



---

**AN BILLE UM CHEARTAS COIRIÚIL (CÚNAMH  
FRITHPHÁIRTEACH) 2005**  
**CRIMINAL JUSTICE (MUTUAL ASSISTANCE) BILL 2005**

---

*Mar a tionscnaíodh*  
*As initiated*

---

**ARRANGEMENT OF SECTIONS**

**PART 1**

**PRELIMINARY AND GENERAL**

**Section**

1. Short title and commencement.
2. Interpretation (general).
3. General restriction on providing assistance.
4. Designated state.
5. Certain Articles of 2000 Convention and Second Protocol to have force of law.
6. Requests (general).
7. Transmission of evidence to designated state (general).
8. Central Authority.
9. Spontaneous exchange of information.
10. Repeals.

**PART 2**

**INFORMATION ABOUT FINANCIAL TRANSACTIONS FOR CRIMINAL  
INVESTIGATION PURPOSES**

11. Interpretation (*Part 2*).
- Information about financial transactions for use in the State*
12. Account information order and account monitoring order.
13. Request to member state for information about financial transactions.

*Information about financial transactions for use in member state*

14. Request from member state for information about financial transactions.
15. Action on request.
16. Account information order and account monitoring order on foot of request.
17. Transmission of information obtained to requesting authority.
18. Requesting authority to be informed of possible further investigations.

*Supplementary*

19. Variation or discharge of account information order or account monitoring order.
20. Non-compliance with account information order or account monitoring order.

PART 3

INTERCEPTION OF TELECOMMUNICATIONS MESSAGES

*Introductory*

21. Interpretation (*Part 3*).

*Interceptions where technical assistance required from member state*

22. Request to member state for interception.
23. Request to State for interception.
24. Action on request.

*Interceptions where technical assistance from member state not required*

25. Notification to member state of interception.
26. Notification by member state of interception.

*Miscellaneous*

27. Indirect interception of telecommunications messages.
28. Amendment of section 110 of Act of 1983.

## PART 4

### FREEZING ORDERS

#### *Introductory*

29. Interpretation (*Part 4*).

#### *Freezing order relating to evidence*

30. Freezing order relating to evidence.

#### *Freezing orders for enforcement outside State*

31. Transmission of freezing order, with certificate, to member state for enforcement.

#### *External freezing orders for enforcement in State*

32. Transmission of external freezing orders to State.
33. Recognition and enforcement of external freezing orders.
34. Duration of freezing co-operation order.
35. Variation or discharge of freezing co-operation order.
36. Refusal to make freezing co-operation order.
37. Postponement of freezing co-operation order.
38. Subsequent treatment of frozen property.

## PART 5

### ORDERS FOR CONFISCATION AND FORFEITURE

#### *Definitions*

39. Definitions (*Part 5*).

#### *Enforcement of confiscation orders outside State*

40. Request for confiscation of property in designated state.

#### *Enforcement of external confiscation orders in State*

41. Transmission to State of external confiscation order.
42. Confiscation co-operation order.

#### *Enforcement of forfeiture orders outside State*

43. Forfeiture of property in designated state.

#### *Enforcement of external forfeiture orders in State*

44. Transmission to State of external forfeiture order.
45. Forfeiture co-operation order.

## PART 6

### PROVISION OF EVIDENCE

46. Interpretation (*Part 6*).

#### CHAPTER 1

##### *Taking of Evidence*

47. Evidence from person in designated state.  
48. Evidence for use in designated state.  
49. Privilege of witnesses.

##### *Evidence of prisoners*

50. Transfer of prisoner to give evidence or assist criminal investigation in State.  
51. Transfer of prisoner to give evidence or assist investigation outside State.

##### *Evidence through television link*

52. Evidence through television link for use in State.  
53. Request for evidence through television link for use outside State.  
54. Action on request.  
55. Taking of the evidence.

##### *Evidence by telephone link for use outside State*

56. Request for evidence by telephone link.  
57. Taking of evidence.

##### *Search for evidence*

58. Search for evidence at place in designated state.  
59. Search for evidence for use outside State (general).  
60. Search for particular evidence for use outside State.

#### CHAPTER 2

##### *Identification evidence*

61. Definitions (*Chapter 2*).  
62. Identification evidence for use in State.  
63. Identification evidence for use outside State.  
64. Action on request.

## PART 7

### OTHER FORMS OF ASSISTANCE

#### CHAPTER 1

##### *Service of documents*

- 65. Documents for service outside State.
- 66. Mode of service.
- 67. Service of documents in State.

#### CHAPTER 2

##### *Restitution*

- 68. Restitution of stolen property from designated state.
- 69. Request to State for restitution of stolen property.
- 70. Action on request.
- 71. Order for restitution.

#### CHAPTER 3

##### *Controlled deliveries*

- 72. Interpretation (*Chapter 3*).
- 73. Controlled delivery in designated state.
- 74. Controlled delivery in State.
- 75. Amendment of Garda Síochána Act 1989.
- 76. Application of Criminal Justice (Joint Investigation Teams) Act 2004 in relation to controlled deliveries.

## PART 8

### MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE STATE AND THE UNITED STATES OF AMERICA

- 77. Definitions (*Part 8*).
- 78. Application in State of Ireland - US Treaty.

## PART 9

### MISCELLANEOUS

- 79. Amendment of section 9 of Criminal Justice (Joint Investigation Teams) Act 2004.
- 80. Disclosure prejudicing investigation.
- 81. Liability of officers of body corporate.
- 82. Evidence in proceedings (general).
- 83. Provisional measures.
- 84. Amendment of Criminal Justice Act 1994.

85. Personal data protection.
86. Regulations.
87. Expenses.
88. Laying of orders or regulations before Houses of Oireachtas.

#### SCHEDULE 1

CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS  
BETWEEN MEMBER STATES OF EUROPEAN UNION, DONE AT BRUSSELS  
ON 29 MAY 2000

#### SCHEDULE 2

PROTOCOL TO EU 2000 CONVENTION, DONE AT LUXEMBOURG ON 16  
OCTOBER 2001

#### SCHEDULE 3

AGREEMENT BETWEEN EUROPEAN UNION AND REPUBLIC OF ICELAND  
AND KINGDOM OF NORWAY ON APPLICATION OF CERTAIN PROVISIONS OF  
2000 CONVENTION AND 2001 PROTOCOL, DONE AT BRUSSELS ON 19  
DECEMBER 2003

#### SCHEDULE 4

COUNCIL FRAMEWORK DECISION (2003/577/JHA) OF 22 JULY 2003 ON  
EXECUTION IN EUROPEAN UNION OF ORDERS FREEZING PROPERTY OR  
EVIDENCE

#### SCHEDULE 5

SECOND ADDITIONAL PROTOCOL OF 8 NOVEMBER 2001 TO EUROPEAN  
CONVENTION OF 20 APRIL 1959 ON MUTUAL ASSISTANCE IN CRIMINAL  
MATTERS

#### SCHEDULE 6

ARTICLES 49 AND 51 OF CONVENTION, SIGNED IN SCHENGEN ON 19  
JUNE 1990, IMPLEMENTING SCHENGEN AGREEMENT OF 14 JUNE 1985

#### SCHEDULE 7

AGREEMENT ON MUTUAL LEGAL ASSISTANCE BETWEEN EUROPEAN  
UNION AND UNITED STATES OF AMERICA, DONE AT WASHINGTON D.C.  
ON 25 JUNE 2003, AND EXPLANATORY NOTE

#### SCHEDULE 8

TREATY BETWEEN GOVERNMENT OF IRELAND AND GOVERNMENT OF  
UNITED STATES OF AMERICA ON MUTUAL ASSISTANCE IN CRIMINAL  
MATTERS, DONE AT WASHINGTON D.C. ON 18 JANUARY 2001, AS  
MODIFIED BY INSTRUMENT CONTEMPLATED BY ARTICLE 3(2) OF THE  
AGREEMENT OF 25 JUNE 2003

---

# ACTS REFERRED TO

Bail Act 1997	1997, No. 16
Bankers' Books Evidence Act 1879	1879, 42 & 43 Vic., c. 11
Central Bank Act 1971	1971, No. 24
Children Act 2001	2001, No. 24
Criminal Justice (Joint Investigation Teams) Act 2004	2004, No. 20
Criminal Justice (Miscellaneous Provisions) Act 1997	1997, No. 4
Criminal Justice (Terrorist Offences) Act 2005	2005, No. 2
Criminal Justice (Theft and Fraud Offences) Act 2001	2001, No. 50
Criminal Justice (United Nations Convention against Torture) Act 2000	2000, No. 11
Criminal Justice Act 1994	1994, No. 15
Data Protection Acts 1988 and 2003	
Dentists Act 1985	1985, No. 9
European Arrest Warrant Act 2003	2003, No.45
Extradition Acts 1965 to 2001	
Extradition (Amendment) Act 1994	1994, No. 6
Extradition (European Convention on the Suppression of Terrorism) Act 1987	1987, No. 1
Extradition (European Union Conventions) Act 2001	2001, No. 49
Garda Síochana Act 1989	1989, No. 1
Immigration Act 1999	1999, No. 22
Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993	1993, No. 10
Medical Practitioners Act 1978	1978, No. 4
Misuse of Drugs Act 1977	1977, No. 12
Official Secrets Act 1963	1963, No. 1
Police Property Act 1897	1897, 60 & 61 Vic., c. 30
Postal and Telecommunications Services Act 1983	1983, No. 24
Prisons Act 1970	1970, No. 11
Prisons Act 1972	1972, No. 7
Probation of Offenders Act 1907	1907, 7 Edw., 7., c. 17
Statutory Declarations 1938	1938, No. 37
Transfer of Sentenced Prisoners Act 1995	1995, No. 16



---

**AN BILLE UM CHEARTAS COIRIÚIL (CÚNAMH  
FRITHPHÁIRTEACH) 2005**  
**CRIMINAL JUSTICE (MUTUAL ASSISTANCE) BILL 2005**

---

# **BILL**

5 *entitled*

AN ACT—

10 (a) TO ENABLE EFFECT TO BE GIVEN IN THE  
STATE TO PROVISIONS OF THE FOLLOWING  
INTERNATIONAL INSTRUMENTS RELATING TO  
MUTUAL ASSISTANCE IN CRIMINAL MATTERS:

15 (i) THE EUROPEAN UNION CONVENTION OF 29  
MAY 2000, THE PROTOCOL THERETO OF 16  
OCTOBER 2001 AND THE AGREEMENT OF 19  
DECEMBER 2003 BETWEEN THE EUROPEAN  
UNION AND THE REPUBLIC OF ICELAND  
AND THE KINGDOM OF NORWAY ON THE  
APPLICATION OF CERTAIN PROVISIONS OF  
THE CONVENTION AND PROTOCOL,

20 (ii) COUNCIL FRAMEWORK DECISION 2003/577/  
JHA OF 22 JULY 2003 CONCERNING ORDERS  
FREEZING PROPERTY OR EVIDENCE,

(iii) THE SECOND ADDITIONAL PROTOCOL OF 8  
NOVEMBER 2001 TO THE EUROPEAN CON-  
VENTION OF 20 APRIL 1959,

25 (iv) THE TREATY OF 18 JANUARY 2001 BETWEEN  
THE UNITED STATES OF AMERICA AND  
IRELAND, AS APPLIED BY THE INSTRU-  
MENT CONTEMPLATED BY ARTICLE 3(2) OF  
30 THE AGREEMENT OF 25 JUNE 2003  
BETWEEN THE EUROPEAN UNION AND  
THE UNITED STATES OF AMERICA AND  
DONE AT DUBLIN ON 14 JULY 2005;

35 (b) TO GIVE EFFECT TO COUNCIL DECISION  
(2002/192/EC) OF 28 FEBRUARY 2002 CONCERN-  
ING IRELAND'S REQUEST TO TAKE PART IN  
SOME OF THE PROVISIONS OF THE SCHENGEN  
ACQUIS, IN SO FAR AS THOSE PROVISIONS  
RELATE TO MUTUAL ASSISTANCE IN CRIMI-  
NAL MATTERS;



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

AND TO PROVIDE FOR RELATED MATTERS. 5

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART 1

### PRELIMINARY AND GENERAL

Short title and  
commencement.

1.—(1) This Act may be cited as the Criminal Justice (Mutual Assistance) Act 2005. 10

(2) This Act shall come into operation on such day or days as may be appointed by order or orders of the Minister, either generally or with reference to a particular purpose or provision, and different days may be so appointed for different purposes and different provisions. 15

Interpretation  
(general).

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

“Act of 1994” means the Criminal Justice Act 1994;

“Agreement with Iceland and Norway” means the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 Convention and 2001 Protocol, done at Brussels on 19 December 2003; 20

“Articles 49 and 51”, in relation to the Schengen Convention, means those Articles of the Convention, as applied to the State by Council Decision (2002/192/EEC)<sup>1</sup> of 28 February 2002 concerning Ireland’s request to take part in some of the provisions of the Schengen *acquis*, but does not include paragraph (a) (repealed by Article 2.2 of the 2000 Convention) of Article 49; 25

“authority” includes a person;

“1959 Convention” means the European Convention on Mutual Assistance in Criminal Matters, done at Strasbourg on 20 April 1959, and includes the Additional Protocol of 17 March 1978 and Second Additional Protocol of 8 November 2001 thereto; 30

“2000 Convention” means the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union<sup>2</sup>, done at Brussels on 29 May 2000; 35

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

“Central Authority” means the authority mentioned in *section 8*; 40

<sup>1</sup>OJ. L64, 7.3.2002, p.20

<sup>2</sup>OJ C 197, 12.7.2000, p.1

“criminal investigation” means an investigation, whether in the State or a designated state, into whether a person has committed an offence;

“criminal conduct” means any conduct—

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

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

- 10          (a) proceedings concerning measures relating to—
  - (i) the deferral of delivery or suspension of enforcement of a sentence or preventive measure,
  - (ii) conditional release, or
  - 15           (iii) a stay or interruption of enforcement of a sentence or preventive measure,
- (b) in relation to requests for assistance by a requesting authority in a member state—
  - (i) without prejudice to *subsection (2)(b) of sections 59 and 60* (requests for evidence or evidential material), proceedings brought by an administrative authority in respect of conduct which is punishable under the law of the State or that state or of both of them, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters,
  - 20           (ii) proceedings in claims for damages arising from wrongful prosecution or conviction,
  - 25           (iii) clemency proceedings,
  - 30           (iv) civil actions joined to criminal proceedings, as long as the criminal court concerned has not taken a final decision in the criminal proceedings, and
  - (v) proceedings in respect of measures relating to—
    - 35           (I) the deferral of delivery or suspension of enforcement of a sentence or preventive measure,
    - (II) conditional release, or
    - (III) a stay or interruption of enforcement of a sentence or preventive measure, and
  - 40           (c) in relation to requests for assistance by a requesting authority in a designated state (other than a member state), without prejudice to *subsection (3) of sections 59 and 60*, proceedings brought by an administrative authority in respect of conduct which is punishable under the law of the State or that state or of both of them, by virtue of being infringements of the rules of law, and where the
  - 45

decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

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

“evidence” means oral evidence or, as appropriate, any document or thing which could be produced as evidence in criminal proceedings, including any information in non-legible form which could be converted into permanent and legible form for the purposes of those proceedings; 5

“Framework Decision” means Council Framework Decision (2003/577/JHA<sup>3</sup>) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence; 10

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

“member state” means— 15

(a) a member state of the European Union (other than the State), for the purposes of mutual assistance under the provisions of the 2000 Convention, 2001 Protocol or Articles 49 and 51, and

(b) Iceland and Norway or any other designated state, for the purposes of mutual assistance under any of those provisions; 20

“Minister” means the Minister for Justice, Equality and Law Reform;

“offence” (except in *Parts 2, 4, and 8* and subject to *subsections (2) and (3) of sections 59 and 60*)— 25

(a) means, in relation to a criminal investigation or criminal proceedings, for an offence committed—

(i) in the State, an offence in respect of which a request for mutual assistance may be made under the relevant international instrument, 30

(ii) in a member state, an offence for which a person may be surrendered to it under the European Arrest Warrant Act 2003, and

(iii) in a designated state (other than a member state), an offence for which a person may be extradited to it under the Extradition Acts 1965 to 2001, 35

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

(c) does not include a political offence; 40

“political offence”, except in *Part 2*—

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

<sup>3</sup>OJ L196, 2.8.2003, p.45

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

5 “prison” means a place of custody administered by or on behalf of the Minister and includes—

(a) St. Patrick’s Institution,

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

10 (c) a place specified under section 3 of the Prisons Act 1972, and

(d) an institution (or part thereof) or other place designated as a children detention centre under section 150 of the Children Act 2001;

“property”, except in *Part 4*, includes—

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

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

(c) proceeds of the disposal of property, and

20 (d) evidence;

“2001 Protocol” means the Protocol<sup>4</sup> to the 2000 Convention, done at Luxembourg on 16 October 2001;

“relevant international instrument” means, as appropriate:

(a) the 2000 Convention,

25 (b) the 2001 Protocol,

(c) the Agreement with Iceland and Norway,

(d) the Framework Decision,

(e) Articles 49 and 51 of the Schengen Convention,

(f) the 1959 Convention,

30 and includes any reservation or declarations made in accordance therewith;

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

35 “requesting authority” means—

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

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

<sup>4</sup>OJ C 326, 21.11.2001, p. 1

“revenue offence”—

- (a) means an offence under the law of the State or a designated state in connection with taxes, duties, customs or exchange regulation,
- (b) includes such an offence under the law of a designated state irrespective of whether the law of the State provides for taxes, duties, customs or exchange regulation of the same kind as that state provides, but
- (c) does not include—
  - (i) an offence involving the use or threat of force or perjury or the forging of a document issued under statutory authority, or
  - (ii) an offence alleged to have been committed by an officer of the Revenue of that state in his or her capacity as such officer;

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

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

- (a) for whose external relations the state or its government is wholly or partly responsible, and
- (b) to which the relevant international instrument applies,

and “designated state” and “member state” are to be construed accordingly.

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

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

- (a) *paragraph (b) of the definition of “criminal proceedings” in subsection (1);*
- (b) *subsections (1) and (2) of sections 59 and 60;*
- (c) *section 68(1)(b).*

(4) References in this Act to a judge of the District Court are to be construed as references to the judge when sitting in the district court district to which he or she is assigned.

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

(6) When interpreting any provision of this Act—

- (a) a court may consider the relevant international instrument and any explanatory document issued in connection with it, and
- 5 (b) give the instrument and any such document such weight as is appropriate in the circumstances.

(7) For convenience of reference—

- (a) *Schedule 1* sets out the English text of the 2000 Convention,
- (b) *Schedule 2* sets out the English text of the 2001 Protocol,
- 10 (c) *Schedule 3* sets out the English text of the Agreement with Iceland and Norway,
- (d) *Schedule 4* sets out the English text of the Framework Decision,
- 15 (e) *Schedule 5* sets out the English text of the Second Additional Protocol,
- (f) *Schedule 6* sets out the English text of Articles 49 and 51 of the Schengen Convention,
- (g) *Schedule 7* sets out the English text of the Agreement on Mutual Legal Assistance between the European Union and the United States of America, done at Washington D.C. on 25 June 2003, and
- 20 (h) *Schedule 8* sets out the English text of the Treaty between the Government of Ireland and the Government of the United States on Mutual Assistance in Criminal Matters, done at Washington D.C. on 8 January 2001, as applied by the Instrument contemplated by Article 3(2) of the said Agreement of 25 June 2003 and done at Dublin on 14 July 2005.
- 25

(8) In this Act, unless the context otherwise requires—

- 30 (a) a reference to a section, Part or Schedule is to a section or Part of, or a Schedule to, this Act,
- (b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs,
- 35 (c) a reference to any other enactment is to that enactment as amended, adapted or extended by or under any other enactment, including this Act.

3.—(1) Assistance shall be refused—

- 40 (a) if the Minister considers that to do so would be likely to prejudice the sovereignty, security or other essential interests of the State or would be contrary to public policy (*ordre public*),
- (b) if there are reasonable grounds for believing—

General restriction on providing assistance.

- (i) that the request concerned was made for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation,
- (ii) that providing assistance—
  - (I) may prejudice a person's position for any of those reasons,
  - (II) may result in the person being subjected to torture, or
  - (III) would otherwise contravene the European Convention on Human Rights,

or

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

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

Designated state.

**4.—**(1) The Minister for Foreign Affairs may by order designate a state (other than a member state) for the purposes of this Act or specified Parts or provisions of it.

(2) The Minister for Foreign Affairs may amend or revoke an order under this section, including an order under this subsection.

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

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

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

- (a) references in the Articles mentioned in that subsection to a requested state or requested party or to authorities, judicial authorities or competent authorities of that state or party shall be construed as references to, where appropriate, the Central Authority or the judge or court concerned, and
- (b) references to those Articles are references to the Articles as modified by any reservation or declaration made in relation to them.

Requests (general).

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

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

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

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

(3) Requests shall—

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

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

15 (4) Requests to a designated state and any supporting or related documents shall be accompanied, where appropriate, by a translation of the requests and of any such documents, or of the material parts of them, into the official language or one of the official languages of that state.

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

(6) The Central Authority may—

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

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

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

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

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

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

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

Transmission of evidence to designated state (general).

45 (2) If any such evidence is to be accompanied by a certificate, affidavit or other verifying document, the judge concerned or, as the case may be, the appropriate member of the Garda Síochána, shall



supply the required document for transmission to the designated state.

(3) Where the evidence consists of a document, the original or a copy shall be transmitted and, where it consists of any other item, the item itself or a description, photograph or other representation of it shall be transmitted, as may be necessary to comply with the request. 5

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

(2) The Central Authority has the function of receiving, transmitting and otherwise dealing with requests, except those made under *Part 3*. 10

(3) The Minister may, if he or she considers it appropriate, designate persons to perform specified functions of the Central Authority, and different persons may be so designated to perform different such functions. 15

(4) While such a designation is in force, a reference in this Act to the Central Authority, in so far as it relates to the performance of a function specified in the designation, is to be construed as a reference to the person so designated to perform that function. 20

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

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

Spontaneous  
exchange of  
information.

9.—(1) The Director of Public Prosecutions or Commissioner of the Garda Síochána may, pursuant to Article 7 of the 2000 Convention or Article 11 of the Second Protocol and without receiving a request to that effect, communicate information to a competent authority in a designated state relating to matters which might give rise to such a request. 25 30

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

(3) *Subsection (2)* does not apply in relation to the competent authority of a designated state which has made a declaration under paragraph 4 of the said Article 11 unless, as required by such a declaration, the authority has received prior notice of the nature of the information to be communicated and has agreed to its being communicated. 35

(4) Any conditions imposed by a competent authority in a designated state on the use of information communicated by it to the Director or Commissioner shall be complied with pursuant to the said Article 7 or 11. 40

(5) In this section references to a competent authority in a designated state are references to the authority in such a state appearing to the Director or Commissioner to be the appropriate authority for receiving or communicating the information concerned. 45

10.—The following provisions are repealed:

Repeals.

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

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

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

## PART 2

### INFORMATION ABOUT FINANCIAL TRANSACTIONS FOR CRIMINAL INVESTIGATION PURPOSES

11.—(1) In this Part, except where the context otherwise requires— Interpretation (Part 2).

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

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

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

(c) an account held by another person on which the person is authorised to operate, whether by way of a power of attorney or otherwise, and in relation to which the information requested can be provided by the financial institution concerned within a reasonable time,

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

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

“account information order” means an order under *section 12* or *16* that a specified financial institution shall, within a reasonable time, to be specified by the applicant for the order by notice in writing—

(a) state whether an account or accounts in a specified name or names is or are kept in the financial institution, and

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

“account monitoring order” means an order under *section 12* or *16* that a specified financial institution shall enable the applicant for the order to monitor, during a period, and in a manner and form, specified by the applicant by notice in writing, any operations so specified that are being carried out on an account or accounts in a specified name or names in the financial institution; 5

“financial institution” means—

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

(i) a person who holds or has held a licence from the Central Bank and Financial Services Authority of Ireland under section 9 of the Central Bank Act 1971, 10

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

(iii) a credit institution (within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992)) which has been authorised by that Authority to carry on the business of a credit institution in accordance with the supervisory enactments within the meaning of those Regulations, 15 20

or

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

“form”, where it occurs in the definition of account information order and account monitoring order, means a form which— 25

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

(b) if so specified by the applicant for such an order, is in an electronic or other non-legible form which is capable of being converted into a permanent and legible form; 30

“offence” means—

(a) in relation to a criminal investigation in the State, an offence punishable by imprisonment for a maximum period of at least 4 years, 35

(b) in relation to an order under *section 12* concerning financial transactions in a member state, an offence punishable in the State by imprisonment for a maximum period of at least 4 years and under the law of the member state by imprisonment for a maximum period of at least 2 years, 40

(c) in relation to an order under *section 16* on foot of a request from a member state concerning financial transactions in the State, an offence punishable in the State by imprisonment for a maximum period of at least 2 years and under the law of the member state by imprisonment for a maximum period of at least 4 years, 45

(d) an offence referred to in Article 2 of the Convention on the establishment of a European Police Office (Europol)

Convention) of 24 July 1995 or in the Annex thereto,  
as amended,

(e) to the extent that it may not be provided for in that Convention, an offence referred to in the Convention on the  
5 Protection of the European Communities' Financial  
Interests of 26 July 1995 or the 1996 Protocol or 1997  
Second Protocol thereto, and

(f) such other offence as the Council of the European Union  
10 may prescribe pursuant to Article 34(2)(c) of the Treaty  
of European Union,

and includes a revenue offence, if or to the extent that the relevant  
international instrument provides for mutual assistance in respect of  
such an offence;

“political offence”—

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

(b) does not include—

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

20 (ii) an offence, as defined in *subsection (2)*, of conspiracy  
or association to commit such an offence;

“2001 Protocol” means the Protocol of 16 October 2001 to the 2000  
Convention;

“sending or recipient account” has the meaning given to it by *para-*  
25 *graph (d)* of the definition of “account”.

(2) The offence of conspiracy or association referred to in *para-*  
*graph (b)(ii)* of the definition of “political offence” is an offence—

(a) which is constituted by the behaviour described in Article  
30 3(4) of the Convention relating to Extradition between  
the Member States of the European Union, done at  
Brussels on 27 September 1996, namely, behaviour by a  
person which contributes to the commission, by a group  
of persons acting with a common purpose, of—

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

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

and

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

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

(3) The reference in this section to section 3 of the Act of 1987 is to that section as amended by section 2 of the Extradition (Amendment) Act 1994 and sections 12 and 27 of the Extradition (European Union Conventions) Act 2001. 5

*Information about financial transactions for use in the State*

Account  
information order  
and account  
monitoring order.

**12.—**(1) For the purposes of a criminal investigation in the State, a member of the Garda Síochána not below the rank of inspector may apply *ex parte* to a judge of the District Court for an account information order or an account monitoring order or for both of those orders. 10

(2) The application may relate to—

- (a) all financial institutions in the State or the member state concerned, 15
- (b) a category or categories of such financial institutions, or
- (c) a particular such financial institution or particular such financial institutions.

(3) The judge may make the order or orders applied for in relation to the financial institution or financial institutions specified in the application if satisfied that— 20

- (a) the Garda Síochána are investigating whether a specified person—
  - (i) has committed an offence, or 25
  - (ii) is in possession or control of assets or proceeds deriving from criminal conduct, and
- (b) there are reasonable grounds for believing—
  - (i) that the financial institution or financial institutions concerned may have information which is required for the purposes of the investigation, and 30
  - (ii) that it is in the public interest that any such information should be disclosed for those purposes, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances. 35

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

(5) An order under this section has effect—

- (a) as if it were an order of the District Court, and 40
- (b) notwithstanding any obligation as to secrecy or any other restriction on disclosure imposed by statute or otherwise.

(6) An order may be made under this section notwithstanding that a financial institution to which it relates is not in the district court district to which the judge is assigned.

5 (7) Any information provided by a financial institution in the State in compliance with an order under this section is not admissible in evidence against the financial institution, except in any proceedings for an offence under *section 20(1)(b)*.

10 **13.—**(1) Where an account information order or account monitoring order relates to information concerning an account or accounts in a financial institution in a member state, the Director of Public Prosecutions may send the order to the Central Authority for transmission to a competent authority in that state, together with a request by the Director for the supply of the information to which the order relates. Request to member state for information about financial transactions.

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

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

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

(3) Any request under this section shall include—

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

(b) the following information:

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

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

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

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

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

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

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

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

*Information about financial transactions for use in member state*

Request from  
member state for  
information about  
financial  
transactions.

**14.—**(1) This section applies to a request for information in relation to any account or accounts that may be held in a financial institution in the State by a person who is the subject of a criminal investigation in a member state. 10

(2) The request shall include—

(a) a statement that a specified offence has been committed in the member state concerned and that the person mentioned in the request is the subject of an investigation into the offence, 15

(b) a statement that—

(i) any information that may be supplied in response to the request will not, without the Minister's prior consent, be used for any purpose other than that specified in the request, and 20

(ii) the record of any such information will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless the Minister indicates that its return is not required, and 25

(c) the following information:

(i) why the requesting authority considers that the requested information is likely to be of substantial value for the purposes of the investigation; 30

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

(iii) if available, the name or names of that institution or those institutions; 35

(iv) the maximum period of imprisonment under the law of the member state by which the offence is punishable; and

(v) any other information that may facilitate compliance with the request. 40

(3) In *subsection (1)*, “information” includes—

(a) information as to whether a financial institution in the State keeps an account or accounts mentioned in that subsection, 45

(b) details of any such account or accounts,

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

5     **15.**—The Minister may, if of opinion that the request complies with *section 14*, authorise a member of the Garda Síochána not below the rank of inspector to apply to a judge of the District Court for an account information order or account monitoring order, or for both of those orders, in relation to the information requested.

Action on request.

10     **16.**—(1) On receipt of an authorisation under *section 15* a member of the Garda Síochána not below the rank of inspector may apply *ex parte* to a judge of the District Court for an account information order or account monitoring order or for both of those orders.

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

(2) The application—

15     (a) may relate to—

(i) all financial institutions in the State,

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

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

and

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

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

(a) an offence under the law of the member state concerned has been committed,

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

(c) the request is otherwise in accordance with the 2001 Protocol, and

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

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

40     (5) An order under this section has effect—

(a) as if it were an order of the District Court, and



(b) notwithstanding any obligation as to secrecy or other restriction imposed by statute or otherwise.

(6) An order may be made under this section notwithstanding that a financial institution to which it relates is not in the district court district to which the judge is assigned.

5

(7) Any information provided by a financial institution in compliance with such an order is not admissible in evidence against it, except in any proceedings for an offence under *section 20(1)(b)*.

Transmission of information obtained to requesting authority.

**17.**—Information disclosed by a financial institution in compliance with an account information order or account monitoring order under *section 16* shall be transmitted to the requesting authority concerned in accordance with arrangements approved by the Minister.

10

Requesting authority to be informed of possible further investigations.

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

15

### *Supplementary*

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

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

20

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

(b) any financial institution affected by the order.

(2) Where the application relates to an order under *section 16*, the judge shall arrange for the competent authority in the member state concerned to be notified—

25

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

30

(b) of the outcome of the application.

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

Non-compliance with account information order or account monitoring order.

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

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

35

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

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

40

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

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

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

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

### PART 3

#### INTERCEPTION OF TELECOMMUNICATIONS MESSAGES

##### *Introductory*

**21.**—In this Part, unless the context otherwise requires—

Interpretation  
(Part 3).

10 “Act of 1983” means the Postal and Telecommunications Services Act 1983;

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

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

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

20 “telecommunications address” has the meaning that it has in the Act of 1993.

##### *Interceptions where technical assistance required from member state*

**22.**—(1) This section applies where—

Request to member  
state for  
interception.

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

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

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

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

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

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

(3) The request shall—

- (a) confirm that an authorisation of an interception has been given by the Minister under the Act of 1993 for the purpose of a criminal investigation,
- (b) give sufficient information to identify the person whose telecommunications messages are to be intercepted, 5
- (c) give an indication of the criminal conduct under investigation,
- (d) state the desired duration of the interception,
- (e) provide sufficient technical data, including the network connection number of the telecommunications address concerned, to ensure that the request can be met, and 10
- (f) where—
  - (i) the request relates to a specified person who is present in the member state concerned, or 15
  - (ii) is a request under *subsection (2)(b)*,

provide a summary of the facts relating to the offence being investigated and any further information that the competent authority may require to enable it to decide whether the requested interception would be authorised by it in similar circumstances. 20

(4) If the request relates to a person who is present in a member state other than that from which the technical assistance is required, that other member state shall be notified of the authorisation in accordance with *section 25*. 25

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

(6) For the removal of doubt, it is declared that an authorisation may be given under section 2 of the Act of 1993 where the person whose telecommunications messages are to be intercepted is present in a member state. 30

Request to State for interception.

**23.—**(1) This section applies where—

- (a) a criminal investigation is taking place in a member state,
- (b) a lawful interception order or warrant for the interception of telecommunications messages to or from a specified person or telecommunications address has been issued in the member state in connection with the investigation, 35
- (c) a competent authority in the member state makes a request to the Minister for—
  - (i) the interception and immediate transmission to the authority or a person nominated by it of telecommunications messages to or from the telecommunications address concerned, or 40

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

(d) the specified person—

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

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

(2) The request shall—

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

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

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

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

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

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

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

(3) Where—

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

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

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

**24.—(1)** Subject to *subsection (3)*, where the request is for the interception and immediate transmission of specified telecommunications messages, the Minister may give an authorisation of the interception if of opinion that *section 23* applies and is complied with in relation to the case. Action on request.

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

- (a) the request is for the interception and recording of specified telecommunication messages and transmission of the recording, and
- (b) immediate transmission of the interception is not possible—
  - (i) from the State,
  - (ii) to the member state, or
  - (iii) in both of those cases,

the Minister may give an authorisation of the interception if of opinion that *section 23* applies and is complied with in relation to the case.

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

- (a) the conduct being investigated in the requesting state would, if it occurred in the State, constitute a serious offence within the meaning of the Act of 1993 and otherwise justify the giving of an authorisation under that Act, and
- (b) *section 23* applies and is complied with in relation to the case.

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

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

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

- (a) arrange for the transmission of the telecommunications messages concerned to the competent authority in the member state or a person nominated by it, or
- (b) as appropriate, arrange for the recording of the messages and transmission of the recording to that authority or person.

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

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

*Interceptions where technical assistance from member state not required*

25.—(1) Where—

Notification to member state of interception.

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

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

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

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

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

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

(2) The notification shall include the following information:

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

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

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

(d) the expected duration of the interception.

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

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

(a) any interception made may be continued, but

(b) material intercepted may not be used unless—

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

(ii) in connection with taking urgent measures to prevent an immediate and serious threat to public security (including measures in respect of any serious

offence), in which case the Minister shall inform the competent authority of any such use and the reasons justifying it.

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

(6) If so requested by the competent authority, the Minister shall supply it with a summary of the facts of the case and any further information necessary to enable it to decide whether an interception would be authorised by it in similar circumstances. 10

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

(8) Where the Minister is of opinion that the information to be provided under *subsection (2)* is of a particularly sensitive nature, the information may, with the agreement of the competent authority concerned, be transmitted to it through a specific person or body. 15

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

Notification by  
member state of  
interception.

**26.—**(1) This section applies where—

- (a) the competent authority in a member state has authorised an interception,
- (b) the telecommunications address of the person specified in the authorisation is being used on the territory of the State, 25
- (c) technical assistance from the State is not required to carry out the interception, and
- (d) the competent authority notifies the Minister accordingly in accordance with Article 20 of the 2000 Convention. 30

(2) Where this section applies, the Minister, without delay and at the latest within a period specified in *subsection (7)*, shall proceed in accordance with *subsection (3)* or *subsections (4)* and *(5)*, as appropriate. 35

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

(4) If—

- (a) such an authorisation would not be given, 40
- (b) *section 3* applies, or
- (c) the offence concerned is a political offence or revenue offence,

the Minister shall require that the interception not be carried out or be terminated and give the reasons for so requiring in writing. 45

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

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

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

(a) a period not exceeding 96 hours; or

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

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

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

#### *Miscellaneous*

25 **27.—**(1) In this section, “authorised undertaking” has the meaning given to it by the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2003 (S.I. No. 306 of 2003). Indirect interception of telecommunications messages.

(2) Where—

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

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

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

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

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

(3) Where—

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

45 (b) a lawful order or warrant for the interception of telecommunications messages to or from the person has been



made or issued in the member state for the purposes of a criminal investigation and is in force,

- (c) the messages cannot be directly intercepted in the member state, but
- (d) an authorised undertaking which has received directions under section 110 of the Act of 1983 in relation to interceptions—
  - (i) can directly intercept the messages, and
  - (ii) has interception equipment enabling a provider of telecommunications services in the member state to intercept them,

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

Amendment of section 110 of Act of 1983.

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

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

- (a) on summary conviction, to a fine not exceeding €5,000, or
- (b) on conviction on indictment, to a fine.”.

## PART 4

### FREEZING ORDERS

#### *Introductory*

25

Interpretation (Part 4).

**29.**—In this Part, unless the context otherwise requires—

“certificate” means the certificate—

- (a) provided for in Article 9 of the Framework Decision, and
- (b) the standard form of which is set out in the Annex to the Decision;

30

“external freezing order” means any measure—

- (a) taken provisionally by a competent judicial authority of a member state in criminal proceedings to prevent the destruction, transformation, moving, transfer, disposal or use of specified property in the State that could be subject to confiscation or be evidence in those proceedings, and
- (b) made for the purpose of—
  - (i) subsequent confiscation of the property, or

35

(ii) protection of evidence;

“freezing co-operation order” has the meaning given to it by *section 33*;

“freezing order” means—

- 5        (a) an order under *section 24* (as amended by *section 84(a)* of this Act) of the Act of 1994,
- (b) an order under *section 14* or *15* of the Criminal Justice (Terrorist Offences) Act 2005, or
- (c) an order under *section 30*,

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

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

15    “issuing member state” means the member state in which an issuing judicial authority exercises jurisdiction;

“offence” includes conduct constituting—

- (a) an offence under the law of the State or the issuing member state—
- 20            (i) which is specified in Article 3(2) of the Framework Decision, and
- (ii) any other offence or category of offence which may be added to the list in that Article by the Council of the European Union in accordance with Article 3(3) of the Decision,

25            and

- (b) any other offence under the law of the State and the issuing member state, whatever its constituent elements, or however it may be described, under the law of that member state;

30    “property” includes property of any description, corporeal or incorporeal, movable or immovable and wherever situated, which the competent judicial authority in the member state considers—

- (a) to be the proceeds of an offence,
- 35            (b) to be equivalent to either the full value or a part of the value of such proceeds, or
- (c) to be the instrumentalities or objects of an offence,

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

Freezing order  
relating to evidence.

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

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

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

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

(b) that evidence relating to the offence concerned—

(i) is on specified premises,

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

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

(iv) does not consist of or include items subject to legal privilege,

and

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

(4) An order under this section has effect as if it were an order of the High Court.

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

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

(b) any person affected by it,

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

(6) If—

(a) an order under this section is transmitted for enforcement in a member state pursuant to *section 31(5)*, and

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

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

5 *Freezing orders for enforcement outside State*

31.—(1) If—

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

(b) the application is granted,

Transmission of freezing order, with certificate, to member state for enforcement.

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

(2) Where appropriate, the freezing order and certificate shall be accompanied by a translation into the official language or one of the official languages of the member state concerned, unless it is known  
15 that such a translation is not required by the appropriate authority in the member state concerned.

(3) The certificate shall—

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

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

(4) If the freezing order is an order under *section 30* for the protection of evidence, the court concerned may indicate to the judicial authority of the member state any formalities and procedures in  
25 enforcing the order that are necessary to ensure that the evidence is admissible in criminal proceedings.

(5) The documents mentioned in *subsection (2)* shall be sent by a registrar of the Court to the Central Authority for transmission to the appropriate authority in the member state concerned with a view  
30 to having the freezing order enforced.

*External freezing orders for enforcement in State*

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

Transmission of external freezing orders to State.

40 (2) If the external freezing order or certificate is in a language other than Irish or English, a translation into either of those languages shall also be so transmitted.

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

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

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

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

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

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

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

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

Recognition and enforcement of external freezing orders.

**33.—**(1) The Central Authority shall, on receipt of an external freezing order, certificate and any translation, forthwith cause an application to be made to the High Court for an order (a “freezing co-operation order”) recognising the external freezing order and prohibiting the destruction, transformation, moving, transfer, disposal or use by any person of property specified in the external freezing order, subject to any conditions that may be specified in the freezing co-operation order.

(2) The application may be made *ex parte* and shall be accompanied by the external freezing order, certificate, any other related documents or copies thereof.

(3) The application shall be dealt with as soon as possible and, whenever practicable, within 24 hours of receipt of the external freezing order and a duly completed certificate.

(4) On the application the Court may, subject to *subsection (6)*, make a freezing co-operation order.

(5) A freezing co-operation order has effect for all purposes as if it were an order made under *section 24* (as amended by *section 84(a)* of this Act) of the Act of 1994.

(6) The Court may—

(a) refuse to make a freezing co-operation order on a ground mentioned in *section 3* or *36*, or

(b) postpone its making on a ground mentioned in *section 37*.

(7) Where the request concerns an offence referred to in Article 3(2) of the Framework Decision which is punishable in the member state concerned by a maximum term of imprisonment of not less

than 3 years, the Court may not refuse to make a freezing co-operation order solely on the ground that the conduct constituting the offence concerned does not constitute an offence under the law of the State.

5 (8) Where—

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

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

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

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

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

**34.—**A freezing co-operation order remains in force—

Duration of  
freezing co-  
operation order.

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

25 (b) where the order is for the purpose of subsequent confiscation of property, until a confiscation co-operation order is made or the request for such an order is refused and the refusal is upheld on any appeal against it, or

(c) until the freezing co-operation order is discharged in accordance with *section 35*.

30 **35.—**(1) Subject to the provisions of this section, the High Court, on application by any person affected by a freezing co-operation order—

Variation or  
discharge of  
freezing co-  
operation order.

(a) may vary or discharge it, and

(b) shall discharge it—

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

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

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

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

(4) The registrar of the Court shall inform the issuing judicial authority—

5

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

(b) of the outcome of the application.

Refusal to make  
freezing co-  
operation order.

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

10

(a) the offence to which the external freezing order relates is not an offence within the meaning of this Part,

(b) the certificate is not produced, is incomplete or manifestly does not correspond to the external freezing order,

15

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

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

20

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

25

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

(b) accept an equivalent document, or

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

30

(3) Where—

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

35

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

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

40

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

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

5     **37.—(1)** The High Court may postpone the making of a freezing co-operation order— Postponement of freezing co-operation order.

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

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

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

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

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

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

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

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

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

35     **38.—(1)** A request to transfer evidence subject to a freezing co-operation order to the issuing member state shall be treated as a request for assistance in obtaining evidential material under *section 60*. Subsequent treatment of frozen property.

      (2) A request to make a confiscation co-operation order in relation to property subject to such an order shall be dealt with in accordance with *Part 5*.

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

40     (a) the request concerns an offence to which Article 3(2) of the Framework Decision applies, and

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



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

## PART 5

### ORDERS FOR CONFISCATION AND FORFEITURE

5

#### *Definitions*

Definitions (*Part 5*). **39.**—(1) In this Part, unless the context otherwise requires—

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

“confiscation cooperation order” has the meaning given to it by *section 42*; 10

“confiscation order” means a confiscation order within the meaning of the Act of 1994;

“defendant” means the person to whose property an external confiscation order relates; 15

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

(a) recovering property in the State which was received or obtained as a result of or in connection with conduct which would, if it occurred in the State, constitute an indictable offence, 20

(b) recovering the value of such property, or

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

“external forfeiture order” means an order for the forfeiture of property in the State which is made by a court in a designated state in or in connection with proceedings resulting from conduct which would, if it occurred in the State, constitute an indictable offence; 25

“gift” means a gift which, if the external confiscation order concerned were a confiscation order, would be a gift caught by the Act of 1994; 30

“realisable property” means—

(a) in relation to a confiscation co-operation order made in respect of specified property, the property specified in the order, and 35

(b) in any other case—

(i) any property held by the defendant, and

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

but does not include property which is the subject of an order under *section 30* (forfeiture orders) of the Misuse of Drugs Act 1977 or 40

section 4 (confiscation orders: drug trafficking offences), 9  
(confiscation orders: offences other than drug trafficking offences)  
or 61 (forfeiture orders) of the Act of 1994.

*Enforcement of confiscation orders outside State*

5     **40.**—(1) If a confiscation order relates to property in a designated state, the registrar or clerk of the court concerned shall, on request and subject to any conditions that may be specified by rules of court, give to the Director of Public Prosecutions—

Request for  
confiscation of  
property in  
designated state.

(a) a duly authenticated copy of the order,

10     (b) a certificate signed by the registrar or clerk stating—

(i) that the order is not subject to appeal or, if it is, the date on which the time for lodging an appeal against it will expire, and

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

and

20     (c) a brief description of the conduct which resulted in the making of the order.

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

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

(b) a statement signed by or on behalf of the Director that the order is in force and has not been satisfied, and

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

30     (3) If—

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

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

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

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

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

40     (b) the date of realisation, and

(c) the proceeds of realisation,

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

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

5

*Enforcement of external confiscation orders in State*

Transmission to  
State of external  
confiscation order.

**41.**—(1) An external confiscation order may be transmitted by or on behalf of the court that made it to the Central Authority for enforcement.

(2) The order shall be accompanied by—

10

(a) a statement by or on behalf of the court—

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

(ii) that, if the person against whom the order was made did not appear in the proceedings concerned, notice of the proceedings was received by the person in sufficient time to defend them,

15

and

(b) a brief description of the conduct constituting the offence which resulted in the making of the external confiscation order.

20

Confiscation co-  
operation order.

**42.**—(1) The Central Authority, on receipt of an external confiscation order and accompanying documents, may cause an application to be made to the High Court for an order (a “confiscation co-operation order”) for the confiscation of the property in the State to which the external confiscation order relates.

25

(2) The application shall be accompanied by the external confiscation order and any accompanying or related documents or copies thereof,

(3) On the application the Court may, subject to *subsection (4)*, make a confiscation co-operation order.

30

(4) The Court may not make a confiscation co-operation order unless—

(a) it is satisfied—

(i) that the application is made with the consent of the Minister, and

35

(ii) as to the matters mentioned in *section 41(2)(a)*,

and

(b) an opportunity has been given to any person claiming to own, or have an interest in, the property subject to the external confiscation order to show cause why the order should not be made.

40

- (5) Where a confiscation co-operation order provides, or in so far as it provides, for the confiscation of a sum of money—
- 5       (a) it has effect for all purposes and is enforceable as if it were a confiscation order requiring the person against whom the external confiscation order was made to pay that sum, and
- (b) sections 19 to 22 and 24 to 30 of the Act of 1994 apply accordingly, with any necessary modifications.
- 10 (6) Where a confiscation co-operation order provides, or in so far as it provides, for the confiscation of property other than money—
- (a) the Court may—
- (i) appoint a person to be a receiver in respect of the property,
- 15       (ii) empower him or her to take possession of the property, subject to such conditions or exceptions as may be specified by the Court,
- (iii) order any person having possession or control of the property to give possession of it to the receiver,
- 20       (iv) empower the receiver to realise the property in such manner as the Court may direct,
- (v) where appropriate, make an order under section 24 of the Act of 1994 in relation to the property, and
- (vi) make such other provision as the interests of justice may require,
- 25       (b) the property is deemed for the purposes of this subsection to be realisable property,
- (c) the Court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, by the recipient of any gift as the court may direct and may, on the payment being made, by order transfer, grant or extinguish any interest in the property,
- 30       (d) sections 22 and 26 to 30 of the Act of 1994 apply accordingly, as appropriate and with the necessary modifications, in relation to the confiscation co-operation order as if it were a confiscation order, and
- 35       (e) the Court shall not exercise the power conferred by *subparagraph (ii), (iii) or (iv) of paragraph (a) or by paragraph (c)* unless a reasonable opportunity has been given for any person holding an interest in the property concerned to make representations to the Court.
- 40
- (7) Where a sum of money payable or remaining to be paid under an external confiscation order is expressed in a currency other than the euro, the amount shall—
- 45

(a) be converted into euro at the baseline rate of exchange between that currency and the euro on the date of the making of the external confiscation order, and

(b) be expressed as such in the confiscation co-operation order.

5

(8) The Court—

(a) may vary or discharge a confiscation co-operation order on the application of any person claiming to have an interest in the property concerned or to be otherwise affected by the order and may in that connection consult the court which made the external confiscation order, and

10

(b) shall—

(i) vary a confiscation co-operation order in accordance with any variation made in the external confiscation order, and

15

(ii) if satisfied that the external confiscation order has been revoked or has been satisfied in accordance with the law of the designated state concerned, discharge it.

*Enforcement of forfeiture orders outside State*

20

Forfeiture of  
property in  
designated state.

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

(a) a duly authenticated copy of the order,

25

(b) a certificate signed by the registrar or clerk stating—

(i) that the order is not subject to appeal or, if it is, the date on which the time for lodging an appeal against it will expire, and

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

30

and

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

35

(2) The Director of Public Prosecutions may send to the Central Authority, for transmission to the appropriate authority in the designated state concerned—

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

40

(b) a request that the property be forfeited.

**44.—**(1) An external forfeiture order may be transmitted by or on behalf of the court that made it to the Central Authority for enforcement. Transmission to State of external forfeiture order.

- 5       (2) The order shall be accompanied by—
- (a) a statement by or on behalf of the court—
- (i) that the order is in force and not subject to appeal, and
- 10           (ii) that, if the person against whom the order was made did not appear in the proceedings concerned, notice of the proceedings was received by the person in sufficient time to defend them,
- and
- 15           (b) a brief description of the conduct constituting the offence which resulted in the making of the external forfeiture order.

**45.—**(1) The Central Authority, on receipt of an external forfeiture order and accompanying documents, may cause an application to be made to the High Court for an order (a “forfeiture co-operation order”) for the forfeiture of the property in the State to which the external forfeiture order relates. Forfeiture co-operation order.

20

(2) The application shall be accompanied by the external forfeiture order and the accompanying and any related documents or copies thereof.

25       (3) On the application the Court may, subject to *subsection (4)*, make a forfeiture co-operation order.

(4) The Court may not make a forfeiture co-operation order unless—

- (a) it is satisfied—
- 30           (i) that the application is made with the consent of the Minister, and
- (ii) as to the matters mentioned in *section 44(2)(a)*,
- and
- 35           (b) an opportunity has been given to any person claiming to own, or have an interest in, the property subject to the external forfeiture order to show cause why the order should not be made.

(5) A forfeiture co-operation order operates to deprive the defendant in the proceedings in which the external forfeiture order was made of any right or interest in the property and to vest the property in the Commissioner of the Garda Síochána.

40

(6) The forfeited property shall be disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

(7) The Court—

(a) may vary or discharge a forfeiture co-operation order on the application of any person claiming to own or have an interest in the property concerned or to be otherwise affected by the order and may in that connection consult the court which made the external forfeiture order, and 5

(b) shall— 10

(i) vary a forfeiture co-operation order in accordance with any variation in the external forfeiture order, and

(ii) if satisfied that the external forfeiture order has been revoked, discharge it. 15

(8) The Police Property Act 1897 does not apply to property which vests in the Commissioner of the Garda Síochána by virtue of this section.

(9) This section applies to any property which is in the possession of the Garda Síochána under section 61(4) of the Act of 1994. 20

(10) Nothing in this section affects any enactment whereby property is, or may be ordered to be, forfeited as a result of a conviction for an offence.

PART 6

PROVISION OF EVIDENCE 25

Interpretation  
(Part 6).

46.—In this Part—

“evidence” does not include information provided under *Part 2* in relation to financial transactions;

“place” includes premises;

“witness” includes an expert witness and a person suspected of the offence which has given rise to the request concerned. 30

CHAPTER 1

*Taking of Evidence*

Evidence from  
person in  
designated state.

47.—(1) Where it appears to a judge of any court that criminal proceedings have been instituted or a criminal investigation is taking place in the State, the judge may issue a letter (a “letter of request”) requesting assistance in obtaining from a person in a designated state such evidence as is specified in the letter for use in the proceedings or investigation. 35

(2) Application for a letter of request may be made by the Director of Public Prosecutions or a person charged in any such proceedings that have been instituted. 40

(3) The letter of request shall be sent to the Central Authority for transmission to the appropriate authority.

5 (4) Notwithstanding *subsections (1) to (3)*, where proceedings in respect of an offence have been instituted or a criminal investigation is taking place, the Director of Public Prosecutions may issue and transmit a letter of request directly to the appropriate authority.

(5) The letter of request shall include—

- (a) a statement that the evidence is required for the purpose of criminal proceedings or a criminal investigation,
- 10 (b) a brief description of the conduct constituting the offence concerned, and
- (c) any other available information that may assist the appropriate authority in complying with the request.

15 (6) Evidence obtained by virtue of this section shall not, without the consent of the appropriate authority, be used for any purpose other than that specified in the letter of request.

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

(8) A statement of the evidence of a witness—

- (a) taken in accordance with a letter of request, and
- (b) certified by or on behalf of the court, tribunal or authority by which it was taken to be an accurate statement of  
25 the evidence,

is admissible, without further proof, in proceedings relating to the offence concerned as evidence of any fact stated therein of which oral evidence would be so admissible.

(9) A document purporting—

- 30 (a) to be a certificate given by a court, tribunal or authority under *subsection (8)*, and
- (b) to be signed by it or on its behalf,

is deemed to be such a certificate and to be so signed, unless the contrary is shown.

35 (10) A court, when considering whether any evidence taken from a person pursuant to a letter of request should be excluded in the exercise of its discretion to exclude evidence otherwise admissible, shall, where appropriate, have regard to—

- 40 (a) whether the law of the state concerned allowed the person and any other party concerned, when the evidence was being taken, to be legally represented and cross-examined, and
- (b) any other respects in which the taking of the evidence may have differed from the taking of comparable evidence in  
45 the State.



(11) Nothing in this section prevents the Director of Public Prosecutions from issuing a letter of request for assistance in obtaining a statement of evidence or taking possession of material evidence in a designated state for the purposes of criminal proceedings or a criminal investigation where the witness or witnesses concerned will give evidence in those proceedings or any proceedings that may be instituted after the investigation. 5

(12) In this section, “appropriate authority”, in relation to the place where the evidence is to be obtained, means—

(a) a court or tribunal specified in the letter of request and exercising jurisdiction in that place, or 10

(b) any other authority recognised by the government of the state concerned as the appropriate authority for receiving the letter.

Evidence for use in designated state.

**48.**—(1) This section applies, subject to *section 49*, in relation to a request for assistance in obtaining evidence in the State from a person (in this section referred to as a “witness”) for the purpose of criminal proceedings, or a criminal investigation, in a designated state. 15

(2) On receipt of such a request the Minister, if of opinion that this section applies in relation to it, may, subject to *subsection (3)*— 20

(a) request the President of the District Court to nominate a judge of that Court to receive the evidence to which the request relates, and

(b) send the judge a copy of the request and of any accompanying or related documents. 25

(3) The Minister shall not exercise the power conferred by *subsection (2)* unless an assurance is given by the requesting authority that any evidence that may be supplied in response to the request will not, without the consent of the nominated judge or the witness, be used for any purpose other than that permitted by the relevant international instrument. 30

(4) For the purposes of this section the nominated judge—

(a) has the powers of the District Court in criminal proceedings, including its powers— 35

(i) in relation to securing the attendance of witnesses, the production of documents or other articles, taking evidence on oath, compelling witnesses to give evidence or to produce documents or other things and the conduct generally of the proceedings for the taking of evidence, and 40

(ii) under any enactment or rule of law relating to the protection of witnesses against intimidation,

(b) may direct that the evidence, or any part of it, be received otherwise than in public if of opinion that such a direction is necessary to protect— 45

(i) the witness or other person, or

(ii) confidential or sensitive information, and

(c) shall inform the witness of his or her rights under *section 48*.

5 (5) The evidence may be given through a live television link in any case where it may be so given in proceedings under any enactment.

10 (6) Any person who is summoned to give evidence and who, without reasonable excuse, does not answer any question or comply with a requirement to produce any document or other thing is guilty of an offence and liable, on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(7) The Bankers' Books Evidence Act 1879 applies to proceedings under this section as it applies to other proceedings before a court.

15 (8) No order for costs may be made in the proceedings.

**49.—**(1) A person is not compelled to give any evidence in proceedings under *section 48* which he or she could not be compelled to give— Privilege of witnesses.

(a) in criminal proceedings in the State, or

20 (b) subject to *subsection (2)*, in criminal proceedings in the state concerned.

(2) *Subsection (1)(b)* does not apply unless the claim of the person to be exempt from giving the evidence is conceded by the requesting authority.

25 (3) Where the claim is not conceded, the person may (subject to the other provisions of this section) be required to give the evidence to which the claim relates, but the evidence shall not be transmitted to the requesting authority if a court in the state concerned, on the matter being referred to it, upholds the claim.

30 (4) Without prejudice to *subsection (1)*, a person may not be compelled under this section to give any evidence—

(a) in his or her capacity as an officer or servant of the State,  
or

(b) if to do so would be prejudicial to the security of the State.

35 (5) In any proceedings referred to in *subsection (1)* a certificate purporting to be signed by or on behalf of the Minister to the effect that it would be prejudicial to the security of the State for a person to give any evidence is admissible, without further proof, as evidence of that fact.

40 (6) In this section references to giving evidence include references to answering any question and to producing any document or other thing, and the reference in *subsection (3)* to the transmission of evidence given by a person is to be construed accordingly.

Transfer of prisoner  
to give evidence or  
assist criminal  
investigation in  
State.

**50.—**(1) In this section, “prisoner” means a person who is detained in custody in a designated state—

- (a) under a sentence or order of a court exercising criminal jurisdiction in that state, or 5
- (b) having been transferred there from the State under section 5 (issue of warrants for the transfer of sentenced prisoners outside State) of the Transfer of Sentenced Prisoners Act 1995.

(2) Where— 10

- (a) a witness order has been made or a witness summons issued in criminal proceedings in respect of a prisoner, or
- (b) it appears to the Minister that it is desirable for a prisoner to be identified in, or otherwise to assist by his or her presence, such proceedings or a criminal investigation, 15

the Minister, at the request of the Director of Public Prosecutions or a person charged in any such proceedings, may issue a warrant providing for the prisoner to be transferred to the State.

(3) A warrant shall not be issued unless the appropriate authority in the designated state concerned provides a written statement by 20 the prisoner consenting to be transferred for that purpose.

(4) A warrant issued under this section shall be transmitted by the Central Authority to the authority in the designated state that appears to the Central Authority to be the appropriate authority for receiving it, together with a request for the transfer of the prisoner 25 to the State.

(5) The warrant is authority for—

- (a) bringing the prisoner to the State,
- (b) taking the prisoner to, and detaining him or her in, a prison, 30
- (c) taking the prisoner to and from the place where the prisoner’s evidence is to be heard, and
- (d) returning the prisoner in custody to the designated state.

(6) A prisoner is deemed to be in lawful custody while in the State. 35

(7) A prisoner who escapes from custody or is unlawfully at large may be arrested without warrant by a member of the Garda Síochána and taken in custody to a prison.

(8) A person (other than a member of the Garda Síochána) who is authorised to have custody of a prisoner by or for the purposes of 40 a warrant under this section is deemed to be such a member for the purposes of this section.

- (9) The law relating to—
- (a) the control of entry into the State of non-nationals (within the meaning of the Immigration Act 1999),
  - (b) the duration and conditions of their stay in the State,
  - 5 (c) their obligations while in the State, and
  - (d) their removal from the State,

does not apply in relation to a prisoner who is a non-national while he or she is present in the State in pursuance of a warrant under this section but, if the warrant ceases to have effect while the prisoner is  
10 so present, that law shall thereupon apply, with any necessary modifications, in relation to him or her.

(10) A prisoner while in the State pursuant to the warrant may not be proceeded against, sentenced, detained or subjected to any other restriction on his or her personal freedom in respect of any  
15 offence committed before arriving in the State.

**51.—**(1) The Minister may, on receipt of a request in that behalf, issue a warrant for the transfer of a person serving a sentence of imprisonment in a prison (a “prisoner”) to a designated state for the purpose of—

Transfer of prisoner to give evidence or assist investigation outside State.

- 20 (a) giving evidence in criminal proceedings, or assisting in a criminal investigation, in that state, or
- (b) being identified in, or otherwise assisting by his or her presence, such proceedings or investigation.

(2) A warrant may be issued only if the prisoner has made a written statement consenting to his or her being transferred for that  
25 purpose.

(3) Where, by reason of the prisoner’s youth or physical or mental condition, it appears to the Minister inappropriate for the prisoner to act for himself or herself, the consent shall be given by a person  
30 appearing to the Minister to be an appropriate person to act on the prisoner’s behalf.

(4) A warrant is authority for—

- 35 (a) taking the prisoner from the prison and delivering him or her into the custody of a person representing the requesting authority concerned at a place of departure from the State,
- (b) detaining the prisoner in the designated state, and
- (c) bringing the prisoner back to the State and returning him or her to the prison.

(5) A warrant may not be issued unless an assurance is given by the requesting authority that the prisoner will not be proceeded against, sentenced, detained or subjected to any other restriction on his or her personal freedom in respect of any offence under the law of the designated state committed before the prisoner’s departure  
45 from the State.

(6) The period spent in custody under the warrant is included in the period of imprisonment or detention to be served by the prisoner in the State.

(7) A prisoner is deemed to be in lawful custody when being taken from or to a prison under the warrant. 5

(8) A prisoner who escapes from custody or is unlawfully at large may be arrested without warrant by a member of the Garda Síochána and taken in custody to a prison.

(9) A person (other than a member of the Garda Síochána) who is authorised to have custody of a prisoner by or for the purposes of a warrant under this section is deemed to be such a member for the purposes of this section. 10

*Evidence through television link*

Evidence through television link for use in State.

**52.—**(1) This section applies where—

- (a) criminal proceedings have been instituted in the State against a person, 15
- (b) a witness in the proceedings is in a designated state, and
- (c) it is not desirable or possible for the witness to give evidence in person.

(2) Where this section applies, an application may be made by or on behalf of the Director of Public Prosecutions or the accused to a judge of the court of trial to issue a letter (a “letter of request”) requesting the provision of facilities in the designated state concerned to enable the witness to give evidence in the proceedings through a live television link. 20 25

(3) The judge may grant the application if satisfied that it is not desirable or possible for the witness to give evidence in person.

(4) The letter of request shall be accompanied by a document signed by the judge and stating—

- (a) the name, address and, if known, the nationality of the witness, 30
- (b) the court which is to hear the evidence,
- (c) the name of the judge conducting the hearing,
- (d) why it is not desirable or possible for the witness to give evidence in person, and 35
- (e) the likely date of the hearing.

(5) The request shall be sent to the Central Authority for transmission—

- (a) in urgent cases, to the court or tribunal specified in the request, or 40
- (b) in any other case, to any authority recognised by the state concerned as the appropriate authority for receiving such requests.

(6) If the name of the judge conducting the hearing is not available at the time the letter of request is issued, it shall be sent to the Central Authority for such transmission as soon as it becomes available.

5 (7) The accused shall be given an opportunity to cross-examine and re-examine the witness at the hearing.

(8) Evidence given through the live television link at the hearing shall be videorecorded.

10 (9) The videorecording of the evidence or, if the accused consents, an edited version of it, is admissible at the trial of the offence as evidence of any fact of which direct oral evidence would be admissible, unless the trial judge is of the opinion that to do so would not be in the interests of justice.

15 (10) The provisions of the relevant international instrument concerning a hearing through a live television link, in so far as they relate to a requesting state and are not incorporated in this section, have effect in the State, with the necessary modifications, in relation to a hearing under this section.

20 (11) A witness who makes a statement which is material in the proceedings and which he or she knows to be false or does not believe to be true is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both, or

25 (b) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years or both.

30 (12) Proceedings for an offence under *subsection (11)* may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the State.

(13) In this section “videorecording” means any recording, on any medium, from which a moving image may be produced and includes the accompanying soundtrack, and cognate words shall be construed accordingly.

35 **53.—(1)** This section applies to a request for a witness who is present in the State to give evidence through a television link in criminal proceedings before a court or tribunal in a designated state. Request for evidence through television link for use outside State.

(2) The request shall include the following information:

40 (a) the name, address and, if known, the nationality of the witness;

(b) the court or authority making the request;

(c) the name of the person or persons who will conduct the hearing;

45 (d) a statement as to why it is not desirable or possible for the witness to give evidence in person;

(e) the likely date of the hearing.

**54.—**The Minister, if of opinion—

- (a) that it is not desirable or possible for the witness to give evidence in person in the state concerned, and
- (b) that the request complies with *section 53*,

may request the President of the District Court to nominate a judge of that Court to summon the witness to attend at a suitable venue within the judge's district for the purpose of giving effect to the request. 5

**55.—**(1) The nominated judge of the District Court shall summon the witness concerned to give evidence through a live television link at a suitable venue within the district to which the judge is assigned. 10

(2) For the purpose of ensuring compliance with the request the nominated judge has the powers of the District Court in criminal proceedings, including its powers—

- (a) in relation to securing the attendance of the witness, taking evidence on oath and compelling the witness to give evidence or to produce documents or other things, and 15
- (b) under any enactment or rule of law relating to the protection of witnesses against intimidation.

(3) The evidence shall be given in accordance with the laws and procedures of the requesting state to the extent that they do not contravene the fundamental principles of the law of the State. 20

(4) In particular, the witness may not be compelled to give any evidence which he or she could not be compelled to give in criminal proceedings in the State or the designated state. 25

(5) Where necessary for the protection of the witness and in agreement with the requesting authority, the evidence may be taken otherwise than in public.

(6) Subject to *subsection (7)*, the proceedings shall be conducted directly by, or under the direction of, a judge of the designated state in accordance with its own laws. 30

(7) Where the nominated judge is of opinion that the taking of evidence is not in accordance with the fundamental principles of the law of the State, he or she shall take immediate action to ensure that those principles are complied with. 35

(8) The nominated judge and the witness shall be assisted by an interpreter, where necessary.

(9) When the evidence has been taken, the nominated judge shall send a record of the evidence given by the witness to the Minister for transmission to the requesting authority, indicating— 40

- (a) the date and place of the taking of the evidence,
- (b) the name of the witness,

(c) the name and function of any other person present and participating in the proceedings,

(d) whether an oath was administered to the witness, and

5 (e) the technical conditions under which the proceedings took place.

(10) A witness who—

(a) makes a statement material in the proceedings which he or she knows to be false or does not believe to be true, or

(b) does not testify when under an obligation to do so,

10 is guilty of an offence and liable, on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

*Evidence by telephone link for use outside State*

15 **56.—**(1) This section applies to a request for a witness who is present in the State to give evidence by telephone link in criminal proceedings before a court or tribunal in a designated state. Request for evidence by telephone link.

(2) The request shall include the following information:

(a) the name, address and, if known, the nationality of the witness;

20 (b) the court or tribunal which is to hear the evidence;

(c) the person or persons who will conduct the proceedings;

(d) a statement that the witness is willing to give evidence by telephone link in the proceedings;

(e) the likely date of the hearing.

25 **57.—**(1) The Minister, if of opinion that the witness is willing to give evidence by telephone link in the proceedings concerned, may request the President of the District Court to nominate a judge of that Court to summon the witness to attend at a suitable venue within the judge's district for the purpose of giving effect to the request. Taking of evidence.

30

(2) Before the evidence is taken, the witness shall be asked to confirm that he or she is willing to give the evidence by telephone link.

35 (3) *Section 55* applies in relation to taking evidence under this section by telephone link as it applies in relation to taking evidence under that section by television link.



Search for evidence  
at place in  
designated state.

58.—(1) Where it appears to a judge of any court that—

- (a) criminal proceedings have been instituted or a criminal investigation is taking place, and
- (b) evidence for the purposes of the proceedings or investigation may be obtained at a place in a designated state,

5

the judge may, in accordance with the relevant international instrument, issue a letter (a “letter of request”) requesting assistance in obtaining the evidence.

(2) Application for a letter of request may be made by the Director of Public Prosecutions or a person charged in any such proceedings that have been instituted.

10

(3) The letter of request shall be sent to—

- (a) the Central Authority for transmission to the appropriate authority, or
- (b) in urgent cases, directly to that authority.

15

(4) Notwithstanding *subsections (1) to (3)*, where proceedings for an offence have been instituted or an offence is being investigated, the Director of Public Prosecutions may issue and transmit a letter of request directly to the appropriate authority.

20

(5) The letter of request shall include—

- (a) a statement that the evidence is required for the purpose of criminal proceedings or a criminal investigation and will be returned to the appropriate authority when no longer required for that purpose, unless the authority indicates otherwise,
- (b) information relating to the nature and location of the evidence concerned,
- (c) a brief description of the conduct constituting the offence concerned, and
- (d) any other available information that may assist the appropriate authority in complying with the letter of request.

25

30

(6) Evidence obtained by virtue of this section shall not, without the consent of the appropriate authority, be used for any purpose other than that specified in the letter of request.

35

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

(8) In this section, “appropriate authority” means—

40

- (a) a court or tribunal exercising criminal jurisdiction in the place in a designated state where the evidence referred to in the letter of request is to be obtained, or

- (b) any other body or authority recognised by the government of that state as the appropriate authority for receiving the letter.

5 59.—(1) Subject to *subsections* (2) and (3), this section applies to a request for assistance in obtaining evidence for the purposes of criminal proceedings, or a criminal investigation, in a designated state, where there is power under any enactment to issue a warrant for the search of a place in respect of an offence constituted by the conduct giving rise to the request.

Search for evidence  
for use outside  
State (general).

10 (2) This section does not apply to such a request from a member state unless the act is punishable—

(a) under the law of the State and the member state by imprisonment for a maximum period of at least 6 months, or

15 (b) under the law of the State by such imprisonment and under the law of the member state by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

20 (3) This section does not apply to such a request from a designated state (other than a member state) unless the conduct giving rise to the request is punishable under both the law of the State and the law of that state.

25 (4) The Minister, if of opinion that this section applies to the request, may, subject to *subsection* (5), send the request and any accompanying and related documents to the Commissioner of the Garda Síochána to arrange for the request to be complied with.

30 (5) In the case of a request from a designated state, the Minister may not proceed in accordance with *subsection* (4) unless an assurance is given by the requesting authority—

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

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

40 (6) A member of the Garda Síochána shall not enter any place in furtherance of the request without the consent of the occupier or the entry being authorised by a warrant under this section.

45 (7) Unless the evidence sought is already in the possession of the Garda Síochána, a member of the Garda Síochána not below the rank of inspector shall, on production of a copy of the request and of any accompanying or related documents, apply to a judge of the District Court for an order under *subsection* (8).

(8) If, on the application, it appears to the judge that there are reasonable grounds for believing—

(a) that this section applies to the request,

- (b) that entry to any place is necessary for the purposes of complying with it, and
- (c) that the occupier of the place—
  - (i) has not consented to the entry, or
  - (ii) is unlikely in the circumstances of the case to consent 5  
and that seeking consent might seriously prejudice  
compliance with the request,

the judge may issue a warrant for the search of the place and any person found there.

(9) The warrant shall be expressed and operate to authorise a 10  
named member of the Garda Síochána, accompanied by such other  
members or persons or both as the member thinks necessary—

- (a) to enter the place named in the warrant at any time or  
times within one week of the date of its issue, on pro-  
duction, if so requested, of the warrant and, if necessary, 15  
by the use of reasonable force,
- (b) to search it and any person found there,
- (c) to access, examine, seize, take away and retain any  
material found there, or in the possession of a person  
present there at the time of the search— 20
  - (i) which the member reasonably believes to be evidence  
of, or relating to, the commission of the offence con-  
cerned or assets or proceeds deriving from criminal  
conduct in the designated state or their identity or  
whereabouts, or 25
  - (ii) whose retention is necessary to comply with the  
request,
- (d) to make a copy of any document so seized and to take the  
copy away, and
- (e) to take such other steps as appear to the member to be 30  
necessary for preserving any such material and  
preventing interference with it.

(10) Where material referred to in *subsection (9)* consists of or  
includes information in non-legible form, the warrant has effect as  
an order to produce the material, or to give access to it, in a form 35  
which is legible and in which it can be taken away.

(11) The warrant—

- (a) does not confer any right to examine, seize, take away or  
retain documents which are subject to legal privilege or  
to have them produced or to be given access to them, and 40
- (b) subject to *paragraph (a)*, has effect notwithstanding any  
other obligation as to secrecy or other restriction on the  
disclosure of information under any enactment or rule  
of law.

(12) A member acting under the warrant may— 45

(a) require any person present at the place where the search is being carried out to give his or her name and address to the member, and

(b) arrest without warrant any person who—

(i) obstructs or attempts to obstruct the member in carrying out his or her duties,

(ii) does not comply with a requirement under *paragraph (a)*, or

(iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

(13) A person who—

(a) obstructs or attempts to obstruct a member acting under the authority of a warrant under this section,

(b) does not comply with a requirement under *subsection (12)(a)*, or

(c) gives a false or misleading name or address to a member,

is guilty of an offence and liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(14) The power to issue a warrant under this section is without prejudice to any other power conferred by statute to issue a warrant for the search of any place or person.

(15) In this section “evidence” includes evidence of or relating to assets or proceeds deriving from criminal conduct in the designated state concerned or their identity or whereabouts.

**60.—**(1) Subject to *subsections (2) and (3)*, this section applies to a request for assistance in obtaining specified evidential material or evidential material of a specified description for the purposes of criminal proceedings, or a criminal investigation, in a designated state, where there is power under any enactment to issue a warrant for the search of a place in respect of an offence constituted by the conduct giving rise to the request.

Search for particular evidence for use outside State.

(2) This section does not apply to such a request from a member state unless the act is punishable—

(a) under the law of the State and the member state by imprisonment for a maximum period of at least 6 months, or

(b) under the law of the State by such imprisonment and under the law of the member state by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

(3) This section does not apply to such a request from a designated state (other than a member state) unless the conduct giving rise to the request is punishable under both the law of the State and the law of that state.

(4) This section also applies to such a request which is made in connection with a request under *Part 4* for the freezing of evidence in proceedings for an offence which may be punished in the member state concerned by imprisonment for a term of not less than 3 years.

(5) The Minister, if of opinion that this section applies to the request, may, subject to *subsection (6)*, send the request and any accompanying and related documents to the Commissioner of the Garda Síochána to arrange for the request to be complied with. 5

(6) The Minister shall not proceed in accordance with *subsection (5)* unless an assurance is given by the requesting authority— 10

(a) that any material that may be furnished in response to the request will not, without his or her prior consent, be used for any purpose other than that specified in the request, and

(b) that the material will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless he or she indicates that its return is not required. 15

(7) A member of the Garda Síochána shall not enter any place in furtherance of the request without the consent of the occupier or the entry being authorised by an order under this section. 20

(8) Unless the material sought is already in the custody of the Garda Síochána, a member of the Garda Síochána not below the rank of inspector shall, on production of a copy of the request and of any accompanying or related documents, apply to a judge of the District Court for an order under *subsection (9)*. 25

(9) On the application, if it appears to the judge that there are reasonable grounds for believing—

(a) that this section applies to the request,

(b) that the person named in the request possesses the evidential material, and 30

(c) that he or she has not agreed to produce it or is unlikely in the circumstances of the case to do so and, in the latter case, that seeking consent might seriously prejudice compliance with the request, 35

the judge may by order require the person, on production by a member of the Garda Síochána of a copy of the order, to produce the material to the member for the member to take away, or to give the member access to it, either immediately or within a period specified in the order. 40

(10) If evidential material is believed to be at a particular place, the order may include a requirement that any person appearing to be entitled to grant entry to that place shall allow any member of the Garda Síochána to enter it to obtain access to the material.

(11) The judge may vary or discharge an order under this section. 45

(12) Where the evidential material consists of or includes information in non-legible form, the order has effect as an order to produce the information, or to give access to it, in a form which is legible and in which it can be taken away.

- (13) The order—
- (a) does not confer any right to production of or access to material which is subject to legal privilege, and
  - (b) subject to *paragraph (a)* and *subsection (15)*, has effect notwithstanding any other obligation as to secrecy or other restriction on the disclosure of information under any enactment or rule of law.
- (14) If a person does not comply with a requirement in the order, the order is thereupon deemed for all purposes to be a warrant under *section 59* for the search of the place concerned and any person found there, and that section has effect accordingly, with any necessary modifications.
- (15) Where—
- (a) material has been supplied to a Government department or other authority by or on behalf of the government of another state,
  - (b) an undertaking was given that the material would be used only for a particular purpose or purposes,
- an order under this section does not have the effect of requiring or permitting the production of, or the giving of access to, the material for any other purpose without the consent of that government.
- (16) This section is without prejudice to *section 59*.
- (17) In this section “evidential material” includes any such material relating to assets or proceeds deriving from criminal conduct in the designated state concerned or their identity or whereabouts.

## CHAPTER 2

### *Identification evidence*

#### **61.—In this Chapter—**

Definitions  
(*Chapter 2*).

“bodily sample” means any of the following:

- (a) a sample of blood, hair, urine or saliva,
  - (b) a nail or any material found under a nail,
  - (c) a swab from any part of the body,
  - (d) a footprint or a similar impression of any part of the body, including a dental impression;
- “dentist” means a person whose name is entered for the time being in the Register of Dentists maintained under the Dentists Act 1985;
- “doctor” means a person whose name is entered for the time being in the General Register of Medical Practitioners established under section 26 of the Medical Practitioners Act 1978;
- “identification evidence” means a fingerprint, palm print or photograph of, or bodily sample from, a person and includes any related records.

62.—(1) Where it appears to a judge of any court that—

- (a) criminal proceedings have been instituted or a criminal investigation is taking place, and
- (b) identification evidence for the purposes of the proceedings or investigation may be obtained from an authority in a designated state, 5

the judge may issue a letter (a “letter of request”) requesting assistance in obtaining the evidence.

(2) Application for a letter of request may be made by the Director of Public Prosecutions or a person charged in any proceedings 10 that have been instituted.

(3) The letter of request shall be sent to—

- (a) the Central Authority for transmission to the appropriate authority, or
- (b) in urgent cases, directly to that authority. 15

(4) Notwithstanding *subsections (1) to (3)*, where proceedings for an offence have been instituted or an offence is being investigated, the Director of Public Prosecutions may issue and transmit a letter of request directly to the appropriate authority.

(5) The letter of request shall include— 20

- (a) a statement that the evidence is required for the purpose of criminal proceedings or a criminal investigation and will be returned to the appropriate authority when no longer required for that purpose, unless the authority indicates otherwise, 25
- (b) a brief description of the conduct constituting the offence concerned, and
- (c) any other available information that may assist the appropriate authority in complying with the request.

(6) Evidence obtained by virtue of this section shall not, without the consent of the appropriate authority, be used for any purpose other than that specified in the letter of request. 30

(7) When any such evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to the appropriate authority unless the authority indicates that it need not be returned. 35

(8) In any proceedings a document purporting to be—

- (a) a report of the taking of the identification evidence in the designated state and to be signed by, and to state the rank or other qualification of, the person who took the evidence, or 40
- (b) a record of the evidence kept by the appropriate authority and certified by it or on its behalf,

is admissible, without further proof, as evidence of the matters stated in it. 45

(9) Where a document is admissible in evidence under this section, any document purporting—

(a) to be a translation of it, and

(b) to be certified as correct by a person competent to do so,

5 is admissible in any proceedings, without further proof, as evidence of the translation.

(10) In this section, “appropriate authority” means the authority in the designated state concerned appearing to the Director of Public Prosecutions to possess the identification evidence requested or to  
10 have the function of obtaining or arranging to obtain it.

**63.**—A request for obtaining identification evidence for use in a designated state shall include—

Identification  
evidence for use  
outside State.

(a) a statement that the evidence is required in connection with criminal proceedings, or a criminal investigation, in  
15 that state, and

(b) a brief description of the conduct constituting the offence.

**64.**—(1) The Minister may send the request to the Commissioner of the Garda Síochána for the necessary action if satisfied—

Action on request.

(a) that it complies with *section 63*,

20 (b) that any identification evidence that may be furnished in response to the request will not, without the consent of the Minister, be used for any purpose other than that specified in the request, and

(c) that the evidence—

25 (i) will be returned by the requesting authority when no longer required for that purpose (or any other purpose for which such consent has been obtained), unless the Minister indicates otherwise, or

30 (ii) will be dealt with in accordance with *subsections (10) and (11)*.

(2) If or in so far as the identification evidence requested is not in the possession of the Garda Síochána, the Commissioner shall instruct a member of the Garda Síochána (a “member”) to inform the person who is to provide the evidence—

35 (a) of the nature of the evidence,

(b) that it has been requested in connection with criminal proceedings, or a criminal investigation, in the designated state concerned,

(c) that he or she is not obliged to provide the evidence, and

40 (d) that, if he or she does consent to provide it, it may be given in evidence in any proceedings in that state.



(3) If the person consents to provide the evidence, the member may take the evidence, or cause it to be taken, in compliance with the request and any requirements specified in the request in relation to its taking.

(4) If a person who is to provide the identification evidence is in a prison— 5

(a) evidence may be taken under this section only if it relates to an offence other than that for which the person is in custody, and

(b) any evidence provided may be taken at the prison or at another place. 10

(5) A bodily sample consisting of blood, pubic hair or a swab from a body orifice (other than the mouth) or a genital region may be taken under this section only by a doctor, and a dental impression may be so taken only by a dentist or doctor. 15

(6) If required by the requesting authority, the Commissioner may arrange for a forensic test to be performed on a swab from a body orifice or a genital region.

(7) A sample of hair other than pubic hair may be taken under this section by cutting hairs or by plucking hairs singly with their roots and, where hairs are plucked, no more shall be plucked than the person taking the sample reasonably considers to be necessary to constitute a sufficient sample for the purpose of forensic testing or comparison purposes. 20

(8) The following particulars shall be recorded by the member who takes identification evidence: 25

(a) the place, time and date at which it was taken;

(b) the result of any forensic test on the evidence;

(c) any other relevant particulars, including any specified by the requesting authority, 30

and the record shall include a copy of the consent to the taking of the evidence.

(9) The Commissioner shall send to the Central Authority any identification evidence—

(a) in the possession of the Garda Síochána, or 35

(b) taken under *subsection (3)*, together with a copy of the record made under *subsection (8)*,

for transmission to the requesting authority.

(10) When transmitting the identification evidence and record to the requesting authority the Central Authority shall, if *subsection (1)(c)(i)* does not apply and subject to *subsection (11)*, obtain an assurance that the evidence will be destroyed— 40

(a) if the person the subject of the investigation is not prosecuted, on the expiration of 12 months from the taking of the evidence, unless the failure to prosecute is not due 45

to the fact that the person has absconded or cannot be found,

(b) if the person is prosecuted and is acquitted or discharged or the proceedings are discontinued, on the expiration of 21 days thereafter, or

(c) if the person is prosecuted and made subject to an order corresponding to or in the nature of a probation order under section 1(1) of the Probation of Offenders Act 1907, on the expiration of a period of 3 years from the making of the order, unless the person is convicted during that period of an offence under the law of the country concerned corresponding to an arrestable offence.

(11) The Minister may, at the request of the requesting authority and having consulted the Director of Public Prosecutions, direct that any period mentioned in *subsection (10)* be extended for good reason.

(12) In this section—

“arrestable offence” means an offence for which a person of full capacity and not previously convicted may, under or by virtue of any enactment or of the common law, be punished by imprisonment for a term of 5 years or by a more severe penalty, and includes an attempt to commit any such offence;

“consent” means consent in writing and a reference to the consent of a person is a reference to—

(a) in the case of a person who has attained the age of 17 years, the consent of that person,

(b) in the case of a person who has not attained the age of 17 years but has attained the age of 14 years, the consent of that person and of his or her parent or guardian, and

(c) in the case of a person who has not attained the age of 14 years, the consent of his or her parent or guardian.

## PART 7

### OTHER FORMS OF ASSISTANCE

#### CHAPTER 1

##### *Service of documents*

**65.—**(1) A document may be issued by a court in the State for the purposes of or in connection with criminal proceedings notwithstanding that the person on whom it is to be served is in another state. Documents for service outside State.

(2) Where the document is not in the official language or one of the official languages of that state, the person at whose request it was issued shall provide the court with a translation of the document, or the material parts of it, into that language or one of those languages, unless *subsection (3)* applies.

(3) Where such a person believes that the person on whom it is to be served does not understand Irish, English or another language which is the official language or one of the official languages of that state, he or she shall—

(a) inform the court of that belief, and 5

(b) provide it with a translation of the document, or of the material parts of it, into a language that he or she believes that the person understands.

(4) The document—

(a) if it requires the recipient to appear in proceedings, shall 10  
not refer to a penalty for non-appearance, and

(b) shall be accompanied by—

(i) a notice stating that the person to be served may obtain information regarding his or her rights or obligations concerning the document from the court 15  
which issued the document or a specified person or authority,

(ii) a notice giving any other information required to be given by rules of court, and

(iii) where necessary, a translation of the document, or of 20  
the material parts of it, into an appropriate language.

(5) Subject to *subsection (6)*, non-compliance by a person with a requirement specified in the document is not contempt of court or a ground for issuing a warrant to compel the person to attend the proceedings concerned. 25

(6) *Subsection (5)* does not apply if the document is subsequently served on the person in the State.

(7) Subject to *subsection (9)*, a person who is in the State in compliance with a requirement in the document to appear as a defendant in criminal proceedings may not be proceeded against, sentenced, 30  
detained or otherwise restricted in his or her personal freedom in respect of any offence committed before arriving in the State other than an offence or offences specified in the document.

(8) Subject to *subsection (9)*, a person who is in the State in compliance with a requirement in the document to appear as a witness 35  
in criminal proceedings may not be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in respect of any offence committed before arriving in the State.

(9) The immunity provided for in *subsections (7) and (8)* ceases when— 40

(a) a period of 15 days has elapsed from the date when the person's presence in the State is no longer required by the court concerned and the person, having had an opportunity to leave the State during that period, has not done so, or 45

(b) the person, having left the State during that period, returns to it.

66.—(1) A document referred to in *section 65* may be served by Mode of service.  
post.

5 (2) Subject to *subsection (3)*, it may be transmitted to a designated state with a request for service otherwise than by post in accordance with the relevant international instrument.

(3) Where the person to be served is in a member state, service otherwise than by post may be requested only if—

(a) the address of the person is unknown or uncertain,

(b) it has not been possible to serve the document by post, or

10 (c) the person at whose request the document was issued has good reason for believing that service by post would not be effective or is inappropriate.

(4) Such a document may be served in a state other than a designated state in accordance with arrangements made by the Minister.

15 67.—(1) This section applies to a request for service on a person Service of  
in the State of— documents in State.

(a) a document requiring the person to appear as a defendant or attend as a witness in criminal proceedings in a designated state, and

20 (b) any other document issued by a court or authority (including a prosecuting authority) in that state in criminal proceedings, including a document relating to the enforcement of a sentence or a preventive measure, the imposition of a fine or the payment of costs of proceedings.  
25

(2) Unless the request is for personal service, the Minister may cause the document, together with the notice referred to in *subsection (1)*, to be served by post on the person concerned.

30 (3) Where the request is for personal service, the document, if not in Irish or English, shall be accompanied by a translation of the document, or of the material parts of it, into either of those languages, unless it is known that the person understands only another language or languages, in which case the accompanying translation shall be into that other language or one of those other languages.

35 (4) Where the request is for personal service, the Minister shall, subject to *subsection (5)*, direct the Commissioner of the Garda Síochána to cause the document to be served personally on the person concerned.

40 (5) *Subsection (4)* does not apply to a request for personal service from a member state unless—

(a) the address of the person concerned is unknown or uncertain,

45 (b) under the law of the member state proof of service on the person is required, other than proof that can be obtained by post,

(c) it has not been possible to serve the document by post, or

- (d) the applicant for the issue of the document or the issuing authority has good reason for believing that service by post would not be effective or is inappropriate.
- (6) The Commissioner shall—
- (a) cause the document, together with the notice referred to in *subsection (11)*, to be served by a member of the Garda Síochána in accordance with the request and send proof of the service to the Minister for transmission to the requesting authority concerned, or 5
- (b) if it is not possible to effect service, cause the Minister to be notified accordingly, stating the reason for the non-service. 10
- (7) A person served under this section with a document is not under any obligation under the law of the State to comply with any requirement in it. 15
- (8) A document requiring a person to appear as a defendant in criminal proceedings in a designated state may not be served under this section unless an assurance is given by the requesting authority concerned that, if the person so appears, he or she will not, subject to *subsection (10)*, be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in that state in respect of any conduct taking place before his or her departure from the State, other than conduct constituting the offence or offences specified in the document. 20
- (9) A document requiring a person to attend as a witness in criminal proceedings in a designated state may not be served under this section unless an assurance is given by the requesting authority concerned that, if the person so attends, he or she will not, subject to *subsection (10)*, be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in that state in respect of any offence committed before his or her departure from the State. 25 30
- (10) The immunity provided for in *subsections (8) and (9)* ceases when—
- (a) a period of at least 15 days has elapsed from the date when the person's presence in the designated state is no longer required by the judicial authorities concerned and the person, having had an opportunity to leave the designated state during that period, has not done so, or 35
- (b) the person, having left the state during that period, returns to it. 40
- (11) The notice to accompany a document served under this section shall—
- (a) state the content of *subsection (7)*, *(8)* or *(9)*, as appropriate, and *subsection (10)*,
- (b) indicate that the person on whom the document is served may wish to seek advice as to the possible consequences of failure to comply with it under the law of the state where it was issued, and 45
- (c) indicate that under that law the person may not, as a defendant or witness, have the same rights and privileges 50

as he or she would have in that capacity in criminal proceedings in the State.

5 (12) If there is reason to believe that the person understands only a language or languages other than Irish or English, the notice shall be translated into that other language or one of those other languages.

## CHAPTER 2

### *Restitution*

10 **68.—**(1) An order under paragraph (i) of section 56 (orders for restitution) of the Criminal Justice (Theft and Fraud Offences) Act 2001 may be made by the court by or before which a person is convicted in relation to property in a designated state. Restitution of stolen property from designated state.

15 (2) The return of property to its owner in accordance with such an order does not prejudice the rights of any *bona fide* third parties in relation to it.

20 (3) The Central Authority, on the application of the person entitled under the order to recover the property, shall send a copy of the order to the person or body in the designated state appearing to it to have the function of dealing with a request for the restitution of the property concerned.

(4) The request shall be accompanied by a document provided by the applicant containing—

(a) a statement that—

25 (i) a specified person obtained the property concerned by committing an offence under the law of the State, and

(ii) the return of the property to its owner does not prejudice the rights of any *bona fide* third parties in relation to it,

30 and

(b) the following information:

(i) a description of the property;

(ii) its location;

(iii) the name and address of its owner; and

35 (iv) any other information likely to facilitate compliance with the request.

**69.—**(1) This section applies to a request for property obtained by criminal means to be placed at the disposal of the requesting authority with a view to the return of the property to its owner. Request to State for restitution of stolen property.

40 (2) The request shall be in writing and shall include or be accompanied by—

(a) a statement that—

- (i) a specified person has obtained the property by committing an offence under the law of the requesting state, and
- (ii) the return of the property to its owner does not prejudice the rights of any *bona fide* third parties in relation to it,

and

(b) the following information:

- (i) a description of the property;
- (ii) its location;
- (iii) the name and address of its owner; and
- (iv) any other information likely to facilitate compliance with the request.

Action on request. **70.**—(1) On receipt of the request the Minister may, if of opinion that the request complies with *section 69*, cause an application to be made to the District Court for an order under *section 71* in relation to the property.

(2) The Court shall provide for notice of the application to be given to any person who appears to be or is affected by such an order unless the Court is satisfied that it is not reasonably possible to ascertain the person's whereabouts.

Order for restitution.

**71.**—(1) On application by or on behalf of the Minister, the District Court may, if satisfied—

- (a) that *sections 69* and *70(2)* have been complied with, and
- (b) that the property concerned is in the possession or control of a specified person,

order that person to deliver the property to the member in charge of the Garda Síochána station named in the application.

(2) The Central Authority shall arrange for the delivery of the property to the requesting authority with a view to the return of the property to its owners.

(3) An order may also be made by the District Court under this section for the delivery of property which is in the custody of the Garda Síochána.

(4) An order under this section may not be made—

- (a) where the property is required as evidence in civil or criminal proceedings, or
- (b) unless an opportunity has been given to any person claiming to own, or have an interest in, the property to show cause why the order should not be made.

(5) The jurisdiction of the District Court under this section may be exercised—

(a) by the judge of that Court assigned to the district court district in which the property is located , or

5 (b) if the property is located in more than one district court district, by a judge of that Court assigned to any one of those districts.

### CHAPTER 3

#### *Controlled deliveries*

10 **72.—(1)** In this Chapter—

Interpretation  
(Chapter 3).

“competent authority in a designated state”, in relation to a request for a controlled delivery to or from a designated state, means a person or body in that state appearing to the Competent Authority in the State to have the function of receiving or making the request;

15 “Competent Authority in the State”, in relation to a request for a controlled delivery to or from a designated state, means—

(a) the Commissioner of the Garda Síochána, or

20 (b) if the controlled delivery is concerned with a revenue offence, the Revenue Commissioners or a person authorised by them for the time being to exercise their functions under this Chapter;

25 “controlled delivery” means a delivery permitted in the State in accordance with this Chapter or in a designated state in accordance with the relevant international instrument for the purposes of an investigation into an offence;

“controlled drug” has the meaning given to it by section 2 of the Misuse of Drugs Act 1977;

“offence” includes an offence which is suspected, with reasonable cause, to have been or to be about to be committed.

30 (2) Where the competent authority of a designated state requires requests under this Chapter to be received or made by a judicial authority, the requests shall be addressed to or made by the Minister, and for that purpose references in this Chapter to the Competent Authority in the State are to be construed as references to the  
35 Minister.

**73.—(1)** The Competent Authority in the State may request the competent authority in a designated state to permit—

Controlled delivery  
in designated state.

(a) a controlled delivery to be made in that state, and

40 (b) specified persons or persons of a specified description, including members of the Garda Síochána and officers of customs and excise, to participate in the operations connected with the delivery.

(2) The request shall include particulars of the offence with which the controlled delivery is concerned.



**74.**—(1) This section applies to a request to the Competent Authority in the State from a competent authority in a designated state to permit—

(a) a controlled delivery to be made in the State, and

(b) specified persons, or persons of a specified description, 5  
from the designated state to participate in the operations  
connected with the controlled delivery.

(2) The request shall include particulars of the offence with which the controlled delivery is concerned.

(3) The Competent Authority in the State may grant the request 10  
if satisfied that—

(a) the controlled delivery is being made for the purposes of an investigation into an offence, or

(b) there are reasonable grounds for believing that it is in the public interest, having regard to the benefit likely to 15  
accrue to the investigation, to permit the delivery to take place.

(4) The operations related to a controlled delivery shall, if the delivery is concerned with the illegal importation of controlled drugs, be regulated in accordance with— 20

(a) the Memorandum of Understanding of 12 January 1996 concerning the relationship between the Customs and Excise Service of the Revenue Commissioners and the Garda Síochána with respect to Drugs Law Enforcement and agreed between the Commissioner of the Garda 25  
Síochána and the chairman of the Revenue Commissioners, and

(b) the Operational Protocol for co-operation between An Garda Síochána, the Customs and Excise and the Naval Service in relation to Drugs Law Enforcement, 30

including any modifications or extensions of the Memorandum or Protocol for the time being in force.

(5) If the delivery is concerned with a revenue offence (other than an offence constituted by the illegal importation of controlled drugs), the operations shall be under the direction and control of the officers 35  
of customs and excise assigned to the delivery.

(6) If the delivery is concerned with any other offence, the operations shall be under the direction and control of the members of the Garda Síochána so assigned.

(7) A member of the Garda Síochána or officer of customs and 40  
excise participating in operations connected with a controlled delivery in the State may, at the request of a person from a designated state so participating, take such action as may be open to the member or officer in furtherance of the operations.

(8) Copies of the Memorandum of Understanding and Oper- 45  
ational Protocol have been placed in the Oireachtas Library.

75.—(1) The Garda Síochána Act 1989 is amended—

Amendment of  
Garda Síochána Act  
1989.

- (a) in section 3 (liability of certain members of the Garda Síochána for service outside State), by the substitution of the following subsection for subsection (2):

“(2) Notwithstanding anything contained in the Acts, a member of the Garda Síochána to whom this section for the time being applies shall be liable to serve outside the State—

(a) with a contingent of the Garda Síochána which is despatched for service with an International United Nations Force,

(b) as a liaison officer with Europol,

(c) as a member of a joint investigation team within the meaning of the Criminal Justice (Joint Investigation Teams) Act 2004, or

(d) in connection with making a controlled delivery in a designated state pursuant to a request under *section 73 of the Criminal Justice (Mutual Assistance) Act 2005.*”,

- (b) in section 4 (registration of certain births and deaths occurring outside the State), by the deletion of the words after “occurring” in subsection (1) and the insertion of “outside the State while the member is serving outside the State in the circumstances mentioned in section 3(2) and, as respects a death referred to in paragraph (b) of this subsection, in such other circumstances as may be specified in the regulations.”.

(2) The references in *subsection (1)* to subsection 2 of section 3, and subsection (1) of section 4, of the said Act of 1989 are to those provisions as substituted by section 10 of the Criminal Justice (Joint Investigation Teams) Act 2004.

76.—Sections 11 (use of information), 12 (criminal liability) and 13 (civil liability) of the Criminal Justice (Joint Investigation Teams) Act 2004 apply, with the necessary modifications, in relation to a person participating in operations connected with a controlled delivery as they apply in relation to a member or seconded member of a joint investigation team within the meaning of that Act.

Application of  
Criminal Justice  
(Joint Investigation  
Teams) Act 2004 in  
relation to  
controlled  
deliveries.

## PART 8

### MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE STATE AND THE UNITED STATES OF AMERICA

77.—In this Part—

Definitions (*Part 8*).

“Article” means an Article of the Ireland-US Treaty;

“Explanatory Note” means the Explanatory Note<sup>5</sup> which—

<sup>5</sup>OJ. L181, 19.7.2003, p.41

(a) is annexed to the Council Decision<sup>6</sup> of 6 June 2003 concerning the signature of the Agreements between the European Union and the United States of America on extradition and mutual assistance in criminal matters, and

(b) records an understanding between the European Union and the United States of America on the EU - US Agreement;

“Instrument” means the Instrument contemplated by Article 3(2) of the EU - US Agreement<sup>7</sup> as to the application of the US - Ireland Treaty and done at Dublin on 14 July 2005;

“EU - US Agreement” means the Agreement on Mutual Legal Assistance between the European Union and the United States of America, done at Washington D.C. on 25 June 2003;

“Ireland - US Treaty” means the Treaty between the Government of Ireland and the Government of the United States of America on Mutual Assistance in Criminal Matters, done at Washington D.C. on 18 January 2001, as applied by the Instrument.

Application in State  
of Ireland - US  
Treaty.

**78.—**(1) The Ireland - US Treaty has the force of law in its application in relation to the State.

(2) Judicial notice shall be taken of the Treaty.

(3) For the purpose of giving full effect to the Treaty, the relevant provisions of this Act relating to requests for mutual legal assistance between the State and member states, including those relating to applications to courts or judges—

(a) to make orders to give effect to or enforce compliance with requests for such assistance, and

(b) to make, vary or discharge those orders,

have also effect, subject to the Treaty, in relation to requests for mutual legal assistance between the State and the United States of America, where necessary for that purpose and with the necessary modifications; in particular, for that purpose the reference in Article 16 *bis* 4 to money laundering and terrorist activity include, respectively, an offence under section 31 of the Criminal Justice Act 1994, as substituted by section 21 of the Criminal Justice (Theft and Fraud Offences) Act 2001, and an offence under section 6 of the Criminal Justice (Terrorist Offences) Act 2005.

(4) Section 7 (operation of joint investigation teams) of the Joint Investigation Teams Act 2004 applies in relation to a joint investigation team established under Article 16 *ter* and operating in the State as if it were a joint investigation team established under that Act.

(5) Article 7, in its application in relation to the use of personal data contained in evidence or information obtained under the Treaty by a person in the State, is without prejudice to the application of section 7 (duty of care owed by data controllers and data processors) of the Data Protection Act 1988 in respect of the use of such data.

<sup>6</sup>OJ. L181, 19.7.2003, p.25

<sup>7</sup>OJ. L181, 19.7.2003, p.34

(6) The Data Protection Acts 1988 and 2003 apply in relation to such data in respects other than those related to their use.

(7) A court may consider—

5 (a) the Explanatory Note when interpreting any provision of the EU - US Agreement, and

(b) the Note and Agreement when interpreting any provision of the Treaty,

and give them such weight as is appropriate in the circumstances.

## PART 9

### 10 MISCELLANEOUS

**79.**—Section 9 (participants in joint investigation teams) of the Criminal Justice (Joint Investigation Teams) Act 2004 is amended—

Amendment of section 9 of Criminal Justice (Joint Investigation Teams) Act 2004.

(a) in subsection (1), by the substitution of the following paragraph for paragraph (d):

15 “(d) one or more officers designated by an authority of a country or territory (other than a Member State or part of such a State) designated under section 4 of the *Criminal Justice (Mutual Assistance) Act 2005*.”, and

20 (b) by the deletion of subsections (5) and (6).

**80.**—(1) Where a request is made in connection with a criminal investigation in the State or a designated state, any person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

25 Disclosure prejudicing investigation.

(2) A person guilty of an offence under this section is liable—

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

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

(3) In proceedings for an offence under this section it is a defence to prove that the defendant—

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

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

**81.—(1) Where—**

- (a) an offence under this Act is committed by a body corporate, and
- (b) it is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person who—
  - (i) was a director, manager, secretary or other similar officer of the body corporate, or
  - (ii) was purporting to act in any such capacity,

the person is guilty of an offence and liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts or defaults of a member in connection with the member's functions of management as if he or she were a director or manager of the body corporate.

(3) *Subsections (1) and (2)* apply, with the necessary modifications, in relation to offences under this Act committed by an unincorporated body.

**82.—(1) A document purporting—**

- (a) to be—
  - (i) a request or a supporting or related document,
  - (ii) an order made or warrant issued by a court, tribunal or authority in a designated state,
  - (iii) a record of the making or issue of such an order or warrant, or
  - (iv) without prejudice to *section 47(8)*, evidence obtained in such a state, in response to a request, or a record of such evidence,
- and
- (b) to be signed by or on behalf of the court, tribunal or authority concerned,

is admissible, without further proof, as evidence of the matters mentioned in the document.

**(2) A document purporting—**

- (a) to be a translation of a document mentioned in *subsection (1)*, and
- (b) to be certified as correct by a person appearing to be competent to do so,

is admissible, without further proof, as evidence of the translation.

(3) A document purporting to be a copy of a document mentioned in *subsection (1)* and—

(a) to be certified to be such a copy by or on behalf of the court, tribunal or authority issuing it or by an officer of the central authority of the state concerned, or

(b) to bear the seal of the court, tribunal or either such authority concerned,

is deemed to be a true copy of the document.

(4) A document purporting—

(a) to set out the text of a reservation or declaration under a relevant international instrument, and

(b) to be signed by an officer of the Department of Foreign Affairs,

is admissible, without further proof, of the reservation or declaration.

**83.—(1)** Where—

Provisional  
measures.

(a) criminal proceedings have been instituted, or a criminal investigation is taking place, in a designated state, and

(b) a competent authority in that state makes a request to the Minister, under Article 24 of the Second Additional Protocol of 8 November 2001 to the 1959 Convention, for the taking of provisional measures within the meaning of that Article,

the Minister may cause an application to be made to the High Court for the grant of the requested measures.

(2) On such an application the High Court may grant provisional, including protective, measures of any kind that the Court has power to grant in proceedings that, apart from this section, are within its jurisdiction.

(3) The measures may be granted for such period, and subject to such conditions or limitations, as the Court may specify.

(4) The Court may refuse to grant the measures sought if, in its opinion, the fact that it has not jurisdiction, apart from this section, in relation to the subject matter of the proceedings concerned makes it inexpedient for it to grant such measures.

**84.—**The Act of 1994 is amended—

Amendment of  
Criminal Justice  
Act 1994.

(a) in sections 3(1), 24 and 25, 28 to 30 and 65, by the substitution of “freezing order” for “restraint order”,

(b) in section 30, by the substitution of “freezing” for “restraint”,

(c) by the insertion of the following subsection after section 3(16):

“(16A) References in this Act (other than section 9) to an offence in respect of which a confiscation order might be made under section 9 of this Act shall be construed as references to an indictable offence (other than a drug trafficking offence), irrespective of whether a person has been convicted of it on indictment.”, 5

(d) by the substitution of the following Table for the Table to section 19:

“

Amount outstanding under confiscation order	Period of imprisonment	
Not exceeding €650	45 days	10
Exceeding €500 but not exceeding €1,300	3 months	
Exceeding €1,300 but not exceeding €3,250	4 months	
Exceeding €3,250 but not exceeding €6,500	6 months	
Exceeding €6,500 but not exceeding €13,000	9 months	15
Exceeding €13,000 but not exceeding €26,000	12 months	
Exceeding €26,000 but not exceeding €65,000	18 months	
Exceeding €65,000 but not exceeding €130,000	2 years	
Exceeding €130,000 but not exceeding €325,000	3 years	
Exceeding €325,000 but not exceeding €1,300,000	5 years	20
Exceeding €1,300,000	10 years	

”,

(e) in section 24, by the addition of the following subsection:

“(11) An order under this section may relate to property in a member state of the European Union.”, 25

(f) by the addition to Part IV of the following section:

“Revenue offence.

32A.—For the avoidance of doubt it is hereby declared that, in relation to an offence under the law of a country or territory other than the State, references in this Part to an offence shall be construed as including references to an offence in connection with taxes, duties, customs or exchange regulation.”, and 30

(g) in section 60, by the substitution of “restraint (including a freezing order)” for “restraint”, 35

(h) by the substitution of the following subsections for subsection (8) of section 63:

“(8) Subject to subsection (9) of this section, an order under subsection (2) of this section— 40

(a) in so far as it may empower a member of the Garda Síochána to take away a document or to be given access to it, shall authorise the member to make a copy of it and to take the copy away, 45

(b) shall not confer any right to production of, or access to any material subject to legal privilege, and

(c) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise.

5 (8A) Any material taken away by a member of the Garda Síochána under this section may be retained by him or her for use as evidence in any proceedings.”.

85.—(1) The provisions of the relevant international instrument have effect in respect of the use of personal data communicated to  
10 or otherwise obtained by a person in the State under the instrument. Personal data protection.

(2) *Subsection (1)* is without prejudice to the application of section 7 (duty of care owed by data controllers and data processors) of the Data Protection Act 1988 in respect of the use of such data.

(3) The Data Protection Acts 1988 and 2003 apply in relation to  
15 such data in respects other than those relating to their use.

86.—Regulations may be made by the Minister for the purpose of enabling any provision of this Act to have full effect and may include such consequential, incidental, transitional or supplementary provisions as may be necessary for that purpose. Regulations.

20 87.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses.

25 88.—An order (other than an order under *section 1(2)*) or regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling it is passed by either such House within the next 21 days on which that House has sat after it is laid before it, the order or regulation is annulled accordingly, but without prejudice to the validity of anything previously done under it. Laying of orders or regulations before Houses of Oireachtas.



SCHEDULE 1

CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS  
BETWEEN MEMBER STATES OF EUROPEAN UNION, DONE AT BRUSSELS  
ON 29 MAY 2000

FIRST SCHEDULE 5

The text in the English Language of the 2000 Convention

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.** 10

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, 15

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 20  
fast and efficient manner compatible with the basic principles of their  
national law, and in compliance with the individual rights and prin-  
ciples of the European Convention for the Protection of Human  
Rights and Fundamental Freedoms, signed in Rome on 4  
November 1950, 25

EXPRESSING their confidence in the structure and functioning of  
their legal systems and in the ability of all Member States to guaran-  
tee a fair trial,

RESOLVED to supplement the European Convention on Mutual  
Assistance in Criminal Matters of 20 April 1959 and other Conven- 30  
tions 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 35  
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 40  
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, 45

5 RECOGNISING that this Convention does not affect the exercise  
of the responsibilities incumbent upon Member States with regard  
do 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

### 10 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  
15 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';

20 (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  
25 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 Assist-  
ance 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  
30 between the Member States of the Benelux Economic  
Union.

2. This Convention shall not affect the application of more favour-  
able 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  
40 assistance in criminal matters agreed on the basis of uniform legis-  
lation 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**

45 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 Agree-  
ment 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* <sup>1</sup>.

2. The provisions of Articles 49(a), 52, 53 and 73 of the Schengen Implementation Convention are hereby repealed. 5

### *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. 10

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. 15

### *Article 4*

#### **Formalities and procedures in the execution of requests for mutual assistance 20**

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. 25

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. 30

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. 35 40

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 45 50

<sup>1</sup>OJ L 176, 10.7.1999, p. 36.

and requested Member States may subsequently agree on further action to be taken concerning the request.

#### *Article 5*

##### **Sending and service of procedural documents**

- 5 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:
- 10 (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
- 15 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.
- 20 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
- 25 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.
- 30 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**

- 40 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
- 45 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:

5

(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.

10

15

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.

20

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.

25

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.

30

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.

35

8. The following requests or communications shall be made through the central authorities of the Member States:

40

(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;

45

(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.

50

### **Spontaneous exchange of information**

1. Within the limits of their national law, the competent authorities of the Member States may exchange information, without a request to that effect, relating to criminal offences and the infringements of rules of law referred to in Article 3(1), the punishment or handling of which falls within the competence of the receiving authority at the time the information is provided.
2. The providing authority may, pursuant to its national law, impose conditions on the use of such information by the receiving authority.
3. The receiving authority shall be bound by those conditions.

## **TITLE II**

### **REQUEST FOR CERTAIN SPECIFIC FORMS OF MUTUAL ASSISTANCE**

#### *Article 8*

#### **Restitution**

1. At the request of the requesting Member State and without prejudice to the rights of *bona fide* third parties, the requested Member State may place articles obtained by criminal means at the disposal of the requesting State with a view to their return to their rightful owners.
2. In applying Articles 3 and 6 of the European Mutual Assistance Convention and Articles 24(2) and 29 of the Benelux Treaty, the requested Member State may waive the return of articles either before or after handing them over to the requesting Member State if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of *bona fide* third parties shall not be affected.
3. In the event of a waiver before handing over the articles to the requesting Member State, the requested Member State shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles.

A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Member State to collect taxes or duties from the rightful owner.

#### *Article 9*

#### **Temporary transfer of persons held in custody for purpose of investigation**

1. Where there is agreement between the competent authorities of the Member States concerned, a Member State which has requested an investigation for which the presence of the person held in custody on its own territory is required may temporarily transfer that person to the territory of the Member State in which the investigation is to take place.
2. The agreement shall cover the arrangements for the temporary transfer of the person and the date by which he or she must be returned to the territory of the requesting Member State.

3. Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Member State.
4. The period of custody in the territory of the requested Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Member State. 5
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. 10
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. 15

#### 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. 20
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. 25 30
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. 35
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: 40
- (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 45 50



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.



**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. 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. 10
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. 15
5. The practical arrangements regarding the hearing shall be agreed between the Member States concerned. 20

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; 25
- (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*. 30

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. 35
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. 40
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. 45

**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. 5

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. 10

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. 15

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. 20

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: 25

- (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; 30 35
- (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. 40

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. 45 50

**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.

5 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.

10 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;

15 (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  
20 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  
25 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  
30 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  
35 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.

## 40 *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  
45 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. 5

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. 10

#### *Article 20* 15

#### **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. 20 25

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: 30

(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; 35

(b) in other cases, immediately after it becomes aware that the subject of the interception is on the territory of the notified Member State. 40

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; 45
- (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. 5
- (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). 10

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. 15

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. 20

#### *Article 21*

#### **Responsibility for charges made by telecommunications operators** 25

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** 30

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 35

#### *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; 40
- (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; 45

(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.

5 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.

10 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.

15 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.

20 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:

25 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.

30 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**

40 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  
45 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; 5
- (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). 10

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. 15

#### *Article 26*

#### **Territorial application**

The application of this Convention to Gibraltar will take effect upon extension of the European Mutual Assistance Convention to Gibraltar. 20

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. 25

#### *Article 27*

#### **Entry into force**

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements. 30

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. 35

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. 40

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. 45

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

5

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. 10

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. 15

#### 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. 20

#### Declaration by the United Kingdom on Article 20

This Declaration shall form an agreed, integral part of the Convention. 25

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). 30

### SCHEDULE 2

PROTOCOL TO EU 2000 CONVENTION, DONE AT LUXEMBOURG ON 16 OCTOBER 2001 35

The text in the English Language of the 2001 Protocol

#### 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. 40

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,

5 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,

10 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<sup>(1)</sup>,

15 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,

20 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<sup>(2)</sup>, hereinafter referred to as the 2000 Mutual Assistance Convention:

#### *Article 1*

##### **Request for information on bank accounts**

25 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  
30 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.

35 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:

40 — 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

45 — an offence referred to in Article 2 of the 1995 Convention on the Establishment of a European Police Office (Europol Convention), or in the Annex to that Convention, as amended, or

— to the extent that it may not be covered by the Europol Convention, an offence referred to in the 1995 Convention

<sup>(1)</sup>OJ L 344, 15.12.1997, p. 7.

<sup>(2)</sup>OJ C 197, 12.7.2000, p. 3.

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, 5
- 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, 10
- 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. 15

6. The Council may decide, pursuant to Article 34(2)(c) of the Treaty of European Union, to extend the scope of paragraph 3.

#### *Article 2*

##### **Requests for information on banking transactions**

1. On request by the requesting State, the requested State shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account. 20
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. 25
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. 30
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** 35

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. 40
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. 45

4. The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested Member States.

#### *Article 4*

### 5 **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  
10 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  
15 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*

### 20 **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  
25 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  
30 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**

35 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**

40 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  
45 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. 5

3. Article 50 of the Schengen Implementation Convention is hereby repealed.

#### *Article 9*

#### **Political offences 10**

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: 15

(a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism of 27 January 1977; and 20

(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. 25

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. 30

#### *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 35

— 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. 40

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. 5
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. 10
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. 15
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. 20

## 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*<sup>(1)</sup> (hereinafter referred to as the 'Association Agreement'). 25

## Article 16

### Entry into force for Iceland and Norway 30

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). 35
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. 40
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. 45

<sup>(1)</sup>OJ L 176, 10.7.1999, p. 36.

4. Without prejudice to paragraphs 1, 2 and 3, the provision referred to in Article 15 shall enter into force for Iceland and Norway not later than on the date of entry into force of this Protocol for the fifteenth State, being a member of the European Union at the time of the adoption by the Council of the Act establishing this Protocol.

#### Article 17

#### Depositary

The Secretary-General of the Council of the European Union shall act as depositary of this Protocol. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and also any other notification concerning this Protocol.

IN WITNESS WHEREOF, the undersigned plenipotentiaries have hereunto set their hands. Done at Luxembourg, on 16 October 2001 in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, the original being deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall forward a certified copy thereof to each Member State.

#### SCHEDULE 3

#### **Agreement between European Union and Republic of Iceland and Kingdom of Norway on application of certain provisions of 2000 Convention and 2001 Protocol, done at Brussels on 19 December 2003**

The text in the English Language of the Agreement with Iceland and Norway

THE EUROPEAN UNION, on the one hand, and THE REPUBLIC OF ICELAND and THE KINGDOM OF NORWAY, on the other hand, hereinafter referred to as 'the Contracting Parties',

WISHING to improve judicial cooperation in criminal matters between the Member States of the European Union and Iceland and Norway, without prejudice to the rules protecting individual freedom,

CONSIDERING that current relationships among the Contracting Parties require close cooperation in the fight against crime,

POINTING OUT the Contracting Parties' common interest in ensuring that mutual assistance between the Member States of the European Union and Iceland and Norway is provided in a fast and efficient manner compatible with the basic principles of their national law, and in compliance with the individual rights and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950,

EXPRESSING their mutual confidence in the structure and functioning of their legal systems and in the ability of all Contracting Parties to guarantee a fair trial,

RESOLVED to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and other Conventions in force in this area, by an Agreement between the European Union, Iceland and Norway,

RECOGNISING that the provisions of those Conventions remain applicable for all matters not covered by this Agreement, 5

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, 10 15 20

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, 25

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: 30 35

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. 40

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: 45 50

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.

5

#### *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.

10

#### *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.

15 Done at Brussels, this nineteenth day of December, in the year two thousand and three.

#### *ANNEX I*

##### **Application to Gibraltar**

The United Kingdom of Great Britain and Northern Ireland, as  
20 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  
25 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  
30 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  
35 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**  
40

The Contracting Parties agree to consult, as appropriate, when the Republic of Iceland or the Kingdom of Norway or one of the  
45 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  
50 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.

### SCHEDULE 4

#### **Council Framework Decision (2003/577/JHA) of 22 July 2003 on execution in European Union of orders freezing property or evidence**

The text in the English Language of the Council Framework Decision

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative by the Republic of France, the Kingdom of Sweden and the Kingdom of Belgium<sup>(1)</sup>,

Having regard to the opinion of the European Parliament<sup>(2)</sup>,

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.

<sup>(1)</sup>OJ C 75, 7.3.2001, p. 3.

<sup>(2)</sup>Opinion delivered on 11 June 2002 (not yet published in the Official Journal).

(6) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to freeze property for which a freezing order has been issued when there are reasons to believe, on the basis of objective elements, that the freezing order is issued for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media,

HAS ADOPTED THIS FRAMEWORK DECISION:

## TITLE I

### SCOPE

#### *Article 1*

#### **Objective**

The purpose of the Framework Decision is to establish the rules under which a Member State shall recognise and execute in its territory a freezing order issued by a judicial authority of another Member State in the framework of criminal proceedings. It shall not have the effect of amending the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

#### *Article 2*

### Definitions

For the purposes of this Framework Decision:

- (a) 'issuing State' shall mean the Member State in which a judicial authority, as defined in the national law of the issuing State, has made, validated or in any way confirmed a freezing order in the framework of criminal proceedings;
- (b) 'executing State' shall mean the Member State in whose territory the property or evidence is located;
- (c) 'freezing order' property that could be subject to confiscation or evidence;
- (d) 'property' includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which the competent judicial authority in the issuing State considers:
  - is the proceeds of an offence referred to in Article 3, or equivalent to either the full value or part of the value of such proceeds, or

- constitutes the instrumentalities or the objects of such an offence;
- (e) ‘evidence’ shall mean objects, documents or data which could be produced as evidence in criminal proceedings concerning an offence referred to in Article 3. 5

### *Article 3*

### **Offences**

1. This Framework Decision applies to freezing orders issued for purposes of:

- (a) securing evidence, or 10
- (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: 15

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography, 20
- 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, 25
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro, 30
- 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, 35
- 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,
- 5 — racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- 10 — illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- 15 — crimes within the jurisdiction of the International Criminal Tribunal,
- unlawful seizure of aircraft/ships,
- sabotage.

20 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  
25 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  
30 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  
35 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, 5  
together with the certificate provided for in Article 9, shall be trans-  
mitted by the judicial authority which issued it directly to the com-  
petent judicial authority for execution by any means capable of pro-  
ducing a written record under conditions allowing the executing State  
to establish authenticity. 10
2. The United Kingdom and Ireland, respectively, may, before the  
date referred to in Article 14(1), state in a declaration that the freez-  
ing 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 15  
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 20  
assistance of the Convention implementing the Schengen Agree-  
ment 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 inquir-  
ies, including via the contact points of the European Judicial 25  
Network<sup>(1)</sup>, 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 neces-  
sary measures for its execution, it shall, *ex officio*, transmit the freez- 30  
ing order to the competent judicial authority for execution and shall  
so inform the judicial authority in the issuing State which issued it.

#### Article 5

##### Recognition and immediate execution

1. The competent judicial authorities of the executing State shall 35  
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- 40  
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 45  
to the fundamental principles of law in the executing State, the  
judicial authority of the executing State shall also observe the for-  
malities and procedures expressly indicated by the competent judicial  
authority of the issuing State in the execution of the freezing order.

<sup>(1)</sup>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).

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.

5 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.

10 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**

15 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).

20 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.

25 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**

30 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;

35 (b) there is an immunity or privilege under the law of the executing State which makes it impossible to execute the freezing order;

40 (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;

45 (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

5

(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.

10

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.

15

#### *Article 8*

#### **Grounds for postponement of execution**

20

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;

25

(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.

30

35

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.

40

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.

45

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*

5

#### **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.

10 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  
15 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:

20 (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  
25 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  
30 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  
35 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  
40 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**

45 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. 5

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. 10

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. 15

#### *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. 20 25

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. 30

### **TITLE III**

#### **FINAL PROVISIONS**

#### *Article 13*

#### **Territorial application**

This Framework Decision shall apply to Gibraltar. 35

#### *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. 40 45

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*

5

**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

10 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: .....	5
Post held (title/grade): .....	
File reference: .....	
Address: .....	
.....	
Tel: (country code) (area/city code) (...) .....	10
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): .....	15
.....	
.....	20
(b) The authority competent for the enforcement of the freezing order in the issuing State	
Official name: .....	
.....	
Name of representative: .....	25
Post held (title/grade): .....	
File reference: .....	
Address: .....	
.....	
Tel: (country code) (area/city code) (...) .....	30
Fax: (country code) (area/city code) (...) .....	
E-mail: .....	
Languages in which it is possible to communicate with the authority competent for the enforcement .....	
.....	35
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): .....	
.....	40

	<p>(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:</p> <p><input type="checkbox"/> Authority mentioned under point (a)</p> <p><input type="checkbox"/> Authority mentioned under point (b)</p>
5	<p>(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):</p> <p>Name of the central authority: .....</p> <p>.....</p>
10	<p>Contact person, if applicable (title/grade and name): .....</p> <p>.....</p> <p>Address: .....</p> <p>.....</p> <p>File reference: .....</p>
15	<p>Tel: (country code) (area/city code) .....</p> <p>Fax: (country code) (area/city code) .....</p> <p>E-mail: .....</p>
20	<p>(e) The freezing order:</p> <p>1. Date and if applicable reference number</p> <p>2. State the purpose of the order</p> <p>2.1. Subsequent confiscation</p> <p>2.2. Securing evidence</p> <p>3. Description of formalities and procedures to be observed when executing a freezing order concerning evidence (if applicable)</p>
25	<p>(f) Information regarding the property or evidence in the executing State covered by the freezing order:</p> <p>Description of the property or evidence and location:</p>
30	<p>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)</p>
35	<p>(b) Precise description of the evidence</p> <p>2. Exact location of the property or evidence (if not known, the last known location)</p> <p>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)</p> <p>.....</p> <p>.....</p>

(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	5
Name: .....	
Forename(s): .....	
Maiden name, where applicable: .....	
Aliases, where applicable: .....	
Sex: .....	10
Nationality: .....	
Date of birth: .....	
Place of birth: .....	
Residence and/or known address if not known state the last known address: .....	15
.....	
Language(s) which the person understands (if known): .....	
.....	
2. Legal persons	
Name: .....	
Form of legal person: .....	20
Registration number: .....	
Registered seat: .....	
.....	
(h) Action to be taken by the executing State after executing the freezing order	
Confiscation	25
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	30
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	35
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. ....	40

	(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:
5	
	Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the freezing order was made:
10	
	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:
15	<input type="checkbox"/> participation in a criminal organisation;
	<input type="checkbox"/> terrorism;
	<input type="checkbox"/> trafficking in human beings;
	<input type="checkbox"/> sexual exploitation of children and child pornography;
	<input type="checkbox"/> illicit trafficking in narcotic drugs and psychotropic substances;
20	<input type="checkbox"/> illicit trafficking in weapons, munitions and explosives;
	<input type="checkbox"/> corruption;
	<input type="checkbox"/> 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;
25	<input type="checkbox"/> laundering of the proceeds of crime;
	<input type="checkbox"/> counterfeiting currency, including of the euro;
	<input type="checkbox"/> computer-related crime;
	<input type="checkbox"/> environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
30	<input type="checkbox"/> facilitation of unauthorised entry and residence;
	<input type="checkbox"/> murder, grievous bodily injury;
	<input type="checkbox"/> illicit trade in human organs and tissue;
	<input type="checkbox"/> kidnapping, illegal restraint and hostage-taking;
	<input type="checkbox"/> racism and xenophobia;
35	<input type="checkbox"/> organised or armed robbery;
	<input type="checkbox"/> illicit trafficking in cultural goods, including antiques and works of art;
	<input type="checkbox"/> swindling;
	<input type="checkbox"/> racketeering and extortion;
	<input type="checkbox"/> counterfeiting and piracy of products;
40	<input type="checkbox"/> forgery of administrative documents and trafficking therein;
	<input type="checkbox"/> forgery of means of payment;
	<input type="checkbox"/> illicit trafficking in hormonal substances and other growth promoters;
	<input type="checkbox"/> illicit trafficking in nuclear or radioactive materials;
	<input type="checkbox"/> trafficking in stolen vehicles;



**Second Additional Protocol of 8 November 2001 to European  
Convention of 20 April 1959 on Mutual Assistance in Criminal  
Matters**

5       **The text in the English Language of the Second Additional  
          Protocol**

The member States of the Council of Europe, signatory to this Protocol,

10       Having regard to their undertakings under the Statute of the Council  
of Europe;

Desirous of further contributing to safeguard human rights, uphold the rule of law and support the democratic fabric of society;

Considering it desirable to that effect to strengthen their individual and collective ability to respond to crime;

15       Decided to improve on and supplement in certain aspects the European Convention on Mutual Assistance in Criminal Matters done at Strasbourg on 20 April 1959 (hereinafter referred to as “the Convention”), as well as the Additional Protocol thereto, done at Strasbourg on 17 March 1978;

20       Taking into consideration the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981,

25       Have agreed as follows:

**Chapter I**

**Article 1 – Scope**

Article 1 of the Convention shall be replaced by the following provisions:

30       “1 The Parties undertake promptly to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

35       2 This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

40       3 Mutual assistance may also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Party by virtue of being infringements of the rules of law, where the decision



may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

4 Mutual assistance shall not be refused solely on the grounds that it relates to acts for which a legal person may be held liable in the requesting Party.”

5

## **Article 2 – Presence of officials of the requesting Party**

Article 4 of the Convention shall be supplemented by the following text, the original Article 4 of the Convention becoming paragraph 1 and the provisions below becoming paragraph 2:

“2 Requests for the presence of such officials or interested persons should not be refused where that presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting Party and, therefore, likely to avoid the need for supplementary requests for assistance.”

## **Article 3 – Temporary transfer of detained persons to the territory of the requesting Party**

Article 11 of the Convention shall be replaced by the following provisions:

“1 A person in custody whose personal appearance for evidentiary purposes other than for standing trial is applied for by the requesting Party shall be temporarily transferred to its territory, provided that he or she shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 of this Convention, in so far as these are applicable.

Transfer may be refused if:

a the person in custody does not consent;

b his or her presence is necessary at criminal proceedings pending in the territory of the requested Party;

c transfer is liable to prolong his or her detention, or

d there are other overriding grounds for not transferring him or her to the territory of the requesting Party.

2 Subject to the provisions of Article 2 of this Convention, in a case coming within paragraph 1, transit of the person in custody through the territory of a third Party, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested. A Party may refuse to grant transit to its own nationals.

3 The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his or her release.”

## **Article 4 – Channels of communication**

Article 15 of the Convention shall be replaced by the following provisions:

45

5 “1 Requests for mutual assistance, as well as spontaneous information, shall be addressed in writing by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels. However, they may be forwarded directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party and returned through the same channels.

10 2 Applications as referred to in Article 11 of this Convention and Article 13 of the Second Additional Protocol to this Convention shall in all cases be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.

15 3 Requests for mutual assistance concerning proceedings as mentioned in paragraph 3 of Article 1 of this Convention may also be forwarded directly by the administrative or judicial authorities of the requesting Party to the administrative or judicial authorities of the requested Party, as the case may be, and returned through the same channels.

20 4 Requests for mutual assistance made under Articles 18 and 19 of the Second Additional Protocol to this Convention may also be forwarded directly by the competent authorities of the requesting Party to the competent authorities of the requested Party.

25 5 Requests provided for in paragraph 1 of Article 13 of this Convention may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 of this Convention shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.

30 6 Requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the Convention may be made directly to the competent authorities. Any Contracting State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of  
35 this paragraph, deem competent authorities.

7 In urgent cases, where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).

40 8 Any Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to make the execution of requests, or specified requests, for mutual assistance dependent on one or more of the following conditions:

a that a copy of the request be forwarded to the central authority designated in that declaration;

45 b that requests, except urgent requests, be forwarded to the central authority designated in that declaration;

c that, in case of direct transmission for reasons of urgency, a copy shall be transmitted at the same time to its Ministry of Justice;

50 d that some or all requests for assistance shall be sent to it through channels other than those provided for in this article.

9 Requests for mutual assistance and any other communications under this Convention or its Protocols may be forwarded through any electronic or other means of telecommunication provided that the requesting Party is prepared, upon request, to produce at any time a written record of it and the original. However, any Contracting State, may by a declaration addressed at any time to the Secretary General of the Council of Europe, establish the conditions under which it shall be willing to accept and execute requests received by electronic or other means of telecommunication. 5

10 The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Parties which provide for the direct transmission of requests for assistance between their respective authorities.” 10

#### **Article 5 – Costs**

Article 20 of the Convention shall be replaced by the following provisions: 15

“1 Parties shall not claim from each other the refund of any costs resulting from the application of this Convention or its Protocols, except:

a costs incurred by the attendance of experts in the territory of the requested Party; 20

b costs incurred by the transfer of a person in custody carried out under Articles 13 or 14 of the Second Additional Protocol to this Convention, or Article 11 of this Convention; 25

c costs of a substantial or extraordinary nature.

2 However, the cost of establishing a video or telephone link, costs related to the servicing of a video or telephone link in the requested Party, the remuneration of interpreters provided by it and allowances to witnesses and their travelling expenses in the requested Party shall be refunded by the requesting Party to the requested Party, unless the Parties agree otherwise. 30

3 Parties shall consult with each other with a view to making arrangements for the payment of costs claimable under paragraph 1.c above.

4 The provisions of this article shall apply without prejudice to the provisions of Article 10, paragraph 3, of this Convention.” 35

#### **Article 6 – Judicial authorities**

Article 24 of the Convention shall be replaced by the following provisions:

“Any State shall at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities. It subsequently may, at any time and in the same manner, change the terms of its declaration.” 40 45

## Chapter II

### Article 7 – Postponed execution of requests

- 1 The requested Party may postpone action on a request if such  
5 action would prejudice investigations, prosecutions or related proceedings by its authorities.
- 2 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.
- 10 3 If the request is postponed, reasons shall be given for the postponement. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

### Article 8 – Procedure

- 15 Notwithstanding the provisions of Article 3 of the Convention, where requests specify formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to fundamental principles of its law,  
20 unless otherwise provided for in this Protocol.

### Article 9 – Hearing by video conference

- 1 If a person is in one Party's territory and has to be heard as a witness or expert by the judicial authorities of another Party, the latter may, where it is not desirable or possible for the person to be  
25 heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs 2 to 7.
- 2 The requested Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical  
30 means to carry out the hearing. If the requested Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting Party by mutual agreement.
- 3 Requests for a hearing by video conference shall contain, in  
35 addition to the information referred to in Article 14 of the Convention, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.
- 4 The judicial authority of the requested Party shall summon the  
40 person concerned to appear in accordance with the forms laid down by its law.
- 5 With reference to hearing by video conference, the following rules shall apply:
- 45 a a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested

Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles; 5

b measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;

c the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party 10 in accordance with its own laws;

d at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;

e the person to be heard may claim the right not to testify 15 which would accrue to him or her under the law of either the requested or the requesting Party.

6 Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating the date and 20 place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by 25 the competent authority of the requested Party to the competent authority of the requesting Party.

7 Each Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law 30 applies in the same way as if the hearing took place in a national procedure.

8 Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the 35 accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Parties concerned, in accordance with their national law and relevant 40 international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.

9 Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 45 above of also applying the provisions of this article to hearings by video conference involving the accused person or the suspect.

#### **Article 10 – Hearing by telephone conference**

1 If a person is in one Party's territory and has to be heard as a witness or expert by judicial authorities of another Party, the latter may, where its national law so provides, request the assistance of 50 the former Party to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 6.

2 A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.

3 The requested Party shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.  
5

4 A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the Convention, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.  
10

5 The practical arrangements regarding the hearing shall be agreed between the Parties concerned. When agreeing such arrangements, the requested Party shall undertake to:

15 a notify the witness or expert concerned of the time and the venue of the hearing;

b ensure the identification of the witness or expert;

c verify that the witness or expert agrees to the hearing by telephone conference.

6 The requested Party may make its agreement subject, fully or in part, to the relevant provisions of Article 9, paragraphs 5 and 7.  
20

#### **Article 11 – Spontaneous information**

1 Without prejudice to their own investigations or proceedings, the competent authorities of a Party may, without prior request, forward to the competent authorities of another Party information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under the Convention or its Protocols.  
25

2 The providing Party may, pursuant to its national law, impose conditions on the use of such information by the receiving Party.  
30

3 The receiving Party shall be bound by those conditions.

4 However, any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to be bound by the conditions imposed by the providing Party under paragraph 2 above, unless it receives prior notice of the nature of the information to be provided and agrees to its transmission.  
35

#### **Article 12 – Restitution**

1 At the request of the requesting Party and without prejudice to the rights of bona fide third parties, the requested Party may place articles obtained by criminal means at the disposal of the requesting Party with a view to their return to their rightful owners.  
40

2 In applying Articles 3 and 6 of the Convention, the requested Party may waive the return of articles either before or after handing them over to the requesting Party if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of bona fide third parties shall not be affected.  
45

3 In the event of a waiver before handing over the articles to the requesting Party, the requested Party shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles.

4 A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Party to collect taxes or duties from the rightful owner. 5

### **Article 13 – Temporary transfer of detained persons to the requested Party**

1 Where there is agreement between the competent authorities of the Parties concerned, a Party which has requested an investigation for which the presence of a person held in custody on its own territory is required may temporarily transfer that person to the territory of the Party in which the investigation is to take place. 10

2 The agreement shall cover the arrangements for the temporary transfer of the person and the date by which the person must be returned to the territory of the requesting Party. 15

3 Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Party. 20

4 The transferred person shall remain in custody in the territory of the requested Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from which the person was transferred applies for his or her release.

5 The period of custody in the territory of the requested Party shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Party. 25

6 The provisions of Article 11, paragraph 2, and Article 12 of the Convention shall apply *mutatis mutandis*. 30

7 Any Contracting State may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that before an agreement is reached under paragraph 1 of this article, the consent referred to in paragraph 3 of this article will be required, or will be required under certain conditions indicated in the declaration. 35

### **Article 14 – Personal appearance of transferred sentenced persons**

The provisions of Articles 11 and 12 of the Convention shall apply *mutatis mutandis* also to persons who are in custody in the requested Party, pursuant to having been transferred in order to serve a sentence passed in the requesting Party, where their personal appearance for purposes of review of the judgement is applied for by the requesting Party. 40

### **Article 15 – Language of procedural documents and judicial decisions to be served** 45

1 The provisions of this article shall apply to any request for service under Article 7 of the Convention or Article 3 of the Additional Protocol thereto.



2 Procedural documents and judicial decisions shall in all cases be transmitted in the language, or the languages, in which they were issued.

5 3 Notwithstanding the provisions of Article 16 of the Convention, if the authority that issued the papers knows or has reasons to believe that the addressee understands only some other language, the papers, or at least the most important passages thereof, shall be accompanied by a translation into that other language.

10 4 Notwithstanding the provisions of Article 16 of the Convention, procedural documents and judicial decisions shall, for the benefit of the authorities of the requested Party, be accompanied by a short summary of their contents translated into the language, or one of the languages, of that Party.

#### **Article 16 – Service by post**

15 1 The competent judicial authorities of any Party may directly address, by post, procedural documents and judicial decisions, to persons who are in the territory of any other Party.

20 2 Procedural documents and judicial decisions shall be accompanied by a report stating that the addressee may obtain information from the authority identified in the report, regarding his or her rights and obligations concerning the service of the papers. The provisions of paragraph 3 of Article 15 above shall apply to that report.

3 The provisions of Articles 8, 9 and 12 of the Convention shall apply *mutatis mutandis* to service by post.

25 4 The provisions of paragraphs 1, 2 and 3 of Article 15 above shall also apply to service by post.

#### **Article 17 – Cross-border observations**

30 1 Police officers of one of the Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, shall be authorised to continue their observation in the territory of another Party where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

On request, the observation will be entrusted to officers of the Party in whose territory it is carried out.

40 2 The request for assistance referred to in the first sub-paragraph must be sent to an authority designated by each Party and having jurisdiction to grant or to forward the requested authorisation.

45 2 Where, for particularly urgent reasons, prior authorisation of the other Party cannot be requested, the officers conducting the observation within the framework of a criminal investigation shall be authorised to continue beyond the border the observation of a person presumed to have committed offences listed in paragraph 6, provided that the following conditions are met:

50 a the authorities of the Party designated under paragraph 4, in whose territory the observation is to be continued,



must be notified immediately, during the observation,  
that the border has been crossed;

- b a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay. 5

Observation shall cease as soon as the Party in whose territory it is taking place so requests, following the notification referred to in a. or the request referred to in b. or where authorisation has not been obtained within five hours of the border being crossed. 10

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

- a The officers conducting the observation must comply with the provisions of this article and with the law of the Party in whose territory they are operating; they must obey the instructions of the local responsible authorities. 15
- b Except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorisation has been granted.
- c The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity. 20
- d The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by the requested Party; their use shall be prohibited save in cases of legitimate self-defence. 25
- e Entry into private homes and places not accessible to the public shall be prohibited.
- f The officers conducting the observation may neither stop and question, nor arrest, the person under observation. 30
- g All operations shall be the subject of a report to the authorities of the Party in whose territory they took place; the officers conducting the observation may be required to appear in person. 35
- h The authorities of the Party from which the observing officers have come shall, when requested by the authorities of the Party in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings. 40

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate both the officers and authorities that they designate for the purposes of paragraphs 1 and 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration. 45

5 The Parties may, at bilateral level, extend the scope of this article and adopt additional measures in implementation thereof.

6 The observation referred to in paragraph 2 may take place only for one of the following criminal offences:

- assassination;
- murder;
- 5 – rape;
- arson;
- counterfeiting;
- armed robbery and receiving of stolen goods;
- extortion;
- 10 – kidnapping and hostage taking;
- traffic in human beings;
- illicit traffic in narcotic drugs and psychotropic substances;
- breach of the laws on arms and explosives;
- 15 – use of explosives;
- illicit carriage of toxic and dangerous waste;
- smuggling of aliens;
- sexual abuse of children.

#### **Article 18 – Controlled delivery**

20 1 Each Party undertakes to ensure that, at the request of another Party, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.

2 The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested  
25 Party, with due regard to the national law of that Party.

3 Controlled deliveries shall take place in accordance with the procedures of the requested Party. Competence to act, direct and control operations shall lie with the competent authorities of that Party.

4 Parties shall at the time of signature or when depositing their  
30 instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

#### **Article 19 – Covert investigations**

1 The requesting and the requested Parties may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).

2 The decision on the request is taken in each individual case by the  
40 competent authorities of the requested Party with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Parties with due regard to their national law and procedures.

45 3 Covert investigations shall take place in accordance with the national law and procedures of the Party on the territory of which

the covert investigation takes place. The Parties involved shall co-operate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of paragraph 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

#### **Article 20 – Joint investigation teams**

1 By mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

- a a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties;
- b a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved.

A request for the setting up of a joint investigation team may be made by any of the Parties concerned. The team shall be set up in one of the Parties in which the investigations are expected to be carried out.

2 In addition to the information referred to in the relevant provisions of Article 14 of the Convention, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3 A joint investigation team shall operate in the territory of the Parties setting up the team under the following general conditions:

- a the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
- b the team shall carry out its operations in accordance with the law of the Party in which it operates. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in sub-paragraph a, taking into account the conditions set by their own authorities in the agreement on setting up the team;
- c the Party in which the team operates shall make the necessary organisational arrangements for it to do so.

- 4 In this article, members of the joint investigation team from the Party in which the team operates are referred to as "members", while members from Parties other than the Party in which the team operates are referred to as "seconded members".
- 5 5 Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Party where the team operates, decide otherwise.
- 10 6 Seconded members of the joint investigation team may, in accordance with the law of the Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Party of operation and the seconding Party.
- 15 7 Where the joint investigation team needs investigative measures to be taken in one of the Parties setting up the team, members seconded to the team by that Party may request their own competent authorities to take those measures. Those measures shall be considered in that Party under the conditions which would apply if they were
- 20 requested in a national investigation.
- 8 Where the joint investigation team needs assistance from a Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other
- 25 State concerned in accordance with the relevant instruments or arrangements.
- 9 A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the
- 30 Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.
- 10 Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Parties concerned may be
- 35 used for the following purposes:
- a for the purposes for which the team has been set up;
  - b subject to the prior consent of the Party where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be
  - 40 withheld only in cases where such use would endanger criminal investigations in the Party concerned or in respect of which that Party could refuse mutual assistance;
  - c for preventing an immediate and serious threat to public security, and without prejudice to sub-paragraph b. if subsequently a criminal investigation is opened;
  - 45
  - d for other purposes to the extent that this is agreed between Parties setting up the team.
- 11 This article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.
- 50

12 To the extent that the laws of the Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members or seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise. 5

#### **Article 21 – Criminal liability regarding officials**

During the operations referred to in Articles 17, 18, 19 or 20, unless otherwise agreed upon by the Parties concerned, officials from a Party other than the Party of operation shall be regarded as officials of the Party of operation with respect to offences committed against them or by them. 10

#### **Article 22 – Civil liability regarding officials 15**

1 Where, in accordance with Articles 17, 18, 19 or 20, officials of a Party are operating in another Party, the first Party shall be liable for any damage caused by them during their operations, in accordance with the law of the Party in whose territory they are operating.

2 The Party in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials. 20

3 The Party whose officials have caused damage to any person in the territory of another Party shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf. 25

4 Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Party shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Party.

5 The provisions of this article shall apply subject to the proviso that the Parties did not agree otherwise. 30

#### **Article 23 – Protection of witnesses**

Where a Party requests assistance under the Convention or one of its Protocols in respect of a witness at risk of intimidation or in need of protection, the competent authorities of the requesting and requested Parties shall endeavour to agree on measures for the protection of the person concerned, in accordance with their national law. 35

#### **Article 24 – Provisional measures**

1 At the request of the requesting Party, the requested Party, in accordance with its national law, may take provisional measures for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests. 40

2 The requested Party may grant the request partially or subject to conditions, in particular time limitation. 45

#### **Article 25 – Confidentiality**

The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent

necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

#### **Article 26 – Data protection**

5 1 Personal data transferred from one Party to another as a result of the execution of a request made under the Convention or any of its Protocols, may be used by the Party to which such data have been transferred, only:

10 a for the purpose of proceedings to which the Convention or any of its Protocols apply;

b for other judicial and administrative proceedings directly related to the proceedings mentioned under (a);

c for preventing an immediate and serious threat to public security.

15 2 Such data may however be used for any other purpose if prior consent to that effect is given by either the Party from which the data had been transferred, or the data subject.

3 Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols where

– such data is protected under its national legislation, and

25 – the Party to which the data should be transferred is not bound by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, unless the latter Party undertakes to afford such protection to the data as is required by the former Party.

4 Any Party that transfers personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols may require the Party to which the data have been transferred to give information on the use made with such data.

5 Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, require that, within the framework of procedures for which it could have refused or limited the transmission or the use of personal data in accordance with the provisions of the Convention or one of its Protocols, personal data transmitted to another Party not be used by the latter for the purposes of paragraph 1 unless with its previous consent.

#### **Article 27 – Administrative authorities**

40 Parties may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities they will deem administrative authorities for the purposes of Article 1, paragraph 3, of the Convention.

#### **Article 28 – Relations with other treaties**

45 The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Parties in application of Article 26, paragraph 3, of the Convention.

## **Article 29 – Friendly settlement**

The European Committee on Crime Problems shall be kept informed regarding the interpretation and application of the Convention and its Protocols, and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of their application. 5

## **Chapter III**

### **Article 30 – Signature and entry into force**

1 This Protocol shall be open for signature by the member States of the Council of Europe which are a Party to or have signed the Convention. It shall be subject to ratification, acceptance or approval. A signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe. 10 15

2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.

3 In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit. 20

### **Article 31 – Accession**

1 Any non-member State, which has acceded to the Convention, may accede to this Protocol after it has entered into force. 25

2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession.

3 In respect of any acceding State, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession. 30

### **Article 32 – Territorial application**

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply. 35

2 Any State may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General. 40

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date or receipt of such notification by the Secretary General. 45



### **Article 33 – Reservations**

1 Reservations made by a Party to any provision of the Convention  
or its Protocol shall be applicable also to this Protocol, unless that  
Party otherwise declares at the time of signature or when depositing  
5 its instrument of ratification, acceptance, approval or accession. The  
same shall apply to any declaration made in respect or by virtue of  
any provision of the Convention or its Protocol.

2 Any State may, at the time of signature or when depositing its  
instrument of ratification, acceptance, approval or accession, declare  
10 that it avails itself of the right not to accept wholly or in part any  
one or more of Articles 16, 17, 18, 19 and 20. No other reservation  
may be made.

3 Any State may wholly or partially withdraw a reservation it has  
made in accordance with the foregoing paragraphs, by means of a  
15 declaration addressed to the Secretary General of the Council of  
Europe, which shall become effective as from the date of its receipt.

4 Any Party which has made a reservation in respect of any of the  
articles of this Protocol mentioned in paragraph 2 above, may not  
claim the application of that article by another Party. It may,  
20 however, if its reservation is partial or conditional, claim the appli-  
cation of that provision in so far as it has itself accepted it.

### **Article 34 – Denunciation**

1 Any Party may, in so far as it is concerned, denounce this Protocol  
by means of a notification addressed to the Secretary General of the  
25 Council of Europe.

2 Such denunciation shall become effective on the first day of the  
month following the expiration of a period of three months after the  
date of receipt of the notification by the Secretary General.

3 Denunciation of the Convention entails automatically denunciation  
30 of this Protocol.

### **Article 35 – Notifications**

The Secretary General of the Council of Europe shall notify the  
member States of the Council of Europe and any State which has  
acceded to this Protocol of:

- 35 a any signature;
- b the deposit of any instrument of ratification, acceptance,  
approval or accession;
- c any date of entry into force of this Protocol in accordance  
with Articles 30 and 31;
- 40 d any other act, declaration, notification or communication  
relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto,  
have signed this Protocol.

45 Done at Strasbourg, this 8th day of November 2001, in English and  
in French, both texts being equally authentic, in a single copy which  
shall be deposited in the archives of the Council of Europe. The  
Secretary General of the Council of Europe shall transmit certified



## SCHEDULE 6

### **Articles 49 and 51 of Convention, signed in Schengen on 19 June 1990, implementing Schengen Agreement of 14 June 1985** 5

#### **The text in the English Language of Articles 49 and 51 of the Schengen Convention**

##### Article 49

Mutual assistance shall also be afforded:

- (a) in proceedings brought by the administrative authorities 10  
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; 15
- (b) in proceedings for claims for damages arising from wrong-  
ful 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 20  
the criminal proceedings;
- (e) in the service of judicial documents relating to the enforce-  
ment of a sentence or a preventive measure, the imposi-  
tion of a fine or the payment of costs for proceedings;
- (f) in respect of measures relating to the deferral of delivery 25  
or suspension of enforcement of a sentence or a preven-  
tive measure, to conditional release or to a stay or inter-  
ruption of enforcement of a sentence or a preventive  
measure.

##### Article 51 30

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 35  
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 40  
the rules of law which is being prosecuted by the adminis-  
trative authorities, and where the decision may give rise  
to proceedings before a court having jurisdiction in part-  
icular in criminal matters;
- (b) execution of the letters rogatory is consistent with the law 45  
of the requested Contracting Party.

## SCHEDULE 7

### Agreement on Mutual Legal Assistance between European Union and United States of America, done at Washington D.C. on 25 June 2003, and Explanatory Note

#### 5      **The text in the English Language of the EU/US Agreement**

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,

10    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,

15    MINDFUL of the guarantees under their respective legal systems  
which provide an accused person with the right to a fair trial, includ-  
ing the right to adjudication by an impartial tribunal established pur-  
suant to law,

DESIRING to conclude an Agreement relating to mutual legal  
assistance in criminal matters,

20    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  
25    mutual legal assistance.

#### *Article 2*

##### **Definitions**

1. 'Contracting Parties' shall mean the European Union and the  
United States of America.

30    2. 'Member State' shall mean a Member State of the European  
Union.

#### *Article 3*

35    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  
40    of America, in force at the time of the entry into force of this Agree-  
ment, 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; 5
- (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; 10
- (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; 15
- (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; 20 25
- (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. 30 35
- (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). 40
- (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. 45
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 50

in force between a Member State and the United States of America.

5 (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.

10 (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).

15 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.

20 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  
25 otherwise available under domestic law.

#### *Article 4*

##### **Identification of bank information**

30 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  
35 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;

40 (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:

45 (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 5
    - (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. 10
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 15
  - (b) national authorities of the United States responsible for investigation or prosecution of criminal offences, as designated pursuant to Article 15(2). 20
- 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. 25
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; 30
  - (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. 35
- (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. 40
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. 45 50

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. 5

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. 10 15

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. 20 25

#### *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. 30

#### *Article 8*

##### **Mutual legal assistance to administrative authorities** 35

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. 40

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. 45

(b) In the absence of a treaty, requests shall be transmitted between the United States Department of Justice and the 50



Ministry of Justice or, pursuant to Article 15(1), comparable Ministry of the Member State concerned responsible for transmission of mutual legal assistance requests, or between such other authorities as may be agreed by the Department of Justice and such Ministry.

3. The Contracting Parties shall take measures to avoid the imposition of extraordinary burdens on requested States through application of this Article. Where extraordinary burdens on a requested State nonetheless result, the Contracting Parties shall immediately consult with a view to facilitating the application of this Article, including the taking of such measures as may be required to reduce pending and future burdens.

#### *Article 9*

##### **Limitations on use to protect personal and other data**

1. The requesting State may use any evidence or information obtained from the requested State:

- (a) for the purpose of its criminal investigations and proceedings;
- (b) for preventing an immediate and serious threat to its public security;
- (c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
  - (i) set forth in subparagraph (a); or
  - (ii) for which mutual legal assistance was rendered under Article 8;
- (d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
- (e) for any other purpose, only with the prior consent of the requested State.

2. (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected.



4. A requested State may apply the use limitation provision of the applicable bilateral mutual legal assistance treaty in lieu of this Article, where doing so will result in less restriction on the use of information and evidence than provided for in this Article.

5. Where a bilateral mutual legal assistance treaty in force between a Member State and the United States of America on the date of signature of this Agreement, permits limitation of the obligation to provide assistance with respect to certain tax offences, the Member State concerned may indicate, in its exchange of written instruments with the United States of America described in Article 3(2), that, with respect to such offences, it will continue to apply the use limitation provision of that treaty.

#### *Article 10*

#### **Requesting State's request for confidentiality**

The requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the requesting State. If the request cannot be executed without breaching the requested confidentiality, the central authority of the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

#### *Article 11*

#### **Consultations**

The Contracting Parties shall, as appropriate, consult to enable the most effective use to be made of this Agreement, including to facilitate the resolution of any dispute regarding the interpretation or application of this Agreement.

#### *Article 12*

#### **Temporal application**

1. This Agreement shall apply to offences committed before as well as after it enters into force.

2. This Agreement shall apply to requests for mutual legal assistance made after its entry into force. Nevertheless, Articles 6 and 7 shall apply to requests pending in a requested State at the time this Agreement enters into force.

#### *Article 13*

#### **Non-derogation**

Subject to Article 4(5) and Article 9(2)(b), this Agreement is without prejudice to the invocation by the requested State of grounds for refusal of assistance available pursuant to a bilateral mutual legal assistance treaty, or, in the absence of a treaty, its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, order public or other essential interests.

*Article 14*

**Future bilateral mutual legal assistance treaties with Member States**

This Agreement shall not preclude the conclusion, after its entry into force, of bilateral Agreements between a Member State and the  
5 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  
10 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),  
15 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  
20 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  
25 and the United States of America.

*Article 16*

**Territorial application**

1. This Agreement shall apply:

30 (a) to the United States of America;

(b) in relation to the European Union, to:

— Member States,

— territories for whose external relations a Member  
35 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.

40 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  
45 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. 5

## Article 18

### Entry into force and termination 10

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. 15

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. 20

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. 25

### **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. 30

### *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. 35 40

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 45

contemplated does not exclude that, other sanctions than criminal ones may be pursued by that authority. Thus, mutual legal assistance obtained under Article 8(1) may lead the requesting administrative authority to the conclusion that pursuance of criminal proceedings or criminal referral would not be appropriate. These possible consequences do not affect the obligation upon the Contracting Parties to provide assistance under this Article.

However, the requesting administrative authority may not use Article 8(1) to request assistance where criminal prosecution or referral is not being contemplated, or for matters in which the conduct under investigation is not subject to criminal sanction or referral under the laws of the requesting State.

The European Union recalls that the subject matter of the Agreement for its part falls under the provisions on police and judicial cooperation in criminal matters set out in Title VI of the Treaty on European Union and that the Agreement has been concluded within the scope of these provisions.

#### *On Article 9*

Article 9(2)(b) is meant to ensure that refusal of assistance on data protection grounds may be invoked only in exceptional cases. Such a situation could arise if, upon balancing the important interests involved in the particular case (on the one hand, public interests, including the sound administration of justice and, on the other hand, privacy interests), furnishing the specific data sought by the requesting State would raise difficulties so fundamental as to be considered by the requested State to fall within the essential interests grounds for refusal. A broad, categorical, or systematic application of data protection principles by the requested State to refuse cooperation is therefore precluded. Thus, the fact the requesting and requested States have different systems of protecting the privacy of data (such as that the requesting State does not have the equivalent of a specialised data protection authority) or have different means of protecting personal data (such as that the requesting State uses means other than the process of deletion to protect the privacy or the accuracy of the personal data received by law enforcement authorities), may as such not be imposed as additional conditions under Article 9(2a).

#### *On Article 14*

Article 14 provides that the Agreement shall not preclude the conclusion, after its entry into force, of bilateral agreements on mutual legal assistance between a Member State and the United States of America consistent with the Agreement.

Should any measures set forth in the Agreement create an operational difficulty for the United States of America and one or more Member States, such difficulty should in the first place be resolved, if possible, through consultations between the Member State or Member States concerned and the United States of America, or, if appropriate, through the consultation procedures set out in the Agreement. Where it is not possible to address such operational difficulty through consultations alone, it would be consistent with the Agreement for future bilateral agreements between a Member State and the United States of America to provide an operationally feasible alternative mechanism that would satisfy the objectives of the specific provision with respect to which the difficulty has arisen.

## SCHEDULE 8

**Treaty between Government of Ireland and Government of United States of America on Mutual Assistance in Criminal Matters, done at Washington D.C. on 18 January 2001, as modified by Instrument contemplated by Article 3(2) of the Agreement of 25 June 2003** 5

### **The text in the English Language of the Ireland / US Treaty**

Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, as to the application of the Treaty between the Government of Ireland and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters signed 18 January 2001 10

1. As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter “the U.S.-EU Mutual Legal Assistance Agreement”), the Governments of the United States of America and Ireland acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of Ireland and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters signed 18 January 2001 (hereafter “the 2001 Mutual Legal Assistance Treaty”) under the following terms: 15 20

- (a) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 16 *bis* of the Annex to this Instrument shall govern the identification of financial accounts and transactions, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty; 25
- (b) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 16 *ter* of the Annex to this Instrument shall govern the formation and activities of joint investigative teams, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty; 30 35
- (c) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Articles 6 and 16 *quater* of the Annex to this Instrument shall govern the taking of testimony of a person located in the requested Party by use of video transmission technology between the Requesting and Requested Parties, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty; 40
- (d) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4(1) of the Annex to this Instrument shall govern the use of expedited means of communication, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty; 45
- (e) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1(1 *bis*) of the Annex to this Instrument shall govern the providing of mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty; 50

(f) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Instrument shall govern the limitation on use of information or evidence provided to the Requesting Party, and the conditioning or refusal of assistance on data protection grounds.

2. The Annex reflects the integrated text of the provisions of the 2001 Mutual Legal Assistance Treaty and the U.S.-EU Mutual Legal Assistance Agreement that shall apply upon entry into force of this Instrument.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offences committed before as well as after it enters into force.

4. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 4(1), 6 and 16 *quater* of the Annex shall be applicable to requests made prior to such entry into force.

5. (a) This Instrument shall be subject to the completion by the United States of America and Ireland of their respective applicable internal procedures for entry into force. The Governments of the United States of America and Ireland shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 2001 Mutual Legal Assistance Treaty shall be applied. The Governments of the United States of America and Ireland nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Instrument.

DONE at Dublin, in duplicate, this 14th day of July, 2005.

FOR THE GOVERNMENT OF  
IRELAND:

FOR THE GOVERNMENT  
OF THE UNITED STATES  
OF AMERICA:

# ANNEX

## TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF IRELAND ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

5

### TABLE OF CONTENTS

Article 1	Scope of Assistance	
Article 2	Central Authorities	
Article 3	Limitations on Assistance	
Article 4	Form and Contents of Requests	10
Article 5	Execution of Requests	
Article 6	Costs	
Article 7	Limitations on Use	
Article 8	Testimony or Evidence in the Territory of the Requested Party	
Article 9	Records of Government Agencies	15
Article 10	Testimony in the Territory of the Requesting Party	
Article 11	Transfer of Persons in Custody	
Article 12	Location or Identification of Persons or Items	
Article 13	Service of Documents	
Article 14	Search and Seizure	20
Article 15	Return of Items	
Article 16	Assistance in Forfeiture Proceedings	
Article 16 <i>bis</i>	Identification of bank information	
Article 16 <i>ter</i>	Joint investigative teams	
Article 16 <i>quater</i>	Video conferencing	25
Article 17	Compatibility with Other Arrangements	
Article 18	Consultation	
Article 19	Termination	

### Article 1

#### Scope of Assistance 30

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offences, and in proceedings related to criminal matters.

1 *bis.* (a) Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

(b) Requests for assistance under this paragraph shall be transmitted between the Central Authorities designated pursuant to Article 2 of

this Treaty, or between such other authorities as may be agreed by the Central Authorities.

2. Assistance shall include:

- (a) taking the testimony or statements of persons;
- 5 (b) providing documents, records, and articles of evidence;
- (c) locating or identifying persons;
- (d) serving documents;
- (e) transferring persons in custody for testimony or other purposes;
- 10 (f) executing requests for searches and seizures;
- (g) identifying, tracing, freezing, seizing, and forfeiting the proceeds and instrumentalities of crime and assistance in related proceedings;
- 15 (h) such other assistance as may be agreed between Central Authorities.

3. Except when required by the laws of the Requested Party, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the territory of the Requesting Party would constitute an offence under  
20 the laws of the Requested Party.

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

## 25 Article 2

### Central Authorities

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. For the Government of the United States of America, the Central  
30 Authority shall be the Attorney General or a person designated by the Attorney General. For the Government of Ireland, the Central Authority shall be the Minister for Justice, Equality and Law Reform or a person designated by the Minister.
3. The Central Authorities shall communicate directly with one  
35 another for the purposes of this Treaty.

## Article 3

### Limitations on Assistance

1. The Central Authority of the Requested Party may deny assistance if:  
40 (a) the Requested Party is of the opinion that the request, if granted, would impair its sovereignty, security, or other essential interests, or would be contrary to important public policy;



- (b) the request relates to an offender who, if proceeded against under the law of the Requested Party for the offence for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction; 5
- (c) the request relates to an offence that is regarded by the Central Authority of the Requested Party as:
  - (i) an offence of a political character; or
  - (ii) an offence under military law of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party; or 10
- (d) the request is not made in conformity with the Treaty.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions. 15

#### Article 4

##### Form and Contents of Requests 20

1. (a) Requests for mutual legal assistance and communications related thereto may be made and responded to by expedited means of communications, including fax or e-mail, with formal confirmation of requests to follow where required by the Requested Party. 25
- (b) In urgent cases, requests for mutual legal assistance may be made orally but shall be confirmed in writing within ten days.
- (c) The Requested Party may respond by any such expedited means of communication. 30
- (d) The request shall be in an official language of the Requested Party unless otherwise agreed.
2. The request shall include the following:
  - (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates; 35
  - (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offences which relate to the matter;
  - (c) a description of the evidence, information, or other assistance sought; and 40
  - (d) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

(a) information on the identity and location of any person from whom evidence is sought;

(b) information on the identity and location of a person be served, that person's relationship to the proceedings, and the manner in which service is to be made;

(c) information on the identity and whereabouts of a person to be located;

(d) a precise description of the place or person to be searched and of the articles to be seized;

(e) a description of the manner in which any testimony or statement is to be taken and recorded;

(f) a list of questions to be asked of a witness;

(g) a description of any particular procedure to be followed in executing the request;

(h) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled; and

(i) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.

4. The Requested Party may ask the Requesting Party to provide any further information which appears to the Requested Party to be necessary for the purpose of executing the request.

## Article 5

### Execution of Requests

1. As empowered by this Treaty or by national law, or in accordance with its national practice, the Central Authority of the Requested Party shall take whatever steps it deems necessary to execute promptly requests received from the Requesting Party. The Courts of the Requested Party shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested Party shall make all necessary arrangements for representation in the territory of the Requested Party of the Requesting Party in any proceedings arising out of a request for assistance.

3. The method of execution specified in the request shall be followed except to the extent that it is incompatible with the laws and practices of the Requested Party.

4. If the Central Authority of the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding under the laws of that Party, or prejudice the safety of any person, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Central Authority of the Requested Party shall, in accordance with its national law and practice, facilitate the presence in the execution of the request of such persons as are specified in the request.

6. The Requested Party shall, upon request, keep confidential any information which might indicate that a request has been made or responded to. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine the extent to which it wishes the request to be executed.

7. The Central Authority of the Requested Party shall respond to reasonable inquiries by the Central Authority of the Requesting Party concerning progress toward execution of the request.

8. The Central Authority of the Requested Party may ask the Central Authority of the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

9. The Central Authority of the Requesting Party shall promptly inform the Central Authority of the Requested Party of any circumstances which make it inappropriate to proceed with the execution of the request or which require modification of the action requested.

10. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

11. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party of the reasons for the denial.

## Article 6

### Costs

1. The Requested Party shall pay all costs relating to the execution of the request, including the costs of representation, except for:

(a) the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which costs, fees, allowances, and expenses shall be paid by the Requesting Party;

(b) the costs associated with establishing and servicing a video transmission, to the extent set forth in Article 16 *quater*.

2. If, during the execution of a request, it becomes apparent that complete execution will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

## Article 7

### Limitations on Use

1. The Requesting Party may use any evidence or information obtained from the Requested Party:

- 5        (a) for the purpose of its criminal investigations and proceedings;
- (b) for preventing an immediate and serious threat to its public security;
- 10       (c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
  - (i) set forth in subparagraph (a); or
  - (ii) for which mutual legal assistance was rendered under Article 1 (1 *bis*)(a) of this Treaty;
- 15       (d) for any other purpose, if the evidence or information has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
- 20       (e) for any other purpose only with the prior consent of the Requested Party.

2. (a) This Article shall not prejudice the ability of the Requested Party in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested Party may require the Requesting Party to give information on the use made of the evidence or information.

30       (b) Generic restrictions with respect to the legal standards of the Requesting Party for processing personal data may not be imposed by the Requested Party as a condition under subparagraph (a) to providing evidence or information.

35       3. Where, following disclosure to the Requesting Party, the Requested Party becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested Party may consult with the Requesting Party to determine the extent to which the evidence and information can be protected.

## 40       Article 8

### Testimony or Evidence in the Territory of the Requested Party

1. A person in the territory of the Requested Party from whom testimony or evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear and testify or produce items,  
45 including documents, records, and articles of evidence.

2. Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. In accordance with its laws and practice, the Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to ask questions directly of the person whose testimony or evidence is being taken or indirectly through a legal representative qualified to appear before the courts of the Requested Party.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting Party, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting Party for resolution by the authorities of that Party.

5. Evidence produced in the territory of the Requested Party pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Forms A1 or A2, as applicable, appended to this Treaty. The absence or nonexistence of such records may, upon request, be certified through the use of Forms B1 or B2, as applicable, appended to this Treaty. Records authenticated by Forms A1 or A2, or Forms B1 or B2 certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting Party. Documentary information produced pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

## Article 9

### Records of Government Agencies

1. The Requested Party shall provide the Requesting Party with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the Requested Party.

2. The Requested Party may provide copies of any documents, records, or information which are in the possession of a government department or agency of that Party, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested Party may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Records produced pursuant to this Article shall, upon request, be authenticated under the provisions of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, dated October 5, 1961, or by an official competent to do so through the use of Forms C1 or C2, as applicable, appended to this Treaty. The absence or nonexistence of such records may, upon request, be certified through the use of Forms D1 or D2, as applicable, appended to this Treaty. No further authentication shall be necessary. Records authenticated by Forms C1 or C2, or Forms D1 or D2 certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting Party. Documentary information produced pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

Testimony in the Territory of the Requesting Party

1. When the Requesting Party requests the appearance of a person in the territory of that Party, the Requested Party shall invite the person to appear voluntarily before the appropriate authority in the territory of the Requesting Party. The Requesting Party shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the response of the person.
2. The Central Authority of the Requesting Party may, in its discretion, determine that a person appearing in the territory of the Requesting Party pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded that person's departure from the territory of the Requested Party.
3. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting Party has notified the Central Authority of the Requested Party that the person's presence is no longer required, or when the person, having left the territory of the Requesting Party, voluntarily returns. The Central Authority of the Requesting Party may, in its discretion, extend this period for up to fifteen days if it determines that there is good cause to do so.

Article 11

Transfer of Persons in Custody

1. A person in the custody of one Party whose presence in the territory of the other Party is sought for purposes of assistance under this Treaty shall be transferred for those purposes if the person and the Central Authorities of both Parties consent.
2. For purposes of this Article:
  - (a) the receiving Party shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the sending Party;
  - (b) the receiving Party shall return the person transferred to the custody of the sending Party as soon as circumstances permit and in any event no later than the date upon which the person would have been released from custody in the territory of the sending Party, unless otherwise agreed by both Central Authorities and the person transferred;
  - (c) the receiving Party shall not require the sending Party to initiate extradition proceedings for the return of the person transferred; and
  - (d) the person transferred shall receive credit for service of the sentence imposed in the sending Party for time served in the custody of the receiving Party.

## Article 12

### Location or Identification of Persons or Items

The Requested Party shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

## Article 13

5

### Service of Documents

1. The Requested Party shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting Party under the provisions of this Treaty. 10

2. Service of any document by virtue of paragraph (1) of this Article shall not impose any obligation under the law of the Requested Party to comply with it.

3. The Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting Party a reasonable time before the scheduled appearance. 15

4. The Requested Party shall return a proof of service in the manner specified in the Request.

## Article 14

20

### Search and Seizure

1. The Requested Party shall execute a request for the search, seizure, and delivery of any item to the Requesting Party if the request includes the information justifying such action under the laws of the Requested Party and it is carried out in accordance with the laws of that Party. 25

2. The Requested Party may refuse a request if it relates to conduct in respect of which powers of search and seizure would not be exercisable in the territory of the Requested Party in similar circumstances. 30

3. Upon request, every official who has custody of a seized item shall certify, through the use of Forms E1 or E2, as applicable, appended to this Treaty, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting Party. Certification under this Article may also be provided in any other form or manner as may be prescribed from time to time by either Central Authority. 35

4. The Central Authority of the Requested Party may require that the Requesting Party agree to the terms and conditions deemed to be necessary to protect third party interests in the item to be transferred. 40

## Article 15

### Return of Items

5 The Central Authority of the Requesting Party shall return any items, including documents, records, or articles of evidence furnished to it in execution of a request under this Treaty as soon as possible unless the Central Authority of the Requested Party waives their return.

## Article 16

### Assistance in Forfeiture Proceedings

10 1. If the Central Authority of one Party becomes aware of proceeds or instrumentalities of offences which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction in  
15 this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and the Central Authority shall report to the Central Authority of the other Party on the action taken.

20 2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offences. This may include action to temporarily freeze the proceeds or instrumentalities pending further proceedings.

25 3. The Party that has custody over proceeds or instrumentalities of offences shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

30 Article 16 *bis*:

### Identification of bank information

35 1. (a) Upon request of the Requesting Party, the Requested Party shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offence is the holder of a bank account or accounts. The Requested Party shall promptly communicate the results of its enquiries to the Requesting Party.

40 (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;

45 (ii) information in the possession of non-bank financial institutions, or

(iii) financial transactions unrelated to accounts.



2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 shall include:

- (a) the identity of the natural or legal person relevant to locating such accounts or transactions;
- (b) sufficient information to enable the competent authority of the Requested Party to:
  - (i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offence and that banks or non-bank financial institutions in the territory of the Requested Party may have the information requested; and
  - (ii) conclude that the information sought relates to the criminal investigation or proceeding; and
- (c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic note between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

- (a) for Ireland, its Central Authority set forth in Article 2(2) of this Treaty, and
- (b) for the United States of America, the attaché responsible for Ireland of the:
  - (i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
  - (ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
  - (iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. Ireland shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested Parties, and with respect to other criminal activity punishable under the law of Ireland by a maximum sentence of at least five years imprisonment or more serious penalty and which are punishable under applicable United States laws. The United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested Parties.

5. The Requested Party shall respond to a request for production of records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty.

Article 16 *ter*:

Joint investigative teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and Ireland for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union including Ireland, where deemed appropriate by the United States of America and Ireland.

2. The procedures under which the team is to operate, such as its composition, duration, location, organisation, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offences, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 16 *quater*:

Video conferencing

1. The use of video transmission technology shall be available between the United States of America and Ireland for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested Party. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. Unless otherwise agreed by the Requesting and Requested Parties, the Requesting Party shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the Requested Party) shall be borne in accordance with Article 6 of this Treaty.

3. The Requesting and Requested Parties may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the Requesting Party, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested Party in the same

manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested Party available under applicable treaty or law. 5

6. The Requested Party may permit the use of video transmission technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 17 10

Compatibility with Other Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice which may be applicable. 15

Article 18

Consultation

The Central Authorities of the Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty. 20

Article 19 25

Termination

Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Treaty. 30

FORM A1

(for use when Ireland is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF AUTHENTICITY OF BUSINESS  
RECORDS

5 I, \_\_\_\_\_, attest on penalty of criminal punishment  
(Name)

for false statement or false attestation that I am employed by

\_\_\_\_\_  
(Name of Business from which documents are sought)

10 and that my official title is \_\_\_\_\_  
(Official Title)

I further state that each of the records attached hereto is the original  
or a duplicate of the original records in the custody of

15 \_\_\_\_\_  
(Name of Business from which documents are sought).

I further state that:

20 (A) such records were made, at or near the time of the  
occurrence of the matters set forth, by (or from infor-  
mation transmitted by) a person with knowledge of those  
matters;

(B) such records were kept in the course of a regularly  
conducted business activity;

(C) the business activity made such records as a regular  
practice;

25 (D) if such record is not the original, such record is a dupli-  
cate of the original.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Sworn to or affirmed before me, \_\_\_\_\_, a

30 \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
(notary public, judicial officer, etc.)

FORM A2

(for use when the United States is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF AUTHENTICITY OF BUSINESS  
RECORDS

5

I, \_\_\_\_\_, the undersigned, aged 18 years and older, with the  
(Name)

understanding that I am subject to criminal penalty under the laws  
of Ireland for an intentionally false declaration, make this solemn  
declaration conscientiously believing the statements set forth in this 10  
declaration to be true.

I declare that I am employed by/associated with the

\_\_\_\_\_ in the position of \_\_\_\_\_  
(Name of Business from which documents are sought) (Official Title)

and by reason of my position am authorised and qualified to make 15  
this declaration.

I further declare that the documents attached hereto are originals or  
true copies of records in the custody of \_\_\_\_\_  
(Name of Business from which documents are sought)

which: 20

1. were made at or near the time of the occurrence of the matters  
set forth therein, by (or from information transmitted by) a person  
with knowledge of those matters;
2. were kept in the course of regularly conducted business activity;
3. were made by the said business activity as a regular practice; and 25
4. if not the original records, are duplicates of original records.

All by virtue of the Statutory Declarations Act, 1938.

The originals or duplicates of these records are maintained in the  
country of \_\_\_\_\_.

Date of execution: \_\_\_\_\_ 30

Place of execution: \_\_\_\_\_

Signature: \_\_\_\_\_

Declared before me at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_.

Signed \_\_\_\_\_

Judge of the \_\_\_\_\_ 35

FORM B1

(for use when Ireland is the Requesting Party, pursuant  
to Article 8)

CERTIFICATE OF ABSENCE OR NON-EXISTENCE OF  
BUSINESS RECORDS

I, \_\_\_\_\_ attest on penalty of criminal punishment for  
(Name)

false statement or false attestation that I am employed by

\_\_\_\_\_ and that my official title

(Name of Business from which documents are sought)

is \_\_\_\_\_.

(Official Title)

As a result of my employment with the above-named business, I am  
familiar with the business records it maintains. The business main-  
tains business records that:

(A) are made, at or near the time of the occurrence of the  
matters set forth, by (or from information transmitted by)  
a person with knowledge of those matters;

(B) are kept in the course of a regularly-conducted business  
activity;

(C) are made by the business as a regular practice.

Among the records so maintained are records of individuals and enti-  
ties that have accounts or otherwise transact business with the above-  
named business. I have made or caused to be made a diligent search  
of those records. No records have been found reflecting any business  
activity between the business and the following individuals and  
entities:

\_\_\_\_\_.

If the business had maintained an account on behalf of or had partici-  
pated in a transaction with any of the foregoing individuals or enti-  
ties, its business records would reflect that fact.

Signature

Date

Sworn to or affirmed before me, \_\_\_\_\_, a  
(Name)

\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Notary public, judicial officer, etc.)

FORM B2

(for use when the United States is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF ABSENCE OR NON-EXISTENCE OF  
BUSINESS RECORDS 5

I, \_\_\_\_\_, the undersigned, aged 18 years and older, with the  
(Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this 10  
declaration to be true.

I declare that I am employed by/associated with the

\_\_\_\_\_ in the position of \_\_\_\_\_  
(Name of Business from which documents are sought) (Official Title)

and by reason of my position am authorised and qualified to make 15  
this declaration.

I further declare that as a result of my employment with the above-named business, I am familiar with the business records it maintains. The business maintains business records that:

1. are made, at or near the time of the occurrence of the 20  
matters set forth, by (or from information transmitted by)  
a person with knowledge of those matters;
2. are kept in the course of a regularly-conducted business  
activity;
3. are made by the business as a regular practice. 25

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals 30  
and entities:\_\_\_\_\_.

If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

All by virtue of the Statutory Declarations Act, 1938. 35

Date of execution: \_\_\_\_\_

Place of execution: \_\_\_\_\_

Signature: \_\_\_\_\_

Declared before me at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_.

Signed \_\_\_\_\_ 40

Judge of the \_\_\_\_\_

FORM C1

(for use when Ireland is the Requesting Party, pursuant  
to Article 9)

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC  
RECORDS

5

I, \_\_\_\_\_, attest on penalty of criminal  
(Name)

punishment for false statement or attestation that my position with  
the Government of

10 \_\_\_\_\_ is \_\_\_\_\_ and that in that  
(Country) (Official Title)

position I am duly authorised to attest that the documents attached  
and described below are true and accurate copies of original official  
records which are recorded or filed in

15 \_\_\_\_\_, which is a government office or agency of \_\_\_\_\_.  
(Name of Office or Agency) (Country)

Description of Documents:

20 \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)



FORM C2

(for use when the United States is the Requesting Party, pursuant to Article 9)

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC RECORDS

5

I, \_\_\_\_\_, the undersigned, aged 18 years and older, with the  
(Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this 10  
declaration to be true.

I declare that my position with the Government of

\_\_\_\_\_ is \_\_\_\_\_

(Country)

(Official Title)

and that by reason of my position I am authorised and qualified to 15  
make this declaration.

I further declare that the documents attached and described below are true and accurate copies of original official records which are recorded or filed in \_\_\_\_\_,

(Name of Office or Agency) 20

which is a government office or agency of \_\_\_\_\_.

(Country)

Description of Documents:

All by virtue of the Statutory Declarations Act, 1938.

Date of execution: \_\_\_\_\_ 25

Place of execution: \_\_\_\_\_

Signature: \_\_\_\_\_

Declared before me at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_.

Signed \_\_\_\_\_

Judge of the \_\_\_\_\_ 30

FORM D1

(for use when Ireland is the Requesting Party, pursuant  
to Article 9)

ATTESTATION REGARDING ABSENCE  
OR NON-EXISTENCE OF FOREIGN PUBLIC RECORDS

I, \_\_\_\_\_, attest on penalty of criminal punishment  
(Name)

for false statement or attestation that my position with the  
Government of \_\_\_\_\_

(Country)

is \_\_\_\_\_, and that in that position I am duly authorised to make  
(Official Title)

this attestation.

I do hereby certify that I am the custodian of records of

\_\_\_\_\_, and that I have made a diligent  
(Name of Public Office or Agency)

search of the said records for the

\_\_\_\_\_, and that  
(Description of Records for Which a Search was Done)

no such records are found to exist therein. I further certify that the  
records for which a search was conducted set forth matters which are  
required by the laws of the Government of \_\_\_\_\_

(Country)

to be recorded or filed and reported, and such matters regularly are  
recorded or filed and reported by \_\_\_\_\_

(Name of Public Agency or Office)

Signature \_\_\_\_\_

Date \_\_\_\_\_

FORM D2

(for use when the United States is the Requesting Party, pursuant to Article 9)

ATTESTATION REGARDING ABSENCE OR NON-EXISTENCE OF FOREIGN PUBLIC RECORDS 5

I, \_\_\_\_\_, the undersigned, aged 18 years and older, with the (Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this 10 declaration to be true.

I declare that my position with the Government of

\_\_\_\_\_ is \_\_\_\_\_  
(Country) (Official Title)

and that by reason of my position I am authorised and qualified to 15 make this declaration.

I further declare that I am the custodian of records of

\_\_\_\_\_, and that I have made a diligent (Name of Public Office or Agency)

search of the said records for the 20

\_\_\_\_\_, and that (Description of Records for Which a Search was Done)

no such records are found to exist therein. I further declare that the records for which a search was conducted set forth matters which are required by the laws of the 25

Government of \_\_\_\_\_ to be recorded or filed and reported, and (Country)

such matters regularly are recorded or filed and reported by \_\_\_\_\_. (Name of Public Agency or Office)

All by virtue of the Statutory Declarations Act, 1938. 30

Date of execution: \_\_\_\_\_

Place of execution: \_\_\_\_\_

Signature: \_\_\_\_\_

Declared before me at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_.

Signed \_\_\_\_\_ 35

Judge of the \_\_\_\_\_

FORM E1

(for use when Ireland is the Requesting Party, pursuant  
to Article 14)

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

5 I, \_\_\_\_\_, attest on penalty of criminal punishment for  
(Name)

false statements or attestation that my position with the  
Government of \_\_\_\_\_  
(Country)

10 is \_\_\_\_\_. I received the articles listed below from  
(Official Title)

\_\_\_\_\_ on \_\_\_\_\_,  
(Name of Person) (Date)

at \_\_\_\_\_ in the following condition:  
15 (Place)

Description of Article:

Changes in Condition while in my custody:

Official Seal or Stamp

20 \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

FORM E2

(for use when the United States is the Requesting Party, pursuant to Article 14)

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, \_\_\_\_\_, the undersigned, aged 18 years and older, with the (Name) 5

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true. 10

I declare that that my position with the Government of

\_\_\_\_\_ is \_\_\_\_\_  
(Country) (Official Title)

and that by reason of my position am authorised and qualified to make this declaration. 15

I further declare that I received the articles listed below from

\_\_\_\_\_ on \_\_\_\_\_,  
(Name of Person) (Date)

at \_\_\_\_\_ in the following condition:  
(Place) 20

Description of Article:

Changes in Condition while in my custody:

All by virtue of the Statutory Declarations Act, 1938.

Date of execution: \_\_\_\_\_

Place of execution: \_\_\_\_\_ 25

Signature: \_\_\_\_\_ Official Seal or stamp \_\_\_\_\_

Declared before me at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_.

Signed \_\_\_\_\_

Judge of the \_\_\_\_\_