builds upon the Schengen *acquis*, under Title V of Part Three of the TFEU, Denmark, in accordance with Article 4 of that Protocol, is to decide within six months after adoption of this Directive whether it will implement it in its national law.
- (101) As regards Iceland and Norway, this Directive constitutes a development of provisions of the Schengen *acquis*, as provided for by the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ⁽⁴⁾.

⁽¹⁾ 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 (OJ L 210, 6.8.2008, p. 1).

⁽²⁾ Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 1).

⁽³⁾ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

⁽⁴⁾ OJ L 176, 10.7.1999, p. 36.

- (102) As regards Switzerland, this Directive constitutes a development of provisions of the Schengen *acquis*, as provided for by the Agreement between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* ⁽¹⁾.
- (103) As regards Liechtenstein, this Directive constitutes a development of provisions of the Schengen *acquis*, as provided for by the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽²⁾.
- (104) This Directive respects the fundamental rights and observes the principles recognised in the Charter as enshrined in the TFEU, in particular the right to respect for private and family life, the right to the protection of personal data, the right to an effective remedy and to a fair trial. Limitations placed on those rights are in accordance with Article 52(1) of the Charter as they are necessary to meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
- (105) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition measures. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (106) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 7 March 2012 ⁽³⁾.
- (107) This Directive should not preclude Member States from implementing the exercise of the rights of data subjects on information, access to and rectification or erasure of personal data and restriction of processing in the course of criminal proceedings, and their possible restrictions thereto, in national rules on criminal procedure,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

Subject-matter and objectives

1. This Directive lays down the rules relating to 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, including the safeguarding against and the prevention of threats to public security.
2. In accordance with this Directive, Member States shall:
 - (a) protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data; and
 - (b) ensure that the exchange of personal data by competent authorities within the Union, where such exchange is required by Union or Member State law, is neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

⁽¹⁾ OJ L 53, 27.2.2008, p. 52.

⁽²⁾ OJ L 160, 18.6.2011, p. 21.

⁽³⁾ OJ C 192, 30.6.2012, p. 7.

3. This Directive shall not preclude Member States from providing higher safeguards than those established in this Directive for the protection of the rights and freedoms of the data subject with regard to the processing of personal data by competent authorities.

Article 2

Scope

1. This Directive applies to the processing of personal data by competent authorities for the purposes set out in Article 1(1).

2. This Directive applies to the processing of personal data wholly or partly by automated means, and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

3. This Directive does not apply to the processing of personal data:

- (a) in the course of an activity which falls outside the scope of Union law;
- (b) by the Union institutions, bodies, offices and agencies.

Article 3

Definitions

For the purposes of this Directive:

- (1) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (2) 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- (3) 'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future;
- (4) 'profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;
- (5) 'pseudonymisation' means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;
- (6) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;
- (7) 'competent authority' means:
 - (a) any public authority competent 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; or
 - (b) any other body or entity entrusted by Member State law to exercise public authority and public powers 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;

- (8) 'controller' means the competent authority which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;
- (9) 'processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
- (10) 'recipient' means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;
- (11) 'personal data breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- (12) 'genetic data' means personal data, relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;
- (13) 'biometric data' means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
- (14) 'data concerning health' means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;
- (15) 'supervisory authority' means an independent public authority which is established by a Member State pursuant to Article 41;
- (16) 'international organisation' means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.

CHAPTER II

Principles

Article 4

Principles relating to processing of personal data

- 1. Member States shall provide for personal data to be:
 - (a) processed lawfully and fairly;
 - (b) collected for specified, explicit and legitimate purposes and not processed in a manner that is incompatible with those purposes;
 - (c) adequate, relevant and not excessive in relation to the purposes for which they are processed;
 - (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
 - (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which they are processed;
 - (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

2. Processing by the same or another controller for any of the purposes set out in Article 1(1) other than that for which the personal data are collected shall be permitted in so far as:
 - (a) the controller is authorised to process such personal data for such a purpose in accordance with Union or Member State law; and
 - (b) processing is necessary and proportionate to that other purpose in accordance with Union or Member State law.
3. Processing by the same or another controller may include archiving in the public interest, scientific, statistical or historical use, for the purposes set out in Article 1(1), subject to appropriate safeguards for the rights and freedoms of data subjects.
4. The controller shall be responsible for, and be able to demonstrate compliance with, paragraphs 1, 2 and 3.

Article 5

Time-limits for storage and review

Member States shall provide for appropriate time limits to be established for the erasure of personal data or for a periodic review of the need for the storage of personal data. Procedural measures shall ensure that those time limits are observed.

Article 6

Distinction between different categories of data subject

Member States shall provide for the controller, where applicable and as far as possible, to make a clear distinction between personal data of different categories of data subjects, such as:

- (a) persons with regard to whom there are serious grounds for believing that they have committed or are about to commit a criminal offence;
- (b) persons convicted of a criminal offence;
- (c) victims of a criminal offence or persons with regard to whom certain facts give rise to reasons for believing that he or she could be the victim of a criminal offence; and
- (d) other parties to a criminal offence, such as persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, persons who can provide information on criminal offences, or contacts or associates of one of the persons referred to in points (a) and (b).

Article 7

Distinction between personal data and verification of quality of personal data

1. Member States shall provide for personal data based on facts to be distinguished, as far as possible, from personal data based on personal assessments.
2. Member States shall provide for the competent authorities to take all reasonable steps to ensure that personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available. To that end, each competent authority shall, as far as practicable, verify the quality of personal data before they are transmitted or made available. As far as possible, in all transmissions of personal data, necessary information enabling the receiving competent authority to assess the degree of accuracy, completeness and reliability of personal data, and the extent to which they are up to date shall be added.
3. If it emerges that incorrect personal data have been transmitted or personal data have been unlawfully transmitted, the recipient shall be notified without delay. In such a case, the personal data shall be rectified or erased or processing shall be restricted in accordance with Article 16.

*Article 8***Lawfulness of processing**

1. Member States shall provide for processing to be lawful only if and to the extent that processing is necessary for the performance of a task carried out by a competent authority for the purposes set out in Article 1(1) and that it is based on Union or Member State law.
2. Member State law regulating processing within the scope of this Directive shall specify at least the objectives of processing, the personal data to be processed and the purposes of the processing.

*Article 9***Specific processing conditions**

1. Personal data collected by competent authorities for the purposes set out in Article 1(1) shall not be processed for purposes other than those set out in Article 1(1) unless such processing is authorised by Union or Member State law. Where personal data are processed for such other purposes, Regulation (EU) 2016/679 shall apply unless the processing is carried out in an activity which falls outside the scope of Union law.
2. Where competent authorities are entrusted by Member State law with the performance of tasks other than those performed for the purposes set out in Article 1(1), Regulation (EU) 2016/679 shall apply to processing for such purposes, including for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, unless the processing is carried out in an activity which falls outside the scope of Union law.
3. Member States shall, where Union or Member State law applicable to the transmitting competent authority provides specific conditions for processing, provide for the transmitting competent authority to inform the recipient of such personal data of those conditions and the requirement to comply with them.
4. Member States shall provide for the transmitting competent authority not to apply conditions pursuant to paragraph 3 to recipients in other Member States or to agencies, offices and bodies established pursuant to Chapters 4 and 5 of Title V of the TFEU other than those applicable to similar transmissions of data within the Member State of the transmitting competent authority.

*Article 10***Processing of special categories of personal data**

Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be allowed only where strictly necessary, subject to appropriate safeguards for the rights and freedoms of the data subject, and only:

- (a) where authorised by Union or Member State law;
- (b) to protect the vital interests of the data subject or of another natural person; or
- (c) where such processing relates to data which are manifestly made public by the data subject.

*Article 11***Automated individual decision-making**

1. Member States shall provide for a decision based solely on automated processing, including profiling, which produces an adverse legal effect concerning the data subject or significantly affects him or her, to be prohibited unless authorised by Union or Member State law to which the controller is subject and which provides appropriate safeguards for the rights and freedoms of the data subject, at least the right to obtain human intervention on the part of the controller.

2. Decisions referred to in paragraph 1 of this Article shall not be based on special categories of personal data referred to in Article 10, unless suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

3. Profiling that results in discrimination against natural persons on the basis of special categories of personal data referred to in Article 10 shall be prohibited, in accordance with Union law.

CHAPTER III

Rights of the data subject

Article 12

Communication and modalities for exercising the rights of the data subject

1. Member States shall provide for the controller to take reasonable steps to provide any information referred to in Article 13 and make any communication with regard to Articles 11, 14 to 18 and 31 relating to processing to the data subject in a concise, intelligible and easily accessible form, using clear and plain language. The information shall be provided by any appropriate means, including by electronic means. As a general rule, the controller shall provide the information in the same form as the request.

2. Member States shall provide for the controller to facilitate the exercise of the rights of the data subject under Articles 11 and 14 to 18.

3. Member States shall provide for the controller to inform the data subject in writing about the follow up to his or her request without undue delay.

4. Member States shall provide for the information provided under Article 13 and any communication made or action taken pursuant to Articles 11, 14 to 18 and 31 to be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either:

- (a) charge a reasonable fee, taking into account the administrative costs of providing the information or communication or taking the action requested; or
- (b) refuse to act on the request.

The controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

5. Where the controller has reasonable doubts concerning the identity of the natural person making a request referred to in Article 14 or 16, the controller may request the provision of additional information necessary to confirm the identity of the data subject.

Article 13

Information to be made available or given to the data subject

1. Member States shall provide for the controller to make available to the data subject at least the following information:

- (a) the identity and the contact details of the controller;
- (b) the contact details of the data protection officer, where applicable;
- (c) the purposes of the processing for which the personal data are intended;
- (d) the right to lodge a complaint with a supervisory authority and the contact details of the supervisory authority;
- (e) the existence of the right to request from the controller access to and rectification or erasure of personal data and restriction of processing of the personal data concerning the data subject.

2. In addition to the information referred to in paragraph 1, Member States shall provide by law for the controller to give to the data subject, in specific cases, the following further information to enable the exercise of his or her rights:

- (a) the legal basis for the processing;
- (b) the period for which the personal data will be stored, or, where that is not possible, the criteria used to determine that period;

- (c) where applicable, the categories of recipients of the personal data, including in third countries or international organisations;
- (d) where necessary, further information, in particular where the personal data are collected without the knowledge of the data subject.

3. Member States may adopt legislative measures delaying, restricting or omitting the provision of the information to the data subject pursuant to paragraph 2 to the extent that, and for as long as, such a measure constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and the legitimate interests of the natural person concerned, in order to:

- (a) avoid obstructing official or legal inquiries, investigations or procedures;
- (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
- (c) protect public security;
- (d) protect national security;
- (e) protect the rights and freedoms of others.

4. Member States may adopt legislative measures in order to determine categories of processing which may wholly or partly fall under any of the points listed in paragraph 3.

Article 14

Right of access by the data subject

Subject to Article 15, Member States shall provide for the right of the data subject to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:

- (a) the purposes of and legal basis for the processing;
- (b) the categories of personal data concerned;
- (c) the recipients or categories of recipients to whom the personal data have been disclosed, in particular recipients in third countries or international organisations;
- (d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
- (e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject;
- (f) the right to lodge a complaint with the supervisory authority and the contact details of the supervisory authority;
- (g) communication of the personal data undergoing processing and of any available information as to their origin.

Article 15

Limitations to the right of access

1. Member States may adopt legislative measures restricting, wholly or partly, the data subject's right of access to the extent that, and for as long as such a partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and legitimate interests of the natural person concerned, in order to:

- (a) avoid obstructing official or legal inquiries, investigations or procedures;
- (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
- (c) protect public security;

- (d) protect national security;
 - (e) protect the rights and freedoms of others.
2. Member States may adopt legislative measures in order to determine categories of processing which may wholly or partly fall under points (a) to (e) of paragraph 1.
3. In the cases referred to in paragraphs 1 and 2, Member States shall provide for the controller to inform the data subject, without undue delay, in writing of any refusal or restriction of access and of the reasons for the refusal or the restriction. Such information may be omitted where the provision thereof would undermine a purpose under paragraph 1. Member States shall provide for the controller to inform the data subject of the possibility of lodging a complaint with a supervisory authority or seeking a judicial remedy.
4. Member States shall provide for the controller to document the factual or legal reasons on which the decision is based. That information shall be made available to the supervisory authorities.

Article 16

Right to rectification or erasure of personal data and restriction of processing

1. Member States shall provide for the right of the data subject to obtain from the controller without undue delay the rectification of inaccurate personal data relating to him or her. Taking into account the purposes of the processing, Member States shall provide for the data subject to have the right to have incomplete personal data completed, including by means of providing a supplementary statement.
2. Member States shall require the controller to erase personal data without undue delay and provide for the right of the data subject to obtain from the controller the erasure of personal data concerning him or her without undue delay where processing infringes the provisions adopted pursuant to Article 4, 8 or 10, or where personal data must be erased in order to comply with a legal obligation to which the controller is subject.
3. Instead of erasure, the controller shall restrict processing where:
- (a) the accuracy of the personal data is contested by the data subject and their accuracy or inaccuracy cannot be ascertained; or
 - (b) the personal data must be maintained for the purposes of evidence.

Where processing is restricted pursuant to point (a) of the first subparagraph, the controller shall inform the data subject before lifting the restriction of processing.

4. Member States shall provide for the controller to inform the data subject in writing of any refusal of rectification or erasure of personal data or restriction of processing and of the reasons for the refusal. Member States may adopt legislative measures restricting, wholly or partly, the obligation to provide such information to the extent that such a restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and legitimate interests of the natural person concerned in order to:
- (a) avoid obstructing official or legal inquiries, investigations or procedures;
 - (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
 - (c) protect public security;
 - (d) protect national security;
 - (e) protect the rights and freedoms of others.

Member States shall provide for the controller to inform the data subject of the possibility of lodging a complaint with a supervisory authority or seeking a judicial remedy.

5. Member States shall provide for the controller to communicate the rectification of inaccurate personal data to the competent authority from which the inaccurate personal data originate.
6. Member States shall, where personal data has been rectified or erased or processing has been restricted pursuant to paragraphs 1, 2 and 3, provide for the controller to notify the recipients and that the recipients shall rectify or erase the personal data or restrict processing of the personal data under their responsibility.

Article 17

Exercise of rights by the data subject and verification by the supervisory authority

1. In the cases referred to in Article 13(3), Article 15(3) and Article 16(4) Member States shall adopt measures providing that the rights of the data subject may also be exercised through the competent supervisory authority.
2. Member States shall provide for the controller to inform the data subject of the possibility of exercising his or her rights through the supervisory authority pursuant to paragraph 1.
3. Where the right referred to in paragraph 1 is exercised, the supervisory authority shall inform the data subject at least that all necessary verifications or a review by the supervisory authority have taken place. The supervisory authority shall also inform the data subject of his or her right to seek a judicial remedy.

Article 18

Rights of the data subject in criminal investigations and proceedings

Member States may provide for the exercise of the rights referred to in Articles 13, 14 and 16 to be carried out in accordance with Member State law where the personal data are contained in a judicial decision or record or case file processed in the course of criminal investigations and proceedings.

CHAPTER IV

Controller and processor

Section 1

General obligations

Article 19

Obligations of the controller

1. Member States shall provide for the controller, taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, to implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with this Directive. Those measures shall be reviewed and updated where necessary.
2. Where proportionate in relation to the processing activities, the measures referred to in paragraph 1 shall include the implementation of appropriate data protection policies by the controller.

Article 20

Data protection by design and by default

1. Member States shall provide for the controller, taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing, as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, both at the time of the determination of the means for processing and at the time of the processing itself, to implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing, in order to meet the requirements of this Directive and protect the rights of data subjects.

2. Member States shall provide for the controller to implement appropriate technical and organisational measures ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default personal data are not made accessible without the individual's intervention to an indefinite number of natural persons.

Article 21

Joint controllers

1. Member States shall, where two or more controllers jointly determine the purposes and means of processing, provide for them to be joint controllers. They shall, in a transparent manner, determine their respective responsibilities for compliance with this Directive, in particular as regards the exercise of the rights of the data subject and their respective duties to provide the information referred to in Article 13, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject. The arrangement shall designate the contact point for data subjects. Member States may designate which of the joint controllers can act as a single contact point for data subjects to exercise their rights.

2. Irrespective of the terms of the arrangement referred to in paragraph 1, Member States may provide for the data subject to exercise his or her rights under the provisions adopted pursuant to this Directive in respect of and against each of the controllers.

Article 22

Processor

1. Member States shall, where processing is to be carried out on behalf of a controller, provide for the controller to use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of this Directive and ensure the protection of the rights of the data subject.

2. Member States shall provide for the processor not to engage another processor without prior specific or general written authorisation by the controller. In the case of general written authorisation, the processor shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes.

3. Member States shall provide for the processing by a processor to be governed by a contract or other legal act under Union or Member State law, that is binding on the processor with regard to the controller and that sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller. That contract or other legal act shall stipulate, in particular, that the processor:

- (a) acts only on instructions from the controller;
- (b) ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (c) assists the controller by any appropriate means to ensure compliance with the provisions on the data subject's rights;
- (d) at the choice of the controller, deletes or returns all the personal data to the controller after the end of the provision of data processing services, and deletes existing copies unless Union or Member State law requires storage of the personal data;

- (e) makes available to the controller all information necessary to demonstrate compliance with this Article;
 - (f) complies with the conditions referred to in paragraphs 2 and 3 for engaging another processor.
4. The contract or the other legal act referred to in paragraph 3 shall be in writing, including in an electronic form.
5. If a processor determines, in infringement of this Directive, the purposes and means of processing, that processor shall be considered to be a controller in respect of that processing.

Article 23

Processing under the authority of the controller or processor

Member States shall provide for the processor and any person acting under the authority of the controller or of the processor, who has access to personal data, not to process those data except on instructions from the controller, unless required to do so by Union or Member State law.

Article 24

Records of processing activities

1. Member States shall provide for controllers to maintain a record of all categories of processing activities under their responsibility. That record shall contain all of the following information:
- (a) the name and contact details of the controller and, where applicable, the joint controller and the data protection officer;
 - (b) the purposes of the processing;
 - (c) the categories of recipients to whom the personal data have been or will be disclosed including recipients in third countries or international organisations;
 - (d) a description of the categories of data subject and of the categories of personal data;
 - (e) where applicable, the use of profiling;
 - (f) where applicable, the categories of transfers of personal data to a third country or an international organisation;
 - (g) an indication of the legal basis for the processing operation, including transfers, for which the personal data are intended;
 - (h) where possible, the envisaged time limits for erasure of the different categories of personal data;
 - (i) where possible, a general description of the technical and organisational security measures referred to in Article 29(1).
2. Member States shall provide for each processor to maintain a record of all categories of processing activities carried out on behalf of a controller, containing:
- (a) the name and contact details of the processor or processors, of each controller on behalf of which the processor is acting and, where applicable, the data protection officer;
 - (b) the categories of processing carried out on behalf of each controller;
 - (c) where applicable, transfers of personal data to a third country or an international organisation where explicitly instructed to do so by the controller, including the identification of that third country or international organisation;
 - (d) where possible, a general description of the technical and organisational security measures referred to in Article 29(1).

3. The records referred to in paragraphs 1 and 2 shall be in writing, including in electronic form.

The controller and the processor shall make those records available to the supervisory authority on request.

Article 25

Logging

1. Member States shall provide for logs to be kept for at least the following processing operations in automated processing systems: collection, alteration, consultation, disclosure including transfers, combination and erasure. The logs of consultation and disclosure shall make it possible to establish the justification, date and time of such operations and, as far as possible, the identification of the person who consulted or disclosed personal data, and the identity of the recipients of such personal data.
2. The logs shall be used solely for verification of the lawfulness of processing, self-monitoring, ensuring the integrity and security of the personal data, and for criminal proceedings.
3. The controller and the processor shall make the logs available to the supervisory authority on request.

Article 26

Cooperation with the supervisory authority

Member States shall provide for the controller and the processor to cooperate, on request, with the supervisory authority in the performance of its tasks on request.

Article 27

Data protection impact assessment

1. Where a type of processing, in particular, using new technologies, and taking into account the nature, scope, context and purposes of the processing is likely to result in a high risk to the rights and freedoms of natural persons, Member States shall provide for the controller to carry out, prior to the processing, an assessment of the impact of the envisaged processing operations on the protection of personal data.
2. The assessment referred to in paragraph 1 shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, the measures envisaged to address those risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Directive, taking into account the rights and legitimate interests of the data subjects and other persons concerned.

Article 28

Prior consultation of the supervisory authority

1. Member States shall provide for the controller or processor to consult the supervisory authority prior to processing which will form part of a new filing system to be created, where:
 - (a) a data protection impact assessment as provided for in Article 27 indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk; or
 - (b) the type of processing, in particular, where using new technologies, mechanisms or procedures, involves a high risk to the rights and freedoms of data subjects.
2. Member States shall provide for the supervisory authority to be consulted during the preparation of a proposal for a legislative measure to be adopted by a national parliament or of a regulatory measure based on such a legislative measure, which relates to processing.
3. Member States shall provide that the supervisory authority may establish a list of the processing operations which are subject to prior consultation pursuant to paragraph 1.

4. Member States shall provide for the controller to provide the supervisory authority with the data protection impact assessment pursuant to Article 27 and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

5. Member States shall, where the supervisory authority is of the opinion that the intended processing referred to in paragraph 1 of this Article would infringe the provisions adopted pursuant to this Directive, in particular where the controller has insufficiently identified or mitigated the risk, provide for the supervisory authority to provide, within a period of up to six weeks of receipt of the request for consultation, written advice to the controller and, where applicable, to the processor, and may use any of its powers referred to in Article 47. That period may be extended by a month, taking into account the complexity of the intended processing. The supervisory authority shall inform the controller and, where applicable, the processor of any such extension within one month of receipt of the request for consultation, together with the reasons for the delay.

Section 2

Security of personal data

Article 29

Security of processing

1. Member States shall provide for the controller and the processor, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, in particular as regards the processing of special categories of personal data referred to in Article 10.

2. In respect of automated processing, each Member State shall provide for the controller or processor, following an evaluation of the risks, to implement measures designed to:

- (a) deny unauthorised persons access to processing equipment used for processing ('equipment access control');
- (b) prevent the unauthorised reading, copying, modification or removal of data media ('data media control');
- (c) prevent the unauthorised input of personal data and the unauthorised inspection, modification or deletion of stored personal data ('storage control');
- (d) prevent the use of automated processing systems by unauthorised persons using data communication equipment ('user control');
- (e) ensure that persons authorised to use an automated processing system have access only to the personal data covered by their access authorisation ('data access control');
- (f) ensure that it is possible to verify and establish the bodies to which personal data have been or may be transmitted or made available using data communication equipment ('communication control');
- (g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated processing systems and when and by whom the personal data were input ('input control');
- (h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media ('transport control');
- (i) ensure that installed systems may, in the case of interruption, be restored ('recovery');
- (j) ensure that the functions of the system perform, that the appearance of faults in the functions is reported ('reliability') and that stored personal data cannot be corrupted by means of a malfunctioning of the system ('integrity').

*Article 30***Notification of a personal data breach to the supervisory authority**

1. Member States shall, in the case of a personal data breach, provide for the controller to notify without undue delay and, where feasible, not later than 72 hours after having become aware of it, the personal data breach to the supervisory authority, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification to the supervisory authority is not made within 72 hours, it shall be accompanied by reasons for the delay.
2. The processor shall notify the controller without undue delay after becoming aware of a personal data breach.
3. The notification referred to in paragraph 1 shall at least:
 - (a) describe the nature of the personal data breach including, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
 - (b) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
 - (c) describe the likely consequences of the personal data breach;
 - (d) describe the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.
4. Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.
5. Member States shall provide for the controller to document any personal data breaches referred to in paragraph 1, comprising the facts relating to the personal data breach, its effects and the remedial action taken. That documentation shall enable the supervisory authority to verify compliance with this Article.
6. Member States shall, where the personal data breach involves personal data that have been transmitted by or to the controller of another Member State, provide for the information referred to in paragraph 3 to be communicated to the controller of that Member State without undue delay.

*Article 31***Communication of a personal data breach to the data subject**

1. Member States shall, where the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, provide for the controller to communicate the personal data breach to the data subject without undue delay.
2. The communication to the data subject referred to in paragraph 1 of this Article shall describe in clear and plain language the nature of the personal data breach and shall contain at least the information and measures referred to in points (b), (c) and (d) of Article 30(3).
3. The communication to the data subject referred to in paragraph 1 shall not be required if any of the following conditions are met:
 - (a) the controller has implemented appropriate technological and organisational protection measures, and those measures were applied to the personal data affected by the personal data breach, in particular those that render the personal data unintelligible to any person who is not authorised to access it, such as encryption;
 - (b) the controller has taken subsequent measures which ensure that the high risk to the rights and freedoms of data subjects referred to in paragraph 1 is no longer likely to materialise;
 - (c) it would involve a disproportionate effort. In such a case, there shall instead be a public communication or a similar measure whereby the data subjects are informed in an equally effective manner.

4. If the controller has not already communicated the personal data breach to the data subject, the supervisory authority, having considered the likelihood of the personal data breach resulting in a high risk, may require it to do so, or may decide that any of the conditions referred to in paragraph 3 are met.

5. The communication to the data subject referred to in paragraph 1 of this Article may be delayed, restricted or omitted subject to the conditions and on the grounds referred to in Article 13(3).

Section 3

Data protection officer

Article 32

Designation of the data protection officer

1. Member States shall provide for the controller to designate a data protection officer. Member States may exempt courts and other independent judicial authorities when acting in their judicial capacity from that obligation.

2. The data protection officer shall be designated on the basis of his or her professional qualities and, in particular, his or her expert knowledge of data protection law and practice and ability to fulfil the tasks referred to in Article 34.

3. A single data protection officer may be designated for several competent authorities, taking account of their organisational structure and size.

4. Member States shall provide for the controller to publish the contact details of the data protection officer and communicate them to the supervisory authority.

Article 33

Position of the data protection officer

1. Member States shall provide for the controller to 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. The controller shall support the data protection officer in performing the tasks referred to in Article 34 by providing resources necessary to carry out those tasks and access to personal data and processing operations, and to maintain his or her expert knowledge.

Article 34

Tasks of the data protection officer

Member States shall provide for the controller to entrust the data protection officer at least with the following tasks:

- (a) to inform and advise the controller and the employees who carry out processing of their obligations pursuant to this Directive and to other Union or Member State data protection provisions;
- (b) to monitor compliance with this Directive, with other Union or Member State data protection provisions and with the policies of the controller in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits;
- (c) to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 27;
- (d) to cooperate with the supervisory authority;
- (e) to act as the contact point for the supervisory authority on issues relating to processing, including the prior consultation referred to in Article 28, and to consult, where appropriate, with regard to any other matter.

CHAPTER V

Transfers of personal data to third countries or international organisations*Article 35***General principles for transfers of personal data**

1. Member States shall provide for any transfer by competent authorities of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation including for onward transfers to another third country or international organisation to take place, subject to compliance with the national provisions adopted pursuant to other provisions of this Directive, only where the conditions laid down in this Chapter are met, namely:

- (a) the transfer is necessary for the purposes set out in Article 1(1);
- (b) the personal data are transferred to a controller in a third country or international organisation that is an authority competent for the purposes referred to in Article 1(1);
- (c) where personal data are transmitted or made available from another Member State, that Member State has given its prior authorisation to the transfer in accordance with its national law;
- (d) the Commission has adopted an adequacy decision pursuant to Article 36, or, in the absence of such a decision, appropriate safeguards have been provided or exist pursuant to Article 37, or, in the absence of an adequacy decision pursuant to Article 36 and of appropriate safeguards in accordance with Article 37, derogations for specific situations apply pursuant to Article 38; and
- (e) in the case of an onward transfer to another third country or international organisation, the competent authority that carried out the original transfer or another competent authority of the same Member State authorises the onward transfer, after taking into due account all relevant factors, including the seriousness of the criminal offence, the purpose for which the personal data was originally transferred and the level of personal data protection in the third country or an international organisation to which personal data are onward transferred.

2. Member States shall provide for transfers without the prior authorisation by another Member State in accordance with point (c) of paragraph 1 to be permitted only if the transfer of the personal data is necessary for the prevention of an immediate and serious threat to public security of a Member State or a third country or to essential interests of a Member State and the prior authorisation cannot be obtained in good time. The authority responsible for giving prior authorisation shall be informed without delay.

3. All provisions in this Chapter shall be applied in order to ensure that the level of protection of natural persons ensured by this Directive is not undermined.

*Article 36***Transfers on the basis of an adequacy decision**

1. Member States shall provide that a transfer of personal data to a third country or an international organisation may take place where the Commission has decided 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. Such a transfer shall not require any specific authorisation.

2. When assessing the adequacy of the level of protection, the Commission shall, in particular, take account of the following elements:

- (a) the rule of law, respect for human rights and fundamental freedoms, relevant legislation, both general and sectoral, including concerning public security, defence, national security and criminal law and the access of public authorities to personal data, as well as the implementation of such legislation, data protection rules, professional rules and security measures, including rules for the onward transfer of personal data to another third country or international organisation, which are complied with in that country or international organisation, case-law, as well as effective and enforceable data subject rights and effective administrative and judicial redress for the data subjects whose personal data are transferred;
- (b) the existence and effective functioning of one or more independent supervisory authorities in the third country or to which an international organisation is subject, with responsibility for ensuring and enforcing compliance with data protection rules, including adequate enforcement powers, for assisting and advising data subjects in exercising their rights and for cooperation with the supervisory authorities of the Member States; and

(c) the international commitments the third country or international organisation concerned has entered into, or other obligations arising from legally binding conventions or instruments as well as from its participation in multilateral or regional systems, in particular in relation to the protection of personal data.

3. The Commission, after assessing the adequacy of the level of protection, may decide, by means of implementing act, that a third country, a territory or one or more specified sectors within a third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2 of this Article. The implementing act shall provide a mechanism for periodic review, at least every four years, which shall take into account all relevant developments in the third country or international organisation. The implementing act shall specify its territorial and sectoral application and, where applicable, identify the supervisory authority or authorities referred to in point (b) of paragraph 2 of this Article. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 58(2).

4. The Commission shall, on an ongoing basis, monitor developments in third countries and international organisations that could affect the functioning of decisions adopted pursuant to paragraph 3.

5. The Commission shall, where available information reveals, in particular following the review referred to in paragraph 3 of this Article, that a third country, a territory or one or more specified sectors within a third country, or an international organisation no longer ensures an adequate level of protection within the meaning of paragraph 2 of this Article, to the extent necessary, repeal, amend or suspend the decision referred to in paragraph 3 of this Article by means of implementing acts without retro-active effect. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).

On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 58(3).

6. The Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation giving rise to the decision made pursuant to paragraph 5.

7. Member States shall provide for a decision pursuant to paragraph 5 to be without prejudice to transfers of personal data to the third country, the territory or one or more specified sectors within that third country, or the international organisation in question pursuant to Articles 37 and 38.

8. The Commission shall publish in the *Official Journal of the European Union* and on its website a list of the third countries, territories and specified sectors within a third country and international organisations for which it has decided that an adequate level of protection is or is no longer ensured.

Article 37

Transfers subject to appropriate safeguards

1. In the absence of a decision pursuant to Article 36(3), Member States shall provide that a transfer of personal data to a third country or an international organisation may take place where:

- (a) appropriate safeguards with regard to the protection of personal data are provided for in a legally binding instrument; or
- (b) the controller has assessed all the circumstances surrounding the transfer of personal data and concludes that appropriate safeguards exist with regard to the protection of personal data.

2. The controller shall inform the supervisory authority 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 supervisory authority on request, including the date and time of the transfer, information about the receiving competent authority, the justification for the transfer and the personal data transferred.

*Article 38***Derogations for specific situations**

1. In the absence of an adequacy decision pursuant to Article 36, or of appropriate safeguards pursuant to Article 37, Member States shall provide that a transfer or a category of transfers of personal data to a third country or an international organisation may take place 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, where the law of the Member State transferring the personal data so provides;
- (c) for the prevention of an immediate and serious threat to public security of a Member State or a third country;
- (d) in individual cases for the purposes set out in Article 1(1); or
- (e) in an individual case for the establishment, exercise or defence of legal claims relating to the purposes set out in Article 1(1).

2. Personal data shall not be transferred if the transferring competent authority determines that fundamental rights and freedoms of the data subject concerned override the public interest in the transfer set out in points (d) and (e) of paragraph 1.

3. Where a transfer is based on paragraph 1, such a transfer shall be documented and the documentation shall be made available to the supervisory authority on request, including the date and time of the transfer, information about the receiving competent authority, the justification for the transfer and the personal data transferred.

*Article 39***Transfers of personal data to recipients established in third countries**

1. By way of derogation from point (b) of Article 35(1) and without prejudice to any international agreement referred to in paragraph 2 of this Article, Union or Member State law may provide for the competent authorities referred to in point (7)(a) of Article 3, in individual and specific cases, to transfer personal data directly to recipients established in third countries only if the other provisions of this Directive are complied with and all of the following conditions are fulfilled:

- (a) the transfer is strictly necessary for the performance of a task of the transferring competent authority as provided for by Union or Member State law for the purposes set out in Article 1(1);
- (b) the transferring competent authority determines that no fundamental rights and freedoms of the data subject concerned override the public interest necessitating the transfer in the case at hand;
- (c) the transferring competent authority considers that the transfer to an authority that is competent for the purposes referred to in Article 1(1) in the third country is ineffective or inappropriate, in particular because the transfer cannot be achieved in good time;
- (d) the authority that is competent for the purposes referred to in Article 1(1) in the third country is informed without undue delay, unless this is ineffective or inappropriate;
- (e) the transferring competent authority informs the recipient of the specified purpose or purposes for which the personal data are only to be processed by the latter provided that such processing is necessary.

2. An international agreement referred to in paragraph 1 shall be any bilateral or multilateral international agreement in force between Member States and third countries in the field of judicial cooperation in criminal matters and police cooperation.

3. The transferring competent authority shall inform the supervisory authority about transfers under this Article.

4. Where a transfer is based on paragraph 1, such a transfer shall be documented.

*Article 40***International cooperation for the protection of personal data**

In relation to third countries and international organisations, the Commission and Member States shall take appropriate steps to:

- (a) develop international cooperation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data;
- (b) provide international mutual assistance in the enforcement of legislation for the protection of personal data, including through notification, complaint referral, investigative assistance and information exchange, subject to appropriate safeguards for the protection of personal data and other fundamental rights and freedoms;
- (c) engage relevant stakeholders in discussion and activities aimed at furthering international cooperation in the enforcement of legislation for the protection of personal data;
- (d) promote the exchange and documentation of personal data protection legislation and practice, including on jurisdictional conflicts with third countries.

*CHAPTER VI****Independent supervisory authorities****Section 1***Independent status***Article 41***Supervisory authority**

1. Each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of this Directive, in order to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the Union ('supervisory authority').
2. Each supervisory authority shall contribute to the consistent application of this Directive throughout the Union. For that purpose, the supervisory authorities shall cooperate with each other and with the Commission in accordance with Chapter VII.
3. Member States may provide for a supervisory authority established under Regulation (EU) 2016/679 to be the supervisory authority referred to in this Directive and to assume responsibility for the tasks of the supervisory authority to be established under paragraph 1 of this Article.
4. Where more than one supervisory authority is established in a Member State, that Member State shall designate the supervisory authority which are to represent those authorities in the Board referred to in Article 51.

*Article 42***Independence**

1. Each Member State shall provide for each supervisory authority to act with complete independence in performing its tasks and exercising its powers in accordance with this Directive.
2. Member States shall provide for the member or members of their supervisory authorities in the performance of their tasks and exercise of their powers in accordance with this Directive, to remain free from external influence, whether direct or indirect, and that they shall neither seek nor take instructions from anybody.
3. Members of Member States' supervisory authorities shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.
4. Each Member State shall ensure that each supervisory authority is provided with the human, technical and financial resources, premises and infrastructure necessary for the effective performance of its tasks and exercise of its powers, including those to be carried out in the context of mutual assistance, cooperation and participation in the Board.

5. Each Member State shall ensure that each supervisory authority chooses and has its own staff which shall be subject to the exclusive direction of the member or members of the supervisory authority concerned.

6. Each Member State shall ensure that each supervisory authority is subject to financial control which does not affect its independence and that it has separate, public annual budgets, which may be part of the overall state or national budget.

Article 43

General conditions for the members of the supervisory authority

1. Member States shall provide for each member of their supervisory authorities to be appointed by means of a transparent procedure by:

- their parliament;
- their government;
- their head of State; or
- an independent body entrusted with the appointment under Member State law.

2. Each member shall have the qualifications, experience and skills, in particular in the area of the protection of personal data, required to perform their duties and exercise their powers.

3. The duties of a member shall end in the event of the expiry of the term of office, resignation or compulsory retirement, in accordance with the law of the Member State concerned.

4. A member shall be dismissed only in cases of serious misconduct or if the member no longer fulfils the conditions required for the performance of the duties.

Article 44

Rules on the establishment of the supervisory authority

1. Each Member State shall provide by law for all of the following:

- (a) the establishment of each supervisory authority;
- (b) the qualifications and eligibility conditions required to be appointed as a member of each supervisory authority;
- (c) the rules and procedures for the appointment of the member or members of each supervisory authority;
- (d) the duration of the term of the member or members of each supervisory authority of not less than four years, except for the first appointment after 6 May 2016, part of which may take place for a shorter period where that is necessary to protect the independence of the supervisory authority by means of a staggered appointment procedure;
- (e) whether and, if so, for how many terms the member or members of each supervisory authority is eligible for reappointment;
- (f) the conditions governing the obligations of the member or members and staff of each supervisory authority, prohibitions on actions, occupations and benefits incompatible therewith during and after the term of office and rules governing the cessation of employment.

2. The member or members and the staff of each supervisory authority shall, in accordance with Union or Member State law, be subject to a duty of professional secrecy both during and after their term of office, with regard to any confidential information which has come to their knowledge in the course of the performance of their tasks or the exercise of their powers. During their term of office, that duty of professional secrecy shall in particular apply to reporting by natural persons of infringements of this Directive.

Section 2

Competence, tasks and powers*Article 45***Competence**

1. Each Member State shall provide for each supervisory authority to be competent for the performance of the tasks assigned to, and for the exercise of the powers conferred on, it in accordance with this Directive on the territory of its own Member State.
2. Each Member State shall provide for each supervisory authority not to be competent for the supervision of processing operations of courts when acting in their judicial capacity. Member States may provide for their supervisory authority not to be competent to supervise processing operations of other independent judicial authorities when acting in their judicial capacity.

*Article 46***Tasks**

1. Each Member State shall provide, on its territory, for each supervisory authority to:
 - (a) monitor and enforce the application of the provisions adopted pursuant to this Directive and its implementing measures;
 - (b) promote public awareness and understanding of the risks, rules, safeguards and rights in relation to processing;
 - (c) advise, in accordance with Member State law, the national parliament, the government and other institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to processing;
 - (d) promote the awareness of controllers and processors of their obligations under this Directive;
 - (e) upon request, provide information to any data subject concerning the exercise of their rights under this Directive and, if appropriate, cooperate with the supervisory authorities in other Member States to that end;
 - (f) deal with complaints lodged by a data subject, or by a body, organisation or association in accordance with Article 55, and investigate, to the extent appropriate, the subject-matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;
 - (g) check the lawfulness of processing pursuant to Article 17, and inform the data subject within a reasonable period of the outcome of the check pursuant to paragraph 3 of that Article or of the reasons why the check has not been carried out;
 - (h) cooperate with, including by sharing information, and provide mutual assistance to other supervisory authorities, with a view to ensuring the consistency of application and enforcement of this Directive;
 - (i) conduct investigations on the application of this Directive, including on the basis of information received from another supervisory authority or other public authority;
 - (j) monitor relevant developments insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies;
 - (k) provide advice on the processing operations referred to in Article 28; and
 - (l) contribute to the activities of the Board.
2. Each supervisory authority shall facilitate the submission of complaints referred to in point (f) of paragraph 1 by measures such as providing a complaint submission form which can also be completed electronically, without excluding other means of communication.

3. The performance of the tasks of each supervisory authority shall be free of charge for the data subject and for the data protection officer.

4. Where a request is manifestly unfounded or excessive, in particular because it is repetitive, the supervisory authority may charge a reasonable fee based on its administrative costs, or may refuse to act on the request. The supervisory authority shall bear the burden of demonstrating that the request is manifestly unfounded or excessive.

Article 47

Powers

1. Each Member State shall provide by law for each supervisory authority to have effective investigative powers. Those powers shall include at least the power to obtain from the controller and the processor access to all personal data that are being processed and to all information necessary for the performance of its tasks.

2. Each Member State shall provide by law for each supervisory authority to have effective corrective powers such as, for example:

- (a) to issue warnings to a controller or processor that intended processing operations are likely to infringe the provisions adopted pursuant to this Directive;
- (b) to order the controller or processor to bring processing operations into compliance with the provisions adopted pursuant to this Directive, where appropriate, in a specified manner and within a specified period, in particular by ordering the rectification or erasure of personal data or restriction of processing pursuant to Article 16;
- (c) to impose a temporary or definitive limitation, including a ban, on processing.

3. Each Member State shall provide by law for each supervisory authority to have effective advisory powers to advise the controller in accordance with the prior consultation procedure referred to in Article 28 and to issue, on its own initiative or on request, opinions to its national parliament and its government or, in accordance with its national law, to other institutions and bodies as well as to the public on any issue related to the protection of personal data.

4. The exercise of the powers conferred on the supervisory authority pursuant to this Article shall be subject to appropriate safeguards, including effective judicial remedy and due process, as set out in Union and Member State law in accordance with the Charter.

5. Each Member State shall provide by law for each supervisory authority to have the power to bring infringements of provisions adopted pursuant to this Directive to the attention of judicial authorities and, where appropriate, to commence or otherwise engage in legal proceedings, in order to enforce the provisions adopted pursuant to this Directive.

Article 48

Reporting of infringements

Member States shall provide for competent authorities to put in place effective mechanisms to encourage confidential reporting of infringements of this Directive.

Article 49

Activity reports

Each supervisory authority shall draw up an annual report on its activities, which may include a list of types of infringement notified and types of penalties imposed. Those reports shall be transmitted to the national parliament, the government and other authorities as designated by Member State law. They shall be made available to the public, the Commission and the Board.

CHAPTER VII

Cooperation*Article 50***Mutual assistance**

1. Each Member State shall provide for their supervisory authorities to provide each other with relevant information and mutual assistance in order to implement and apply this Directive in a consistent manner, and to put in place measures for effective cooperation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out consultations, inspections and investigations.
2. Each Member States shall provide for each supervisory authority to take all appropriate measures required to reply to a request of another supervisory authority without undue delay and no later than one month after receiving the request. Such measures may include, in particular, the transmission of relevant information on the conduct of an investigation.
3. Requests for assistance shall contain all the necessary information, including the purpose of and reasons for the request. Information exchanged shall be used only for the purpose for which it was requested.
4. The requested supervisory authority shall not refuse to comply with the request unless:
 - (a) it is not competent for the subject-matter of the request or for the measures it is requested to execute; or
 - (b) compliance with the request would infringe this Directive or Union or Member State law to which the supervisory authority receiving the request is subject.
5. The requested supervisory authority shall inform the requesting supervisory authority of the results or, as the case may be, of the progress of the measures taken in order to respond to the request. The requested supervisory authority shall provide reasons for any refusal to comply with a request pursuant to paragraph 4.
6. Requested supervisory authorities shall, as a rule, supply the information requested by other supervisory authorities by electronic means, using a standardised format.
7. Requested supervisory authorities shall not charge a fee for any action taken by them pursuant to a request for mutual assistance. Supervisory authorities may agree on rules to indemnify each other for specific expenditure arising from the provision of mutual assistance in exceptional circumstances.
8. The Commission may, by means of implementing acts, specify the format and procedures for mutual assistance referred to in this Article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).

*Article 51***Tasks of the Board**

1. The Board established by Regulation (EU) 2016/679 shall perform all of the following tasks in relation to processing within the scope of this Directive:
 - (a) advise the Commission on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Directive;
 - (b) examine, on its own initiative, on request of one of its members or on request of the Commission, any question covering the application of this Directive and issue guidelines, recommendations and best practices in order to encourage consistent application of this Directive;
 - (c) draw up guidelines for supervisory authorities concerning the application of measures referred to in Article 47(1) and (3);
 - (d) issue guidelines, recommendations and best practices in accordance with point (b) of this subparagraph for establishing personal data breaches and determining the undue delay referred to in Article 30(1) and (2) and for the particular circumstances in which a controller or a processor is required to notify the personal data breach;

- (e) issue guidelines, recommendations and best practices in accordance with point (b) of this subparagraph as to the circumstances in which a personal data breach is likely to result in a high risk to the rights and freedoms of natural persons as referred to in Article 31(1);
- (f) review the practical application of the guidelines, recommendations and best practices referred to in points (b) and (c);
- (g) provide the Commission with an opinion for the assessment of the adequacy of the level of protection in a third country, a territory or one or more specified sectors within a third country, or an international organisation, including for the assessment whether such a third country, territory, specified sector, or international organisation no longer ensures an adequate level of protection;
- (h) promote the cooperation and the effective bilateral and multilateral exchange of information and best practices between the supervisory authorities;
- (i) promote common training programmes and facilitate personnel exchanges between the supervisory authorities and, where appropriate, with the supervisory authorities of third countries or with international organisations;
- (j) promote the exchange of knowledge and documentation on data protection law and practice with data protection supervisory authorities worldwide.

With regard to point (g) of the first subparagraph, the Commission shall provide the Board with all necessary documentation, including correspondence with the government of the third country, with the territory or specified sector within that third country, or with the international organisation.

2. Where the Commission requests advice from the Board, it may indicate a time limit, taking into account the urgency of the matter.
3. The Board shall forward its opinions, guidelines, recommendations and best practices to the Commission and to the committee referred to in Article 58(1) and make them public.
4. The Commission shall inform the Board of the action it has taken following opinions, guidelines, recommendations and best practices issued by the Board.

CHAPTER VIII

Remedies, liability and penalties

Article 52

Right to lodge a complaint with a supervisory authority

1. Without prejudice to any other administrative or judicial remedy, Member States shall provide for every data subject to have the right to lodge a complaint with a single supervisory authority, if the data subject considers that the processing of personal data relating to him or her infringes provisions adopted pursuant to this Directive.
2. Member States shall provide for the supervisory authority with which the complaint has been lodged to transmit it to the competent supervisory authority, without undue delay if the complaint is not lodged with the supervisory authority that is competent pursuant to Article 45(1). The data subject shall be informed about the transmission.
3. Member States shall provide for the supervisory authority with which the complaint has been lodged to provide further assistance on request of the data subject.
4. The data subject shall be informed by the competent supervisory authority of the progress and the outcome of the complaint, including of the possibility of a judicial remedy pursuant to Article 53.

Article 53

Right to an effective judicial remedy against a supervisory authority

1. Without prejudice to any other administrative or non-judicial remedy, Member States shall provide for the right of a natural or legal person to an effective judicial remedy against a legally binding decision of a supervisory authority concerning them.

2. Without prejudice to any other administrative or non-judicial remedy, each data subject shall have the right to an effective judicial remedy where the supervisory authority which is competent pursuant to Article 45(1) does not handle a complaint or does not inform the data subject within three months of the progress or outcome of the complaint lodged pursuant to Article 52.
3. Member States shall provide for proceedings against a supervisory authority to be brought before the courts of the Member State where the supervisory authority is established.

Article 54

Right to an effective judicial remedy against a controller or processor

Without prejudice to any available administrative or non-judicial remedy, including the right to lodge a complaint with a supervisory authority pursuant to Article 52, Member States shall provide for the right of a data subject to an effective judicial remedy where he or she considers that his or her rights laid down in provisions adopted pursuant to this Directive have been infringed as a result of the processing of his or her personal data in non-compliance with those provisions.

Article 55

Representation of data subjects

Member States shall, in accordance with Member State procedural law, provide for the data subject to have the right to mandate a not-for-profit body, organisation or association which has been properly constituted in accordance with Member State law, has statutory objectives which are in the public interest and is active in the field of protection of data subject's rights and freedoms with regard to the protection of their personal data to lodge the complaint on his or her behalf and to exercise the rights referred to in Articles 52, 53 and 54 on his or her behalf.

Article 56

Right to compensation

Member States shall provide for any person who has suffered material or non-material damage as a result of an unlawful processing operation or of any act infringing national provisions adopted pursuant to this Directive to have the right to receive compensation for the damage suffered from the controller or any other authority competent under Member State law.

Article 57

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

CHAPTER IX

Implementing acts

Article 58

Committee procedure

1. The Commission shall be assisted by the committee established by Article 93 of Regulation (EU) 2016/679. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

CHAPTER X

Final provisions*Article 59***Repeal of Framework Decision 2008/977/JHA**

1. Framework Decision 2008/977/JHA is repealed with effect from 6 May 2018.
2. References to the repealed Decision referred to in paragraph 1 shall be construed as references to this Directive.

*Article 60***Union legal acts already in force**

The specific provisions for the protection of personal data in Union legal acts that entered into force on or before 6 May 2016 in the field of judicial cooperation in criminal matters and police cooperation, which regulate processing between Member States and the access of designated authorities of Member States to information systems established pursuant to the Treaties within the scope of this Directive, shall remain unaffected.

*Article 61***Relationship with previously concluded international agreements in the field of judicial cooperation in criminal matters and police cooperation**

International agreements involving the transfer of personal data to third countries or international organisations which were concluded by Member States prior to 6 May 2016 and which comply with Union law as applicable prior to that date shall remain in force until amended, replaced or revoked.

*Article 62***Commission reports**

1. By 6 May 2022, and every four years thereafter, the Commission shall submit a report on the evaluation and review of this Directive to the European Parliament and to the Council. The reports shall be made public.
2. In the context of the evaluations and reviews referred to in paragraph 1, the Commission shall examine, in particular, the application and functioning of Chapter V on the transfer of personal data to third countries or international organisations with particular regard to decisions adopted pursuant to Article 36(3) and Article 39.
3. For the purposes of paragraphs 1 and 2, the Commission may request information from Member States and supervisory authorities.
4. In carrying out the evaluations and reviews referred to in paragraphs 1 and 2, the Commission shall take into account the positions and findings of the European Parliament, of the Council and of other relevant bodies or sources.
5. The Commission shall, if necessary, submit appropriate proposals with a view to amending this Directive, in particular taking account of developments in information technology and in the light of the state of progress in the information society.
6. By 6 May 2019, the Commission shall review other legal acts adopted by the Union which regulate processing by the competent authorities for the purposes set out in Article 1(1) including those referred to in Article 60, in order to assess the need to align them with this Directive and to make, where appropriate, the necessary proposals to amend those acts to ensure a consistent approach to the protection of personal data within the scope of this Directive.

*Article 63***Transposition**

1. Member States shall adopt and publish, by 6 May 2018, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith notify to the Commission the text of those provisions. They shall apply those provisions from 6 May 2018.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. By way of derogation from paragraph 1, a Member State may provide, exceptionally, where it involves disproportionate effort, for automated processing systems set up before 6 May 2016 to be brought into conformity with Article 25(1) by 6 May 2023.

3. By way of derogation from paragraphs 1 and 2 of this Article, a Member State may, in exceptional circumstances, bring an automated processing system as referred to in paragraph 2 of this Article into conformity with Article 25(1) within a specified period after the period referred to in paragraph 2 of this Article, if it would otherwise cause serious difficulties for the operation of that particular automated processing system. The Member State concerned shall notify the Commission of the grounds for those serious difficulties and the grounds for the specified period within which it shall bring that particular automated processing system into conformity with Article 25(1). The specified period shall in any event not be later than 6 May 2026.

4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 64***Entry into force**

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

*Article 65***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 27 April 2016.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
J.A. HENNIS-PLASSCHAERT

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

COUNCIL

Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the establishment of a Network for legislative cooperation between the Ministries of Justice of the European Union

(2008/C 326/01)

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

Whereas:

1. Knowledge of the legislation of other Member States or even of certain third countries is an essential tool for the Ministries of Justice of the Member States of the European Union, in particular for drafting legislation and for transposing law of the European Union falling generally within their sphere of competence, including notably civil and criminal law, it being understood that the Ministries of Justice of the Member States have differing competences.
2. Obtaining information may prove unpredictable and complicated.
3. The Ministries of Justice have very precise information about their national legislation, related case law and the major reforms under way.
4. A network for legislative cooperation should be set up to give Ministries of Justice effective access to the national legislation of other Member States.
5. Moreover, the European Union has set itself the objective of providing its citizens with an area of freedom, security and justice. Creation of this area would be facilitated by better mutual knowledge of the Member States' judicial and legal systems and their legislation, as well as by exchanging information about law reform projects.
6. The creation of a 'Network for legislative cooperation between the Ministries of Justice of the Member States of the European Union' would contribute to achieving that objective and to promoting better understanding of the laws of the other Member States, which in its turn is one of the ways to enhance mutual trust and favour the application of the principle of mutual recognition. It would also enable comparative law studies on topical legislative or legal matters to be carried out jointly by the Ministries of Justice,

HEREBY ADOPT THIS RESOLUTION:

- (1) Member States should gradually set up a 'Network for legislative cooperation between the Ministries of Justice of the European Union', hereinafter called 'the Network'. Participation in the Network would be on a voluntary basis.
- (2) 1. The task of the Network should be to increase access to information held by the Ministries of Justice of the Member States of the European Union on legislation in force, on judicial and legal systems, and on major legal reform projects. In particular, it should make it possible:
 - (a) to provide members of the Network on request with coherent and up-to-date information on legislation and with case-law on selected subjects;
 - (b) to make accessible the results of comparative law research carried out by or for the Ministries of Justice of each State in fields of law generally falling within the sphere of competence of those Ministries, including in the context of reforms carried out by the Member States or of transposition of law of the European Union;
 - (c) to be aware of major legal reform projects, while complying with the obligation of confidentiality by which States' bodies are bound.
2. There should be no obligation to provide a translation of the supplied documentation.
- (3) The Network should be supported by an administrator who is in charge of the administrative and technical operation of the Network. Pending the designation of such an administrator, a Member State would initially take charge of the administrative and technical operation of the Network.

- (4) Each Member State should designate a correspondent, preferably within the Ministry of Justice. Each Member State could, however, designate a limited number of other correspondents if this were considered necessary because of the existence of separate legal systems or the domestic distribution of competences.
- (5) Each Member State should inform the Network's administrator of:
- (a) the surname, first name and position of the correspondent(s);
 - (b) the language knowledge of each correspondent; and
 - (c) the communication facilities available to the correspondent(s), with the exact (telephone) numbers, (dedicated e-mail) addresses, etc.
- Each Member State should inform the Network's administrator of any change concerning the data of its correspondent(s) as provided pursuant to this paragraph.
- (6) A correspondent should send a request, preferably by electronic means, to the appropriate correspondent(s) of another Member State or of other Member States. The correspondent should also send a copy of the request to the Network's administrator.
- (7) The correspondent should ensure that the request transmitted:
- falls within the sphere of competence of its Ministry of Justice, or concerns matters which generally fall within the competence of Ministries of Justice, such as civil and criminal law,
 - is precisely formulated,
 - does not impose an unreasonable burden of work on the other correspondents/and or departments of the Ministries of Justice forming the Network.
- (8) Correspondents to whom such a request has been submitted should do their utmost to reply to that request within a reasonable period, without obligation to provide a translation of the supplied documentation, such as legislative texts, (draft) legislation, reports and studies.
- If the correspondent to whom a request has been sent is not in a position to reply, he or she should pass the request on to the competent authority who would be able to do so, and inform the requesting correspondent thereof.

Where it is not possible for a correspondent to reply to a request or to readily identify the competent authority, he or she should inform the requesting correspondent.

- (9) Replies given by a correspondent would be made accessible to the entire Network, subject to the agreement of the correspondent to whom the request was addressed.
- (10) To facilitate the practical operation of the Network, each Member State should ensure that its correspondent(s) has/have an adequate knowledge of a language of the European Union other than its own national language, bearing in mind the need to be able to communicate with the correspondents in the other Member States.
- (11) Meetings of correspondents should be organised when expedient. Such meetings could be opened to a larger audience for the purpose of analysing selected topics from a comparative law perspective, in order to consolidate the Network and foster the exchange of ideas and experience among members.
- (12) To facilitate exchanges, the Network and its correspondents should use the most appropriate opportunities offered by modern communication and information technologies, in particular in line with the recent development of European E-Justice.
- (13) If necessary, the Network should be given an appropriate legal form.
- (14) The Network should develop internal guidelines on practical arrangements for its operation, including on linguistic matters.
- (15) The European Commission could be invited to participate in the Network.
- (16) The Council shall review the application of this resolution at the latest three years after its adoption. Such revision should *inter alia* address the following issues:
- (a) the process of development, the rules of administration, the achievements and the practical functioning of the Network;
 - (b) the financial situation of the Network;
 - (c) the possibility to give third States and ESDP missions access to information which is already available within the Network.

In view of the results of this revision, appropriate measures should be taken in order to further improve the situation if and where necessary.



COUNCIL OF
THE EUROPEAN UNION



Council Conclusions on model provisions, guiding the Council's criminal law deliberations

*2979th JUSTICE and HOME AFFAIRS Council meeting
Brussels, 30 november 2009*

The Council adopted the following conclusions:

"Since the entry into force of the Amsterdam Treaty, several Framework Decisions have been adopted on the basis of Articles 31 and 34 of the TEU, establishing minimum rules concerning the definition of criminal offences and sanctions in various areas, inter alia terrorism, computer crime and organised crime.

In addition, the European Court of Justice has clarified that criminal law provisions may under certain conditions be included in specific areas of Community law.

The Lisbon Treaty is likely to have the effect that criminal law provisions will be discussed within the Council to an even greater extent than at present. This may result in incoherent and inconsistent criminal provisions in EU legislation. Furthermore, provisions negotiated within the Council might unjustifiably deviate from wording that is normally used in EU criminal legislation, thus creating unnecessary difficulties when implementing and interpreting EU law.

While noting the understanding reached in the JHA Council on 21 February 2006¹ on the procedure for the future handling of legislative files containing proposals relevant to the development of criminal law policy, the Council acknowledges the need for further action and coordination to ensure coherent and consistent use of criminal law provisions in EU legislation.

¹ See doc. 7876/06.

P R E S S

To this end, it would be useful if the Council were to agree on guidelines and model provisions for its work on criminal law.

Foreseeable advantages of guidelines and model provisions for criminal law include:

- Guidelines and model provisions would facilitate negotiations by leaving room to focus on the substance of the specific provisions;
- Increased coherence would facilitate the transposition of EU provisions in national law;
- Legal interpretation would be facilitated when new criminal legislation is drafted in accordance with agreed guidelines which build on common elements.

The following guidelines should be conceived as a starting point for discussions in the Council. These guidelines do not introduce obligations or constraints that go beyond what is set out in the Treaties. On this basis, the Council suggests that the Presidency should conduct future discussions on criminal law within the EU, taking these conclusions into account. Furthermore, the Council should seek, together with the European Parliament and the Commission, as soon as possible after the entry into force of the Lisbon Treaty, to further develop and refine these conclusions, and it invites the Presidency to take the necessary measures to that end.

The Council adopts the following conclusions:

Assessment of the need for criminal provisions

- (1) Criminal law provisions should be introduced when they are considered essential in order for the interests to be protected and, as a rule, be used only as a last resort.
- (2) Criminal provisions should be adopted in accordance with the principles laid out in the Treaties, which include the principles of proportionality and of subsidiarity, to address clearly defined and delimited conduct, which cannot be addressed effectively by less severe measures:
 - a) in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis, or
 - b) if the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures.
- (3) When there seems to be a need for adopting new criminal provisions the following factors should be further considered, while taking fully into account the impact assessments that have been made:
 - the expected added value or effectiveness of criminal provisions compared to other measures, taking into account the possibility to investigate and prosecute the crime through reasonable efforts, as well as its seriousness and implications;
 - how serious and/or widespread and frequent the harmful conduct is, both regionally and locally within the EU;
 - the possible impact on existing criminal provisions in EU legislation and on different legal systems within the EU.

Structure of criminal provisions

- (4) The description of conduct which is identified as punishable under criminal law must be worded precisely in order to ensure predictability as regards its application, scope and meaning.
- (5) The criminal provisions should focus on conduct causing actual harm or seriously threatening the right or essential interest which is the object of protection; that is, avoiding criminalisation of a conduct at an unwarrantably early stage. Conduct which only implies an abstract danger to the protected right or interest should be criminalised only if appropriate considering the particular importance of the right or interest which is the object of protection.

Intent

- (6) EU criminal legislation should, as a general rule, only prescribe penalties for acts which have been committed intentionally.
- (7) Negligent conduct should be criminalised when a case-by-case assessment indicates that this is appropriate due to the particular relevance of the right or essential interest which is the object of protection, for example in cases of serious negligence which endangers human life or causes serious damage.
- (8) The criminalisation of an act that has been committed without intention or negligence, i.e., strict liability, should not be prescribed in EU criminal legislation.

Inciting, aiding and abetting, and attempt

- (9) The criminalisation of inciting, aiding and abetting of intentional offences should normally follow the criminalisation of the main offence. Attempts to commit an intentional offence should be criminalised if it is necessary and proportionate in relation to the main offence. Consideration should be given to the different regimes under national law.

Penalties

- (10) When it has been established that criminal penalties for natural persons should be included it may in some cases be sufficient to provide for effective, proportionate and dissuasive criminal penalties and leave it to each Member State to determine the level of the penalties. In other cases there may be a need for going further in the approximation of the levels of penalties. In these cases the Council conclusions of April 2002 on the approach to apply regarding the approximation of penalties should be kept in mind, in the light of the Lisbon Treaty.

Model provisions

- (11) Once it has been established that criminal provisions should be adopted, either as the only option or as an alternative, there is a need to establish a range of concurrent rules, e.g., rules on liability of legal persons. There may also be a need to differentiate between conduct that should be prohibited but does not necessarily have to be established as a criminal offence and conduct that should be criminalised.
- (12) The model provisions set out in Annex I should guide future work of the Council on legislative initiatives that may include criminal provisions.”

Model provisions

The following wording shall guide future legislative work in criminal and related matters within the EU. The aim is to achieve coherent and consistent criminal law provisions, and to avoid unnecessary difficulties in the interpretation of EU law and problems for national legislators in the process of implementation.²

A – Provision on infringements and penalties that do not necessarily have to be criminal

Infringements

Each Member State shall lay down the rules on penalties applicable to infringements of the provisions adopted pursuant to this Directive. The penalties provided for must be effective, proportionate and dissuasive.

B – Criminal law provisions and related provisions

Criminal Offences

Each Member State shall ensure that the following conduct constitutes a criminal offence, when [unlawful and] committed intentionally [or with at least serious negligence].

Inciting, aiding and abetting and attempt

1. *Each Member State shall ensure that inciting, aiding and abetting the intentional conduct referred to in Article (Article on Criminal Offences) is punishable as a criminal offence.*
2. *Each Member State shall ensure that attempting the intentional conduct referred to in Article (Article on Criminal Offences) is punishable as a criminal offence.*

Criminal Penalties (for natural persons, without approximation of levels)

Each Member State shall take the necessary measures to ensure that the offences referred to in Articles (Article on Criminal Offences) are punishable by effective, proportionate and dissuasive criminal penalties.

Criminal Penalties (for natural persons, with approximation of levels)

Each Member State shall take the necessary measures to ensure that an offence referred to in Article (Article on Criminal Offences) is punishable by (penalty levels) of imprisonment.³

² Text within square brackets indicates that the inclusion of such text should be considered on a case by case basis.

³ The Council conclusions of April 2002 on the approach to apply regarding the approximation of penalties which indicates four levels of penalties (doc. 9141/02) should be kept in mind, in the light of the Lisbon Treaty. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, as under Article 83.2 of the Lisbon Treaty, it should follow the practice of setting the minimum level of maximum penalty.

Liability of legal persons

1. *Each Member State shall [take the necessary measures to] ensure that a legal person can be held liable for offences referred to in Articles (Article on Criminal Offences) where such offences have been committed for its benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on*
 - (a) *a power of representation of the legal person,*
 - (b) *an authority to take decisions on behalf of the legal person, or*
 - (c) *an authority to exercise control within the legal person.*
- [2. *Each Member State shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in Articles (Article on Criminal Offences) for the benefit of that legal person by a person under its authority.*]
3. *Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles (Article on Criminal Offences).*
4. *[For the purpose of this Directive] 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations. [NB: This paragraph is preferably included in an Article on definitions, if such a provision exists.]*

Penalties against legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article (Article on Liability of legal persons) is punishable by effective, proportionate and dissuasive penalties [which shall include criminal or non-criminal fines and may include other penalties, such as:

- (a) *exclusion from entitlement to public benefits or aid;*
- (b) *temporary or permanent disqualification from the practice of commercial activities;*
- (c) *placing under judicial supervision;*
- (d) *a judicial winding-up order;*
- (e) *temporary or permanent closure of establishments which have been used for committing the offence.]*

Council conclusions
on mutual recognition in criminal matters
‘Promoting mutual recognition by enhancing mutual trust’
(2018/C 449/02)

THE COUNCIL OF THE EUROPEAN UNION,

Recalling that in accordance with Article 82(1) TFEU, judicial cooperation in criminal matters in the Union is based on the principle of mutual recognition of judgments and judicial decisions;

Noting that in application of this principle, a competent authority in one Member State forwards a judgment or judicial decision to a competent authority in another Member State, which then executes that decision as if it was its own (subject to the applicable rules);

Affirming that the principle of mutual recognition is founded on mutual trust developed through the shared values of the Member States concerning respect for human dignity, freedom, democracy, equality, the rule of law and human rights, so that each authority has confidence that the other authorities apply equivalent standards of protection of rights across their criminal justice systems;

Emphasising that the right to a fair trial, including, inter alia, the requirement of judicial independence, is of cardinal importance for the effective protection of fundamental rights, as it guarantees the protection of all individual rights deriving from EU and national law and the safeguarding of the Member States' common values as set out in Article 2 TEU, in particular the rule of law;

Noting that various issues — notably of a practical or policy nature — can impair mutual trust, and that an ongoing effort is therefore required to foster and enhance this trust;

Considering that such issues relate, inter alia, to differences in the implementation and application of Union law, the rule of law, and areas with a particular sensitivity with regard to fundamental rights, such as detention conditions and the length of pre-trial detention;

Recalling that at their informal meeting on 12 and 13 July 2018, Ministers discussed recent developments that pose challenges to the principle of mutual recognition, as well as relevant case-law of the Court of Justice of the EU (CJEU);

Recalling moreover that at the CATS meeting of 18 September 2018, delegations discussed a Presidency paper setting out the problems and obstacles that arise in relation to the application of mutual recognition instruments as well as proposals for potential action (11956/18);

Recalling finally that at the meeting of the Council (Justice and Home Affairs) on 11 October 2018, Ministers provided input on best practices and action taken to enhance mutual recognition and mutual trust, and on practical and legal measures taken to address recent developments, in particular developments in the case-law of the CJEU and in the case-law of the European Court of Human Rights (12492/18);

HAS ADOPTED THE FOLLOWING CONCLUSIONS:

1. The Member States are reminded that the efficiency and effectiveness of EU mutual recognition instruments, in particular those that have the legal form of Framework Decisions or Directives, is to a large extent dependent on the relevant national legislation being drafted and adopted in line with those instruments;
2. The Member States are urged to note the importance of implementing the procedural rights Directives ⁽¹⁾ in a timely and correct manner with a view to guarantee the right to a fair trial;
3. The Member States should continue to ensure the independence and impartiality of the courts and of the judges, since this forms part of the essence of the fundamental right to a fair trial as guaranteed by the second paragraph of Article 47 of the Charter;

⁽¹⁾ Directives 2010/64/EU, 2012/13/EU, 2013/48/EU, (EU) 2016/343, (EU) 2016/800 and (EU) 2016/1919 for the Member States bound by them.

4. The Member States are reminded that in accordance with the case-law of the Court of Justice of the European Union, a refusal to execute a decision or judgment that has been issued on the basis of a mutual recognition instrument can only be justified in exceptional circumstances, and taking into account that by virtue of the principle of primacy of EU law, Member States cannot demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law. As a consequence, any case for non-execution based on an infringement of fundamental rights should be applied restrictively, following the approach developed by the CJEU in its case law;
5. The Member States are encouraged to have legislation in place that allows, where appropriate, to make use of alternative measures to detention in order to reduce the population in their detention facilities, thereby furthering the aim of social rehabilitation and also addressing the fact that mutual trust is often hampered by poor detention conditions and the problem of overcrowded prisons;
6. The Member States and the Commission are encouraged to promote continuous training of judges, prosecutors and other practitioners, including in the field of fundamental rights in criminal proceedings, as this can enhance the application of the EU instruments based on mutual recognition, to foster mutual trust amongst the European judicial area through the organisation of judicial training seminars and exchanges, and to give due consideration to the adequate funding of training activities in this field at national and European level, especially the ones organised by the European Judicial Training Network (EJTN);
7. The Member States are encouraged to designate practitioners — which can be national contact points for the European Judicial Network (EJN) — in their jurisdiction as specialists in judicial cooperation in criminal matters so that they can assist other practitioners in the application of all relevant instruments, including EU instruments based on the principle of mutual recognition;
8. The Member States are encouraged, where possible with the support of EU financing, to promote exchanges between practitioners of different Member States and stimulate other contacts between such practitioners, as this can enhance mutual trust and promote the efficient application of the principle of mutual recognition;
9. The Member States are encouraged to share best practices to enhance mutual recognition and mutual trust, including in COPEN or in CATS;
10. The Member States are encouraged to establish (non-binding) guidelines on the application of the EU mutual recognition instruments so as to help practitioners understand how the national legislation implementing the EU instruments is to be interpreted and applied;
11. The Member States are invited to encourage practitioners to make full use of the possibilities of the EJN and Eurojust, in accordance with their respective mandates, to assist practitioners in handling judicial cooperation in criminal matters,
12. The Member States are in particular invited to encourage practitioners to use the practical tools for judicial cooperation and the (electronic) forms and certificates of mutual recognition instruments that are available on the website of the EJN, as this may facilitate the application of these instruments;
13. The Member States are invited to encourage practitioners that act as executing authorities in mutual recognition procedures to enter into dialogue and direct consultations with the issuing authorities in other Member States whenever this may be appropriate, in particular before considering not to recognise or execute a decision or judgment that is sent in the context of such procedures;
14. The Member States are invited to ensure that the EJN Contact Points have the capacity to perform their tasks as EJN Contact Points along with their regular duties and tasks, as was highlighted in the Final Report of the of the Sixth Round of mutual evaluations (Recommendation No.7), so that the EJN can continue exercising its task effectively, including in the field of mutual recognition;
15. The Member States who have made a declaration (reservation) in relation to a mutual recognition instrument are invited to verify whether such declaration can be withdrawn, so as to foster a uniform application of the instrument concerned;

16. The Member States are invited to promote the active participation of competent representatives in the conference on prison overcrowding that will be organised by the Council of Europe, with the support of the European Commission, on 24 and 25 April 2019, as well as in the conference on current challenges for the European penitentiary systems to be held under the Romanian Presidency of the Council of the European Union;

17. The Member States and the Commission are invited to set up as a matter of priority the e-Evidence Digital Exchange System as a secure way of sending the European Investigation Order and MLA requests and responses;

18. The Commission is invited to make use of its competences, where appropriate, to ensure that the EU instruments on judicial cooperation in criminal matters and procedural rights are implemented in a timely and correct manner;

19. The Commission is invited to provide practical guidance on the recent case-law of the CJEU, notably the *Aranyosi* case-law, as well as on where to find relevant sources for practitioners containing objective, reliable and properly updated information on penitentiary establishments and prison conditions in the Member States;

20. The Council invites the Member States to consider arranging for a translation of the Fact sheet of the Council of Europe on Detention conditions and treatment of prisoners into their official language and to offer such translations to the Council of Europe for publication on its website;

21. The Commission is invited, in consultations with the Member States, to further develop and regularly update its handbook on the European arrest warrant, including by taking account of recent case-law of the CJEU and best practices for its correct application, and to develop handbooks on the other mutual recognition instruments once fully implemented by the Member States, e.g. the Framework Decisions on custodial sanctions ⁽¹⁾ and on probation ⁽²⁾, as well as, in the future, the Directive on the EIO ⁽³⁾ and the Regulation on freezing and confiscation orders ⁽⁴⁾, so as to promote the correct implementation and application of these instruments;

22. The Commission is invited to communicate notifications by Member States on the EU mutual recognition instruments and other instruments relevant for judicial cooperation in criminal matters in at least one commonly understandable language of the EU to the EJNI, so that it can publish these on its website;

23. The Commission is encouraged to continue organising meetings with experts and practitioners to discuss issues relating to mutual recognition, to step up the frequency and intensity of such meetings, if deemed useful, and to make the outcome of such meetings available to practitioners;

24. The Commission is invited to promote making optimal use of the funds under the EU financial programmes, in case they are made available, in order to strengthen and promote judicial cooperation between the Member States, including in order to modernise detention facilities in the Member States and support the Member States to address the problem of deficient detention conditions, as this can be detrimental to the application of the mutual recognition instruments;

25. The Commission, the Council and the European Parliament are encouraged to draft instruments on mutual recognition, including the forms and certificates, in a more clear, precise and user-friendly way, and to seek more consistency in such drafting, so as to facilitate the application of these instruments by practitioners. Where appropriate, support should be requested from Eurojust and the EJNI to that effect;

26. Eurojust is encouraged to continue its operational and strategic work in relation to mutual recognition instruments in order to facilitate the application of these instruments;

⁽¹⁾ Framework Decision 2008/909/JHA.

⁽²⁾ Framework Decision 2008/947/JHA.

⁽³⁾ Directive 2014/41/EU.

⁽⁴⁾ Regulation (EU) 2018/1805.

27. Eurojust and the EJP are invited to continue playing an active role in addressing obstacles for and identifying best practices in mutual recognition and to continue paying regular attention to instruments of mutual recognition in their meetings with practitioners;
28. The EJP is encouraged to continue improving its website with practical information on mutual recognition instruments, among other things, since this has proven to be a very helpful tool for practitioners;
29. The EJP is encouraged to continue organising training on Union law, including on the relevance of the Charter of Fundamental Rights for the functioning of mutual recognition instruments in criminal matters, and exchanges between practitioners;
30. The Council is invited to designate the practical operation of certain mutual recognition instruments as the topic for the ninth round of mutual evaluations;
31. The Presidency is invited to continue devoting appropriate attention, including at political level, to the issue of mutual recognition and mutual trust, in particular by ensuring a regular exchange of views on this subject, so as to promote the application of the instruments based on the principle of mutual recognition.
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Council conclusions on Eurojust: the Union's Judicial Cooperation Unit in the Digital Age

(2019/C 412/04)

THE COUNCIL HAS ADOPTED THE FOLLOWING CONCLUSIONS:

1. The Council refers to the new Strategic Agenda 2019-2024 adopted by the European Council on 20 June 2019, setting protection of citizens and freedoms as a key priority for the next institutional cycle. In line with the Strategic Agenda, the Union is committed to building on and strengthening the fight against terrorism and cross-border crime, improving cooperation and information-sharing, and further developing the Union's common instruments.
2. The Council welcomes Eurojust's 2018 annual report (7944/19), and the further progress made by Eurojust in fulfilling its mission as a key player in facilitating and strengthening judicial coordination and cooperation between national authorities in the investigation and prosecution of the most serious forms of cross-border crime, in particular terrorism, trafficking in human beings, migrant smuggling, cybercrime and corruption. As in previous years, in 2018 there was a steady increase in new cases brought to Eurojust.
3. The Council is satisfied that Eurojust has concluded new cooperation agreements with Albania and Georgia and has finalised negotiations on a cooperation agreement with Serbia, and that new liaison prosecutors have been seconded to Eurojust. These cooperation agreements substantially contribute to facilitating judicial cooperation with the third countries concerned, as do the liaison prosecutors. This can also be to the benefit of other actors, in particular the European Public Prosecutor's Office (EPPO) as established by Regulation (EU) 2017/1939 ⁽¹⁾. Eurojust is encouraged to ensure that the new cooperation agreements enter into force as soon as possible, in any case before 12 December 2019, when Regulation (EU) 2018/1727 ⁽²⁾ will start to apply. Eurojust is invited to examine the need to conclude cooperation agreements with other third countries in the context of establishing its cooperation strategy on the basis of Article 52(1) of that Regulation. The Council also invites the Commission to prepare recommendations for the opening of negotiations on international agreements, as soon as possible after the date of application of that Regulation.
4. The Council welcomes the fact that the Judicial Counter-Terrorism Register at Eurojust, bringing together judicial information on counter-terrorism proceedings from all EU Member States, became operational in September 2019. This register, which includes information transmitted by the Member States in accordance with Council Decision 2005/671/JHA ⁽³⁾, will enhance the effectiveness of the EU and its Member States in the fight against terrorism. Given that the transmission of information from the competent authorities of the Member States to Eurojust is a precondition for the Judicial Counter-Terrorism Register to work efficiently and add value to the investigations of Member States' authorities, the Council reiterates the obligations for Member States to transmit such information in accordance with Council Decision 2005/671/JHA.

The role of Eurojust

5. The Council underlines that Eurojust is a crucial actor in the area of freedom, security and justice. It has a special and proactive role in coordinating cases in the field of judicial cooperation in the Union. Eurojust is the only EU agency coordinating judicial authorities in each segment of the security chain. It has a unique and vital role in the coordination of serious cross-border investigations and prosecution between national investigating and prosecuting authorities at every step of the criminal justice process, from the beginning of the investigation of a crime to the final judgment.

⁽¹⁾ 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).

⁽²⁾ 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 (OJ L 295, 21.11.2018, p. 138).

⁽³⁾ 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).

6. While the European Union Agency for Law Enforcement Cooperation (Europol) is responsible for supporting Member States' law enforcement authorities in preventing and combating serious cross-border crime, Eurojust's mission is to support and strengthen coordination and cooperation between national investigating and prosecuting authorities during both the investigation and prosecution of serious cross-border crime. Eurojust and Europol are complementary to each other and should continue their efforts in working closely and in a complementary manner. The Council strongly believes that both Europol and Eurojust have an interest in both agencies working well and efficiently, since both have within their respective mandates the same aim: combating serious cross-border crime in the EU more effectively and thereby creating a safer Europe.
7. The EPPO and Eurojust should establish and maintain a close relationship based on mutual cooperation within their respective mandates and competences and on the development of operational, administrative and management links between them, as referred to in Article 100 of Regulation (EU) 2017/1939 on the EPPO and in Article 50 of Regulation (EU) 2018/1727 on Eurojust. Eurojust is likely to play an important role in the work of the EPPO, in particular in the early stages of the latter. It also has an essential role in cases where both participating and non-participating Member States are involved, as well as in cases of fraud falling outside the scope of the competence of the EPPO. Both actors have their unique role and place in the EU area of freedom, security and justice. The Council calls on Eurojust to establish a close relationship with the EPPO as soon as the latter has started its operational activity. Eurojust should endeavour to assist the EPPO in particular once it is operational, including by sharing with the EPPO its expertise, accumulated over nearly 20 years, in the coordination and support of complex cross-border investigations and relations with non-EU States. A working arrangement between the EPPO and Eurojust should be established as soon as possible.
8. The Council also underlines the importance of cooperation between Eurojust and other EU bodies, offices and agencies, such as OLAF and Frontex. Within their respective mandates, all these EU actors should work together in order to identify further synergies and make full use of their strengths in a coherent manner, to assist Member States in their efforts to create a more secure environment for the EU citizen.
9. The Council encourages Eurojust to continue to make full use of its unique position and increase its proactive role by making observations about developments and trends in criminality and criminal phenomena in the EU and beyond, and by enhancing the knowledge and preparedness of national authorities by sharing information with them.

Digital Criminal Justice and Case Management System (CMS)

10. The Council underlines that EU police and judicial cooperation requires the improvement of information exchange and ensuring interoperability between EU information systems in full compliance with data protection requirements, as this will strengthen rapid, trustworthy and secure exchange of information and evidence between agencies and bodies such as Europol, OLAF, Frontex, the EPPO and Eurojust. Eurojust has a crucial role to play in ensuring that national data can be cross-referenced, so that connections between different criminal investigations can be made. To that end, it should be ensured that Eurojust National Members have access to the e-Evidence Digital Exchange System built by the Commission and operated by Member States.
11. The Council encourages the Commission and Eurojust to continue their initiative on digital criminal justice, as presented in the meeting of the Council (Justice and Home Affairs) of 6 December 2018, which seeks to allow judicial authorities in the Union to connect with each other in a secure way to send and receive (sensitive) information in criminal cases. In this context, existing IT solutions should be taken into account, such as the e-Evidence Digital Exchange System and the Secure Information Exchange Network Application (SIENA).

12. It is vital that the IT infrastructure and Case Management System (CMS) of Eurojust work efficiently and properly, in full compliance with the requirements of data protection, so that Eurojust can support national judicial authorities dealing with serious cross-border criminal cases. This is of utmost importance in order to allow Eurojust to provide the competent national authorities with the information and the feedback on the results on the processing of information that may be expected by these authorities in accordance with the legal framework of Eurojust. The present CMS is rather old and does not properly support the exchange of information. Eurojust should therefore look at ways to improve and modernise its CMS, taking into account interoperability with existing solutions or solutions that are being built (like the e-Evidence Digital Exchange System).

New Eurojust Regulation

13. Regulation (EU) 2018/1727 on Eurojust will apply as from 12 December 2019. The new legal framework will enable Eurojust to handle more efficiently the continuously increasing demands of the national authorities, in particular in crime priority areas such as terrorism, trafficking in human beings, migrant smuggling, cybercrime and corruption.
14. As soon as that Regulation has started to apply, the College of Eurojust can formally present a draft of their new rules of procedure, in accordance with Article 5(5) of the Regulation. After approval by the Council, the College of Eurojust can adopt these rules. The relevant actors are encouraged to carry out all necessary work in order to promote the swift adoption of such rules, which should allow Eurojust to carry out its functions in a more efficient manner.
15. The Council considers it highly important that Eurojust should be able to concentrate on its operational work, particularly as the number of cases is continuously rising. To this end, Eurojust is encouraged to continue implementing changes that will lead to more effective and modern governance as an EU agency. Having regard also to Eurojust's unique role at EU level in coordinating the investigation and prosecution of serious cross-border crime, including its significant support to Joint Investigation Teams, it should be ensured that Eurojust is able to focus on cases requiring such coordination. Other cases that could be facilitated by the exchange of information and/or transmission of judicial documents should be dealt by other channels, such as the European Judicial Network in criminal matters (EJN).
16. The Council welcomes the conclusion of the agreement between Eurojust and Denmark, thereby ensuring that the application of the Eurojust Regulation leaves no gaps in the EU judicial cooperation framework.

Improvement of cooperation and coordination with networks

17. The Council refers to its conclusions of 6 June 2019 on 'Synergies between Eurojust and the networks established by the Council in the area of judicial cooperation in criminal matters' (OJ C 207, 18.6.2019, p. 1). The Council encourages Eurojust, in cooperation with the EJN, the Genocide Network, the Joint Investigation Teams (JITs) Network and the European Judicial Cybercrime Network (EJCN), to implement the conclusions set out in that document, read together with the suggestions and recommendations set out in the joint paper annexed to those conclusions.

Resources

18. The Council refers to the European Council conclusions of 18 October 2018, which call for measures to provide Eurojust, alongside Europol, with adequate resources to face new challenges posed by technological developments and the evolving security-threat landscape, including through inter-agency cooperation and improved access to data. The current security threats to the EU and its Member States — posed by terrorism, migrant smuggling, cybercrime, trafficking in human beings and drug trafficking — continue to require an effective response from the police and the judiciary. In this connection, the Council underlines that the security and criminal justice chain should be viewed as a whole in order to ensure comprehensive security in the Union. Therefore, the importance and the role of all actors involved in this chain should be acknowledged in order to avoid impediments in one part of the chain and, worse still, impunity in the end.

19. The Council recognises that Eurojust faces a continuously increasing workload, including its new tasks such as those related to the Judicial Counter-Terrorism Register, increasing cooperation with third countries and the practical implementation of Regulation (EU) 2018/1727. Although Eurojust's operational workload and tasks have increased considerably, its budget has not. Moreover, the Council highlights that the proposed growth of the financial resources for law enforcement agencies in the context of the next multiannual financial framework, potentially leading to a higher caseload, may have an additional impact on the Eurojust's workload. The Council reiterates the importance of an efficient, up-to-date and properly functioning IT infrastructure and Case Management System (CMS) to enable Eurojust to carry out its tasks efficiently. The Council recognises that setting up such improvements requires appropriate human and financial resources.
 20. In view of the above, the Council considers that Eurojust should be provided with adequate resources, including for the benefit of the networks that depend from the Eurojust budget, in order to ensure its proper functioning as a vital actor within the security and criminal justice chain in the EU, and to ensure the continued development of its important strategic and operational work.
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COUNCIL CONCLUSIONS ON ALTERNATIVE MEASURES TO DETENTION: THE USE OF NON-CUSTODIAL SANCTIONS AND MEASURES IN THE FIELD OF CRIMINAL JUSTICE

Introduction

1. According to the new Strategic Agenda 2019-2024, adopted by the European Council on 20 June 2019, protection of citizens and freedoms is a key priority for the next institutional cycle. The European Union is committed to building on and strengthening the fight against terrorism and cross-border crime and improving cooperation.
2. Effective systems of criminal sanctions play an important role in protecting the citizens and ensuring security. Criminal sanctions and measures used and the way in which they are enforced contribute to the prevention of reoffending and thereby affect the security in society.
3. Enforcement of the criminal sanctions and measures should be based on knowledge deriving from relevant research that indicates that the sanctions and measures used reduce reoffending and promote security.
4. Serious offences require appropriate responses, and detention is a necessary instrument in criminal sanctions systems. There is, however, a broad consensus that detention should be used only as a last resort (*ultima ratio*)¹. Applying non-custodial sanctions and measures - instead of detention - where appropriate and taking into consideration the individual circumstances of the case, can have several advantages, as supported by a long-standing tradition of research.

¹ See, e.g., point 4 in the recitals to Council of Europe Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules: “No one shall be deprived of liberty save as a measure of last resort and in accordance with a procedure prescribed by law”. The European Court of Human Rights has in its case law referred to these recommendations for over 1000 times.

5. An important role of alternative measures to detention is to promote social rehabilitation and reintegration of the offender, which is one of the key aims for using such measures². These alternative measures have also several other benefits, in particular by reducing reoffending and, therefore, promoting public security. They may be applied in the interests of the offender but also in the interests of the victims, potential future victims and, more generally, of the society.
6. Alternative measures to detention exist in all Member States, for example in form of suspended prison sentences, community service, financial penalties and electronic monitoring. Furthermore, new developments in technology and digitalisation may contribute to a more effective system of non-custodial sanctions and measures in the future.
7. It is also particularly important to take victims of crime into account. With regard to offences that are suitable for mediation, restorative justice can offer opportunities with regard to the way in which offences are dealt with, by acknowledging the role of the victim and wider society and by focusing on repairing the harm caused by the offender.
8. Detention is not only used as a criminal sanction, but it is also widely used in the pre-trial stage of the proceedings. Alternative measures to detention should therefore be considered throughout the whole criminal justice chain.
9. As regards individual cases, the relevant authorities determine the appropriate sanction or measure. On a general level, Member States can examine the benefits of enabling the use of non-custodial sanctions and measures throughout the criminal proceedings and promote their use, when deemed appropriate and effective.

² See, e.g., Council Conclusions of 8 March 2018: Promoting the use of alternatives to coercive sanctions for drug using offenders, doc. 6931/18, as well as the European Union Drugs Strategy 2013-2020 (OJ C 402, 29.12.2012, p.1) and the European Union Action Plan on Drugs 2017-2020 (OJ C 215, 5.7.2017, p. 21).

10. The criminal sanctions system falls within the competence of the Member States and systems vary between Member States. Therefore, the focus at EU level should be on non-legislative measures.
11. In addition to the above mentioned benefits it is expected that the enhanced use of non-custodial sanctions and measures could produce positive effects also on issues relating to prison overcrowding, insufficient prison conditions, prison radicalisation and obstacles encountered in mutual recognition in criminal matters, all of these being issues that have been raised in different EU forums during the last years.

Alternative measures to detention - policy background

12. Alternatives to detention have been, explicitly or implicitly, on the EU's agenda for several years and in many contexts. The 2004 Hague Programme and the 2009 Stockholm Programme recognised that detention and alternatives to detention were an important area of EU justice policy.
13. In 2011, the Commission presented a Green Paper on "The application of EU criminal justice legislation in the field of detention"³. In the Green Paper it was considered, among other things, that unless more efforts were made to improve detention conditions and promote alternatives to custody, it could be difficult to develop closer judicial cooperation between Member States.
14. In its resolution of 5 October 2017 on prison systems and conditions⁴, the European Parliament noted that prison overcrowding is very common in Europe, but that increasing prison capacity is not the sole solution to overcrowding. Parliament further insisted that efficient long-term management of penitentiary systems should be implemented, reducing the number of prisoners by more frequent use of non-custodial punishments.

³ COM (2011) 327 final.

⁴ A8-0251/2017.

15. In addition, in the Council conclusions on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism of 20 November 2015⁵, alternatives to detention at all stages of the of criminal proceedings were mentioned as possible action when considering criminal justice responses to radicalisation.
16. In accordance with Article 82(1) TFEU, judicial cooperation in criminal matters in the Union is based on the principle of mutual recognition of judgments and judicial decisions. The principle of mutual recognition is founded on mutual trust between the Member States. The Court of Justice of the European Union, in its judgment of 5 April 2016 *Aranyosi and Căldăraru*⁶ indicated that poor prison conditions in Member States may hamper mutual trust and undermine mutual recognition and underlined that inhuman or degrading treatment or punishment is prohibited by the Charter of Fundamental Rights. Following the ruling, the Council - during the Austrian Presidency of the Council - adopted conclusions on “Promoting mutual recognition by enhancing mutual trust”⁷ in December 2018. According to these conclusions, Member States are encouraged to have legislation in place that, where appropriate, allows use to be made of alternative measures to detention in order to reduce the population in their detention facilities, thereby furthering the aim of social rehabilitation and also addressing the fact that mutual trust is often hampered by poor detention conditions and the problem of overcrowded prisons. The Court of Justice further clarified the requirements from the *Aranyosi and Căldăraru* judgment in the recent *Dorobantu* judgment⁸.
17. The Council of Europe already has a long tradition in addressing issues relating to detention and the use of non-custodial sanctions and measures, and has also gathered a deep knowledge on the topic. The EU could therefore benefit from closer cooperation with Council of Europe in this regard.

⁵ 14419/15, of 20 November 2015.

⁶ Judgment of 5 April 2016 in Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*.
⁷ OJ C 449, 13.12.2018, p. 6.

⁸ Judgment of 15 October 2019 in C-128/18, *Dorobantu*, in which the Court clarified the requirements for the executing judicial authority in cases regarding European arrest warrants and the surrender procedures between Member States.

The way forward

18. At the meeting of Justice and Home Affairs Ministers in July 2019, the Ministers acknowledged that there is a need to tackle complex issues relating to prison conditions, prison overcrowding, prison radicalisation and also cooperation in criminal matters. The Ministers also emphasised the importance of enhancing the use of alternative measures to detention in Member States in the coming years underlining the benefits that their use can have.
19. The progress already made in the Member States on the use of alternative measures to detention, both at the pre-trial and the post-trial stage, is welcomed. Further increase in the use of non-custodial sanctions and measures as alternatives to detention throughout the criminal proceedings, when deemed appropriate, should be a common aim across the EU during the next years.
20. The ninth round of mutual evaluations will, among other issues, analyse the Framework Decisions on probation and alternative sanctions (2008/947/JHA) and on the European supervision order (2009/829/JHA) and gather valuable information on the reasons why the use of these instruments has been limited thus far. There is, however, a need to gather wider information on the use of non-custodial sanctions and measures in the Member States, and to discuss the different benefits they may have.
21. The sharing of best practices is a useful way in which the Member States can learn from each other and improve their own legislation, procedures and practices. EU can also benefit from closer cooperation with the Council of Europe and other relevant organisations.

THE COUNCIL OF THE EUROPEAN UNION THEREFORE CONCLUDES THAT

I. Actions to be taken at national level

1. The Member States are encouraged to explore the opportunities to enhance, where appropriate, the use of non-custodial sanctions and measures, such as a suspended prison sentence, community service, financial penalties and electronic monitoring and similar measures based on emerging technologies.
2. The Member States are encouraged to consider enabling the use of different forms of early or conditional release. The aim is to better prepare offenders for reintegration into society and to help prevent reoffending.
3. The Member States are encouraged to consider the scope for and benefits of using restorative justice.
4. The Member States are encouraged to provide in their legislation a possibility to apply non-custodial measures also in the pre-trial stage of criminal proceedings.
5. The Member States are encouraged to ensure that information concerning the legislation on non-custodial sanctions and measures is easily available for practitioners throughout criminal proceedings.
6. The Member States are encouraged to raise awareness among legal practitioners of the benefits of alternative measures to detention as well as of the availability and technical features of existing tools, such as electronic monitoring.
7. The Member States are encouraged to provide training for legal practitioners on the use of alternative measures to detention, including restorative justice, and on existing recommendations as developed by the Council of Europe on this topic.

8. The Member States are encouraged to develop or improve training for prison and probation staff, judges, prosecutors and defence lawyers on the content and the use of Framework Decisions on probation and alternative sanctions (2008/947/JHA) and on European supervision order (2009/829/JHA) and to raise the awareness of the scope for using non-custodial sanctions and measures throughout criminal proceedings.
9. As regards the use of alternative measures to detention, the Member States are encouraged to pay particular attention to the needs of vulnerable persons such as children, persons with disabilities and women during pregnancy and after giving birth.
10. The Member States are encouraged to improve the collection of data on the use of non-custodial sanctions and measures, and on the application of the Framework Decisions on probation and alternative sanctions (2008/947/JHA) and on the European supervision order (2009/829/JHA).
11. The Member States are encouraged to improve capacity for probation services, including the supervision of non-custodial sanctions.
12. The Member States are encouraged to share with each other and with the Commission best practices as regards all aspects of non-custodial sanctions and measures, with the aim to learn from each other.
13. The Member States are also encouraged to continue their efforts to improve prison conditions, to counter prison overcrowding and to promote reintegration of offenders into society taking into account the impact on reducing recidivism and the risk of radicalisation in prison.

II. Actions to be taken at EU level

1. The Commission is invited to explore the options for promoting the use of non-custodial sanctions and measures in its agenda and to increase awareness of the benefits of non-custodial sanctions and measures among policy-makers and practitioners.
2. The Commission is invited to assess the need to carry out a comparative study to analyse the use of non-custodial sanctions and measures in all Member States so as to support the dissemination of national best practices.
3. The Commission is invited to continue to enhance the implementation of both the EU Framework Decisions on probation and alternative sanctions (2008/947/JHA) and on the European supervision order (2009/829/JHA), taking into account the information gathered during the ninth round of mutual evaluations.
4. The Commission is invited to develop training for judges and prosecutors through the European Judicial Training Network (EJTN), as well as for prison and probation staff at EU level through the European Penitentiary Training Academies (EPTA) which is currently funded by the Justice programme.
5. The Commission is invited to launch regular experts' meetings on detention and non-custodial sanctions and measures, in order to encourage the exchange of best practices between experts and practitioners across all Member States as regards national policies and practices in this field.
6. The Commission is invited to consider ways in which Member States can be given funding to further develop probation services, including the supervision on non-custodial sanctions and measures, and improve prison facilities.
7. The Commission is invited to continue to support the European Organisation of Prison and Correctional services (EuroPris), the Confederation of European Probation (CEP) and the European Forum for Restorative Justice (EFRJ), currently funded under the Justice programme. It is invited to examine options for closer cooperation with these organisations, in particular by supporting the work of CEP in gathering data on alternatives to detention in the Member States.

8. The European Judicial Network (EJN) is encouraged to continue discussions in its meetings on the use of Framework Decisions on probation and alternative sanctions (2008/947/JHA) and on the European supervision order (2009/829/JHA). The aim is to identify obstacles for practical application of the instruments and to seek for ways in which to increase the use of such instruments.
9. EJN is encouraged to continue to update the European judicial Atlas on a regular basis.
10. EJN is invited to consider gathering information on its website on the different non-custodial sanctions and measures in each Member State. For this aim, cooperation with any relevant organisation, including Confederation of European Probation (CEP), may be considered.

III. Actions to be taken to enhance cooperation with the Council of Europe and other relevant organisations

1. The EU should work closely with the Council of Europe and other relevant organisations so as to find synergies regarding work relating to detention and the use of non-custodial sanctions and measures.
2. The Commission and the Member States are encouraged to enhance cooperation with the Council of Europe and other relevant organisations, in order to raise the awareness of the benefits of using non-custodial sanctions and measures. The Commission is invited to continue cooperation with the Council of Europe by financially supporting the gathering of statistics in the area of prison and probation (SPACE Statistics) and the operation of the EU Network of National Preventive Mechanisms (EU NPMs).
3. The Commission and the Member States are invited to consider ways in which to promote the dissemination of the Council of Europe standard-setting texts, the relevant case-law of the European Court of Human Rights and the CPT recommendations regarding detention and the use of non-custodial sanctions and measures.

VII. AGREEMENTS WITH THIRD COUNTRIES

AGREEMENT**on mutual legal assistance between the European Union and the United States of America****CONTENTS**

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Explanatory Note

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.
- (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 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.

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, ordre 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

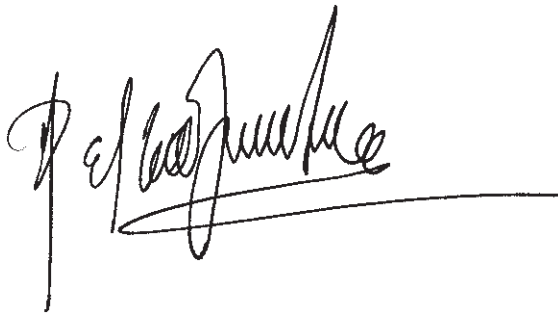
1. This Agreement shall enter into force on the first day following the third month after the date on which the Contracting Parties have exchanged instruments indicating that they have completed their internal procedures for this purpose. These instruments shall also indicate that the steps specified 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.

Por la Unión Europea
For Den Europæiske Union
Für die Europäische Union
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Per l'Unione europea
Voor de Europese Unie
Pela União Europeia
Euroopan unionin puolesta
På Europeiska unionens vägnar



Por los Estados Unidos de América
For Amerikas Forenede Stater
Für die Vereinigten Staaten von Amerika
Για τις Ηνωμένες Πολιτείες της Αμερικής
For the United States of America
Pour les États-Unis d'Amérique
Per gli Stati Uniti d'America
Voor de Verenigde Staten van Amerika
Pelos Estados Unidos da América
Amerikan yhdysvaltojen puolesta
På Amerikas förenta staters vägnar



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.

AGREEMENT

on extradition between the European Union and the United States of America

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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 for the right to a fair trial to an extradited person, including the right to adjudication by an impartial tribunal established pursuant to law,

DESIRING to conclude an Agreement relating to the extradition of offenders,

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 in the context of applicable extradition relations between the Member States and the United States of America governing extradition of offenders.

*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.
3. 'Ministry of Justice' shall, for the United States of America, mean the United States Department of Justice; and for a Member State, its Ministry of Justice, except that with respect to a Member State in which functions described in Articles 3, 5, 6, 8 or 12 are carried out by its Prosecutor General, that body may be designated to carry out such function in lieu of the Ministry of Justice in accordance with Article 19, unless the United States and the Member State concerned agree to designate another body.

*Article 3***Scope of application of this Agreement in relation to bilateral extradition treaties with Member States**

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 extradition 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 in place of bilateral treaty provisions that authorise extradition exclusively with respect to a list of specified criminal offences;
 - (b) Article 5 shall be applied in place of bilateral treaty provisions governing transmission, certification, authentication or legalisation of an extradition request and supporting documents transmitted by the requesting State;
 - (c) Article 6 shall be applied in the absence of bilateral treaty provisions authorising direct transmission of provisional arrest requests between the United States Department of Justice and the Ministry of Justice of the Member State concerned;
 - (d) Article 7 shall be applied in addition to bilateral treaty provisions governing transmission of extradition requests;

- (e) Article 8 shall be applied in the absence of bilateral treaty provisions governing the submission of supplementary information; where bilateral treaty provisions do not specify the channel to be used, paragraph 2 of that Article shall also be applied;
 - (f) Article 9 shall be applied in the absence of bilateral treaty provisions authorising temporary surrender of persons being proceeded against or serving a sentence in the requested State;
 - (g) Article 10 shall be applied, except as otherwise specified therein, in place of, or in the absence of, bilateral treaty provisions pertaining to decision on several requests for extradition of the same person;
 - (h) Article 11 shall be applied in the absence of bilateral treaty provisions authorising waiver of extradition or simplified extradition procedures;
 - (i) Article 12 shall be applied in the absence of bilateral treaty provisions governing transit; where bilateral treaty provisions do not specify the procedure governing unscheduled landing of aircraft, paragraph 3 of that Article shall also be applied;
 - (j) Article 13 may be applied by the requested State in place of, or in the absence of, bilateral treaty provisions governing capital punishment;
 - (k) Article 14 shall be applied in the absence of bilateral treaty provisions governing treatment of sensitive information in a 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 extradition 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 extradition 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. If the process described in paragraph 2(b) is not completed by the date of accession, the provisions of this Agreement shall apply in the relations between that new Member State and the United States of America 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.

*Article 4***Extraditable offences**

1. An offence shall be an extraditable offence if it is punishable under the laws of the requesting and requested States by deprivation of liberty for a maximum period of more than one year or by a more severe penalty. An offence shall also be an extraditable offence if it consists of an attempt or conspiracy to commit, or participation in the commission of, an extraditable offence. Where the request is for enforcement of the sentence of a person convicted of an extraditable offence, the deprivation of liberty remaining to be served must be at least four months.

2. If extradition is granted for an extraditable offence, it shall also be granted for any other offence specified in the request if the latter offence is punishable by one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

3. For the purposes of this Article, an offence shall be considered an extraditable offence:

- (a) regardless of whether the laws in the requesting and requested States place the offence within the same category of offences or describe the offence by the same terminology;
- (b) regardless of whether the offence is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court; and
- (c) in criminal cases relating to taxes, customs duties, currency control and the import or export of commodities, regardless of whether the laws of the requesting and requested States provide for the same kinds of taxes, customs duties, or controls on currency or on the import or export of the same kinds of commodities.

4. If the offence has been committed outside the territory of the requesting State, extradition shall be granted, subject to the other applicable requirements for extradition, if the laws of the requested State provide for the punishment of an offence committed outside its territory in similar circumstances. If the laws of the requested State do not provide for the punishment of an offence committed outside its territory in similar circumstances, the executive authority of the requested State, at its discretion, may grant extradition provided that all other applicable requirements for extradition are met.

*Article 5***Transmission and authentication of documents**

1. Requests for extradition and supporting documents shall be transmitted through the diplomatic channel, which shall include transmission as provided for in Article 7.

2. Documents that bear the certificate or seal of the Ministry of Justice, or Ministry or Department responsible for foreign affairs, of the requesting State shall be admissible in extradition proceedings in the requested State without further certification, authentication, or other legalisation.

*Article 6***Transmission of requests for provisional arrest**

Requests for provisional arrest may be made directly between the Ministries of Justice of the requesting and requested States, as an alternative to the diplomatic channel. The facilities of the International Criminal Police Organisation (Interpol) may also be used to transmit such a request.

*Article 7***Transmission of documents following provisional arrest**

1. If the person whose extradition is sought is held under provisional arrest by the requested State, the requesting State may satisfy its obligation to transmit its request for extradition and supporting documents through the diplomatic channel pursuant to Article 5(1), by submitting the request and documents to the Embassy of the requested State located in the requesting State. In that case, the date of receipt of such request by the Embassy shall be considered to be the date of receipt by the requested State for purposes of applying the time limit that must be met under the applicable extradition treaty to enable the person's continued detention.

2. Where a Member State on the date of signature of this Agreement, due to the established jurisprudence of its domestic legal system applicable at such date, cannot apply the measures referred to in paragraph 1, this Article shall not apply to it, until such time as that Member State and the United States of America, by exchange of diplomatic note, agree otherwise.

*Article 8***Supplemental information**

1. The requested State may require the requesting State to furnish additional information within such reasonable length of time as it specifies, if it considers that the information furnished in support of the request for extradition is not sufficient to fulfil the requirements of the applicable extradition treaty.

2. Such supplementary information may be requested and furnished directly between the Ministries of Justice of the States concerned.

*Article 9***Temporary surrender**

1. If a request for extradition is granted in the case of a person who is being proceeded against or is serving a sentence in the requested State, the requested State may temporarily surrender the person sought to the requesting State for the purpose of prosecution.

2. The person so surrendered shall be kept in custody in the requesting State and shall be returned to the requested State at the conclusion of the proceedings against that person, in accordance with the conditions to be determined by mutual agreement of the requesting and requested States. The time spent in custody in the territory of the requesting State pending prosecution in that State may be deducted from the time remaining to be served in the requested State.

*Article 10***Requests for extradition or surrender made by several States**

1. If the requested State receives requests from the requesting State and from any other State or States for the extradition of the same person, either for the same offence or for different offences, the executive authority of the requested State shall determine to which State, if any, it will surrender the person.

2. If a requested Member State receives an extradition request from the United States of America and a request for surrender pursuant to the European arrest warrant for the same person, either for the same offence or for different offences, the competent authority of the requested Member State shall determine to which State, if any, it will surrender the person. For this purpose, the competent authority shall be the requested Member State's executive authority if, under the bilateral extradition treaty in force between the United States and the Member State, decisions on competing requests are made by that authority; if not so provided in the bilateral extradition treaty, the competent authority shall be designated by the Member State concerned pursuant to Article 19.

3. In making its decision under paragraphs 1 and 2, the requested State shall consider all of the relevant factors, including, but not limited to, factors already set forth in the applicable extradition treaty, and, where not already so set forth, the following:

- (a) whether the requests were made pursuant to a treaty;
- (b) the places where each of the offences was committed;
- (c) the respective interests of the requesting States;
- (d) the seriousness of the offences;
- (e) the nationality of the victim;
- (f) the possibility of any subsequent extradition between the requesting States; and
- (g) the chronological order in which the requests were received from the requesting States.

*Article 11***Simplified extradition procedures**

If the person sought consents to be surrendered to the requesting State, the requested State may, in accordance with the principles and procedures provided for under its legal system, surrender the person as expeditiously as possible without further proceedings. The consent of the person sought may include agreement to waiver of protection of the rule of specialty.

*Article 12***Transit**

1. A Member State may authorise transportation through its territory of a person surrendered to the United States of America by a third State, or by the United States of America to a third State. The United States of America may authorise transportation through its territory of a person surrendered to a Member State by a third State, or by a Member State to a third State.

2. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of the Member State concerned. The facilities of Interpol may also be used to transmit such a request. The request shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit shall be detained in custody during the period of transit.

3. Authorisation is not required when air transportation is used and no landing is scheduled on the territory of the transit State. If an unscheduled landing does occur, the State in which the unscheduled landing occurs may require a request for transit pursuant to paragraph 2. All measures necessary to prevent the person from absconding shall be taken until transit is effected, as long as the request for transit is received within 96 hours of the unscheduled landing.

*Article 13***Capital punishment**

Where the offence for which extradition is sought is punishable by death under the laws in the requesting State and not punishable by death under the laws in the requested State, the requested State may grant extradition on the condition that the death penalty shall not be imposed on the person sought, or if for procedural reasons such condition cannot be complied with by the requesting State, on condition that the death penalty if imposed shall not be carried out. If the requesting State accepts extradition subject to conditions pursuant to this Article, it shall comply with the conditions. If the requesting State does not accept the conditions, the request for extradition may be denied.

*Article 14***Sensitive information in a request**

Where the requesting State contemplates the submission of particularly sensitive information in support of its request for extradition, it may consult the requested State to determine the extent to which the information can be protected by the requested State. If the requested State cannot protect the information in the manner sought by the requesting State, the requesting State shall determine whether the information shall nonetheless be submitted.

*Article 15***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 16***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 extradition made after its entry into force. Nevertheless, Articles 4 and 9 shall apply to requests pending in a requested State at the time this Agreement enters into force.

*Article 17***Non-derogation**

1. This Agreement is without prejudice to the invocation by the requested State of grounds for refusal relating to a matter not governed by this Agreement that is available pursuant to a bilateral extradition treaty in force between a Member State and the United States of America.
2. Where the constitutional principles of, or final judicial decisions binding upon, the requested State may pose an impediment to fulfilment of its obligation to extradite, and resolution of the matter is not provided for in this Agreement or the applicable bilateral treaty, consultations shall take place between the requested and requesting States.

*Article 18***Future bilateral extradition 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 19***Designation and notification**

The European Union shall notify the United States of America of any designation pursuant to Article 2(3) and Article 10(2), prior to the exchange of written instruments described in Article 3(2) between the Member States and the United States of America.

*Article 20***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 21***Review**

The Contracting Parties agree to carry out a common review of this Agreement as necessary, and in any event 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, including Article 10.

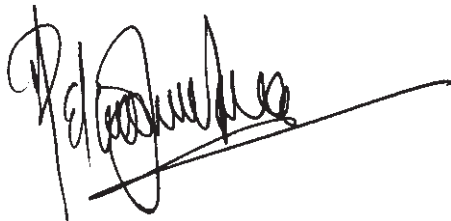
*Article 22***Entry into force and termination**

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) 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 DC 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.

Por la Unión Europea
For Den Europæiske Union
Für die Europäische Union
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Per l'Unione europea
Voor de Europese Unie
Pela União Europeia
Euroopan unionin puolesta
På Europeiska unionens vägnar



Por los Estados Unidos de América
For Amerikas Forenede Stater
Für die Vereinigten Staaten von Amerika
Για τις Ηνωμένες Πολιτείες της Αμερικής
For the United States of America
Pour les États-Unis d'Amérique
Per gli Stati Uniti d'America
Voor de Verenigde Staten van Amerika
Pelos Estados Unidos da América
Amerikan yhdysvaltojen puolesta
På Amerikas förenta staters vägnar



Explanatory Note on the Agreement on Extradition between the European Union and the United States of America

This Explanatory Note reflects understandings regarding the application of certain provisions of the Agreement on Extradition between the European Union and the United States of America (hereinafter 'the Agreement') agreed between the Contracting Parties.

On Article 10

Article 10 is not intended to affect the obligations of States Parties to the Rome Statute of the International Criminal Court, nor to affect the rights of the United States of America as a non-Party with regard to the International Criminal Court.

On Article 18

Article 18 provides that the Agreement shall not preclude the conclusion, after its entry into force, of bilateral agreements on extradition 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 either one or more Member States or the United States of America, 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 this 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 the Member State or Member States 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.

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 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 latter's 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 latter's 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 depositary of this Agreement.

2. The depositary 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.

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 Gibraltar 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.

AGREEMENT

between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and 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,

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,

CONSIDERING that Iceland and Norway have expressed their wish to enter into an agreement enabling them to expedite arrangements for handing over suspects and convicts with the Member States of the European Union and to apply a surrender procedure with the Member States,

CONSIDERING that the European Union also considers it desirable to have such an agreement in place,

CONSIDERING that it is therefore appropriate to set up a system for such surrender procedure,

CONSIDERING that all Member States and the Kingdom of Norway and the Republic of Iceland are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have uniform extradition laws with a common concept of extradition,

CONSIDERING that the level of cooperation under the EU Convention of 10 March 1995 on simplified extradition procedure and of the EU Convention of 27 September 1996 relating to extradition should be maintained where it is not possible to increase it,

CONSIDERING that decisions on the execution of the arrest warrant as defined by this Agreement must be subject to sufficient controls, which means that a judicial authority of the State where the requested person has been arrested should have to take the decision on his or her surrender,

CONSIDERING that the role of central authorities in the execution of an arrest warrant as defined by this Agreement should be limited to practical and administrative assistance,

CONSIDERING that this Agreement respects fundamental rights and in particular the European Convention on Human Rights and Fundamental Freedoms.
This Agreement does not prevent a State from applying its constitutional rules relating to due process, freedom of association, freedom of the press, freedom of expression in other media and freedom fighters,

CONSIDERING that no person should be surrendered to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment,

CONSIDERING that since all States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Agreement should be protected in accordance with the principles of the said Convention,

HAVE AGREED AS FOLLOWS:

CHAPTER 1

GENERAL PRINCIPLES

Article 1

Object and purpose

1. The Contracting Parties undertake to improve, in accordance with the provisions of this Agreement, the surrender for the purpose of prosecution or execution of sentence between, on the one hand, the Member States and, on the other hand, the Kingdom of Norway and the Republic of Iceland, by taking account of, as minimum standards, the terms of the Convention of 27 September 1996 relating to extradition between the Member States of the European Union.

2. The Contracting Parties undertake, in accordance with the provisions of this Agreement, to ensure that the extradition system between, on the one hand, the Member States and, on the other hand, the Kingdom of Norway and the Republic of Iceland shall be based on a mechanism of surrender pursuant to an arrest warrant in accordance with the terms of this Agreement.

3. This Agreement shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in the European Convention on Human Rights, or, in case of execution by the judicial authority of a Member State, of the principles referred to in Article 6 of the Treaty on European Union.

4. Nothing in this Agreement should be interpreted as prohibiting refusal to surrender a person in respect of whom an arrest warrant as defined by this Agreement has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or 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.

Article 2

Definitions

1. 'Contracting Parties' shall mean the European Union and the Kingdom of Norway and the Republic of Iceland.

2. 'Member State' shall mean a Member State of the European Union.

3. 'State' shall mean a Member State, the Kingdom of Norway or the Republic of Iceland.

4. 'Third State' shall mean any State other than a State as defined in paragraph 3.

5. 'Arrest warrant' shall mean a judicial decision issued by a State with a view to the arrest and surrender by another State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

Article 3

Scope

1. An arrest warrant may be issued for acts punishable by the law of the issuing State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

2. Without prejudice to paragraphs 3 and 4, surrender shall be subject to the condition that the acts for which the arrest warrant has been issued constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.

3. Subject to Articles 4, 5(1)(b) to (g), 6, 7 and 8, in no case shall a State refuse to execute an arrest warrant issued in relation to the behaviour of any person who contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism and Articles 1, 2, 3 and 4 of the Framework Decision of 13 June 2002 on combating terrorism, illicit trafficking in narcotic drugs and psychotropic substances, or murder, grievous bodily injury, kidnapping, illegal restraint, hostage-taking and rape, punishable by deprivation of liberty or a detention order of a maximum of at least 12 months, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution shall be intentional and made with the further knowledge that his or her participation will contribute to the achievement of the organisation's criminal activities.

4. Norway and Iceland, on the one hand, and the EU, on behalf of any of its Member States, on the other hand may make a declaration to the effect that, on the basis of reciprocity, the condition of double criminality referred to in paragraph 2 shall not be applied under the conditions set out hereafter. The following offences, if they are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing State, shall, under the terms of this Agreement and without verification of the double criminality of the act, give rise to surrender pursuant to an arrest warrant:

- 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.

Article 4

Grounds for mandatory non-execution of the arrest warrant

States shall establish an obligation for the executing judicial authority to refuse to execute the arrest warrant in the following cases:

- 1) if the offence on which the arrest warrant is based is covered by amnesty in the executing State, where that State had jurisdiction to prosecute the offence under its own criminal law;
- 2) if the executing judicial authority is informed that the requested person has been finally judged by a State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing State;
- 3) if the person who is the subject of the arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

*Article 5***Other grounds for non-execution of the arrest warrant**

1. States can establish an obligation or an option for the executing judicial authority to refuse to execute the arrest warrant in the following cases:

- (a) if, in one of the cases referred to in Article 3(2), the act on which the arrest warrant 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 arrest warrant shall 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 type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;
- (b) where the person who is the subject of the arrest warrant is being prosecuted in the executing State for the same act as that on which the arrest warrant is based;
- (c) where the judicial authorities of the executing State have decided either not to prosecute for the offence on which the arrest warrant is based or to halt proceedings, or where a final judgement has been passed upon the requested person in a State, in respect of the same acts, which prevents further proceedings;
- (d) where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing State and the acts fall within the jurisdiction of that State under its own criminal law;
- (e) if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
- (f) if the arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;
- (g) where the arrest warrant relates to offences 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.

2. Each State shall inform the General Secretariat of the Council for which of the grounds of non-execution of paragraph 1, it has established an obligation for its executing judicial authorities to refuse the execution of an arrest warrant. The General Secretariat shall make the information received available to all States and the Commission.

*Article 6***Political offence exception**

1. Execution may not be refused on the ground that the offence may be regarded by the executing State as a political offence, as an offence connected with a political offence or an offence inspired by political motives.

2. Norway and Iceland, on the one hand, and the European Union, on behalf of any of its Member States, on the other hand, may make, however, a declaration to the effect that paragraph 1 will be applied only in relation to:

- (a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;
 - (b) offences of conspiracy or association — which correspond to the description of behaviour referred to in Article 3(3) — to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;
- and
- (c) Articles 1, 2, 3 and 4 of the Framework Decision of 13 June 2002 on combating terrorism.

3. Where an arrest warrant has been issued by a State having made a declaration as referred to in paragraph 2, or by a State on behalf of which such a declaration has been made, the State executing the arrest warrant, may apply reciprocity.

*Article 7***Nationality exception**

1. Execution may not be refused on the ground that the person claimed is a national of the executing State.

2. Norway and Iceland, on the one hand, and the European Union, on behalf of any of its Member States, on the other hand, may make a declaration to the effect that nationals will not be surrendered or that surrender will be authorised only under certain specified conditions.

3. Where an arrest warrant has been issued by a State having made a declaration as referred to in paragraph 2, or by a State for which such a declaration has been made, any other State may, in the execution of the arrest warrant, apply reciprocity.

Article 8

Guarantees to be given by the issuing State in particular cases

The execution of the arrest warrant by the executing judicial authority may be subject to the following conditions:

- 1) where the arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered *in absentia* and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia*, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing State and to be present at the judgment;
- 2) if the offence on the basis of which the arrest warrant has been issued is punishable by custodial life sentence or life-time detention order the execution of the said arrest warrant may be subject to the condition that the issuing State gives an assurance deemed sufficient by the executing state that it will review the penalty or measure imposed, on request or at the latest after 20 years, or will encourage the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing State, aiming at a non-execution of such penalty or measure;
- 3) where a person who is the subject of an arrest warrant for the purposes of prosecution is a national or resident of the executing State, surrender may be subject to the condition that the person, after being heard, is returned to the executing State in order to serve there the custodial sentence or detention order passed against him in the issuing State.

Article 9

Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing State which is competent to issue an arrest warrant by virtue of the law of that State.
2. The executing judicial authority shall be the judicial authority of the executing State which is competent to execute the arrest warrant by virtue of the law of that State. At the moment of

notification referred to in Article 38(1), a Minister of Justice may be designated as a competent authority for the execution of an arrest warrant, whether or not the Minister of Justice is a judicial authority under the domestic law of that State.

3. The Contracting Parties shall inform each other of their competent authorities.

Article 10

Recourse to the central authority

1. The Contracting Parties may notify each other of the central authority for each State, having designated such an authority, or, when the legal system of the relevant State so provides, of more than one central authority to assist the competent judicial authorities.
2. In doing so the Contracting Parties may indicate that, as a result of the organisation of the internal judicial system of the relevant States, the central authority(ies) are responsible for the administrative transmission and reception of arrest warrants as well as for all other official correspondence relating thereto. These indications shall be binding upon all the authorities of the issuing State.

Article 11

Content and form of the arrest warrant

1. The arrest warrant shall contain the following information set out in accordance with the form contained in the Annex to this Agreement:
 - (a) the identity and nationality of the requested person;
 - (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
 - (c) evidence of an enforceable judgement, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 2 and 3;
 - (d) the nature and legal classification of the offence, particularly in respect of Article 3;
 - (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
 - (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing State;
 - (g) if possible, other consequences of the offence.

2. The arrest warrant must be translated into the official language or one of the official languages of the executing State. Any Contracting Party may, when this Agreement is concluded or at a later date, make a declaration to the effect that a translation in one or more other official languages of a State will be accepted.

CHAPTER 2

SURRENDER PROCEDURE

Article 12

Transmission of an arrest warrant

1. When the location of the requested person is known, the issuing judicial authority may transmit the arrest warrant directly to the executing judicial authority.

2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

Such an alert shall be effected in accordance with the relevant provisions of European Union law on alerts in the Schengen Information System on persons for the purpose of surrender. An alert in the Schengen Information System shall be equivalent to an arrest warrant accompanied by the information set out in Article 11(1).

3. For a transitional period, until the SIS is capable of transmitting all the information described in Article 11, the alert shall be equivalent to an arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 13

Detailed procedures for transmitting an arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, in order to obtain that information from the executing State.

2. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on the International Criminal Police Organisation (Interpol) to transmit an arrest warrant.

3. The issuing judicial authority may forward the arrest warrant by any secure means capable of producing written records under conditions allowing the executing State to establish its authenticity.

4. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the States.

5. If the authority which receives an arrest warrant is not competent to act upon it, it shall automatically forward the arrest warrant to the competent authority in its State and shall inform the issuing judicial authority accordingly.

Article 14

Rights of a requested person

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

2. A requested person who is arrested for the purpose of the execution of an arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing State.

Article 15

Keeping the person in detention

When a person is arrested on the basis of an arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing State. The person may be released provisionally at any time in conformity with the domestic law of the executing State, provided that the competent authority of the said State takes all the measures it deems necessary to prevent the person absconding.

Article 16

Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the 'speciality rule', referred to in Article 30(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing State.

2. Each State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing State.

4. In principle, consent may not be revoked. Each State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 20. Norway and Iceland, on the one hand, and the European Union, on behalf of any of its Member States, on the other hand, may make, at the time of notification provided for in Article 38(1), a declaration indicating that they wish to have recourse to this possibility, specifying the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 17

Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 16, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing State.

Article 18

Surrender decision

1. The executing judicial authority shall decide, within the time limits and under the conditions defined in this Agreement, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 4 to 6, 8 and 11, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 20.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

Article 19

Decision in the event of multiple requests

1. If two or more States have issued a European arrest warrant or an arrest warrant for the same person, the decision as to which of the arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2. The executing judicial authority of a Member State may seek the advice of Eurojust when making the choice referred to in paragraph 1.

3. In the event of a conflict between an arrest warrant and a request for extradition presented by a third State, the decision as to whether the arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to States' obligations under the Statute of the International Criminal Court.

Article 20

Time limits and procedures for the decision to execute the arrest warrant

1. An arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. The European Union, on behalf of any of its Member States, may make, at the time of notification provided for in Article 38(1), a declaration indicating in which cases paragraphs 3 and 4 will not apply. Norway and Iceland may apply reciprocity in relation to the Member States concerned.

6. As long as the executing judicial authority has not taken a final decision on the arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

7. Reasons must be given for any refusal to execute an arrest warrant.

Article 21

Situation pending the decision

1. Where the arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

- (a) either agree that the requested person should be heard according to Article 22;
- (b) or agree to the temporary transfer of the requested person.

2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

3. In the case of temporary transfer, the person must be able to return to the executing State to attend hearings concerning him or her as part of the surrender procedure.

Article 22

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the State of the requesting court.

2. The requested person shall be heard in accordance with the law of the executing State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

3. The competent executing judicial authority may assign another judicial authority of its State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 23

Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing State, the time limits referred to in Article 20 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

2. The executing State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

3. Where power to waive the privilege or immunity lies with an authority of the executing State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 24

Competing international obligations

This Agreement shall not prejudice the obligations of the executing State where the requested person has been extradited to that State from a third State and where that person is protected by

provisions of the arrangement under which he or she was extradited concerning speciality. The executing State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the State which issued the arrest warrant. The time limits referred to in Article 20 shall not start running until the day on which these speciality rules cease to apply.

Pending the decision of the State from which the requested person was extradited, the executing State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 25

Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the arrest warrant.

Article 26

Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 27

Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the arrest warrant.

2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing State.

Article 28

Transit

1. Each State shall permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:

- (a) the identity and nationality of the person subject to the arrest warrant;
- (b) the existence of an arrest warrant;
- (c) the nature and legal classification of the offence;
- (d) the description of the circumstances of the offence, including the date and place.

The State, on behalf of which a declaration has been made in accordance with Article 7(2), to the effect that nationals will not be surrendered or that surrender will be authorised only under certain specified conditions, may, under the same terms, refuse the transit of its nationals through its territory or submit it to the same conditions.

2. The Contracting Parties shall notify each other of the authority designated for each State responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests.

3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The State of transit shall notify its decision by the same procedure.

4. This Agreement does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

5. Where a transit concerns a person who is to be extradited from a third State to a State this Article will apply *mutatis mutandis*. In particular the expression 'arrest warrant' as defined by this Agreement shall be deemed to be replaced by 'extradition request'.

CHAPTER 3

EFFECTS OF THE SURRENDER

Article 29

Deduction of the period of detention served in the executing State

1. The issuing State shall deduct all periods of detention arising from the execution of an arrest warrant from the total period of detention to be served in the issuing State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 10 to the issuing judicial authority at the time of the surrender.

Article 30

Possible prosecution for other offences

1. Norway and Iceland, on the one hand, and the European Union, on behalf of any of its Member States, on the other hand, may notify each other that, for relations of States with other States to which the same notification applies, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) the offence is not punishable by a custodial sentence or detention order;
- (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

- (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;
 - (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 16;
 - (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
 - (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.
4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 11(1) and a translation as referred to in Article 11(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Agreement. Consent shall be refused on the grounds referred to in Article 4 and otherwise may be refused only on the grounds referred to in Articles 5, or 6(2) and 7(2). The decision shall be taken no later than 30 days after receipt of the request. For the situations mentioned in Article 8 the issuing State must give the guarantees provided for therein.
- (b) where the requested person consents to be surrendered to a State other than the executing State pursuant to an arrest warrant. Consent shall be given before the competent judicial authorities of the issuing State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;
 - (c) where the requested person is not subject to the speciality rule, in accordance with Article 30(3)(a), (e), (f) and (g).
3. The executing judicial authority consents to the surrender to another State according to the following rules:
- (a) the request for consent shall be submitted in accordance with Article 12, accompanied by the information mentioned in Article 11(1) and a translation as stated in Article 11(2);
 - (b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Agreement;
 - (c) the decision shall be taken no later than 30 days after receipt of the request;
 - (d) consent shall be refused on the grounds referred to in Article 4 and otherwise may be refused only on the grounds referred to in Articles 5 or 6(2) and 7(2).

Article 31

Surrender or subsequent extradition

1. Norway and Iceland, on the one hand, and the European Union, on behalf of any of its Member States, on the other hand, may notify each other that, for relations of States with other States to which the same notification applies, the consent for the surrender of a person to a State other than the executing State pursuant to an arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing State pursuant to an arrest warrant may, without the consent of the executing State, be surrendered to a State other than the executing State pursuant to an arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

- (a) where the requested person, having had an opportunity to leave the territory of the State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;

For the situations referred to in Article 8, the issuing State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to an arrest warrant shall not be extradited to a third State without the consent of the competent authority of the State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that State is bound, as well as with its domestic law.

Article 32

Handing over of property

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:

- (a) may be required as evidence; or
- (b) has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing State, on condition that it is returned.

4. Any rights which the executing State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing State shall return the property without charge to the executing State as soon as the criminal proceedings have been terminated.

Article 33

Expenses

1. Expenses incurred in the territory of the executing State for the execution of an arrest warrant shall be borne by that State.

2. All other expenses shall be borne by the issuing State.

CHAPTER 4

GENERAL AND FINAL PROVISIONS

Article 34

Relation to other legal instruments

1. Without prejudice to their application in relations between States and third States, this Agreement shall, from its entry into force, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between Norway and Iceland, on the one hand, and Member States, on the other hand:

- (a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned as amended by the 2003 Protocol once it will enter into force;
- (b) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders;
- (c) Schengen-relevant provisions of the 1995 and 1996 EU Extradition Conventions to the extent that they are in force.

2. States may continue to apply bilateral or multilateral agreements or arrangements in force when this Agreement is concluded in so far as such agreements or arrangements allow the objectives of this Agreement to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of an arrest warrant. The Contracting Parties shall notify each other of any such agreements or arrangements.

3. States may conclude bilateral or multilateral agreements or arrangements after this Agreement has come into force in so far as such agreements or arrangements allow the prescriptions of this Agreement to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of an arrest warrant, in particular by fixing time limits shorter than those fixed in Article 20, by extending the list of offences laid down in Article 3(4), by further limiting the grounds for refusal set out in Articles 4 and 5, or by lowering the threshold provided for in Article 3(1) or (4).

The agreements and arrangements referred to in the first subparagraph may in no case affect relations with States which are not parties to them.

The Contracting Parties shall also notify each other of any such new agreement or arrangement as referred to in the first subparagraph, within three months of signing it.

4. Where the conventions or agreements referred to in paragraph 1 apply to the territories of States or to territories for whose external relations a State is responsible to which this Agreement does not apply, these instruments shall continue to govern the relations existing between those territories and the other States.

Article 35

Transitional provision

1. Extradition requests received before the date of entry into force of this Agreement will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by this Agreement.

2. Norway and Iceland, on the one hand, and the European Union, on behalf of any of its Member States, on the other hand, may, at the time of the notification provided for in Article 38(1), make a statement indicating that, as executing State, the State will continue to apply the extradition system applicable before the entry into force of this Agreement in relation to acts committed before a date which it specifies. The date in question may not be later than the entry into force of this Agreement. The said statement may be withdrawn at any time.

*Article 36***Dispute settlement**

Any dispute between either Iceland or Norway and a Member State of the European Union regarding the interpretation or the application of this Agreement 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 37***Case law**

The Contracting Parties, in order to achieve the objective of arriving at as uniform an application and interpretation as possible of the provisions of this Agreement, 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 these provisions and to those of similar surrender instruments. To this end a mechanism shall be set up to ensure regular mutual transmission of such case law.

*Article 38***Notifications, declarations, entry into force**

1. The Contracting Parties shall notify each other of the completion of the procedures required to express their consent to be bound by this Agreement.
2. When giving their notification under paragraph 1 the Contracting Parties shall make any of the notifications or declarations provided for in Articles 5(2), 9(3), 28(2) and 34(2) of this Agreement and may make any of the notifications or declarations provided for in Articles 3(4), 6(2), 7(2), 10(1), 11(2), 16(4), 20(5), 30(1), 31(1) and 35(2) of this Agreement. The declarations or notifications referred to in Articles 3(4), 10(1) and 11(2) may be made at any time. The declarations or notifications referred to in Articles 9(3) and 28(2) may be modified, and those referred to in Articles 5(2), 6(2), 7(2), 10(1), 16(4), 20(5), 34(2) and 35(2) withdrawn, at all times.
3. Where the European Union makes such declarations or notifications it shall indicate for which of its Member States the declaration applies.
4. 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 has established that all formal requirements concerning the expression of the consent by the Contracting Parties to this Agreement have been fulfilled.

*Article 39***Accession**

Accession by new Member States to the European Union shall create rights and obligations under the present Agreement between those new Member States and Iceland and Norway.

*Article 40***Common review**

The Contracting Parties agree to carry out a common review of this Agreement no later than five years after its entry into force, and in particular of the declarations made under Articles 3(4), 6(2), 7(2) and 20(5) of this Agreement. Where the declarations referred to in Article 7(2) are not renewed, they shall expire five years after the entry into force of this Agreement. 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 41***Termination**

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 Contracting Party 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 surrender still pending at that date shall be completed in conformity with the provisions of this Agreement.

*Article 42***Depositary**

1. The Secretary General of the Council of the European Union shall act as the depositary of this Agreement.
2. The depositary shall make public information on any notification or declaration made concerning this Agreement.

Done at Vienna on 28 June 2006 in one single copy in the Icelandic, Norwegian, Czech, Danish, Dutch, German, English, Estonian, French, Finnish, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each version being equally authentic.

Fyrir hönd Evrópusambandsins
 For Den europeiske union
 Por la Unión Europea
 Za Evropskou unii
 For den Europæiske Union
 Für die Europäische Union
 Euroopa Liidu nimel
 Για την Ευρωπαϊκή Ένωση
 For the European Union
 Pour l'Union européenne
 Thar ceann an Aontais Eorpaigh
 Per l'Unione europea
 Eiropas Savienības vārdā
 Europos Sąjungos vardu
 Az Európai Unió részéről
 Ghall-Unjoni Ewropea
 Voor de Europese Unie
 W imieniu Unii Europejskiej
 Pela União Europeia
 Za Európsku úniu
 Za Evropsko unijo
 Euroopan unionin puolesta
 På Europeiska unionens vägnar



Fyrir hönd lýðveldisins Íslands
 For Republikken Island
 Por la República de Islandia
 Za Islandskou republiku
 For Republikken Island
 Für die Republik Island
 Íslandi Vabariigi nimel
 Για τη Δημοκρατία της Ισλανδίας
 For the Republic of Iceland
 Pour la République d'Islande
 Thar ceann Phoblacht na hÍoslainne
 Per la Repubblica d'Islanda
 Islandes Republikas vārdā
 Islandijos Respublikos vardu
 Az Izlandi Köztársaság részéről
 Ghar-Repubblika ta' l-Iżlanda
 Voor de Republiek IJsland
 W imieniu Republiki Islandii
 Pela República da Islândia
 Za Islandskú republiku
 Za Republiko Islandijo
 Islannin tasavallan puolesta
 På Republiken Islands vägnar



Fyrir hönd Konungsríkisins Noregs
 For Kongeriket Norge
 Por el Reino de Noruega
 Za Norské království
 For Kongeriget Norge
 Für das Königreich Norwegen
 Norra Kuningriigi nimel
 Για το Βασίλειο της Νορβηγίας
 For the Kingdom of Norway
 Pour le Royaume de Norvège
 Thar ceann Ríocht na hIorua
 Per il Regno di Norvegia
 Norvēģijas Karalistes vārdā
 Norvegijos Karalystės vardu
 A Norvég Királyság részéről
 Ghar-Renju tan-Norveġja
 Voor het Koninkrijk Noorwegen
 W imieniu Królestwa Norwegii
 Pelo Reino da Noruega
 Za Nórske kráľovstvo
 Za Kraljevino Norveško
 Norjan kuningaskunnan puolesta
 På Konungariket Norges vägnar



ANNEX

ARREST WARRANT ⁽¹⁾

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order ⁽²⁾.

(a) Information regarding the identity of the requested person:

Name:
 Forename(s):
 Maiden name, where applicable:
 Aliases, where applicable:
 Sex:
 Nationality:
 Date of birth:
 Place of birth:
 Residence and/or known address:

 Language(s) which the requested person understands (if known)

 Distinctive marks/description of the requested person:

 Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:
 Type:
2. Enforceable judgement:

 Reference:

⁽¹⁾ This warrant is to be used under the Agreement of 28 June 2006 between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway. However, when a judicial authority of a Member State of the European Union wants, in accordance with Article 12(2) and (3) of the Agreement to alert a person in the Schengen information System, the European arrest warrant form attached to the Framework Decision (2002/584/JHA) of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States shall be considered as equivalent to this format for the purpose of this Agreement.

⁽²⁾ This warrant must be written in, or translated into, one of the official languages of the executing State, when that State is known, or any other language accepted by that State.

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):

.....

2. Length of the custodial sentence or detention order imposed:

.....

Remaining sentence to be served:

.....

(d) Decision rendered *in absentia* and:

- The person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia*,

or

- The person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia* but has the following legal guarantees after surrender (such guarantees can be given in advance)

Specify the legal guarantees

.....

(e) Offences:

This warrant relates to in total: offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

.....

- I. The following applies only in case both the issuing and the executing state have made a declaration under Article 3(4) of the Agreement: if applicable, tick one or more of the following offences punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years as defined by the laws of the issuing State:

- 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 European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting of currency, including 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.

II. Full descriptions of offence(s) not covered by section I above:

.....

(f) Other circumstances relevant to the case (optional information):

(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

.....

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):

.....

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

the issuing State will upon request by the executing State give an assurance that it will:

— review the penalty or measure imposed – on request or at least after 20 years,

and/or

— encourage the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing State, aiming at a non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:

Official name:

.....

Name of its representative ⁽¹⁾:

.....

Post held (title/grade):

.....

File reference:

.....

Address:

.....

Tel. (country code) (area/city code) (...)

Fax (country code) (area/city code) ()

.....

E-mail:

Contact details of the person to contact to make necessary practical arrangements for the surrender:

.....

.....

Where a central authority has been made responsible for the transmission and administrative reception of arrest warrants:

Name of the central authority:

.....

Contact person, if applicable (title/grade and name):

.....

Address:

.....

Tel. (country code) (area/city code) (...)

Fax (country code) (area/city code) (...)

.....

E-mail:

Signature of the issuing judicial authority and/or its representative:

.....

Name:

Post held (title/grade):

Date:

Official stamp (if available)

⁽¹⁾ In the different language versions a reference to the 'holder' of the judicial authority will be included.

Declaration by the Contracting Parties to the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedures between the Member States of the European Union and Norway and Iceland:

'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 European Union:

'The European Union declares that the possibility pursuant to the second sentence of Article 9(2) to designate the Minister of Justice as competent authority for the execution of an arrest warrant will be used only by the Federal Republic of Germany, the Kingdom of Denmark, the Republic of Slovakia and the Kingdom of The Netherlands.'

The European Union declares that the Member States will apply Article 20(3) and (4) in compliance with their national rules for similar cases.'

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

**Notice concerning the entry into force of the Surrender Agreement between the European Union,
Iceland and Norway**

The Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway ⁽¹⁾, signed in Vienna on 28 June 2006, shall, pursuant to its Article 38(4), enter into force on 1 November 2019.

⁽¹⁾ OJ L 292, 21.10.2006, p. 2.

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.

For the European Union

For Japan




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.



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