



Number 40 of 2015

Criminal Justice (Mutual Assistance) (Amendment) Act 2015



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CRIMINAL JUSTICE (MUTUAL ASSISTANCE) (AMENDMENT) ACT 2015

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[2015.]

Criminal Justice (Mutual Assistance) (Amendment) Act 2015.

[No. 40.]

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[No. 40.]

Criminal Justice (Mutual Assistance) (Amendment) Act 2015.

[2015.]



Number 40 of 2015

CRIMINAL JUSTICE (MUTUAL ASSISTANCE) (AMENDMENT) ACT 2015

An Act to give effect to Council Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders¹, Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties², Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between special intervention units of the Member States of the European Union in crisis situations³, Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime⁴, Council Decision 2010/616/EU of 7 October 2010 on the conclusion of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters⁵; to give further effect to Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial⁶; for those purposes, to amend the Criminal Justice (Mutual Assistance) Act 2008, the Criminal Justice Act 1994, the Criminal Justice (Joint Investigation Teams) Act 2004 and the Garda Síochána Act 2005; and to provide for related matters. [1st December, 2015]

Be it enacted by the Oireachtas as follows:

Interpretation

1. In this Act—

“Minister” means the Minister for Justice and Equality;

“Principal Act” means the Criminal Justice (Mutual Assistance) Act 2008.

1 OJ L 328, 24.11.2006, p.59.
2 OJ L 76, 2.03.2005, p.16.
3 OJ L 210, 06.08.2008, p.73.
4 OJ L 138, 04.06.2008, p.14.
5 OJ L 271, 15.10.2010, p.3.
6 OJ L 81, 27.03.2009, p.24.

Amendment of section 2 of Principal Act**2.** Section 2 of the Principal Act is amended—

(a) in subsection (1)—

(i) in the definition of “international instrument”—

(I) by the insertion of the following paragraph after paragraph (c):

“(ca) the Agreement with Japan;”,

(II) in paragraph (e), by the substitution of “2003 Framework Decision” for “Framework Decision”,

(III) by the insertion of the following paragraphs after paragraph (e):

“(ea) the 2005 Framework Decision;

(eb) the 2006 Framework Decision;”,

(IV) by the insertion of the following paragraph after paragraph (gb) (inserted by section 128(b) of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014:

“(gc) the 2008 Council Decision (special intervention units);

(gd) the 2009 Council Decision;”,

and

(V) by the substitution of the following paragraph for paragraph (m):

“(m) a bilateral agreement between the State and a designated state, or a multilateral agreement between the State and other designated states, for the provision of such assistance; and”,

(ii) in the definition of “member state” (amended by section 128(c) of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014), by the substitution of the following paragraph for paragraph (a):

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

(iii) by the deletion of the definition of “Framework Decision”, and

(iv) by the insertion of the following definitions:

“ ‘Agreement with Japan’ means the Agreement between the European Union and Japan on mutual legal assistance in criminal matters, done at Brussels on 30 November 2009 and at Tokyo on 15 December 2009;

‘2008 Council Decision (special intervention units)’ means Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between special intervention units of the member states of the European Union in crisis situations⁷;

‘2009 Council Decision’ means Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime⁸;

‘2010 Council Decision’ means Council Decision 2010/616/EU of 7 October 2010 on the conclusion of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters⁹;

‘2003 Framework Decision’ means Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence¹⁰;

‘2005 Framework Decision’ means Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of mutual recognition to financial penalties¹¹;

‘2006 Framework Decision’ means Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders¹²;”,

and

(b) in section 2(6)—

(i) by the insertion of the following paragraph after paragraph (c):

“(ca) Schedule 3A sets out the English text of the Agreement with Japan,”,

(ii) in paragraph (e), by the substitution of “2003 Framework Decision” for “Framework Decision”,

(iii) by the insertion of the following paragraphs after paragraph (e):

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

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

7 OJ L 210, 06.08.2008, p.73.

8 OJ L 138, 04.06.2009, p.14.

9 OJ L 271, 15.10.2010, p.3.

10 OJ L 196, 02.08.2003, p.45.

11 OJ L 76, 22.3.2005, p.16.

12 OJ L 328, 24.11.2006, p.59.

(iv) by the insertion of the following paragraphs after paragraph (g):

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

(gb) Schedule 7B sets out the English text of the 2009 Council Decision.”.

Amendment of section 31(1) of Principal Act

3. Section 31(1) of the Principal Act is amended by—

(a) the substitution of the following definition for the definition of “certificate”:

“ ‘certificate’ means—

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

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

as the context requires;”

(b) the insertion of the following definition:

“ ‘competent authority’—

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

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

and

(c) the substitution of the following paragraph for paragraph (a) of the definition of “realisable property”:

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

Amendment of section 32(6)(a) of Principal Act

4. Section 32(6)(a) of the Principal Act is amended by the substitution of “section 33” for

“section 33(4)”.

Amendment of section 34(1) of Principal Act

5. Section 34(1) of the Principal Act is amended by the substitution of “2003 Framework Decision” for “Framework Decision”.

Amendment of section 35(6) of Principal Act

6. Section 35(6) of the Principal Act is amended by the substitution of “2003 Framework Decision” for “Framework Decision”.

Amendment of section 38 of Principal Act

7. Section 38 of the Principal Act is amended—
- (a) in subsection (1), by the insertion of “or, in the case of an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state, that external confiscation order” after “confiscation co-operation order”, and
 - (b) in subsection (4), by the substitution of “any order referred to in subsection (1)” for “any confiscation co-operation order”.

Amendment of section 44 of Principal Act

8. Section 44 of the Principal Act is amended by the substitution of the following paragraph for paragraph (b):
- “(b) where the order is for the purpose of subsequent confiscation of property—
 - (i) in the case of confiscation on foot of an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state, until the execution of that external confiscation order or until the Central Authority has informed the competent authority in the designated state concerned of one of the matters under paragraphs (c), (d), (e), (f) and (g) of section 51G, and
 - (ii) in any other case, until a confiscation co-operation order is made or the request for such an order is refused and the refusal is upheld on any appeal against it, or”.

Amendment of section 45(1) of Principal Act

9. Section 45(1) of the Principal Act is amended by the insertion of “the Central Authority or” after “on application by”.

Amendment of section 48 of Principal Act

10. Section 48 of the Principal Act is amended—

- (a) in subsection (2), by the substitution of “this Part” for “Part 5”,
- (b) in subsection (3)(a), by the substitution of “2003 Framework Decision” for “Framework Decision”.

Amendment of section 49 of Principal Act

11. Section 49 of the Principal Act is amended by—

- (a) the insertion of the following subsection after subsection (2):

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

- (a) if there is a risk that the amount that may be realised in pursuance of such a request is greater than the amount ordered to be paid under the confiscation order, stating that there is that risk and requesting that the amount to be realised not exceed the amount specified in the request,
- (b) if all or part of the confiscation order has been executed in the State or in another designated state, stating the amount of the proceeds of realisation and requesting that the amount to be realised in the designated state concerned not exceed the difference between the amount specified in the confiscation order and those proceeds of realisation,
- (c) if the defendant has made any voluntary payment in respect of the confiscation order after it was transmitted, stating the amount of that voluntary payment and requesting that the amount to be realised in the designated state concerned not exceed the difference between the amount specified in the confiscation order and the amount paid voluntarily, or
- (d) if the confiscation order ceases to be enforceable, stating that fact.”,

and

- (b) the insertion of the following subsection after subsection (4):

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

External confiscation orders (designated states other than member states)

12. The Principal Act is amended by the substitution of the following section for section 51:

- “**51.** (1) The Central Authority, on receipt of an external confiscation order and accompanying documents transmitted by or on behalf of a court in a designated state other than a member state, may cause an application to be made to the High Court for an order (a ‘confiscation co-operation order’) for the confiscation of realisable property to which the external confiscation order relates and that is in the State.
- (2) The application shall be accompanied by the request, the accompanying documents and any other related documents or by copies thereof.
- (3) On the application the Court may, subject to section 51B, 51C or 51D, as may be appropriate, make a confiscation co-operation order.”.

External confiscation orders (member states)

13. The Principal Act is amended by the insertion of the following section after section 51:

- “**51A.**(1)Where the Central Authority receives an external confiscation order that has been transmitted by or on behalf of a court in a designated state that is a member state, it shall, subject to subsection (2), transmit the external confiscation order to the Director of Public Prosecutions for execution under this Act.
- (2) Where the Central Authority considers that there are grounds for refusal, postponement, variation or termination of the execution of an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state, in accordance with the relevant international instrument, the Central Authority shall cause an application to be made to the High Court for an order under section 51B, 51C, 51E or 51F, as the case may be.”.

Refusal to confiscate

14. The Principal Act is amended by the insertion of the following section after section 51A:

- “**51B.**(1) On application made in accordance with section 51(1) or 51A(2) and without prejudice to section 3, the High Court shall refuse to make a confiscation co-operation order in respect of an external confiscation order, or shall make an order refusing the execution of an external confiscation order made by or on behalf of a court in a designated state that is a member state, as the case may be, if—
- (a) subject to subsection (4), the conduct which resulted in the making of the external confiscation order is not an offence to which the relevant international instrument relates,
- (b) there is immunity or privilege under the law of the State which makes it impossible to make the confiscation co-operation order or execute the external confiscation order, as the case may be,

- (c) it is immediately clear from the information provided in a certificate that compliance with the external confiscation order in relation to the offence that resulted in the making of that order would infringe the *ne bis in idem* principle,
 - (d) the defendant did not appear in person at the trial resulting in the external confiscation order, unless the certificate from the court in the designated state concerned states that—
 - (i) he or she was notified of the time when, and place at which, the proceedings were to take place, or he or she was otherwise aware of the scheduled proceedings, and he or she was informed that an external confiscation order could be made even if he or she did not appear,
 - (ii) he or she was aware of the proceedings concerned and was represented at those proceedings by a lawyer whom he or she has appointed,
 - (iii) after having been served with the external confiscation order and expressly informed of his or her right to a retrial or an appeal in which he or she would have been able to participate and which could have led to the original decision being reversed, he or she—
 - (I) expressly stated that he or she did not contest the external confiscation order, or
 - (II) did not request the retrial or appeal within the time limit for exercising that right,or
 - (iv) in a case where he or she was not personally served with the external confiscation order, an undertaking has been given by the designated state concerned that he or she will be personally served with the external confiscation order without delay and will be expressly informed of his or her right to a retrial or an appeal in which he or she will be able to participate and which could lead to a reversal of the order, and of the time limit for exercising that right,
 - (e) the criminal conduct concerned was either committed outside the territory of the designated state concerned or committed wholly or partly in the State, or
 - (f) the enforcement of the confiscation co-operation order, or the execution of the external confiscation order, as the case may be, is statute barred.
- (2) Where the copy of the external confiscation order is not accompanied by the documents required under section 50(2), or is incomplete or

does not correspond to the external confiscation order, the High Court—

- (a) may permit the certified copy of the order, or a completed or corrected certified copy of the order, to be produced by or on behalf of the court concerned in accordance with a specified deadline, or
 - (b) shall refuse to make a confiscation co-operation order or, as the case may be, to execute the external confiscation order, unless it is satisfied, by the production of an equivalent document or otherwise, that the information provided by or on behalf of the court concerned is sufficient.
- (3) The High Court shall not make a confiscation co-operation order or, as the case may be, shall make an order refusing the execution of the external confiscation order if it is satisfied that the rights of any person holding an interest in the property the subject of the external confiscation order concerned make it impossible to execute that order.
- (4) Where an external confiscation order is transmitted by or on behalf of a court in a designated state that is a member state, and the offence that resulted in the making of the order is an offence referred to in Article 6(1) of the 2006 Framework Decision punishable in that designated state by a maximum term of imprisonment of not less than 3 years, the High Court shall not make an order refusing the execution of the external confiscation order solely on the ground that the conduct constituting the offence that resulted in the making of that external confiscation order does not constitute an offence under the law of the State.”.

Postponement of confiscation

15. The Principal Act is amended by the insertion of the following section after section 51B:

- “51C.(1) Where an application is made in accordance with section 51(1) or 51A(2), the High Court may order the postponement of confiscation under this Chapter until such time as the Court considers reasonable, where to proceed with the confiscation, on foot of, as the case may be, a confiscation co-operation order or an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state, might prejudice an ongoing criminal investigation in the State.
- (2) The High Court may order the postponement of confiscation under this Chapter where the realisable property concerned is already subject to confiscation proceedings in the State.
- (3) An order of the High Court postponing confiscation shall include an order that such measures as may be necessary to provide for the availability of the realisable property for the execution of the external

confiscation order concerned be taken during the postponement period.

- (4) When the grounds for the postponement cease to exist, the High Court shall, without delay—
 - (a) where the designated state is a member state, make an order for the execution of the external confiscation order concerned, or
 - (b) in any other case, make a confiscation co-operation order in respect of the external confiscation order concerned.
- (5) For the purposes of this section the ‘postponement of confiscation’ means—
 - (a) the postponement of the execution of an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state, and
 - (b) in any other case, the postponement of the making of a confiscation co-operation order in respect of an external confiscation order.”.

Variation or discharge of confiscation co-operation orders

16. The Principal Act is amended by the insertion of the following section after section 51C:

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

- (a) may vary or discharge it,
 - (b) shall vary it to the extent of any amount in respect of which there has already been confiscation in any state, if the High Court is satisfied that there has been such confiscation where—
 - (i) the person concerned has provided evidence that there has been such confiscation, in part, in that other state, and
 - (ii) the High Court has consulted with the competent authority in the designated state where the external confiscation order concerned was made, and that competent authority has confirmed that there has been confiscation in that other state and the extent of that confiscation,
- and
- (c) shall discharge it if the High Court is satisfied that there is no need for the confiscation co-operation order where—
 - (i) the person concerned has provided evidence that there has been confiscation in any state, the High Court has consulted with the competent authority in the designated state where the external confiscation order was made and that competent authority has

confirmed that that external confiscation order has been satisfied by confiscation in that other state, or

- (ii) it has been informed by the competent authority in the designated state where the external confiscation order concerned was made that that order has ceased to be enforceable.
- (2) Notice of an application under this section and of the grounds for it shall be given by the applicant, in such manner as may be prescribed by rules of court or as the High Court may direct, to the Central Authority for transmission to the designated state concerned.
- (3) The making of an application under subsection (1) shall not suspend the execution of the confiscation co-operation order concerned.”.

Variation or discharge of external confiscation orders from member states

17. The Principal Act is amended by the insertion of the following section after section 51D:

- “51E. (1) A person who claims to be affected by an external confiscation order that has been transmitted by or on behalf of a court in a designated state that is a member state to the Central Authority and then transmitted to the Director of Public Prosecutions under section 51A for execution in the State may make an application to the High Court to vary or discharge that external confiscation order.
- (2) The High Court shall consider an application made under subsection (1) and may vary or discharge the external confiscation order concerned only if it is informed by the competent authority in the designated state where the external confiscation order concerned was made that it has reviewed the substantive grounds for the order and has concluded that the external confiscation order concerned should be varied or discharged.
 - (3) Notice of an application under this section and of the grounds for it shall be given by the applicant, in such manner as may be prescribed by rules of court or as the High Court may direct, to the Central Authority for transmission to the designated state concerned.
 - (4) The making of an application under subsection (1) shall not suspend the execution of the external confiscation order concerned.”.

Termination of external confiscation orders from member states

18. The Principal Act is amended by the insertion of the following section after section 51E:

- “51F. Where an external confiscation order has been transmitted by or on behalf of a court in a designated state that is a member state to the Central Authority and the Central Authority has transmitted it to the Director of Public Prosecutions under section 51A for execution in the State, the

execution of that external confiscation order shall be terminated by order of the High Court only if a request to terminate it has been received from the competent authority of the designated state concerned.”.

Central Authority to inform competent authority

19. The Principal Act is amended by the insertion of the following section after section 51F:

“51G.The Central Authority shall inform, by any means capable of producing a written record, the competent authority in the designated state that transmitted an external confiscation order of the following:

- (a) where the external confiscation order was transmitted by or on behalf of a court in a designated state that is a member state, when the Central Authority receives the external confiscation order;
- (b) where the external confiscation order was transmitted by or on behalf of a court in a designated state that is a member state, when the execution of the external confiscation order has been completed;
- (c) where it is impossible to execute the external confiscation order under section 51A because, after consultation with that competent authority, the realisable property the subject of that order has been destroyed or cannot be found in the location indicated in the documents accompanying that order or that location has not been indicated in a sufficiently precise manner;
- (d) where the High Court refuses under section 51B to make a confiscation co-operation order, or makes an order refusing the execution of an external confiscation order made by or on behalf of a designated state that is a member state because, after consultation with that competent authority, the realisable property the subject of that external confiscation order has been destroyed or cannot be found in the location indicated in the documents accompanying the external confiscation order or that location has not been indicated in a sufficiently precise manner;
- (e) where there has been postponement of confiscation ordered in respect of that external confiscation order under section 51C, or the grounds for such a postponement have ceased and an order has therefore been made under subsection (4) of that section;
- (f) where there has been variation or discharge in respect of that external confiscation order under section 51D or 51E; or
- (g) where the execution of the external confiscation order has been terminated under section 51F.”.

Amendment of section 53 of Principal Act

20. Section 53 of the Principal Act is amended—

(a) in subsection (1)(a), by the insertion of “an external confiscation order or” before “a confiscation co-operation order”,

(b) by the addition of the following subsections after subsection (6):

“(7) Where property recovered by the execution of an external confiscation order or confiscation co-operation order is not a sum of money, the receiver may—

(a) cause the property recovered to be transferred to the state concerned, or

(b) cause the property recovered to be sold and, subject to subsection (8), the proceeds transferred to the state concerned.

(8) Where property recovered by the execution of an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state is a sum of money or the proceeds of a sale under subsection (7)(b)—

(a) if that sum is less than €10,000, it shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct, and

(b) if that sum is €10,000 or more, 50 per cent of the sum shall be transferred to the designated state concerned and the remaining 50 per cent shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.”.

Amendment of section 56 of Principal Act

21. Section 56 of the Principal Act is amended by the addition of the following subsection:

“(5) Where realisable property is the subject of an external confiscation order and a request under section 75, whether or not transmitted from the same designated state, the request under section 75 shall have priority over the external confiscation order.”.

Amendment of section 57(b) of Principal Act

22. Section 57(b) of the Principal Act is amended by the insertion of “an external confiscation order or” after “shall be construed as references to”.

Application of provisions on enforcement and realisation to execution of external confiscation order from member states

23. The Principal Act is amended by the insertion of the following section in Chapter 3 of Part 4 after section 57:

“57A. Sections 52, 54, 55, 56 and 57 apply in relation to external confiscation orders transmitted by or on behalf of courts in designated states that are member states (except where the execution of such orders is subject to refusal, postponement, variation or discharge, or termination under sections 51B, 51C, 51E and 51F respectively) as they apply in relation to confiscation co-operation orders.”.

Financial penalties

24. The Principal Act is amended by the insertion of the following Part after Part 4:

“PART 4A

FINANCIAL PENALTIES

Interpretation

60A. In this Part—

‘appropriate court’, in relation to an external financial penalty order, means a court in the State that has jurisdiction to impose a financial penalty of the same amount as the sum mentioned in the external financial penalty order;

‘certificate’ means the certificate provided for in Article 4 of the 2005 Framework Decision, the standard form of which is provided for in the Annex to that Framework Decision;

‘competent authority’, in relation to a member state, means—

- (a) the issuing judicial authority in the member state, or
- (b) the authority in the member state that the General Secretariat of the Council of the European Union has, in accordance with Article 2 of the 2005 Framework Decision, been informed is to be the competent authority in that member state;

‘executing state’, in relation to a financial penalty order, means the member state to which the order is transmitted for enforcement;

‘external financial penalty order’ means a financial penalty order that is made by an issuing judicial authority in an issuing state;

‘financial penalty’, in relation to a defendant, means an obligation for the defendant to pay, further to a conviction for an offence, in an issuing state or the State—

- (a) a fine, costs or any other sum of money to the issuing state or the State, as the case may be,
- (b) a sum as compensation for the benefit of a victim of the offence, or
- (c) a sum of money to a public fund or victim support organisation;

‘financial penalty order’, means an order of—

- (a) a court in the State imposing a financial penalty, or
- (b) an issuing judicial authority in an issuing state imposing a financial penalty that is enforceable under the law of that state;

‘issuing judicial authority’, in relation to an external financial penalty order, means a judicial authority in an issuing state, as defined in the law of that state, which makes, validates or in any way confirms the external financial penalty order;

‘issuing state’, in relation to an external financial penalty order, means the member state in which that order was made.

Request for execution of financial penalty order in member state

- 60B.** (1) If a financial penalty order relates to a defendant who has property or income, or is normally resident, in a member state, the registrar or clerk of the court concerned shall, on request of the prosecuting authority and subject to any conditions that may be specified by rules of court, give to the Central Authority—
- (a) a duly authenticated copy of the order, and
 - (b) a certificate signed by the registrar or clerk and stating that the prescribed time for lodging an appeal has expired or, as the case may be, will expire on a specified date.
- (2) If the financial penalty which is the subject of the financial penalty order has not been paid in whole or in part, the Central Authority may transmit to the competent authority in the member state concerned—
- (a) the documents mentioned in subsection (1),
 - (b) a certificate, and
 - (c) a request that the financial penalty order be executed in accordance with the 2005 Framework Decision.
- (3) Where the Central Authority makes a request under subsection (2)—
- (a) if all or part of the financial penalty order has not been executed in the State or in another member state, stating the amount paid and requesting that the amount to be paid in the member state concerned not exceed the difference between the amount specified in the financial penalty order and the amount paid, and
 - (b) if the defendant has made any voluntary payment in respect of the financial penalty order after it was transmitted, stating the amount of that voluntary payment and requesting that the amount to be paid to the member state concerned not exceed the difference between the amount specified in the financial penalty order and the amount paid voluntarily, and

- (c) if the financial penalty order ceases to be enforceable, stating that fact.
- (4) If—
 - (a) an amount is paid to the member state concerned in pursuance of a request under subsection (2), and
 - (b) the amount paid is less than, or equal to, the amount ordered to be paid under the financial penalty order,
the amount so ordered under the financial penalty order is deemed to be reduced by an amount equal to the amount paid or, as the case may be, the financial penalty order is deemed to be discharged.
- (5) In any proceedings a certificate purporting to be issued by a competent authority in a member state and stating—
 - (a) the amount of any payment made to the member state pursuant to the request, and
 - (b) the date of that payment,
is admissible, without further proof, as evidence of those matters.
- (6) Transmission of documents referred to in subsections (2) and (3) shall be by any means capable of producing a written record under conditions which allow the competent authority concerned to establish the documents' authenticity.

Transmission to State of external financial penalty order

- 60C.** (1) An external financial penalty order may be transmitted by the competent authority of an issuing state to the Central Authority with a request for its execution.
- (2) The external financial penalty order shall be accompanied by—
 - (a) a certificate signed and certified as accurate by the competent authority in the issuing state and any supporting documentation, and
 - (b) any required translations,
and shall include any further information required by the 2005 Framework Decision.
 - (3) Transmission of the documents referred to in subsections (1) and (2) shall be by any means capable of producing a written record under conditions which allow the Central Authority or the appropriate court to establish the documents' authenticity.
 - (4) Subsection (3) is deemed to have been complied with if facsimile copies of those documents and any translation thereof are transmitted in compliance with any regulations that may be made under subsection (6).

- (5) If the Central Authority or the appropriate court is not satisfied that a facsimile copy of a document transmitted in accordance with this section corresponds to the document of which it purports to be such a copy, the Central Authority or the appropriate court shall—
 - (a) request the competent authority in the issuing state to cause the original or a copy of the document to be transmitted to the Central Authority, and
 - (b) agree with that competent authority regarding the manner in which the original or copy is to be so transmitted.
- (6) The Minister may, if he or she considers it necessary for the purposes of ensuring the accuracy of documents transmitted in accordance with this section, make regulations—
 - (a) prescribing procedures to be followed in connection with the transmission of documents in accordance with this section, and
 - (b) specifying features to be present in any equipment being used in that connection.

External financial penalty orders

- 60D.** (1) Where the Central Authority receives an external financial penalty order that has been transmitted by a competent authority in an issuing state, it shall proceed to the execution of that order as though it were an order of an appropriate court.
- (2) Where the Central Authority considers that there are grounds for refusal, variation or termination of the execution of an external financial penalty order transmitted to it in accordance with the 2005 Framework Decision, the Central Authority shall cause an application to be made to the appropriate court for an order under section 60E, 60F or 60G.
 - (3) Where the Central Authority proceeds to execute an external financial penalty order that has been transmitted by a competent authority in an issuing state, the Fines (Payment and Recovery) Act 2014 shall apply to the execution of that financial penalty order as though it were an order of an appropriate court.
 - (4) Where a sum of money payable or remaining to be paid under an external financial penalty order is expressed in a currency other than euro, the external financial penalty order shall require payment of an equivalent euro amount, calculated at the baseline rate of exchange prevailing between that currency and the euro on the date of the making of the external financial penalty order.

Refusal to execute external financial penalty order

- 60E.** (1) On application made under section 60D(2) and without prejudice to section 3, the appropriate court shall make an order refusing the

execution of an external financial penalty order made by an issuing judicial authority if—

- (a) a financial penalty order has been made in the State against the defendant in respect of the conduct which resulted in the making of the external financial penalty order,
- (b) a financial penalty order has been made in a state other than the issuing state or the State, in respect of the conduct which resulted in the making of the external financial penalty order, and has been executed,
- (c) the conduct which resulted in the making of the external financial penalty order is not an offence in the State,
- (d) the execution of the financial penalty order is statute barred in the State,
- (e) the criminal conduct concerned was either committed outside the territory of the issuing state concerned or committed wholly or partly in the State,
- (f) there is immunity or privilege under the law of the State which makes it impossible to execute the external financial penalty order,
- (g) the defendant could not have been convicted in the State of an offence in respect of the conduct which resulted in the making of the external financial penalty order because of his or her age,
- (h) the defendant did not appear in person at the proceedings resulting in the external financial penalty order, unless the certificate from the issuing judicial authority states that—
 - (i) he or she was summonsed to attend in person the proceedings, or he or she was otherwise made aware, by official notification, of the time when, and the place at which, those proceedings were to take place, and he or she was informed that an external financial penalty order could be made even if he or she did not appear,
 - (ii) he or she was aware of the proceedings concerned and was represented at those proceedings by a lawyer whom he or she appointed,
 - (iii) after having been served with the external financial penalty order and expressly informed of his or her right to a retrial or an appeal at which he or she would have been able to participate (and which would have been an examination of the case on its merits, including the possibility of adducing fresh evidence), and which could have led to a reversal of the original decision, he or she—

- (I) expressly stated that he or she did not contest the external financial penalty order, or
 - (II) did not request the retrial or appeal within the time limit for exercising that right,
- or
- (iv) where he or she was not personally served with the external financial penalty order, an undertaking has been given by the issuing state concerned that he or she will be personally served with the external financial penalty order without delay and will be expressly informed of his or her right to a retrial or an appeal in which he or she will be able to participate (and which will be an examination of the case on its merits, including the possibility of adducing fresh evidence), and which could lead to a reversal of the order, and of the time limit for exercising that right,
- or
- (i) the amount of the financial penalty the subject of the external financial penalty order is less than €70.
- (2) If the certificate did not accompany the external financial penalty order, or is incomplete or manifestly does not correspond to the external financial penalty order, the appropriate court—
- (a) may permit the certificate, or a completed or corrected certificate, to be produced by or on behalf of the court concerned in accordance with a specified deadline, or
 - (b) may refuse to execute the external financial penalty order, unless it is satisfied, by the production of an equivalent document or otherwise, that the information provided by or on behalf of the court concerned is sufficient.

Variation of amount payable under external financial penalty order

60F. On application made under section 60D(2) and without prejudice to section 3, the appropriate court may make an order—

- (a) where that court is satisfied that, had the conduct which was the subject of the conviction on which that external financial penalty order was made been carried out in the State, the maximum amount of a penalty that could have been imposed was less than the sum mentioned in that order, reducing the amount that the defendant is to pay to that maximum amount,
- (b) where the court is satisfied that there has been partial payment of the sum mentioned in the external financial penalty order, reducing the amount that the defendant is to pay to the difference between the sum mentioned in the order and the amount already paid, or

- (c) where the court is satisfied that, in all the circumstances, the defendant should be excused from paying all or part of the sum mentioned in the external financial penalty order, ordering that the amount be so reduced.

Termination of execution of external financial penalty order

60G. Where an external financial penalty order has been transmitted to the Central Authority for execution in the State, the execution of the external financial penalty order shall terminate as soon as may be after the Central Authority is informed by the competent authority of the issuing state concerned that that external financial penalty order has ceased to be enforceable or has been withdrawn by that issuing state or where the court is satisfied on an application made under section 60D(2) that, in all the circumstances, the defendant should be excused from paying all or part of the sum mentioned in the external financial penalty order, ordering that the amount be so reduced.

Central Authority to inform competent authority

60H. The Central Authority shall inform, by any means capable of producing a written record, the competent authority in the issuing state that transmitted an external financial penalty order of the following:

- (a) the Central Authority has received the external financial penalty order, as soon as may be after the Central Authority receives it;
- (b) an order refusing the execution of the financial penalty order under section 60E, or reducing the amount to be paid on foot of it under section 60F, has been made, as soon as may be after it is made;
- (c) an order terminating the execution of the external financial penalty order has been made, as soon as may be after it is made;
- (d) the execution of the external financial penalty order is complete, as soon as may be after it is complete; or
- (e) imprisonment or another alternative sanction has been imposed by a court in the State on the defendant in accordance with Article 10 of the 2005 Framework Decision, as soon as may be after it is imposed.

Amounts to accrue to Exchequer

60I. An amount paid on foot of an external financial penalty order shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct, unless an agreement is made between the Central Authority and the competent authority in the issuing state concerned that all or part of that amount will be paid to that issuing state.”.

Amendment of section 67 of Principal Act

25. Section 67 of the Principal Act is amended—

- (a) in subsection (1)(c), by the substitution of “practicable” for “possible”,
- (b) in subsection (3), by the substitution of “practicable” for “possible”,
- (c) in subsection (4)(d), by the substitution of “practicable” for “possible”.

Amendment of section 68(2)(d) of Principal Act

26. Section 68(2)(d) of the Principal Act is amended by the substitution of “practicable” for “possible”.

Amendment of section 69(a) of Principal Act

27. Section 69(a) of the Principal Act is amended by the substitution of “practicable” for “possible”.

Amendment of section 74 of Principal Act

28. Section 74 of the Principal Act is amended by the insertion of the following subsections after subsection (12):

“(12A) Where the evidence sought is already in the possession of the Garda Síochána, or where material referred to in subsection (9) is obtained on foot of a warrant under this section, the Commissioner of the Garda Síochána shall arrange for the evidence to be transmitted, to the requesting authority—

- (a) without delay,
- (b) in accordance with the request, and
- (c) in accordance with any directions that the Minister may give.

(12B) Any evidential material taken away by a member of the Garda Síochána under this section may be dealt with in accordance with the request.”.

Amendment of section 75 of Principal Act

29. Section 75 of the Principal Act is amended by the insertion of the following subsection after subsection (8):

“(8A) Where the material sought is already in the custody of the Garda Síochána or has been obtained on foot of an order under subsection (10), the Commissioner of the Garda Síochána shall arrange for the material to be transmitted to the requesting authority—

- (a) without delay,
- (b) in accordance with the request, and
- (c) in accordance with any directions that the Minister may give.”.

Powers of officers of Revenue Commissioners

30. The Principal Act is amended by the insertion of the following section after section 75:

“75A. Where a request under section 74 or 75 is in relation to a revenue offence, the powers of a member of the Garda Síochána may also be exercised by an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section, and sections 74 and 75 apply, subject to the following and any other necessary modifications:

- (a) a reference to the ‘Commissioner of the Garda Síochána’ shall be read, in relation to such a request, as a reference to the ‘Revenue Commissioners’;
- (b) a reference to a ‘member’, in relation to the Garda Síochána, shall be read, in relation to such a request, as including a reference to an ‘officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section’;
- (c) a reference to evidence being ‘in the possession of the Garda Síochána’ shall be read, in relation to such a request, as including a reference to its being ‘in the possession of the Revenue Commissioners’;
- (d) a reference to ‘a member of the Garda Síochána not below the rank of inspector’ shall be read, in relation to such a request, as including a reference to ‘an officer of the Revenue Commissioners not below the rank of Higher Executive Officer’;
- (e) a reference to material being ‘in the custody of the Garda Síochána’ shall be read as including a reference to its being ‘in the custody of the Revenue Commissioners’.”.

Special intervention units

31. The Principal Act is amended by the insertion of the following Part after section 94:

“PART 7A

SPECIAL INTERVENTION UNITS

Interpretation

94A. In this Part—

‘competent authority’, in relation to the State, means the Minister and, in relation to a member state, means the authority designated by that member state to be the competent authority of that member state for the purposes of the 2008 Council Decision (special intervention units);

‘crisis situation’ means any situation in which the competent authority or the competent authority of a member state has reasonable grounds to believe that, as a result of a criminal offence, there exists a serious direct physical threat to persons, property, infrastructure or institutions in the

State or in that member state;

‘special intervention unit’—

- (a) if and when operating in a member state, has the meaning assigned to it by section 94B,
- (b) if and when operating in the State, means a special intervention unit consisting of a law enforcement unit of another member state which is specialised in the control of a crisis situation.

Special intervention unit

94B. For the purpose of providing assistance under section 94E, the Garda Commissioner may establish a special intervention unit, where required for the control of a crisis situation, from such members of the Garda Síochána as the Garda Commissioner considers appropriate.

Request to member state for assistance of special intervention unit in dealing with crisis situation

94C. (1) Where the competent authority is satisfied that—

- (a) as a result of the commission of a criminal offence, a crisis situation exists in the State, and
- (b) there are reasonable grounds for believing that it is in the public interest to seek the assistance of a special intervention unit from a member state, and
- (c) the Government has agreed to the request for the assistance of a special intervention unit,

the competent authority may request the competent authority of that member state to provide the assistance of a special intervention unit in accordance with the 2008 Council Decision (special intervention units).

(2) A request under subsection (1) shall specify the following:

- (a) the competent authority making the request;
- (b) the nature of the crisis situation;
- (c) the criminal offence giving rise to the crisis situation;
- (d) the nature and form of the assistance requested;
- (e) the operational necessity for the assistance requested; and
- (f) the expected period for which the assistance is required.

(3) The competent authority shall furnish to the other competent authority such other information (if any) as would reasonably be required by that authority to decide whether or not to agree to provide the assistance sought.

- (4) Where the requested competent authority accedes to the request, the competent authority may, subject to this Chapter, agree with that authority the form of assistance required including—
- (a) the provision of equipment,
 - (b) the provision of expertise,
 - (c) the assistance in the State of a special intervention unit of the member state concerned.

Request to State for assistance of special intervention unit in dealing with crisis situation

94D. (1) In accordance with the 2008 Council Decision (special intervention units), the competent authority shall consider a request for assistance in dealing with a crisis situation received from the competent authority of a member state.

- (2) A request under subsection (1) shall specify the following:
- (a) the competent authority making the request;
 - (b) the nature of the crisis situation;
 - (c) the criminal offence giving rise to the crisis situation;
 - (d) the nature and form of the assistance requested;
 - (e) the operational necessity for the assistance requested; and
 - (f) the expected period for which the assistance is required.
- (3) The competent authority may seek from the requesting competent authority such other information (if any) as would reasonably be required to decide whether or not to agree to provide the assistance sought.
- (4) Where the competent authority accedes to the request for assistance, the competent authority may, subject to Government approval, agree with the requesting competent authority the form of assistance including:
- (a) equipment;
 - (b) expertise;
 - (c) assistance in the member state of a special intervention unit established under section 94B.

Operation of special intervention unit

94E. (1) A special intervention unit formed under section 94B shall be established for a specific purpose and a limited period of time which may be extended, if the circumstances so require, for such period or periods as may be agreed by the competent authority and the other competent authority concerned.

- (2) Notwithstanding subsection (1), the competent authority may terminate the provision of assistance when—
 - (a) the purpose for which the assistance was agreed has been served, or
 - (b) no further benefit is likely to accrue from the continued operation of the special intervention unit.
- (3) Subject to subsection (1), a special intervention unit may operate in the State or in a member state, as the case may be, for so long as it is necessary to do so for the purpose of dealing with the crisis situation for which the unit was established.
- (4) A special intervention unit operating in the State shall do so in a supporting capacity to the law enforcement authorities of the State and shall operate—
 - (a) under the responsibility, authority and direction of the Garda Commissioner,
 - (b) in accordance with the law of the State, and
 - (c) within the limits of the powers conferred on the unit under the national law of the member state concerned.”.

Eurojust national member

32. The Principal Act is amended by the insertion of the following section after section 95:

“**95A.** The Minister may, in accordance with the 2009 Council Decision, designate an authority or authorities as the Eurojust national member who may transmit and receive information in accordance with that Council Decision.”.

Insertion of Schedules 5A, 5B, 7A, 7B and 7C to Principal Act

33. The Principal Act is amended by the insertion—

- (a) after Schedule 3 of Schedule 3A as set out in *Schedule 1* to this Act,
- (b) after Schedule 5 of Schedule 5A as set out in *Schedule 2* to this Act,
- (c) after Schedule 5A (inserted by paragraph (b)) of Schedule 5B as set out in *Schedule 3* to this Act,
- (d) after Schedule 7 of Schedule 7A as set out in *Schedule 4* to this Act,
- (e) after Schedule 7A (inserted by paragraph (d)) of Schedule 7B as set out in *Schedule 5* to this Act.

Amendment of section 65 of Criminal Justice Act 1994

34. Section 65 of the Criminal Justice Act 1994 is amended by the insertion of the following subsection after subsection (4):

“(4A) The court may order compensation to be paid under this section to a person with an interest in property affected by an order made under section 35, 51, or 60 or executed under section 51A or 60D of the Criminal Justice (Mutual Assistance) Act 2008—

- (a) notwithstanding that he or she is not the person who was the subject of the relevant investigation, and
- (b) only if the court is satisfied—
 - (i) that there has been some serious default on the part of a person concerned in the carrying out of that order on behalf of the State, and
 - (ii) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of that order.”.

Amendment of section 51(1) of Garda Síochána Act 2005

35. Section 51(1) of the Garda Síochána Act 2005 is amended—

- (a) in paragraph (a), by the substitution of “organisation,” for “organisation, or”,
- (b) in paragraph (b), by the substitution of “such duties, or” for “such duties.”, and
- (c) by the insertion of the following paragraph after paragraph (b):

“(c) to participate in a special intervention unit, within the meaning of Part 7A (inserted by *section 31* of the *Criminal Justice (Mutual Assistance) (Amendment) Act 2015*) of the Criminal Justice (Mutual Assistance) Act 2008, for the control of a crisis situation occurring in the territory of a member state.”.

Repeals

36. The following provisions are repealed:

- (a) section 88(2) of the Principal Act, and
- (b) section 2(2) of the Criminal Justice (Joint Investigation Teams) Act 2004.

Short title, collective citation and commencement

37. (1) This Act may be cited as the Criminal Justice (Mutual Assistance) (Amendment) Act 2015.

(2) The Principal Act and this Act may be cited together as the Criminal Justice (Mutual Assistance) Acts 2008 and 2015.

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

SCHEDULE 1

TEXT OF AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN ON MUTUAL LEGAL ASSISTANCE IN
CRIMINAL MATTERS

“Schedule 3A

TEXT OF AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN ON MUTUAL LEGAL
ASSISTANCE IN CRIMINAL MATTERS

AGREEMENT

between the European Union and Japan on mutual legal assistance in criminal matters

THE EUROPEAN UNION,

and

JAPAN

DESIRING to establish more effective cooperation between the European Union Member States and Japan in the area of mutual legal assistance in criminal matters,

DESIRING that such cooperation will contribute to combating crime,

REAFFIRMING their commitment to respect for justice, principles of the rule of law and democracy, and judicial independence,

HAVE AGREED AS FOLLOWS:

*Article 1***Object and purpose**

1. The requested State shall, upon request by the requesting State, provide mutual legal assistance (hereinafter referred to as ‘assistance’) in connection with investigations, prosecutions and other proceedings, including judicial proceedings, in criminal matters in accordance with the provisions of this Agreement.
2. This Agreement does not apply to extradition, transfer of proceedings in criminal matters and enforcement of sentences other than confiscation provided for under Article 25.

*Article 2***Definitions**

For the purpose of this Agreement:

- (a) the term ‘Contracting Parties’ means the European Union and Japan;
- (b) the term ‘Member State’ means a Member State of the European Union;
- (c) the term ‘State’ means a Member State or Japan;
- (d) the term ‘items’ means documents, records and other articles of evidence;

- (e) the term ‘property’ means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;
- (f) the term ‘instrumentalities’ means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence;
- (g) the term ‘proceeds’ means any property derived from or obtained, directly or indirectly, through the commission of a criminal offence;
- (h) the term ‘freezing or seizure’ means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority; and
- (i) the term ‘confiscation’, which includes forfeiture where applicable, means a penalty or a measure, ordered by a court or other judicial authority following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property.

Article 3

Scope of assistance

Assistance shall include the following:

- (a) taking testimony or statements;
- (b) enabling the hearing by videoconference;
- (c) obtaining items, including through the execution of search and seizure;
- (d) obtaining records, documents or reports of bank accounts;
- (e) examining persons, items or places;
- (f) locating or identifying persons, items or places;
- (g) providing items in the possession of the legislative, administrative or judicial authorities of the requested State as well as the local authorities thereof;
- (h) serving documents and informing a person of an invitation to appear in the requesting State;
- (i) temporary transfer of a person in custody for testimony or other evidentiary purposes;
- (j) assisting in proceedings related to freezing or seizure and confiscation of proceeds or instrumentalities; and
- (k) any other assistance permitted under the laws of the requested State and agreed upon between a Member State and Japan.

Article 4

Designation and responsibilities of Central Authorities

Each State shall designate the Central Authority that is the authority responsible for sending, receiving and responding to requests for assistance, the execution of such requests or their transmission to the authorities having jurisdiction to execute such requests under the laws of the State. The Central Authorities shall be the authorities listed in Annex I to this Agreement.

Article 5

Communication between Central Authorities

1. Requests for assistance under this Agreement shall be sent by the Central Authority of the requesting State to the Central Authority of the requested State.
2. The Central Authorities of the Member States and Japan shall communicate directly with one another for the purpose of this Agreement.

Article 6

Authorities competent to originate requests

The authorities which are competent under the laws of the States to originate requests for assistance pursuant to this Agreement are set out in Annex II to this Agreement.

Article 7

Authentication

Documents transmitted by a State pursuant to this Agreement which are attested by the signature or seal of a competent authority or the Central Authority of the State need not be authenticated.

Article 8

Requests for assistance

1. The requesting State shall make a request in writing.
2. The requesting State may, in urgent cases, after having been in contact with the requested State, make a request by any other reliable means of communication, including fax or e-mail. In such cases, the requesting State shall provide supplementary confirmation of the request in writing promptly thereafter, if the requested State so requires.
3. A request shall include the following:
 - (a) the name of the competent authority conducting the investigation, prosecution or other proceeding, including judicial proceeding;
 - (b) the facts pertaining to the subject of the investigation, prosecution or other

proceeding, including judicial proceeding;

- (c) the nature and stage of the investigation, prosecution or other proceeding, including judicial proceeding;
- (d) the text or a statement of the relevant laws, including applicable penalties, of the requesting State;
- (e) a description of the assistance requested; and
- (f) a description of the purpose of the assistance requested.

4. A request shall, to the extent possible and relevant to the assistance requested, include the following:

- (a) information on the identity and location of any person from whom testimony, statements or items are sought;
- (b) a list of questions to be asked to the person from whom testimony or statements are sought;
- (c) a precise description of persons or places to be searched and of items to be sought;
- (d) a description of why the requesting State considers that the requested records, documents or reports of bank accounts are relevant and necessary for the purpose of the investigation into the offence, and other information that may facilitate the execution of the request;
- (e) information regarding persons, items or places to be examined;
- (f) information regarding persons, items or places to be located or identified;
- (g) information on the identity and location of a person to be served with a document or informed of an invitation, that person's relationship to the proceeding, and the manner in which service is to be made;
- (h) information on the allowances and expenses to which a person whose appearance is sought before the competent authority of the requesting State will be entitled; and
- (i) a precise description of proceeds or instrumentalities, the location thereof, and the identity of the owner thereof.

5. A request shall, to the extent necessary, also include the following:

- (a) a description of any particular manner or procedure to be followed in executing the request;
- (b) a description of the reasons for confidentiality concerning the request; and
- (c) any other information that should be brought to the attention of the requested State to facilitate the execution of the request.

6. If the requested State considers that the information contained in a request for assistance is not sufficient to meet the requirements under this Agreement to enable the execution of the request, the requested State may request that additional information be provided.

Article 9

Language

A request and any documents attached thereto shall be accompanied by a translation into an official language of the requested State or, in all or, in urgent cases, into a language specified in Annex III to this Agreement.

Article 10

Execution of requests

1. The requested State shall promptly execute a request in accordance with the relevant provisions of this Agreement. The competent authorities of the requested State shall take every possible measure in their power to ensure the execution of a request.

2. A request shall be executed by using measures that are in accordance with the laws of the requested State. The particular manner or procedure described in the request referred to in paragraph 4(g) or paragraph 5(a) of Article 8 shall be followed to the extent that it is not contrary to the laws of the requested State, and where it is practically possible. In case the execution of the request in the manner or procedure described in the request poses a practical problem for the requested State, the requested State shall consult with the requesting State in order to solve the practical problem.

3. If the execution of a request is deemed to interfere with an ongoing investigation, prosecution or other proceeding, including judicial proceeding, in the requested State, the requested State may postpone the execution. The requested State shall inform the requesting State of the reasons for the postponement and consult the further procedure. Instead of postponing the execution, the requested State may make the execution subject to conditions deemed necessary after consultations with the requesting State. If the requesting State accepts such conditions, the requesting State shall comply with them.

4. The requested State shall make its best efforts to keep confidential the fact that a request has been made, the contents of the request, the outcome of the execution of the request and other relevant information concerning the execution of the request if such confidentiality is requested by the requesting State. If a request cannot be executed without disclosure of such information, the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

5. The requested State shall respond to reasonable inquiries by the requesting State concerning the status of the execution of a request.

6. The requested State shall promptly inform the requesting State of the result of the execution of a request, and shall provide the requesting State with the testimony, statements or items, obtained as a result of the execution, including any claim from a person from whom testimony, statements or items are sought regarding immunity, incapacity or privilege under the laws of the requesting State. The requested State shall provide originals or, if there are reasonable grounds, certified copies of records or documents. If a request cannot be executed in whole or in part, the requested State shall inform the requesting State of the reasons therefore.

Article 11

Grounds for refusal of assistance

1. Assistance may be refused if the requested State considers that:
 - (a) a request concerns a political offence or an offence connected with a political offence;
 - (b) the execution of a request is likely to prejudice its sovereignty, security, ordre public or other essential interests. For the purpose of this subparagraph, the requested State may consider that the execution of a request concerning an offence punishable by death under the laws of the requesting State or, in the relations between one Member State, set out in Annex IV to this Agreement, and Japan, an offence punishable by life imprisonment under the laws of the requesting State, could prejudice essential interests of the requested State, unless the requested State and the requesting State agree on the conditions under which the request can be executed;
 - (c) there are well-founded reasons to suppose that the request for assistance has been made with a view to prosecuting or punishing a person by reason of race, religion, nationality, ethnic origin, political opinions or sex, or that such person's position may be prejudiced for any of those reasons;
 - (d) the person, who is subject to criminal investigations, prosecutions or other proceedings, including judicial proceedings, for which the assistance is requested, in the requesting State, has already been finally convicted or acquitted for the same facts in a Member State or Japan; or
 - (e) a request does not conform to the requirements of this Agreement.
2. The requested State may refuse assistance which would necessitate coercive measures under its laws if it considers that the conduct that is the subject of the investigation, prosecution or other proceeding, including judicial proceeding, in the requesting State would not constitute a criminal offence under the laws of the requested State. In the relations between Japan and two Member States, set out in Annex IV to this Agreement, assistance may be refused if the requested State considers that the conduct that is the subject of the investigation, prosecution or other proceeding, including judicial proceeding, in the requesting State would not constitute a criminal offence under the laws of the requested State.
3. Assistance shall not be refused on the ground of bank secrecy.

4. Before refusing assistance pursuant to this Article, the requested State shall consult with the requesting State when the requested State considers that assistance may be provided subject to certain conditions. If the requesting State accepts such conditions, the requesting State shall comply with them.

5. If assistance is refused, the requested State shall inform the requesting State of the reasons for the refusal.

Article 12

Costs

1. The requested State shall bear all costs related to the execution of a request, unless otherwise agreed between the requesting State and the requested State.

2. Notwithstanding the provisions of paragraph 1, the requesting State shall bear:

- (a) the fees of an expert witness;
- (b) the costs of translation, interpretation and transcription;
- (c) the allowances and expenses related to travel of persons pursuant to Articles 22 and 24;
- (d) the costs of establishing a video link and costs related to the servicing of a video link in the requested State; and
- (e) the costs of an extraordinary nature;

unless otherwise agreed between the requesting State and the requested State.

3. If the execution of a request would impose costs of an extraordinary nature, the requesting State and the requested State shall consult in order to determine the conditions under which the request will be executed.

Article 13

Limitations on use of testimony, statements, items or information

1. The requesting State shall not use testimony, statements, items or any information, including personal data, provided or otherwise obtained under this Agreement other than in the investigation, prosecution or other proceeding, including judicial proceeding, described in the request without prior consent of the requested State. In giving such prior consent, the requested State may impose such conditions as it deems appropriate.

2. The requested State may request that testimony, statements, items or any information, including personal data, provided or otherwise obtained under this Agreement be kept confidential or be used only subject to other conditions it may specify. If the requesting State agrees to such confidentiality or accepts such conditions, it shall comply with them.

3. In exceptional circumstances a State may, at the time it is providing testimony, statements, items or any information, including personal data, request that the receiving State will give information on the use made of them.

Article 14

Transport, maintenance and return of items

1. The requested State may request that the requesting State transport and maintain items provided under this Agreement in accordance with the conditions specified by the requested State, including the conditions deemed necessary to protect third-party interests in the items to be transferred.

2. The requested State may request that the requesting State return any items provided under this Agreement in accordance with the conditions specified by the requested State, after such items have been used for the purpose described in a request.

3. The requesting State shall comply with a request made pursuant to paragraph 1 or 2. When such a request has been made, the requesting State shall not examine the items without the prior consent of the requested State if the examination impairs or could impair the item.

Article 15

Taking of testimony or statements

1. The requested State shall take testimony or statements. The requested State shall employ coercive measures in order to do so, if such measures are necessary and the requesting State provides the requested State with information justifying those measures under the laws of the requested State.

2. The requested State shall make its best efforts to make possible the presence of such persons as specified in a request for taking testimony or statements during the execution of the request, and to allow such persons to question the person from whom testimony or statements are sought. In the case that such direct questioning is not permitted, such persons shall be allowed to submit questions to be posed to the person from whom testimony or statements are sought.

3. If a person, from whom testimony or statements are sought pursuant to this Article, asserts a claim of immunity, incapacity or privilege under the laws of the requesting State, testimony or statements may nevertheless be taken, unless the request includes a statement from the requesting State that when such immunity, incapacity or privilege is claimed, the testimony or statements cannot be taken.

Article 16

Hearing by videoconference

1. If a person is in the requested State and has to be heard as a witness or an expert witness by the competent authorities of the requesting State, the requested State may enable testimony or a statement to be taken from that person by those competent authorities by videoconference, if such hearing is necessary for the proceedings of the requesting State. The requesting and the requested States shall consult, if necessary, in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.
2. The following rules shall apply to the hearing by videoconference unless otherwise agreed between the requesting State and the requested State:
 - (a) the authority of the requested State will identify the person to be heard specified in the request, and invite the person to facilitate his or her appearance;
 - (b) the hearing will be conducted directly by, or under the direction of, the competent authority of the requesting State in accordance with its own laws and the fundamental principles of the law of the requested State;
 - (c) the authority of the requested State will be present during the hearing, where necessary assisted by an interpreter, and will observe the hearing. If the authority of the requested State is of the view that during the hearing the fundamental principles of the law of the requested State are being infringed, it will immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
 - (d) at the request of the requesting State or the person to be heard, the requested State will ensure, if necessary, that the person is assisted by an interpreter; and
 - (e) the person to be heard may claim the right not to testify which would accrue to him or her under the laws of either the requesting or the requested State. Other measures necessary for the protection of the person as agreed upon between the authorities of the requesting and the requested States will also be taken.

Article 17

Obtaining of items

1. The requested State shall obtain items. The requested State shall employ coercive measures, including search and seizure in order to do so, if such measures are necessary and the requesting State provides the requested State with information justifying those measures under the laws of the requested State.
2. The requested State shall make its best efforts to make possible the presence of such persons as specified in a request for obtaining items during the execution of the request.

Article 18

Bank accounts

1. The requested State shall confirm whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts in the banks specified in the request.
2. The requested State shall provide the specified records, documents or reports of the specified accounts, the records of banking operations which have been carried out during a specified period through the accounts specified in the request, or identified in accordance with paragraph 1 and the specified records, documents or reports of any sending or recipient account.
3. The obligations set out in this Article shall apply only to the extent that the information is in the possession of the bank keeping the account.
4. The requested State may make an execution of a request in paragraphs 1 and 2 dependent on the conditions it applies in respect of requests for obtaining items.

Article 19

Examination of persons, items or places

1. The requested State shall examine persons, items or places. The requested State shall employ coercive measures in order to do so, if such measures are necessary and the requesting State provides the requested State with information justifying those measures under the laws of the requested State.
2. The requested State shall make its best efforts to make possible the presence of such persons as specified in a request for examining persons, items or places during the execution of the request.

Article 20

Locating or identifying persons, items or places

The requested State shall make its best efforts to locate or identify persons, items or places.

Article 21

Providing items in possession of the legislative, administrative, judicial or local authorities

1. The requested State shall provide the requesting State with items that are in the possession of the legislative, administrative or judicial authorities of the requested State as well as the local authorities thereof and are available to the general public.
2. The requested State shall make its best efforts to provide the requesting State with items, including criminal records, that are in the possession of the legislative, administrative or judicial authorities of the requested State as well as the local authorities thereof and are not available to the general public, to the same extent and under the same conditions as such items would be available to its investigative and prosecuting authorities.

Article 22

Service of documents and informing a person of an invitation

1. The requested State shall effect service of documents, including service of summons or other documents requiring the appearance of a person before the competent authority of the requesting State, on persons in the requested State. The requested State shall inform a person in that State of an invitation to appear before the competent authority of the requesting State.
2. Where a request concerns service of a document requiring the appearance of a person before the competent authority of the requesting State, the request shall be received by the Central Authority of the requested State not less than 50 days before the scheduled appearance date. In urgent cases, the requested State may waive this requirement.
3. Where the requesting State knows that the addressee does not understand the language which the documents, served or sent pursuant to paragraph 1, are drawn up in or translated into, the requesting State shall endeavour to translate the documents, or shall, at least, translate the important passages thereof, also into the language the addressee understands.
4. Documents served pursuant to paragraph 1 shall include a statement that the addressee may obtain information from the competent authority by which the document was issued or from other authorities of the requesting State regarding his or her essential rights and obligations concerning the documents, if any.
5. In informing the result of the service of documents in accordance with paragraph 6 of Article 10, the requested State shall give proof of service by means of a receipt dated and signed by the person served or by means of a statement made by the requested State that service has been effected, as well as on the date, place and manner of service. The requested State shall, upon request by the requesting State, promptly inform the requesting State, where possible, of the response of the person who is invited or required to appear before the competent authority of the requesting State under paragraph 1.
6. A person who has been invited or required to appear before the competent authority of the requesting State under paragraph 1, but does not appear before that authority shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure in the requesting State, notwithstanding any contrary statement in the request or documents served or sent.

Article 23

Safe conduct

1. A person who is invited or required to appear before the competent authority of the requesting State under paragraph 1 of Article 22 shall not:
 - (a) be subject to detention or any restriction of personal liberty in that State by reason of any conduct or conviction that precedes the departure of the person from the requested State; or
 - (b) be obliged to give evidence or to assist in any investigation, prosecution or other proceeding, including judicial proceeding, other than the proceeding specified in the

request.

2. If the safe conduct provided for in paragraph 1 cannot be provided, the requesting State shall be able to make a decision whether to appear before the competent authority of the requesting State.
3. The safe conduct provided for in paragraph 1 shall cease when:
 - (a) the person, having had, for a period of 15 consecutive days from the date when his or her presence is no longer required by the competent authority or from the day when he or she failed to appear before that authority on the scheduled appearance date, an opportunity of leaving, has nevertheless remained voluntarily in the requesting State; or
 - (b) the person, having left the requesting State, voluntarily returns to it.
4. When the requesting State knows that the safe conduct provided for in paragraph 1 has ceased pursuant to paragraphs 3(a) and 3(b), the requesting State shall so inform the requested State without delay, if such information is requested by the requested State and considered necessary by the requesting State.

Article 24

Temporary transfer of persons in custody

1. A person in custody of the requested State whose presence in the requesting State is necessary for testimony or other evidentiary purposes shall be temporarily transferred for those purposes to the requesting State, if the person consents and if the requesting State and the requested State agree, when permitted under the laws of the requested State.
2. The requesting State shall keep the person transferred pursuant to paragraph 1 in the custody of the requesting State, unless permitted by the requested State to do otherwise.
3. The requesting State shall immediately return the person transferred to the requested State, as agreed beforehand, or as otherwise agreed between the requesting State and the requested State.
4. The person transferred shall receive credit for service of the sentence being served in the requested State for the time spent in the custody of the requesting State.
5. The person transferred to the requesting State pursuant to this Article shall enjoy the safe conduct provided for in paragraph 1 of Article 23 in the requesting State until the return to the requested State, unless the person consents to give evidence or assist in any investigation, prosecution or other proceeding, including judicial proceeding, other than the proceeding specified in the request and the requesting State and the requested State agree thereto.
6. A person who does not consent to be transferred pursuant to this Article shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure in the requesting State, notwithstanding any contrary statement in the request.

Article 25

Freezing or seizure and confiscation of proceeds or instrumentalities

1. The requested State shall assist, to the extent permitted by its laws, in proceedings related to freezing or seizure and confiscation of the proceeds or instrumentalities.
2. A request for the confiscation described in paragraph 1 shall be accompanied by a decision of a court or other judicial authority imposing the confiscation.
3. The requested State that has custody over proceeds or instrumentalities may transfer such proceeds or instrumentalities, in whole or in part, to the requesting State, to the extent permitted by the laws of the requested State and upon such conditions as it deems appropriate.
4. In applying this Article, the legitimate rights and interests of *bona fide* third parties shall be respected under the laws of the requested State.

Article 26

Spontaneous exchange of information

1. Member States and Japan may, without prior request, provide information relating to criminal matters to each other to the extent permitted by the laws of the providing State.
2. The providing State may impose conditions on the use of such information by the receiving State. In such a case, the providing State shall give prior notice to the receiving State of the nature of the information to be provided and of the conditions to be imposed. The receiving State shall be bound by those conditions if it agrees to them.

Article 27

Relation to other instruments

1. Nothing in this Agreement shall prevent any State from requesting assistance or providing assistance in accordance with other applicable international agreements, or pursuant to its laws that may be applicable.
2. Nothing in this Agreement shall prevent a Member State and Japan from concluding international agreements confirming, supplementing, extending or amplifying the provisions thereof.

Article 28

Consultations

1. The Central Authorities of the Member States and Japan shall, if necessary, hold consultations for the purpose of resolving any difficulties with regard to the execution of a request, and facilitating speedy and effective assistance under this Agreement, and may decide on such measures as may be necessary for this purpose.
2. The Contracting Parties shall, as appropriate, hold consultations on any matter that may

arise in the interpretation or application of this Agreement.

Article 29

Territorial application

1. This Agreement shall apply to the territory of Japan and, in relation to the European Union, to:
 - (a) the territories of the Member States; and
 - (b) territories for whose external relations a Member State has responsibility, or countries that are not Member States for whom a Member State has other duties with respect to external relations, where agreed upon by an exchange of diplomatic notes between the Contracting Parties, duly confirmed by the relevant Member State.
2. The application of this Agreement to any territory or country in respect of which extension has been made in accordance with paragraph 1(b) may be terminated by either Contracting Party giving six months' written notice to the other Contracting Party through the diplomatic channel, where duly confirmed between the relevant Member State and Japan.

Article 30

Status of annexes

Annexes to this Agreement form an integral part of this Agreement. Annexes I, II and III may be modified by mutual consent in writing of the Contracting Parties without amendment of this Agreement.

Article 31

Entry into force and termination

1. This Agreement shall enter into force on the 30th day after the date on which the Contracting Parties exchange diplomatic notes informing each other that their respective internal procedures necessary to give effect to this Agreement have been completed.
2. This Agreement shall apply to any request for assistance presented on or after the date upon which this Agreement enters into force, whether the acts relevant to the request were committed before, on or after that date.
3. Either Contracting Party may terminate this Agreement at any time by giving written notice to the other Contracting Party, and such termination shall be effective six months after the date of such notice.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Agreement.

DONE in duplicate, in the English and Japanese languages, both texts being equally authentic, and signed at Brussels on the thirtieth day of November 2009, and at Tokyo on the fifteenth day of December 2009. This Agreement shall also be drawn up in the Bulgarian, Czech, Danish, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian,

[2015.] *Criminal Justice (Mutual Assistance) (Amendment) Act 2015.* [No. 40.] SCH.1

Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, and the Contracting Parties shall authenticate those language versions by an exchange of diplomatic notes.

ANNEX I

THE CENTRAL AUTHORITIES

The Central Authorities of the Contracting Parties are the following authorities:

the Kingdom of Belgium: the Federal Public Service Justice, International Criminal Cooperation Department;

the Republic of Bulgaria: the Ministry of Justice;

the Czech Republic:

- before the case is brought before a court (i.e. in pre-trial proceedings): the Supreme Public Prosecutor's Office of the Czech Republic, and

- after the case has been brought before a court (i.e. in trial stage of criminal proceedings): the Ministry of Justice of the Czech Republic;

the Kingdom of Denmark: the Ministry of Justice;

the Federal Republic of Germany: the Federal Office of Justice;

the Republic of Estonia: the Ministry of Justice;

Ireland: the Minister for Justice, Equality and Law Reform or a person designated by the Minister;

the Hellenic Republic: the Ministry of Justice, Transparency and Human Rights;

the Kingdom of Spain: the Ministry of Justice, the Subdirector General for international legal cooperation;

the French Republic: the Ministry of Justice, the Office for International Mutual Assistance in Criminal Matters, Directorate for Criminal Matters and Pardons;

the Italian Republic: the Ministry of Justice, Department of Judicial Affairs – Directorate General of Criminal Matters;

the Republic of Cyprus: the Ministry of Justice and Public Order;

the Republic of Latvia:

- during pre-trial investigation until prosecution: State Police,

- during pre-trial investigation until submitting the case to the court: the General Prosecutor's Office, and

- during the trial: the Ministry of Justice;

the Republic of Lithuania:

- the Ministry of Justice of the Republic of Lithuania, and

- the General Prosecutor's Office of the Republic of Lithuania;

the Grand Duchy of Luxembourg: the Prosecutor General;

the Republic of Hungary:

- the Ministry of Justice and Law Enforcement, and
 - the Office of the Prosecutor General;
- the Republic of Malta: the Office of the Attorney General;
- the Kingdom of the Netherlands: the Ministry of Justice in The Hague;
- the Republic of Austria: the Ministry of Justice;
- the Republic of Poland:
- during pre-trial stage: the National Public Prosecutor's Office,
 - during the trial: the Ministry of Justice,
- the Portuguese Republic: the Prosecutor General's Office;
- Romania: the Ministry of Justice and Civil Liberties, the General Directorate for Cooperation, Directorate for International Law and Treaties, Division for International Judicial Cooperation in Criminal Matters;
- the Republic of Slovenia: the Ministry of Justice, the Directorate for international cooperation and international legal assistance;
- the Slovak Republic:
- in pre-trial proceedings: the General Prosecutor's Office,
 - in trial stage: the Ministry of Justice, and,
 - for receiving: the Ministry of Justice,
- the Republic of Finland: the Ministry of Justice;
- the Kingdom of Sweden: the Ministry of Justice;
- the United Kingdom of Great Britain and Northern Ireland: the Home Office (United Kingdom Central Authority), Her Majesty's Revenue and Customs, Crown Office and Procurator Fiscal Service;
- Japan: the Minister of Justice and the National Public Safety Commission or persons designated by them.

ANNEX II

With regard to Article 6 of this Agreement, the authorities which are competent under the laws of the States to originate requests for assistance pursuant to this Agreement are set out below:

the Kingdom of Belgium: the judicial authorities: to be understood as meaning members of the judiciary responsible for administering the law, examining magistrates and members of the Department of Public Prosecution;

the Republic of Bulgaria: the Supreme Cassation Prosecutor's Office of the Republic of Bulgaria for pre-trial cases of criminal proceedings and the courts of the Republic of Bulgaria for pending cases in trial phase of criminal proceedings;

the Czech Republic: public prosecutors and courts of the Czech Republic;

the Kingdom of Denmark:

- the District Courts, the High Courts and the Supreme Court,
- the Department of Public Prosecutions, which includes:
 - the Ministry of Justice,
 - the director of Public Prosecutions,
 - the Prosecutor, and
- the Police Commissioners;

the Federal Republic of Germany:

- the Federal Ministry of Justice;
- Federal Court of Justice, Karlsruhe;
- the Public Prosecutor General of the Federal Court of Justice, Karlsruhe;
- the Federal Office of Justice;
- the Ministry of Justice of Baden-Württemberg, Stuttgart;
- the Bavarian State Ministry of Justice and Consumer Protection, Munich;
- the Senate Department for Justice, Berlin;
- the Ministry of Justice of Land Brandenburg, Potsdam;
- the Senator for Justice and Constitution of the Free Hanseatic City of Bremen, Bremen;
- the Justice Authority of the Free and Hanseatic City of Hamburg, Hamburg;
- the Hessian Ministry of Justice, Integration and Europe, Wiesbaden;
- the Ministry of Justice of Mecklenburg-Vorpommern, Schwerin;
- the Ministry of Justice of Lower-Saxony, Hanover;
- the Ministry of Justice of Land North-Rhine/Westphalia, Düsseldorf;
- the Ministry of Justice of Land Rhineland-Palatinate, Mainz;

- the Ministry of Justice of the Saarland, Saarbrücken;
 - the Saxonian State Ministry of Justice, Dresden;
 - the Ministry of Justice of Land Saxony-Anhalt, Magdeburg;
 - the Ministry of Justice, Equality and Integration of Schleswig-Holstein, Kiel;
 - the Thuringian Ministry of Justice, Erfurt;
 - the Higher Regional Courts;
 - the Regional Courts;
 - the Local Courts;
 - the Chief Public Prosecutor at the Higher Regional Courts;
 - the Directors of Public Prosecutions at the Regional Courts;
 - the Central Office of the Land Judicial Administrations for the Investigation of National Socialist Crimes, Ludwigsburg;
 - the Federal Criminal Police Office;
 - the Central Office of the German Customs Investigations Service;
- the Republic of Estonia: judges and prosecutors;
- Ireland: the Director for Public Prosecutions;
- the Hellenic Republic: the Public Prosecutor's Office at the Court of Appeal;
- the Kingdom of Spain: criminal court magistrates and judges, and public prosecutors;
- the French Republic:
- first presidents, presidents, judges and magistrates at criminal courts,
 - examining magistrates at such courts,
 - members of the public prosecution service at such courts, namely:
 - principal public prosecutors,
 - deputy principal public prosecutors,
 - assistant principal public prosecutors,
 - public prosecutors and assistant public prosecutors,
 - representatives of police court public prosecutors, and
 - military court public prosecutors;
- the Italian Republic
- Prosecutors:
- Director of Public Prosecution
 - Assistant Public Prosecutor

- Director of Military Public Prosecution
- Assistant Military Public Prosecutor
- General Public Prosecutor
- Assistant General Public Prosecutor
- General Military Public Prosecutor
- Assistant General Military Public Prosecutor

Judges:

- Judge of Peace
- Investigation Judge
- Preliminary hearing Judge
- Ordinary Court
- Military Court
- Court of Assizes
- Court of Appeal
- Court of Assizes of Appeal
- Military Court of Appeal
- Court of Cassation;

the Republic of Cyprus:

- the Attorney General of the Republic,
- the Chief of Police,
- the Director of Customs & Excise,
- members of the Unit for Combating Money Laundering (MOKAS), and,
- any other authority or person who is entitled to make inquiries and prosecutions in the Republic of Cyprus,

the Republic of Latvia: investigators, prosecutors and judges;

the Republic of Lithuania: judges and prosecutors;

the Grand Duchy of Luxembourg: the judicial authorities: to be understood as meaning members of the judiciary responsible for administering the law, examining magistrates and members of the Department of Public Prosecution;

the Republic of Hungary: prosecutor's offices and courts;

the Republic of Malta:

- the Magistrates Court,

- the Juvenile Court,
- the Criminal Court and the Court of Criminal Appeal,
- the Attorney General,
- the Deputy Attorney General,
- the Legal Officers within the Attorney General's office; and
- the Magistrates;

the Kingdom of the Netherlands: members of the judiciary responsible for administering the law, examining magistrates and members of the Department of Public Prosecutions;

the Republic of Austria: courts and prosecutors;

the Republic of Poland: prosecutors and courts;

the Portuguese Republic: prosecution services in the investigation phase, investigation judges and trial judges;

Romania: courts and the prosecutor's offices of the courts;

the Republic of Slovenia:

- local court judges,
- investigative judges,
- district court judges,
- higher court judges,
- supreme court judges,
- constitutional court judges,
- district state prosecutors,
- higher state prosecutors,
- supreme state prosecutors;

the Slovak Republic: judges and prosecutors;

the Republic of Finland:

- the Ministry of Justice,
- the Courts of First Instance, the Courts of Appeal, and the Supreme Court,
- the public prosecutors,
- the police authorities, the custom authorities, and the frontier guard officers in their capacity of preliminary criminal investigations authorities in criminal proceedings under the Preliminary Criminal Investigations Act,

the Kingdom of Sweden: courts and prosecutors;

the United Kingdom of Great Britain and Northern Ireland: courts and prosecutors;

SCH.1 [No. 40.] *Criminal Justice (Mutual Assistance) (Amendment) Act 2015.* [2015.]

Japan: Courts, Presiding Judges, Judges, Public Prosecutors, Public Prosecutor's Assistant Officers, and Judicial Police Officials.

ANNEX III

With regard to Article 9 of this Agreement, the Member States and Japan accept the following languages:

the Kingdom of Belgium: Dutch, French and German in all cases and English in urgent cases;

the Republic of Bulgaria: Bulgarian in all cases and English in urgent cases;

the Czech Republic: Czech in all cases and English in urgent cases;

the Kingdom of Denmark: Danish in all cases and English in urgent cases;

the Federal Republic of Germany: German in all cases and English in urgent cases;

the Republic of Estonia: Estonian and English in all cases;

Ireland: English and Irish in all cases;

the Hellenic Republic: Greek in all cases and English in urgent cases;

the Kingdom of Spain: Spanish in all cases;

the French Republic: French in all cases;

the Italian Republic: Italian in all cases and English in urgent cases;

the Republic of Cyprus: Greek and English in all cases;

the Republic of Latvia: Latvian in all cases and English in urgent cases;

the Republic of Lithuania: Lithuanian in all cases and English in urgent cases;

the Grand Duchy of Luxembourg: French and German in all cases and English in urgent cases;

the Republic of Hungary: Hungarian in all cases and English in urgent cases;

the Republic of Malta: Maltese in all cases;

the Kingdom of the Netherlands: Dutch in all cases and English in urgent cases;

the Republic of Austria: German in all cases and English in urgent cases;

the Republic of Poland: Polish in all cases;

the Portuguese Republic: Portuguese in all cases and English or French in urgent cases;

Romania: Romanian, English or French in all cases. With regard to longer documents, Romania reserves the right, in any specific case, to require a Romanian translation or to have one made at the expense of the requesting State;

the Republic of Slovenia: Slovenian and English in all cases;

the Slovak Republic: Slovak in all cases;

the Republic of Finland: Finnish, Swedish and English in all cases;

the Kingdom of Sweden: Swedish, Danish or Norwegian in all cases, unless the authority dealing with the application otherwise allows in the individual case;

the United Kingdom of Great Britain and Northern Ireland: English in all cases;

SCH.1 [No. 40.] *Criminal Justice (Mutual Assistance) (Amendment) Act 2015.* [2015.]

Japan: Japanese in all cases and English in urgent cases. However, Japan reserves the right, in any specific urgent case, to require translation into Japanese with regard to the request from the requesting State which does not accept translation into English under this Annex.

ANNEX IV

With regard to paragraph 1(b) of Article 11 of this Agreement, 'one Member State' referred to in this paragraph is the Portuguese Republic.

With regard to paragraph 2 of Article 11 of this Agreement, 'two Member States' referred to in this paragraph are the Republic of Austria and the Republic of Hungary.”

SCHEDULE 2

TEXT OF COUNCIL FRAMEWORK DECISION 2005/214/JHA OF 24 FEBRUARY 2005 ON THE APPLICATION OF
MUTUAL RECOGNITION TO FINANCIAL PENALTIES

“Schedule 5A
TEXT OF 2005 FRAMEWORK DECISION
COUNCIL FRAMEWORK DECISION 2005/214/JHA
of 24 February 2005

on the application of the principle of mutual recognition to financial penalties

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative of the United Kingdom of Great Britain and Northern Ireland, the French Republic and the Kingdom of Sweden ¹,

Having regard to the opinion of the European Parliament ²,

Whereas:

- (1) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.
- (2) The principle of mutual recognition should apply to financial penalties imposed by judicial or administrative authorities for the purpose of facilitating the enforcement of such penalties in a Member State other than the State in which the penalties are imposed.
- (3) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters ³, giving priority to the adoption of an instrument applying the principle of mutual recognition to financial penalties (measure 18).
- (4) This Framework Decision should also cover financial penalties imposed in respect of road traffic offences.

¹ OJ C 278, 2.10.2001, p. 4.

² OJ C 271 E, 7.11.2002, p. 423.

³ OJ C 12, 15.1.2001, p. 10.

- (5) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union ⁴, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to execute a decision when there are reasons to believe, on the basis of objective elements, that the financial penalty has the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.
- (6) This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision:

- (a) ‘decision’ shall mean a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:
 - (i) a court of the issuing State in respect of a criminal offence under the law of the issuing State;
 - (ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;
 - (iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;
 - (iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii);
- (b) ‘financial penalty’ shall mean the obligation to pay:
 - (i) a sum of money on conviction of an offence imposed in a decision;
 - (ii) compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in the exercise of its criminal jurisdiction;
 - (iii) a sum of money in respect of the costs of court or administrative proceedings leading to the decision;

⁴ OJ C 364, 18.12.2000, p. 1.

- (iv) a sum of money to a public fund or a victim support organisation, imposed in the same decision.

A financial penalty shall not include:

- orders for the confiscation of instrumentalities or proceeds of crime,
 - orders that have a civil nature and arise out of a claim for damages and restitution and which are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁵;
- (c) ‘issuing State’ shall mean the Member State in which a decision within the meaning of this Framework Decision was delivered;
- (d) ‘executing State’ shall mean the Member State to which a decision has been transmitted for the purpose of enforcement.

Article 2

Determination of the competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent according to this Framework Decision, when that Member State is the issuing State or the executing State.
2. Notwithstanding Article 4, each Member State may designate, if it is necessary as a result of the organisation of its internal system, one or more central authorities responsible for the administrative transmission and reception of the decisions and to assist the competent authorities.
3. The General Secretariat of the Council shall make the information received available to all Member States and the Commission.

Article 3

Fundamental rights

This Framework Decision shall not have the effect of amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

Article 4

Transmission of decisions and recourse to the central authority

⁵ OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 2245/2004 (OJ L 381, 28.12.2004, p. 10).

1. A decision, together with a certificate as provided for in this Article, may be transmitted to the competent authorities of a Member State in which the natural or legal person against whom a decision has been passed has property or income, is normally resident or, in the case of a legal person, has its registered seat.
2. The certificate, the standard form for which is given in the Annex, must be signed, and its contents certified as accurate, by the competent authority in the issuing State.
3. The decision or a certified copy of it, together with the certificate, shall be transmitted by the competent authority in the issuing State directly to the competent authority in the executing State by any means which leaves a written record under conditions allowing the executing State to establish its authenticity. The original of the decision, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.
4. The issuing State shall only transmit a decision to one executing State at any one time.
5. If the competent authority in the executing State is not known to the competent authority in the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network⁶ in order to obtain the information from the executing State.
6. When an authority in the executing State which receives a decision has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, *ex officio*, transmit the decision to the competent authority and shall inform the competent authority in the issuing State accordingly.
7. The United Kingdom and Ireland, respectively, may state in a declaration that the decision together with the certificate must be sent via its central authority or authorities specified by it in the declaration. These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 3. They shall do so when the provisions on mutual assistance of the Schengen Implementation Convention are put into effect for them. Any declaration shall be deposited with the General Secretariat of the Council and notified to the Commission.

Article 5

Scope

1. The following offences, if they are punishable in the issuing State and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition and enforcement of decisions:
 - participation in a criminal organisation,
 - terrorism,
 - trafficking in human beings,
 - sexual exploitation of children and child pornography,

⁶ Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage,
- conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods,

- smuggling of goods,
- infringements of intellectual property rights,
- threats and acts of violence against persons, including violence during sport events,
- criminal damage,
- theft,
- offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

2. The Council may decide to add other categories of offences to the lists in paragraph 1 at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the EU Treaty.

The Council shall consider, in the light of the report submitted to it pursuant to Article 20(5), whether the list should be extended or amended. The Council shall consider the issue further at a later stage on the basis of a report on the practical application of the Framework Decision established by the Commission within 5 years after the date mentioned in Article 20(1).

3. For offences other than those covered by paragraph 1, the executing State may make the recognition and execution of a decision subject to the condition that the decision is related to conduct which would constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.

Article 6

Recognition and execution of decisions

The competent authorities in the executing State shall recognise a decision which has been transmitted in accordance with Article 4 without any further formality being required and shall forthwith take all the necessary measures for its execution, unless the competent authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7.

Article 7

Grounds for non-recognition and non-execution

1. The competent authorities in the executing State may refuse to recognise and execute the decision if the certificate provided for in Article 4 is not produced, is incomplete or manifestly does not correspond to the decision.

2. The competent authority in the executing State may also refuse to recognise and execute the decision if it is established that:

- (a) decision against the sentenced person in respect of the same acts has been delivered in the executing State or in any State other than the issuing or the executing State, and, in the latter case, that decision has been executed;

- (b) in one of the cases referred to in Article 5(3), the decision relates to acts which would not constitute an offence under the law of the executing State;
- (c) the execution of the decision is statute-barred according to the law of the executing State and the decision relates to acts which fall within the jurisdiction of that State under its own law.
- (d) the decision relates to acts which:
 - (i) are regarded by the law of the executing State as having been committed in whole or in part in the territory of the executing State or in a place treated as such, or
 - (ii) have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory;
- (e) there is immunity under the law of the executing State, which makes it impossible to execute the decision;
- (f) the decision has been imposed on a natural person who under the law of the executing State due to his or her age could not yet have been held criminally liable for the acts in respect of which the decision was passed;
- (g) according to the certificate provided for in Article 4, the person concerned
 - (i) in case of a written procedure was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his right to contest the case and of time limits of such a legal remedy, or
 - (ii) did not appear personally, unless the certificate states:
 - that the person was informed personally, or via a representative, competent according to national law, of the proceedings in accordance with the law of the issuing State, or
 - that the person has indicated that he or she does not contest the case;
- (h) the financial penalty is below EUR 70 or the equivalent to that amount.

3. In cases referred to in paragraphs 1 and 2(c) and (g), before deciding not to recognise and to execute a decision, either totally or in part, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.

Article 8

Determination of the amount to be paid

1. Where it is established that the decision is related to acts which were not carried out within the territory of the issuing State, the executing State may decide to reduce the amount of the penalty enforced to the maximum amount provided for acts of the same kind under the national law of the executing State, when the acts fall within the jurisdiction of that State.

2. The competent authority of the executing State shall, if necessary, convert the penalty into the currency of the executing State at the rate of exchange obtaining at the time when the penalty was imposed.

Article 9

Law governing enforcement

1. Without prejudice to paragraph 3 of this Article, and to Article 10, the enforcement of the decision shall be governed by the law of the executing State in the same way as a financial penalty of the executing State. The authorities of the executing State alone shall be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for termination of enforcement.

2. In the case where the sentenced person is able to furnish proof of a payment, totally or in part, in any State, the competent authority of the executing State shall consult the competent authority of the Issuing State in the way provided for in Article 7(3). Any part of the penalty recovered in whatever manner in any State shall be deducted in full from the amount, which is to be enforced in the executing State.

3. A financial penalty imposed on a legal person shall be enforced even if the executing State does not recognise the principle of criminal liability of legal persons.

Article 10

Imprisonment or other alternative sanction by way of substitution for non-recovery of the financial penalty

Where it is not possible to enforce a decision, either totally or in part, alternative sanctions, including custodial sanctions, may be applied by the executing State if its laws so provide in such cases and the issuing State has allowed for the application of such alternative sanctions in the certificate referred to in Article 4. The severity of the alternative sanction shall be determined in accordance with the law of the executing State, but shall not exceed any maximum level stated in the certificate transmitted by the issuing State.

Article 11

Amnesty, pardon, review of sentence

1. Amnesty and pardon may be granted by the issuing State and also by the executing State.

2. Without prejudice to the Article 10, only the issuing State may determine any application for review of the decision.

Article 12

Termination of enforcement

1. The competent authority of the issuing State shall forthwith inform the competent

authority of the executing State of any decision or measure as a result of which the decision ceases to be enforceable or is withdrawn from the executing State for any other reason.

2. The executing State shall terminate enforcement of the decision as soon as it is informed by the competent authority of the issuing State of that decision or measure.

Article 13

Accrual of monies obtained from enforcement of decisions

Monies obtained from the enforcement of decisions shall accrue to the executing State unless otherwise agreed between the issuing and the executing State, in particular in the cases referred to in Article 1(b)(ii).

Article 14

Information from the executing State

The competent authority of the executing State shall without delay inform the competent authority of the issuing State by any means which leaves a written record:

- (a) of the transmission of the decision to the competent authority, according to Article 4(6);
- (b) of any decision not to recognise and execute a decision, according to Articles 7 or 20(3), together with the reasons for the decision;
- (c) of the total or partial non-execution of the decision for the reasons referred to in Article 8, Article 9(1) and (2), and Article 11(1);
- (d) of the execution of the decision as soon as the execution has been completed;
- (e) of the application of alternative sanction, according to Article 10.

Article 15

Consequences of transmission of a decision

1. Subject to paragraph 2, the issuing State may not proceed with the execution of a decision transmitted pursuant to Article 4.

2. The right of execution of the decision shall revert to the issuing State:

- (a) upon it being informed by the executing State of the total or partial non-execution or the non-recognition or the non-enforcement of the decision in the case of Article 7, with the exception of Article 7(2)(a), in the case of Article 11(1), and in the case of Article 20(3); or
- (b) when the executing State has been informed by the issuing State that the decision has been withdrawn from the executing State pursuant to Article 12.

3. If, after transmission of a decision in accordance with Article 4, an authority of the issuing State receives any sum of money which the sentenced person has paid voluntarily in

respect of the decision, that authority shall inform the competent authority in the executing State without delay. Article 9(2) shall apply.

Article 16

Languages

1. The certificate, the standard form for which is given in the Annex, must be translated into the official language or one of the official languages of the executing State. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the Union.

2. The execution of the decision may be suspended for the time necessary to obtain its translation at the expense of the executing State.

Article 17

Costs

Member States shall not claim from each other the refund of costs resulting from application of this Framework Decision.

Article 18

Relationship with other agreements and arrangements

This Framework Decision shall not preclude the application of bilateral or multilateral agreements or arrangements between Member States in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be exceeded and help to simplify or facilitate further the procedures for the enforcement of financial penalties.

Article 19

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 20

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 22 March 2007.

2. Each Member State may for a period of up to five years from the date of entry into force of this Framework Decision limit its application to:

- (a) decisions mentioned in Article 1(a)(i) and (iv); and/or

- (b) with regard to legal persons, decisions related to conduct for which a European instrument provides for the application of the principle of liability of legal persons.

Any Member State that wants to make use of this paragraph, shall notify a declaration to that effect to the Secretary General of the Council upon the adoption of this Framework Decision. The declaration shall be published in the *Official Journal of the European Union*.

3. Each Member State may, where the certificate referred to in Article 4 gives rise to an issue that fundamental rights or fundamental legal principles as enshrined in Article 6 of the Treaty may have been infringed, oppose the recognition and the execution of decisions. The procedure referred to in Article 7(3) shall apply.

4. Any Member State may apply the principle of reciprocity in relation to any Member State making use of paragraph 2.

5. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established on the basis of this information by the Commission, the Council shall, no later than 22 March 2008, assess the extent to which Member States have complied with this Framework Decision.

6. The General Secretariat of the Council shall notify the Member States and the Commission of the declarations made pursuant to Articles 4(7) and 16.

7. Without prejudice to Article 35(7) of the Treaty, a Member State which has experienced repeated difficulties or lack of activity by another Member State in the mutual recognition and execution of decisions, which have not been solved through bilateral consultations, may inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

8. Any Member State which during a calendar year has applied paragraph 3, shall in the beginning of the following calendar year inform the Council and the Commission of cases in which the grounds referred to in that provision for non-recognition or non-execution of a decision have been applied.

9. Within seven years after the entry into force of this Framework Decision, the Commission shall establish a report on the basis of the information received, accompanied by any initiatives it may deem appropriate. The Council shall on the basis of the report review this Article with a view to considering whether paragraph 3 shall be retained or replaced by a more specific provision.

Article 21

Entry into force

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 24 February 2005.

For the Council
The President
N. SCHMIT

ANNEX

CERTIFICATE

referred to in Article 4 of Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties

(a)

* Issuing State

* Executing State

(b) The authority which issued the decision imposing the financial penalty:

Official name:

Address:

.....

File reference (. .)

Tel No: (country code) (area/city code)

Fax No (country code) (area/city code)

E-mail (when available)

Languages in which it is possible to communicate with the issuing authority

.....

Contact details for person(s) to contact to obtain additional information for the purpose of the enforcement of the decision or, where applicable, for the purpose of the transfer to the issuing State of monies obtained from the enforcement (name, title/grade, tel. No., fax No., and, when available, E-mail)

.....

.....

(c) The authority competent for the enforcement of the decision imposing the financial penalty in the issuing State (if the authority is different from the authority under point (b):

Official name:

Address:

.....

Tel No: (country code) (area/city code)

Fax No. (country code) (area/city code)

E-mail (when available)

Languages in which it is possible to communicate with the authority competent for the enforcement

Contact details for person(s) to contact to obtain additional information for the purpose of the enforcement of the decision or, where applicable, for the purpose of the transfer to the issuing State of monies obtained from the enforcement (name, title/

grade, tel. No., fax No., and, when available, E-mail):

(d) Where a central authority has been made responsible for the administrative transmission of decisions imposing financial penalties in the issuing State:

Name of the central authority:

Contact person, if applicable (title/grade and name):

Address:

File reference:

Tel No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail (when available):

(e) The authority or authorities which may be contacted (in the case where point (c) and/or (d) has been filled):

Authority mentioned under point (b)

Can be contacted for questions concerning:

Authority mentioned under point (c)

Can be contacted for questions concerning:

Authority mentioned under point (d)

Can be contacted for questions concerning:

(f) Information regarding the natural or legal person on which the financial penalty has been imposed:

1. In case of a natural person

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (when available):

Date of birth:

Place of birth:

Last known address:

Language(s) which the person understands (if known):

.....

(a) If the decision is transmitted to the executing State because the person against whom the decision has been passed is normally resident, add the following information:

Normal residence in the executing State:

.....

.....

(b) If the decision is transmitted to the executing State because the person against whom the decision has been passed has property in the executing State, add the following information:

Description of the property of the person:

Location of the property of the person:

(c) If the decision is transmitted to the executing State because the person against whom the decision has been passed has income in the executing State, add the following information:

Description of the source(s) of income of the person:

Location of the source(s) of income of the person:

.....

2. In case of a legal person:

Name:

Form of legal person:

Registration number (if available)⁷:

Registered seat (if available) ⁷:

Address of the legal person:

(a) If the decision is transmitted to the executing State because the legal person against whom the decision has been passed has property in the executing State, add the following information:

Description of the property of the legal person:

Location of the property of the legal person:

(b) If the decision is transmitted to the executing State because the legal person

⁷ Where a decision is transmitted to the executing State because the legal person against whom the decision has been passed has its registered seat in that State, Registration number and Registered seat must be completed.

against whom the decision has been passed has income in the executing State, add the following information:

Description of the source(s) of income of the legal person:

Location of the source(s) of income of the legal person:

(g) The decision imposing a financial penalty:

1. The nature of the decision imposing the financial penalty (tick the relevant box):

- (i) Decision of a court of the issuing State in respect of a criminal offence under the law of the issuing State
- (ii) Decision of an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.
- (iii) Decision of an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.
- (iv) Decision of a court having jurisdiction in particular in criminal matters regarding a decision as referred to in point iii.

The decision was made on (date)

The decision became final on (date)

Reference number of the decision (if available):

The financial penalty constitutes an obligation to pay (tick the relevant box(es) and indicate the amount(s) with indication of currency):

- (i) A sum of money on conviction of an offence imposed in a decision.
Amount:
- (ii) Compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in its exercise of its criminal jurisdiction.
Amount:
- (iii) A sum of money in respect of the costs of court or administrative proceedings leading to the decision.
Amount:
- (iv) A sum of money to a public fund or a victim support organisation, imposed in the same decision.
Amount:

The total amount of the financial penalty with indication of currency:

2. A summary of facts and a description of the circumstances in which the offence(s) has(have) been committed, including time and place:

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the decision was made:

.....

3. To the extent that the offence(s) identified under point 2 above constitute(s) one or more of the following offences, confirm that by ticking the relevant box(es):

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting currency, including of the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;

- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage;
- conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods;
- smuggling of goods;
- infringements of intellectual property rights;
- threats and acts of violence against persons, including violence during sport events;
- criminal damage;
- theft;
- offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

If this Box is ticked, indicate the exact provisions of the instrument adopted on the basis of the EC Treaty or the EU Treaty that the offence relates to.

.....

.....

4. To the extent that the offence(s) identified under point 2 above are not covered by point 3, give a full description of the offence(s) concerned:

.....

.....

(h) Status of the decision imposing the financial penalty:

1. Confirm that (tick the boxes):

- (a) the decision is a final decision
- (b) to the knowledge of the authority issuing the Certificate, a decision against the same person in respect of the same acts has not been delivered in the executing State and that no such decision delivered in any State other than the issuing State or the executing State has been executed.

2. Indicate if the case been subject to a written procedure:

- (a) No, it has not.

(b) Yes, it has. It is confirmed that the person concerned was, in accordance with the law of the issuing State, informed personally or via a representative competent according to national law of his right to contest the case and of time limits of such a legal remedy

3. Indicate if the person concerned appeared personally in the proceedings:

(a) Yes, he or she did.

(b) No, he or she did not. It is confirmed:

that the person was informed personally, or via a representative competent according to national law, of the proceedings in accordance with the law of the issuing State,

or

that the person has indicated that he or she does not contest the case

4. Partial payment of the penalty

If any part of the penalty has already been paid to the issuing State, or, to the knowledge of the authority issuing the Certificate, to any other State, indicate the amount which has been paid:

.....

(i) Alternative sanctions, including custodial sanctions

1. State whether the issuing State allows for the application by the executing State of alternative sanctions in case it is not possible to enforce the decision imposing a penalty, either totally or in part:

yes

no

2. If yes, state which sanctions may be applied (nature of the sanctions, maximum level of the sanctions):

Custody. Maximum period:

Community service (or equivalent). Maximum period.....

Other sanctions. Description:

.....

(j) Other circumstances relevant to the case (optional information):

.....

.....

(k) The text of the decision imposing the financial penalty is attached to the certificate.

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate:

.....

Name:
Post held (title/grade):
Date:
Official stamp (if available)

”.

SCHEDULE 3

TEXT OF COUNCIL FRAMEWORK DECISION 2006/783/JHA OF 6 OCTOBER 2006 ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO CONFISCATION ORDERS

“Schedule 5B
TEXT OF 2006 FRAMEWORK DECISION

COUNCIL FRAMEWORK DECISION 2006/783/JHA OF 6 OCTOBER 2006

on the application of the principle of mutual recognition to confiscation orders

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(1)(a) and 34(2)(b) thereof,

Having regard to the initiative of the Kingdom of Denmark¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) The European Council, meeting in Tampere on 15 and 16 October 1999, stressed that the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.
- (2) According to paragraph 51 of the conclusions of the Tampere European Council, money laundering is at the very heart of organised crime, and should be rooted out wherever it occurs; the European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds of crime. In that connection, in paragraph 55 of the conclusions, the European Council calls for the approximation of criminal law and procedures on money laundering (e.g. tracing, freezing and confiscating funds).
- (3) All Member States have ratified the Council of Europe Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the 1990 Convention). The Convention obliges signatories to recognise and enforce a confiscation order made by another party, or to submit a request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it. The Parties may refuse requests for confiscation *inter alia* if the offence to which the request relates would not be an offence under the law of the requested Party, or if under the law of the requested Party confiscation is not provided for in respect of the type of offence to which the request relates.
- (4) On 30 November 2000 the Council adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters, giving first priority (measures 6 and 7) to the adoption of an instrument applying the principle of mutual recognition to the freezing of evidence and property. Moreover, pursuant to paragraph 3.3 of the programme, the aim is to improve, in accordance with the principle of mutual recognition, execution in one Member State of a confiscation order issued in another

1 OJ C 184, 2.8.2002, p. 8.

2 Opinion delivered on 20 November 2002 (OJ C 25 E, 29.1.2004, p. 205).

Member State, *inter alia* for the purpose of restitution to a victim of a criminal offence, taking into account the existence of the 1990 Convention. With a view to achieving this aim, this Framework Decision, within its field of application, reduces the grounds for refusal of enforcement and suppresses, among Member States, any system of conversion of the confiscation order into a national one.

- (5) Council Framework Decision 2001/500/JHA³ lays down provisions on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime. Under that Framework Decision, Member States are also obliged not to make or uphold reservations in respect of Article 2 of the 1990 Convention, in so far as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year.
- (6) Finally, on 22 July 2003 the Council adopted Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence⁴.
- (7) The main motive for organised crime is financial gain. In order to be effective, therefore, any attempt to prevent and combat such crime must focus on tracing, freezing, seizing and confiscating the proceeds from crime. It is not enough merely to ensure mutual recognition within the European Union of temporary legal measures such as freezing and seizure; effective control of economic crime also requires the mutual recognition of orders to confiscate the proceeds from crime.
- (8) The purpose of this Framework Decision is to facilitate cooperation between Member States as regards the mutual recognition and execution of orders to confiscate property so as to oblige a Member State to recognise and execute in its territory confiscation orders issued by a court competent in criminal matters of another Member State. This Framework Decision is linked to Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property⁵. The purpose of that Framework Decision is to ensure that all Member States have effective rules governing the confiscation of proceeds from crime, *inter alia* in relation to the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.
- (9) Cooperation between Member States, based on the principle of mutual recognition and immediate execution of judicial decisions, presupposes confidence that the decisions to be recognised and executed will always be taken in compliance with the principles of legality, subsidiarity and proportionality. It also presupposes that the rights granted to the parties or bona fide interested third parties will be preserved. In this context, due consideration should be given to preventing successful dishonest claims by legal or natural persons.
- (10) The proper practical operation of this Framework Decision presupposes close liaison between the competent national authorities involved, in particular in cases of simultaneous execution of a confiscation order in more than one Member State.
- (11) The terms ‘proceeds’ and ‘instrumentalities’ used in this Framework Decision are sufficiently broadly defined to include objects of offences whenever necessary.
- (12) Where there are doubts with regard to the location of property which is the subject of a

³ OJ L 182, 5.7.2001, p. 1.

⁴ OJ L 196, 2.8.2003, p. 45.

⁵ OJ L 68, 15.3.2005, p. 49.

confiscation order, Member States should use all available means in order to identify the correct location of that property, including the use of all available information systems.

- (13) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to confiscate property for which a confiscation order has been issued when objective grounds exist for believing that the confiscation order was issued for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation, or that that person's position may be prejudiced for any of these reasons.
- (14) This Framework Decision does not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.
- (15) This Framework Decision does not address the restitution of property to its rightful owner.
- (16) This Framework Decision does not prejudice the end to which the Member States apply the amounts obtained as a consequence of its application.
- (17) This Framework Decision does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security in accordance with Article 33 of the Treaty on European Union,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Objective

1. The purpose of this Framework Decision is to establish the rules under which a Member State shall recognise and execute in its territory a confiscation order issued by a court competent in criminal matters of another Member State.
2. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.

Article 2

Definitions

For the purpose of this Framework Decision,

- (a) 'issuing State' shall mean the Member State in which a court has issued a confiscation order within the framework of criminal proceedings;
- (b) 'executing State' shall mean the Member State to which a confiscation order has been transmitted for the purpose of execution;

- (c) ‘confiscation order’ shall mean a final penalty or measure imposed by a court following proceedings in relation to a criminal offence or offences, resulting in the definitive deprivation of property;
- (d) ‘property’ shall mean property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which the court in the issuing State has decided:
 - (i) is the proceeds of an offence, or equivalent to either the full value or part of the value of such proceeds,
 - or
 - (ii) constitutes the instrumentalities of such an offence,
 - or
 - (iii) is liable to confiscation resulting from the application in the issuing State of any of the extended powers of confiscation specified in Article 3(1) and (2) of Framework Decision 2005/212/JHA,
 - or
 - (iv) is liable to confiscation under any other provisions relating to extended powers of confiscation under the law of the issuing State;
- (e) ‘proceeds’ shall mean any economic advantage derived from criminal offences. It may consist of any form of property;
- (f) ‘instrumentalities’ shall mean any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;
- (g) ‘cultural objects forming part of the national cultural heritage’ shall be defined in accordance with Article 1(1) of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State⁶;
- (h) where the criminal proceedings leading to a confiscation order involve a predicate offence as well as money laundering, a ‘criminal offence’ mentioned in Article 8(2) (f) shall mean a predicate offence.

Article 3

Determination of the competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its law, are competent according to this Framework Decision when that Member State is:

— the issuing State,

or

⁶ OJ L 74, 27.3.1993, p. 74. Directive as last amended by Directive 2001/38/EC of the European Parliament and of the Council (OJ L 187, 10.7.2001, p. 43).

— the executing State.

2. Notwithstanding Articles 4(1) and (2), each Member State may designate, if it is necessary as a result of the organisation of its internal system, one or more central authorities responsible for the administrative transmission and reception of the confiscation orders and to assist the competent authorities.

3. The General Secretariat of the Council shall make the information received available to all Member States and the Commission.

Article 4

Transmission of confiscation orders

1. A confiscation order, together with the certificate provided for in paragraph 2, the standard form for which is given in the Annex, may, in the case of a confiscation order concerning an amount of money, be transmitted to the competent authority of a Member State in which the competent authority of the issuing State has reasonable grounds to believe that the natural or legal person against whom the confiscation order has been issued has property or income.

In the case of a confiscation order concerning specific items of property, the confiscation order and the certificate may be transmitted to the competent authority of a Member State in which the competent authority of the issuing State has reasonable grounds to believe that property covered by the confiscation order is located.

If there are no reasonable grounds which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted, the confiscation order may be transmitted to the competent authority of the Member State where the natural or legal person against whom the confiscation order has been issued is normally resident or has its registered seat respectively.

2. The confiscation order or a certified copy thereof, together with the certificate, shall be transmitted by the competent authority of the issuing State directly to the authority of the executing State which is competent to execute it, by any means capable of producing a written record, under conditions allowing the executing State to establish authenticity. The original of the confiscation order, or a certified copy thereof, and the original of the certificate shall be transmitted to the executing State if it so requires. All official communications shall be made directly between the said competent authorities.

3. The certificate, shall be signed, and its contents certified as accurate, by the competent authority of the issuing State.

4. If the authority competent to execute the confiscation order is not known to the competent authority of the issuing State, the latter shall make all necessary enquiries, including via the contact points of the European judicial network, in order to obtain information from the executing State.

5. Where the authority of the executing State which receives a confiscation order has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, *ex officio*, transmit the order to the authority competent to execute it, and shall inform the competent

authority of the issuing State accordingly.

Article 5

Transmission of a confiscation order to one or more executing States

1. Subject to paragraphs 2 and 3, a confiscation order may only be transmitted pursuant to Article 4 to one executing State at any one time.
2. A confiscation order concerning specific items of property may be transmitted to more than one executing State at the same time in cases where:
 - the competent authority of the issuing State has reasonable grounds to believe that different items of property covered by the confiscation order are located in different executing States,
 - the confiscation of a specific item of property covered by the confiscation order involves action in more than one executing State,or
 - the competent authority of the issuing State has reasonable grounds to believe that a specific item of property covered by the confiscation order is located in one of two or more specified executing States.
3. A confiscation order concerning an amount of money may be transmitted to more than one executing State at the same time, where the competent authority of the issuing State deems there is a specific need to do so, for example where:
 - the property concerned has not been frozen under Council Framework Decision 2003/577/JHA of,or
 - the value of the property which may be confiscated in the issuing State and any one executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.

Article 6

Offences

1. If the acts giving rise to the confiscation order constitute one or more of the following offences, as defined by the law of the issuing State, and are punishable in the issuing State by a custodial sentence of a maximum of at least three years, the confiscation order shall give rise to execution without verification of the double criminality of the acts:
 - participation in a criminal organisation,
 - terrorism,
 - trafficking in human beings,
 - sexual exploitation of children and child pornography,

- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

2. The Council may decide to add other categories of offences to the list contained in paragraph 1 at any time, acting unanimously after consultation of the European Parliament

under the conditions laid down in Article 39(1) of the TEU. The Council shall consider, in the light of the report submitted by the Commission pursuant to Article 22, whether the list should be extended or amended.

3. For offences other than those covered by paragraph 1, the executing State may make the recognition and execution of a confiscation order subject to the condition that the acts giving rise to the confiscation order constitute an offence which permits confiscation under the law of the executing State, whatever its constituent elements or however it is described under the law of the issuing State.

Article 7

Recognition and execution

1. The competent authorities in the executing State shall without further formality recognise a confiscation order which has been transmitted in accordance with Articles 4 and 5, and shall forthwith take all the necessary measures for its execution, unless the competent authorities decide to invoke one of the grounds for non-recognition or non-execution provided for in Article 8, or one of the grounds for postponement of execution provided for in Article 10.

2. If a request for confiscation concerns a specific item of property, the competent authorities of the issuing and the executing States may, if provided for under the law of those States, agree that confiscation in the executing State may take the form of a requirement to pay a sum of money corresponding to the value of the property.

3. If a confiscation order concerns an amount of money, the competent authorities of the executing State shall, if payment is not obtained, execute the confiscation order in accordance with paragraph 1 on any item of property available for that purpose.

4. If a confiscation order concerns an amount of money, the competent authorities of the executing State shall, if necessary, convert the amount to be confiscated into the currency of the executing State at the rate of exchange obtaining at the time when the confiscation order was issued.

5. Each Member State may state in a declaration deposited with the General Secretariat of the Council that its competent authorities will not recognise and execute confiscation orders under circumstances where confiscation of the property was ordered under the extended powers of confiscation referred to in Article 2(d)(iv). Any such declaration may be withdrawn at any time.

Article 8

Reasons for non-recognition or non-execution

1. The competent authority of the executing State may refuse to recognise and execute the confiscation order if the certificate provided for in Article 4 is not produced, is incomplete, or manifestly does not correspond to the order.

2. The competent judicial authority of the executing State, as defined in the law of that State, may also refuse to recognise and execute the confiscation order if it is established that:

- (a) execution of the confiscation order would be contrary to the principle of *ne bis in idem*;
 - (b) in one of the cases referred to in Article 6(3), the confiscation order relates to acts which do not constitute an offence which permits confiscation under the law of the executing State; however, in relation to taxes, duties, customs duties and exchange activities, execution of a confiscation order may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same types of rules concerning taxes, duties, customs duties and exchange activities as the law of the issuing State;
 - (c) there is immunity or privilege under the law of the executing State which would prevent the execution of a domestic confiscation order on the property concerned;
 - (d) the rights of any interested party, including bona fide third parties, under the law of the executing State make it impossible to execute the confiscation order, including where this is a consequence of the application of legal remedies in accordance with Article 9;
 - (e) according to the certificate provided for in Article 4(2), the person concerned did not appear personally and was not represented by a legal counsellor in the proceedings resulting in the confiscation order, unless the certificate states that the person was informed personally, or via his representative competent according to national law, of the proceedings in accordance with the law of the issuing State, or that the person has indicated that he or she does not contest the confiscation order;
 - (f) the confiscation order is based on criminal proceedings in respect of criminal offences which:
 - under the law of the executing State, are regarded as having been committed wholly or partly within its territory, or in a place equivalent to its territory,
 - or
 - were committed outside the territory of the issuing State, and the law of the executing State does not permit legal proceedings to be taken in respect of such offences where they are committed outside that State's territory;
 - (g) the confiscation order, in the view of that authority, was issued in circumstances where confiscation of the property was ordered under the extended powers of confiscation referred to in Article 2(d)(iv);
 - (h) the execution of a confiscation order is barred by statutory time limitations in the executing State, provided that the acts fall within the jurisdiction of that State under its own criminal law.
3. If it appears to the competent authority of the executing State that:
- the confiscation order was issued in circumstances where confiscation of the property was ordered under the extended powers of confiscation referred to in Article 2(d)(iii),
 - and

- the confiscation order falls outside the scope of the option adopted by the executing State under Article 3(2) of Framework Decision 2005/212/JHA,

it shall execute the confiscation order at least to the extent provided for in similar domestic cases under national law.

4. The competent authorities of the executing State shall give specific consideration to consulting, by any appropriate means, the competent authorities of the issuing State before deciding not to recognise and execute a confiscation order pursuant to paragraph 2, or to limit the execution thereof pursuant to paragraph 3. Consultation is obligatory where the decision is likely to be based on:

- paragraph 1,
- paragraph 2(a), (e), (f) or (g),
- paragraph 2(d) and information is not being provided under Article 9(3),
- or
- paragraph 3.

5. Where it is impossible to execute the confiscation order for the reason that the property to be confiscated has already been confiscated, has disappeared, has been destroyed, cannot be found in the location indicated in the certificate or the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the competent authority of the issuing State shall be notified forthwith.

Article 9

Legal remedies in the executing State against recognition and execution

1. Each Member State shall put in place the necessary arrangements to ensure that any interested party, including bona fide third parties, has legal remedies against the recognition and execution of a confiscation order pursuant to Article 7, in order to preserve his or her rights. The action shall be brought before a court in the executing State in accordance with the law of that State. The action may have suspensive effect under the law of the executing State.

2. The substantial reasons for issuing the confiscation order cannot be challenged before a court in the executing State.

3. If action is brought before a court in the executing State, the competent authority of the issuing State shall be informed thereof.

Article 10

Postponement of execution

1. The competent authority of the executing State may postpone the execution of a confiscation order transmitted in accordance with Articles 4 and 5:

- (a) if, in the case of a confiscation order concerning an amount of money, it considers that there is a risk that the total value derived from its execution may exceed the

amount specified in the confiscation order because of simultaneous execution of the confiscation order in more than one Member State;

- (b) in the cases of legal remedies referred to in Article 9;
- (c) where the execution of the confiscation order might damage an ongoing criminal investigation or proceedings, until such time as it deems reasonable;
- (d) where it is considered necessary to have the confiscation order or parts thereof translated at the expense of the executing State, for the time necessary to obtain its translation,
or
- (e) where the property is already the subject of confiscation proceedings in the executing State.

2. The competent authority of the executing State shall, for the duration of postponement, take all the measures it would take in a similar domestic case to prevent the property from no longer being available for the purpose of execution of the confiscation order.

3. In the case of postponement pursuant to paragraph 1(a), the competent authority of the executing State shall inform the competent authority of the issuing State thereof immediately by any means capable of producing a written record, and the competent authority of the issuing State shall comply with the obligations referred to in Article 14(3).

4. In the cases referred to in paragraph 1(b), (c), (d) and (e), a report on the postponement, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be made forthwith by the competent authority of the executing State to the competent authority of the issuing State by any means capable of producing a written record.

As soon as the ground for postponement has ceased to exist, the competent authority of the executing State shall forthwith take the necessary measures for the execution of the confiscation order and inform the competent authority of the issuing State thereof by any means capable of producing a written record.

Article 11

Multiple confiscation orders

If the competent authorities of the executing State are processing:

- two or more confiscation orders concerning an amount of money, which have been issued against the same natural or legal person, and the person concerned does not have sufficient means in the executing State to enable all the orders to be executed,

or

- two or more confiscation orders concerning the same specific item of property,

the decision on which of the confiscation orders is or are to be executed shall be taken by the competent authority of the executing State according to the law of the executing State, with due consideration of all the circumstances, which may include the involvement of frozen assets, the relative seriousness and the place of the offence, the dates of the respective orders and the dates

of transmission of the respective orders.

Article 12

Law governing execution

1. Without prejudice to paragraph 3, the execution of the confiscation order shall be governed by the law of the executing State and its authorities alone shall be competent to decide on the procedures for execution and to determine all the measures relating thereto.
2. In the case where the person concerned is able to furnish proof of confiscation, totally or in part, in any State, the competent authority of the executing State shall consult the competent authority of the issuing State by any appropriate means. Any part of the amount, in the case of confiscation of proceeds, that is recovered pursuant to the confiscation order in any State other than the executing State shall be deducted in full from the amount to be confiscated in the executing State.
3. A confiscation order issued against a legal person shall be executed even if the executing State does not recognise the principle of criminal liability of legal persons.
4. The executing State may not impose measures as an alternative to the confiscation order, including custodial sanctions or any other measure limiting a person's freedom, as a result of a transmission pursuant to Articles 4 and 5, unless the issuing State has given its consent.

Article 13

Amnesty, pardon, review of confiscation order

1. Amnesty and pardon may be granted by the issuing State and also by the executing State.
2. Only the issuing State may determine any application for review of the confiscation order.

Article 14

Consequences of transmission of confiscation orders

1. The transmission of a confiscation order to one or more executing States in accordance with Articles 4 and 5 does not restrict the right of the issuing State to execute the confiscation order itself.
2. In the case of transmission of a confiscation order concerning an amount of money to one or more executing States, the total value derived from its execution may not exceed the maximum amount specified in the confiscation order.
3. The competent authority of the issuing State shall immediately inform the competent authority of any executing State concerned by any means capable of producing a written record:
 - (a) if it considers that there is a risk that execution beyond the maximum amount may

occur, for example on the basis of information notified to it by an executing State pursuant to Article 10(3). In the event of the application of Article 10(1)(a), the competent authority of the issuing State shall as soon as possible inform the competent authority of the executing State whether the risk referred to has ceased to exist;

- (b) if all or a part of the confiscation order has been executed in the issuing State or in another executing State. The amount for which the confiscation order has not yet been executed shall be specified;
- (c) if, after transmission of a confiscation order in accordance with Articles 4 and 5, an authority of the issuing State receives any sum of money which the person concerned has paid voluntarily in respect of the confiscation order. Article 12(2) shall apply.

Article 15

Termination of execution

The competent authority of the issuing State shall forthwith inform the competent authority of the executing State by any means capable of reducing a written record of any decision or measure as a result of which the order ceases to be enforceable or shall be withdrawn from the executing State for any other reason. The executing State shall terminate execution of the order as soon as it is informed by the competent authority of the issuing State of that decision or measure.

Article 16

Disposal of confiscated property

1. Money which has been obtained from the execution of the confiscation order shall be disposed of by the executing State as follows:
 - (a) if the amount obtained from the execution of the confiscation order is below EUR 10 000, or the equivalent to that amount, the amount shall accrue to the executing State;
 - (b) in all other cases, 50 % of the amount which has been obtained from the execution of the confiscation order shall be transferred by the executing State to the issuing State.
2. Property other than money, which has been obtained from the execution of the confiscation order, shall be disposed of in one of the following ways, to be decided by the executing State:
 - (a) the property may be sold. In that case, the proceeds of the sale shall be disposed of in accordance with paragraph 1;
 - (b) the property may be transferred to the issuing State. If the confiscation order covers an amount of money, the property may only be transferred to the issuing State when that State has given its consent;

(c) when it is not possible to apply (a) or (b), the property may be disposed of in another way in accordance with the law of the executing State.

3. Notwithstanding paragraph 2, the executing State shall not be required to sell or return specific items covered by the confiscation order which constitute cultural objects forming part of the national heritage of that State.

4. Paragraphs 1, 2 and 3 apply unless otherwise agreed between the issuing State and the executing State.

Article 17

Information on the result of the execution

The competent authority of the executing State shall without delay inform the competent authority of the issuing State by any means capable of producing a written record:

- (a) of the transmission of the confiscation order to the competent authority, according to Article 4(5);
- (b) of any decision not to recognise the confiscation order, together with the reasons for the decision;
- (c) of the total or partial non-execution of the order for the reasons referred to in Article 11, Article 12(1) and (2) or Article 13(1);
- (d) as soon as the execution of the order has been completed;
- (e) of the application of alternative measures, according to Article 12(4).

Article 18

Reimbursement

1. Without prejudice to Article 9(2), where the executing State under its law is responsible for injury caused to one of the interested parties mentioned in Article 9 by the execution of a confiscation order transmitted to it pursuant to Articles 4 and 5, the issuing State shall reimburse to the executing State any sums paid in damages by virtue of that responsibility to the said party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State.

2. Paragraph 1 is without prejudice to the law of the Member States on claims by natural or legal persons for compensation of damage.

Article 19

Languages

1. The certificate shall be translated into the official language or one of the official languages of the executing State.

2. Any Member State may, when this Framework Decision is adopted or at a later date,

state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

Article 20

Costs

1. Without prejudice to Article 16, Member States may not claim from each other the refund of costs resulting from application of this Framework Decision.
2. Where the executing State has had costs which it considers large or exceptional, it may propose to the issuing State that the costs be shared. The issuing State shall take into account any such proposal on the basis of detailed specifications given by the executing State.

Article 21

Relationship with other agreements and arrangements

This Framework Decision shall not affect the application of bilateral or multilateral agreements or arrangements between Member States in so far as such agreements or arrangements help to further simplify or facilitate the procedures for the execution of confiscation orders.

Article 22

Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision by 24 November 2008.
2. Member States shall communicate to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations resulting from this Framework Decision. On the basis of a report established on the basis of this information by the Commission, the Council shall, by 24 November 2009, assess the extent to which Member States have taken the necessary measures to comply with this Framework Decision.
3. The General Secretariat of the Council shall notify the Member States and the Commission of the declarations made pursuant to Articles 7(5) and 19(2).
4. A Member State which has experienced repeated difficulties or lack of activity by another Member State in the mutual recognition and execution of confiscation orders, which have not been resolved through bilateral consultations, may inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.
5. The Member States, acting as executing States, shall inform the Council and the Commission, at the beginning of the calendar year, of the number of cases in which Article 17(b) has been applied and a summary of reasons for this.

By 24 November 2013, the Commission shall establish a report on the basis of the information received, accompanied by any initiatives it may deem appropriate.

Article 23

Entry into force

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 6 October 2006.

For the Council
The President
K. RAJAMÄKI

ANNEX

CERTIFICATE

referred to in Article 4 of Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders

(a) Issuing and executing States: Issuing State: Executing State:

(b) Court which issued the confiscation order: Official name: Address: File reference: Tel. (country code) (area/city code): Fax (country code) (area/city code): E mail (when available): Languages in which it is possible to communicate with the Court: Contact details for person(s) to contact in order to obtain additional information for the purpose of the execution of the confiscation order, or, where applicable, for the purpose of coordination of the execution of a confirmation order transmitted to two or more executing States, or for the purpose of the transfer to the issuing State of monies or properties obtained from the execution (name, title/grade, tel., fax, and, when available, e mail):
--

(c) Authority competent for the execution of the confiscation order in the issuing State (if the authority is different from the Court under point (b)):

Official name:

.....

Address:

.....

Tel. (country code) (area/city code):

Fax. (country code) (area/city code):

E mail (when available):

.....

.....

Languages in which it is possible to communicate with the authority competent for the execution:

.....

.....

Contact details for person(s) to contact in order to obtain additional information for the purpose of the execution of the confiscation order or, where applicable, for the purpose of coordination of the execution of a confiscation order transmitted to two or more executing States, or for the purpose of the transfer to the issuing State of monies or properties obtained from the execution, (name, title/grade, tel., fax, and, when available, e mail):

.....

.....

(d) Where a central authority has been made responsible for the administrative transmission and reception of confiscation orders in the issuing State:

Name of the central authority:

.....

.....

Contact person, if applicable (title/grade and name):

.....

Address:

.....

File reference:

Tel. (country code) (area/city code):
Fax. (country code) (area/city code):
E mail (when available):

(e) Authority or authorities which may be contacted (if point (c) and/or (d) has(have) been completed):
<input type="checkbox"/> Authority mentioned under point (b) Can be contacted for questions concerning:
<input type="checkbox"/> Authority mentioned under point (c) Can be contacted for questions concerning:
<input type="checkbox"/> Authority mentioned under point (d) Can be contacted for questions concerning:

(f) Where the confiscation order is a follow up to a freezing order transmitted to the executing State pursuant to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence ⁽¹⁾ , provide relevant information to identify the freezing order (the dates of issue and transmission of the freezing order, the authority to which it was transmitted, reference number, if available):
.....
.....

(g) Where the confiscation order has been transmitted to more than one executing State, provide the following information:
1. The confiscation order has been transmitted to the following other executing State(s) (country and authority):
.....
.....
2. The confiscation order has been transmitted to more than one executing State for the following reason (tick the relevant box):
2.1. Where the confiscation order concerns one or more specific items of property:
<input type="checkbox"/> Different specific items of property covered by the confiscation order are believed to be located in different executing States.
<input type="checkbox"/> The confiscation of a specific item of property involves action in more than one executing State.
<input type="checkbox"/> A specific item of property covered by the confiscation order is believed to be located in one of two or more specified executing States.
2.2. Where the confiscation order concerns an amount of money:
<input type="checkbox"/> The property concerned has not been frozen under Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

(1) OJ L 196, 2.8.2003, p. 45.

- The value of the property which may be confiscated in the issuing State and any one executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.
- Other reason(s) (to be specified):
-
-

(h) Information regarding the natural or legal person against whom the confiscation order has been issued:

1. **In the case of a natural person:**

Name:

Forename(s):

Maiden name, (where applicable):

Aliases, (where applicable):

Sex:

Nationality:

Identity number or social security number (when possible):

Date of birth:

Place of birth:

Last known address:

.....

Language(s) which the person understands (if known):

.....

1.1. If the confiscation order concerns an amount of money:

The confiscation order is transmitted to the executing State because (tick the relevant box):

- (a) the issuing State has reasonable grounds to believe that the person against whom the confiscation order has been issued has property or income in the executing State. Add the following information:

Grounds for believing that the person has property/income:

.....

Description of the property of the person/source of income:

.....

Location of the property of the person/source of income (if not known, the last known location):

.....

- (b) there are no reasonable grounds, as referred to under (a), which would allow the issuing State to determine the Member State to which the confiscation order may be sent, but the person against whom the confiscation order has been issued is normally resident in the

executing State. Add the following information:

Normal residence in the executing State:
.....
.....

1.2. If the confiscation order concerns specific item(s) of property:

The confiscation order is transmitted to the executing State because (tick the relevant box):

- (a) the specific item(s) of property is (are) located in the executing State. (See point (i))
- (b) the issuing State has reasonable grounds to believe that all or part of the specific item(s) of property covered by the confiscation order is (are) located in the executing State. Add the following information:

Grounds for believing that the specific item(s) of property is located in the executing State:
.....

- (c) there are no reasonable grounds, as referred to in (b), which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted, but the person against whom the confiscation order has been issued is normally resident in the executing State. Add the following information:

Normal residence in the executing State:
.....
.....

2. **In the case of a legal person:**

Name:

Form of legal person:

Registration number (if available)⁽¹⁾:

Registration seat (if available)⁽¹⁾:

Address of the legal person:

2.1. If the confiscation order concerns an amount of money:

The confiscation order is transmitted to the executing State because (tick the relevant box):

- (a) the issuing State has reasonable grounds to believe that the legal person against whom the confiscation order has been issued has property or income in the executing State. Add the following information:

Grounds for believing that the person has property/income:
.....

Description of the property of the person/source of income:

(1) Where a confiscation order is transmitted to the executing State because the legal person against whom the confiscation order has been issued has its registered seat in that State, Registration number and Registered seat must be completed.

.....
 Location of the property of the person/source of income (if not known, the last known location):

.....

(b) there are no reasonable grounds, as referred to in (a), which would allow the issuing State to determine the Member State to which the confiscation order may be sent but the legal person against whom the confiscation order has been issued has its registered seat in the executing State. Add the following information:

Registered Seat in the executing State:

.....

.....

2.2. If the confiscation order concerns specific item(s) of property:
 The confiscation order is transmitted to the executing State because (tick the relevant box):

(a) the specific item(s) of property is (are) located in the executing State. (See point (i)).

(b) the issuing State has reasonable grounds to believe that all or part of the specific item(s) of property covered by the confiscation order is (are) located in the executing State. Add the following information:

Grounds for believing that the specific item(s) of property is (are) located in the executing State:

.....

.....

(c) there are no reasonable grounds, as referred to in (b), which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted but the legal person against whom the confiscation order has been issued has its registered seat in the executing State. Add the following information:

Registered seat in the executing State:

.....

.....

(i) The confiscation order

The confiscation order was issued on (date):

.....

The confiscation order became final on (date):.....

Reference number of the confiscation order (if available):

1. Information on the nature of the confiscation order

1.1. Indicate (by ticking in the relevant box(es)) if the confiscation order concerns:

an amount of money

The amount for execution in the executing State with indication of currency (in figures and words):

The total amount covered by the confiscation order with indication of currency (in figures and words):

specific item(s) of property

Description of the specific item(s) of property:

Location of the specific item(s) of property (if not known, the last known location):

Where the confiscation of the specific item(s) of property involves action in more than one executing State, description of the action to be taken:

1.2 The Court has decided that the property (tick the relevant box(es)):

- (i) is proceeds of an offence, or is equivalent to either the full value or part of the value of such proceeds,
- (ii) constitutes the instrumentalities of such an offence,
- (iii) is liable to confiscation resulting from the application in the issuing State of extended powers of confiscation as specified in (a), (b) and (c). The basis for the decision is that the Court, based on specific facts, is fully convinced that the property in question has been derived from:
 - (a) criminal activities of the convicted person during a period prior to conviction for the offence concerned which is deemed to be reasonable by the Court in the circumstances of the particular case,
 - (b) similar criminal activities of the convicted person during a period prior to conviction for the offence concerned which is deemed to be reasonable by the Court in the circumstances of the particular case, or
 - (c) the criminal activity of the convicted person, and it has been established that the value of the property is disproportionate to the lawful income of that person.
- (iv) is liable to confiscation under any other provision relating to extended powers of confiscation under the law of the issuing State.

If two or more categories of confiscation are involved, provide details on which property is confiscated in relation to which category:

2. Information on the offence(s) resulting in the confiscation order

2.1. A summary of facts and a description of the circumstances in which the

offence(s) resulting in the confiscation order has(have) been committed, including time and place:

.....
.....
.....
.....
.....

2.2. Nature and legal classification of the offence(s) resulting in the confiscation order and the applicable statutory provision/code on basis of which the decision was made:

.....
.....
.....
.....
.....
.....

2.3. If applicable, indicate one or more of the following offences to which the offence(s) identified under point 2.2 relate(s), if the offence(s) are punishable in the issuing State by a custodial sentence of a maximum of at least 3 years (tick the relevant box(es)):

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting currency, including of the euro;
- computer related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage taking;
- racism and xenophobia;

- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.

2.4. To the extent that the offence(s) resulting in the confiscation order identified under point 2.2 is (are) not covered by point 2.3, give a full description of the offence(s) concerned (this should cover the actual criminal activity involved as opposed for instance to legal classifications):

.....

.....

.....

.....

.....

.....

(j) Proceedings resulting in the confiscation order

Indicate the following concerning the proceedings resulting in the confiscation order (tick the relevant box(es)):

- (a) The person concerned appeared personally in the proceedings.
- (b) The person concerned did not appear personally in the proceedings, but was represented by a legal counsellor.
- (c) The person concerned did not appear in the proceedings and was not represented by a legal counsellor. It is confirmed that:
 - the person was informed personally, or via a representative competent according to national law, of the proceedings in accordance with the law of the issuing State, or
 - the person has indicated that he or she does not contest the confiscation order.

(k) Conversion and transfer of property

1. If the confiscation order concerns a specific item of property, state whether the issuing State allows for the confiscation in the executing State to take the form of a requirement to pay a sum of money corresponding to the value of the property.

yes

no

2. If the confiscation order concerns an amount of money, state whether property, other than money obtained from the execution of the confiscation order, may be transferred to the issuing State:

yes

no

(l) Alternative measures, including custodial sanctions

1. State whether the issuing State allows for the application by the executing State of alternative measures where it is not possible to execute the confiscation order, either totally or in part:

yes

no

2. If yes, state which sanctions may be applied (nature and maximum level of the sanctions):

Custody (maximum period):

Community service (or equivalent) (maximum period):

Other sanctions (description):

.....

(m) Other circumstances relevant to the case (optional information):

.....

.....

(n) The confiscation order is attached to the certificate.

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate:

.....

Name:

Post held (title/grade):

Date:

.....

Official stamp (if available):

SCHEDULE 4

TEXT OF COUNCIL DECISION 2008/617/JHA OF 23 JUNE 2008 ON THE IMPROVEMENT OF COOPERATION BETWEEN SPECIAL INTERVENTION UNITS OF THE MEMBER STATES OF THE EUROPEAN UNION IN CRISIS SITUATIONS

“Schedule 7A

TEXT OF THE 2008 COUNCIL DECISION (SPECIAL INTERVENTION UNITS)

COUNCIL DECISION 2008/617/JHA

of 23 June 2008

on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 30, 32 and 34(2)(c) thereof,

Having regard to the initiative of the Republic of Austria¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) Article 29 of the Treaty states that the Union's objective is to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters.
- (2) In their Declaration on Solidarity against Terrorism of 25 March 2004, the Heads of State and Government of the Member States of the European Union declared their firm intention that the Member States mobilise all the instruments at their disposal to assist a Member State or an acceding State in its territory at the request of its political authorities in the event of a terrorist attack.
- (3) Following the attacks of 11 September 2001, the special intervention units of all law enforcement authorities of the Member States have already initiated cooperation activities under the aegis of the Police Chiefs Task Force. Since 2001, their *network, called 'Atlas'*, has conducted various seminars, studies, exchanges of materials, and joint exercises.
- (4) No single Member State has all the means, resources and expertise at its disposal to deal effectively with all possible kinds of specific or large-scale crisis situations requiring special intervention. It is therefore of crucial importance that each Member State be able to request the assistance of another Member State.
- (5) Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime³ (Prüm Decision), and in particular Article 18 thereof, regulates forms of police assistance between Member

¹ OJ C 321, 29.12.2006, p. 45.

² Opinion of 31 January 2008 (not yet published in the Official Journal).

³ See page 1 of this Official Journal.

States in connection with mass gatherings and similar major events, disasters and serious accidents. This Decision does not cover mass gatherings, natural disasters or serious accidents within the meaning of Article 18 of the Prüm Decision but complements those provisions of the Prüm Decision envisaging forms of police assistance between Member States through special intervention units in other situations, namely in man-made crisis situations presenting a serious direct physical threat to persons, property, infrastructure or institutions, in particular hostage taking, hijacking and similar events.

- (6) The availability of this legal framework and of a compilation indicating the competent authorities will allow Member States to react speedily and gain time should such a crisis situation arise. Moreover, with a view to enhancing Member States' ability to prevent and respond to such crisis situations, and in particular terrorist incidents, it is essential for the special intervention units to meet regularly and organise joint trainings, so as to benefit from mutual experiences,

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

This Decision lays down general rules and conditions to allow for special intervention units of one Member State to provide assistance and/or operate on the territory of another Member State (hereinafter referred to as the requesting Member State) in cases where they have been invited by the requesting Member State and have agreed to do so in order to deal with a crisis situation. The practical details and implementing arrangements complementing this Decision shall be agreed directly between the requesting Member State and the requested Member State.

Article 2

Definitions

For the purpose of this Decision:

- (a) 'special intervention unit' shall mean any law enforcement unit of a Member State which is specialised in the control of a crisis situation;
- (b) 'crisis situation' shall mean any situation in which the competent authorities of a Member State have reasonable grounds to believe that there is a criminal offence presenting a serious direct physical threat to persons, property, infrastructure or institutions in that Member State, in particular those situations referred to in Article 1(1) of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism⁴;
- (c) 'competent authority' shall mean the national authority which may make requests and give authorisations regarding the deployment of the special intervention units.

⁴ OJ L 164, 22.6.2002, p. 3.

Article 3

Assistance to another Member State

1. Through a request via the competent authorities, setting out the nature of the assistance requested as well as the operational necessity therefor, a Member State may ask to be assisted by a special intervention unit of another Member State with a view to dealing with a crisis situation. The competent authority of the requested Member State may accept or refuse such a request or may propose a different kind of assistance.
2. Subject to agreement between the Member States concerned, assistance may consist of providing the requesting Member State with equipment and/or expertise and/or of carrying out actions on the territory of that Member State, using weapons if so required.
3. In the case of actions on the territory of the requesting Member State, officers of the assisting special intervention unit shall be authorised to operate in a supporting capacity on the territory of the requesting Member State and take all necessary measures to provide the requested assistance in so far as they:
 - (a) operate under the responsibility, authority and direction of the requesting Member State and in accordance with the law of the requesting Member State; and
 - (b) operate within the limits of their powers under their national law.

Article 4

Civil and criminal liability

When officers of a Member State operate within another Member State and/or equipment is used under this Decision, the provisions on civil and criminal liability, set out in Articles 21(4) and (5) and 22 of the Prüm Decision shall apply.

Article 5

Meetings and joint training

The participating Member States shall ensure that their special intervention units hold meetings and organise joint training and exercises, whenever necessary, with a view to exchanging experience, expertise and general, practical and technical information on dealing with a crisis situation. Such meetings, training and exercises may be funded under possibilities offered by the financial programmes of the Union to obtain grants from the budget of the European Union. In this context, the Member State holding the Presidency of the Union shall endeavour to ensure that such meetings, training and exercises take place.

Article 6

Costs

The requesting Member State shall bear the operational costs incurred by the requested Member State's special intervention units in connection with the application of Article 3,

including transport and accommodation costs, unless otherwise agreed between the Member States concerned.

Article 7

Relation to other instruments

1. Without prejudice to their commitments under other acts adopted pursuant to Title VI of the Treaty, in particular the Prüm Decision:
 - (a) Member States may continue to apply bilateral or multilateral agreements or arrangements on cross-border cooperation in force on 23 June 2008 in so far as such agreements or arrangements are not incompatible with the objectives of this Decision;
 - (b) Member States may conclude or bring into force bilateral or multilateral agreements or arrangements on cross-border cooperation after 23 December 2008 in so far as such agreements or arrangements provide for the objectives of this Decision to be extended or enlarged.
2. The agreements and arrangements referred to in paragraph 1 may not affect relations with Member States which are not parties thereto.
3. Member States shall inform the Council and the Commission of the agreements or arrangements referred to in paragraph 1.

Article 8

Final provisions

The General Secretariat of the Council shall compile and keep up to date the list of the competent authorities of the Member States which may make requests and give authorisations for providing assistance as referred to in Article 3.

The General Secretariat of the Council shall inform the authorities mentioned in paragraph 1 of any change to the list established pursuant to this Article.

Article 9

Entry into force

This Decision shall enter into force on 23 December 2008.

Done at Luxembourg, 23 June 2008.

For the Council
The President
I. JARC
”.

SCHEDULE 5

TEXT OF COUNCIL DECISION 2009/426/JHA OF 16 DECEMBER 2008 ON THE STRENGTHENING OF EUROJUST AND AMENDING DECISION 2002/187/JHA SETTING UP EUROJUST WITH A VIEW TO REINFORCING THE FIGHT AGAINST SERIOUS CRIME

“Schedule 7B
TEXT OF 2009 COUNCIL DECISION

COUNCIL DECISION 2009/426/JHA**of 16 December 2008**

on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative of the Kingdom of Belgium, the Czech Republic, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Kingdom of Sweden,

Having regard to the Opinion of the European Parliament¹

Whereas:

- (1) Eurojust was set up by Council Decision 2002/187/JHA² as a body of the European Union with legal personality to stimulate and to improve coordination and cooperation between competent judicial authorities of the Member States.
- (2) On the basis of an assessment of the experience gained by Eurojust, a further enhancement of its operational effectiveness is needed by taking account of that experience.
- (3) The time has come to ensure that Eurojust becomes more operational and that the status of national members is approximated.
- (4) In order to ensure continuous and effective contribution from the Member States to the achievement by Eurojust of its objectives, the national member should be required to have his regular place of work at the seat of Eurojust.
- (5) It is necessary to define a common basis of powers which every national member should have in his capacity as a competent national authority acting in accordance with national law. Some of these powers should be granted to the national member for urgent cases where it is not possible for him to identify or to contact the competent national authority in a timely manner. It is understood that these powers will not have to be exercised in so far as it is possible to identify and to contact the competent authority.

¹ Opinion delivered on 2 September 2008 (not yet published in the Official Journal).

² OJ L 63, 6.3.2002, p. 1.

- (6) This Decision does not affect the manner in which the Member States organise their internal judicial system or administrative procedures for the designation of the national member and the setting up of the internal working of the national desks at Eurojust.
- (7) The setting up of an On-Call Coordination (OCC) within Eurojust is necessary to make Eurojust available around the clock and to enable it to intervene in urgent cases. It should be the responsibility of each Member State to ensure that their representatives in the OCC are able to act on a 24-hour/7-day basis.
- (8) Member States should ensure that competent national authorities respond without undue delay to requests made under this Decision, even if competent national authorities refuse to comply with requests made by the national member.
- (9) The role of the College should be enhanced in cases of conflict of jurisdiction and in cases of recurrent refusals or difficulties concerning the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition.
- (10) Eurojust national coordination systems should be set up in the Member States to coordinate the work carried out by the national correspondents for Eurojust, the national correspondent for Eurojust for terrorism matters, the national correspondent for the European Judicial Network and up to three other contact points of the European Judicial Network, as well as representatives in the Networks for Joint Investigation Teams, War Crimes, Asset Recovery and Corruption.
- (11) The Eurojust national coordination system should ensure that the Case Management System receives information related to the Member State concerned in an efficient and reliable manner. However, the Eurojust national coordination system should not have to be responsible for actually transmitting information to Eurojust. Member States should decide on the best channel to be used for the transmission of information to Eurojust.
- (12) In order to enable the Eurojust national coordination system to fulfil its tasks, a connection to the Case Management System should be ensured. The connection to the Case Management System should be made taking due account of national information technology systems. Access to the Case Management System at national level should be based on the central role played by the national member who is responsible for the opening and management of temporary work files.
- (13) Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters³ is applicable to the processing by the Member States of the personal data transferred between the Member States and Eurojust. The relevant set of data protection provisions of Decision 2002/187/JHA will not be affected by Framework Decision 2008/977/JHA and contains specific provisions on the protection of personal data regulating these matters in more detail because of the particular nature, functions and competences of Eurojust.
- (14) Eurojust should be authorised to process certain personal data on persons who, under the national legislation of the Member States concerned, are suspected of having committed or having taken part in a criminal offence in respect of which Eurojust is competent, or who

³ OJ L 350, 30.12.2008, p. 60.

have been convicted of such an offence. The list of such personal data should include telephone numbers, e-mail addresses, vehicle registration data, DNA profiles established from the non-coding part of DNA, photographs and fingerprints. The list should also include traffic data and location data and the related data necessary to identify the subscriber or user of a publicly available electronic communications service; this should not include data revealing the content of the communication. It is not intended that Eurojust carry out an automated comparison of DNA profiles or fingerprints.

- (15) Eurojust should be given the opportunity to extend the deadlines for storage of personal data in order to achieve its objectives. Such decisions should be taken following careful consideration of particular needs. Any extension of deadlines for processing personal data, where prosecution is statute barred in all Member States concerned, should be decided only where there is a specific need to provide assistance under this Decision.
- (16) The Rules on the Joint Supervisory Body should facilitate its functioning.
- (17) With a view to increasing the operational effectiveness of Eurojust, transmission of information to Eurojust should be improved by providing clear and limited obligations for national authorities.
- (18) Eurojust should implement priorities set by the Council, in particular those set on the basis of the Organised Crime Threat Assessment (OCTA), as referred to in the Hague Programme⁴.
- (19) Eurojust is to maintain privileged relations with the European Judicial Network based on consultation and complementarity. This Decision should help clarify the respective roles of Eurojust and the European Judicial Network and their mutual relations, while maintaining the specificity of the European Judicial Network.
- (20) Nothing in this Decision should be construed to affect the autonomy of the secretariats of the networks mentioned in this Decision when they discharge their function as Eurojust staff in accordance with the Staff Regulations of Officials of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council⁵.
- (21) It is also necessary to strengthen Eurojust's capacity to work with external partners, such as third States, the European Police Office (Europol), the European Anti-Fraud Office (OLAF), the Council's Joint Situation Centre and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).
- (22) Provision should be made for Eurojust to post liaison magistrates to third States in order to achieve objectives similar to those assigned to liaison magistrates seconded by the Member States on the basis of Council Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union⁶.
- (23) This Decision allows the principle of public access to official documents to be taken into account,

HAS DECIDED AS FOLLOWS:

4 OJ C 53, 3.3.2005, p. 1.

5 OJ L 56, 4.3.1968, p. 1.

6 OJ L 105, 27.4.1996, p.1.

Article 1

Amendments to Decision 2002/187/JHA

Decision 2002/187/JHA is hereby amended as follows:

1. Article 2 shall be replaced by the following:

'Article 2

Composition of Eurojust

1. Eurojust shall have one national member seconded by each Member State in accordance with its legal system, who is a prosecutor, judge or police officer of equivalent competence.
 2. Member States shall ensure continuous and effective contribution to the achievement by Eurojust of its objectives under Article 3. To fulfil those objectives:
 - (a) the national member shall be required to have his regular place of work at the seat of Eurojust;
 - (b) each national member shall be assisted by one deputy and by another person as an assistant. The deputy and the assistant may have their regular place of work at Eurojust. More deputies or assistants may assist the national member and may, if necessary and with the agreement of the College, have their regular place of work at Eurojust.
 3. The national member shall have a position which grants him the powers referred to in this Decision in order to be able to fulfil his tasks.
 4. National members, deputies and assistants shall be subject to the national law of their Member State as regards their status.
 5. The deputy shall fulfil the criteria provided for in paragraph 1 and be able to act on behalf of or to substitute the national member. An assistant may also act on behalf of or substitute the national member if he fulfils the criteria provided for in paragraph 1.
 6. Eurojust shall be linked to a Eurojust national coordination system in accordance with Article 12.
 7. Eurojust shall have the possibility of posting liaison magistrates in third States in accordance with this Decision.
 8. Eurojust shall, in accordance with this Decision, have a Secretariat headed by an Administrative Director.';
2. Article 3 shall be amended as follows:
 - (a) in paragraph 1(b), the words 'international mutual legal assistance and the implementation of extradition requests' shall be replaced by 'requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition;';

(b) in paragraph 2, the words ‘Article 27(3)’ shall be replaced by ‘Article 26a(2)’;

3. Article 4(1) shall be amended as follows:

(a) point (b) shall be replaced by the following:

‘(a) the types of crime and the offences in respect of which Europol is at all times competent to act;⁷’;

(b) point (b) shall be deleted;

(c) in point (c), the words ‘in points (a) and (b)’ shall be replaced by ‘in point (a)’;

4. the following Article shall be inserted:

‘Article 5a

On-Call Coordination

1. In order to fulfil its tasks in urgent cases, Eurojust shall put in place an On-Call Coordination (OCC) able to receive and process at all times requests referred to it. The OCC shall be contactable, through a single OCC contact point at Eurojust, on a 24-hour/7-day basis.

2. The OCC shall rely on one representative (OCC representative) per Member State who may be either the national member, his deputy, or an assistant entitled to replace the national member. The OCC representative shall be able to act on a 24-hour/7-day basis.

3. When in urgent cases a request for, or a decision on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition, needs to be executed in one or more Member States, the requesting or issuing competent authority may forward it to the OCC. The OCC contact point shall immediately forward it to the OCC representative of the Member State from which the request originates and, if explicitly requested by the transmitting or issuing authority, to the OCC representatives of the Member States on the territory of which the request should be executed. These OCC representatives shall act without delay, in relation to the execution of the request in their Member State, through the exercise of tasks or powers available to them and referred to in Article 6 and Articles 9a to 9f.’;

5. Article 6 shall be amended as follows:

(a) the existing paragraph shall become paragraph 1;

(b) paragraph 1(a) shall be replaced by the following:

‘(a) may ask the competent authorities of the Member States concerned, giving its reasons, to:

(i) undertake an investigation or prosecution of specific acts;

⁷ At the time of adoption of this Decision, the competence of Europol is set out in Article 2(1) of the Convention of 26 July 1995 on the establishment of a European Police Office (Europol Convention) (OJ C 316, 27.11.1995, p. 2), as amended by the 2003 Protocol (OJ C 2, 6.1.2004, p. 1), and in the Annex thereto. However, once the Council Decision establishing the European Police Office (Europol) enters into force, the competence of Eurojust will be as set out in Article 4(1) of that Decision and in the Annex thereto.

- (ii) accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
 - (iii) coordinate between the competent authorities of the Member States concerned;
 - (iv) set up a joint investigation team in keeping with the relevant cooperation instruments;
 - (v) provide it with any information that is necessary for it to carry out its tasks;
 - (vi) take special investigative measures;
 - (vii) take any other measure justified for the investigation or prosecution;’;
- (c) paragraph 1(g) shall be deleted;
 - (d) the following paragraph shall be added:

‘2. The Member States shall ensure that competent national authorities respond without undue delay to requests made under this Article.’;

6. Article 7 shall be amended as follows:

- (a) the existing paragraph shall become paragraph 1;
- (b) the following paragraphs shall be added:

‘2. Where two or more national members can not agree on how to resolve a case of conflict of jurisdiction as regards the undertaking of investigations or prosecution pursuant to Article 6 and in particular Article 6(1)(c), the College shall be asked to issue a written non-binding opinion on the case, provided the matter could not be resolved through mutual agreement between the competent national authorities concerned. The opinion of the College shall be promptly forwarded to the Member States concerned. This paragraph is without prejudice to paragraph 1(a)(ii).

3. Notwithstanding the provisions contained in any instruments adopted by the European Union regarding judicial cooperation, a competent authority may report to Eurojust recurrent refusals or difficulties concerning the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition, and request the College to issue a written non-binding opinion on the matter, provided it could not be resolved through mutual agreement between the competent national authorities or through the involvement of the national members concerned. The opinion of the College shall be promptly forwarded to the Member States concerned.’;

7. Articles 8 and 9 shall be replaced by the following:

Article 8

Follow up to requests and opinions of Eurojust

If the competent authorities of the Member States concerned decide not to comply with a request referred to in Article 6(1)(a) or Article 7(1)(a) or decide not to follow a written opinion referred to in Article 7(2) and (3), they shall inform Eurojust without undue delay of their decision and of the reasons for it. Where it is not possible to give the reasons for refusing to comply with a request because to do so would harm essential national security interests or would jeopardise the safety of individuals, the competent authorities of the Member States may cite operational reasons.

Article 9

National members

1. The length of a national member's term of office shall be at least four years. The Member State of origin may renew the term of office. The national member shall not be removed before the end of a term without informing the Council before the removal and indicating to it the reason therefor. Where a national member is President or Vice-President of Eurojust, his term of office as a member shall at least be such that he can fulfil his function as President or Vice-President for the full elected term.
2. All information exchanged between Eurojust and Member States shall be directed through the national member.
3. In order to meet Eurojust's objectives, the national member shall have at least equivalent access to, or at least be able to obtain the information contained in, the following types of registers of his Member State as would be available to him in his role as a prosecutor, judge or police officer, whichever is applicable, at national level:
 - (a) criminal records;
 - (b) registers of arrested persons;
 - (c) investigation registers;
 - (d) DNA registers;
 - (e) other registers of his Member State where he deems this information necessary for him to be able to fulfil his tasks.
4. A national member may contact the competent authorities of his Member State directly.;
8. the following Articles shall be inserted:

Article 9a

Powers of the national member granted to him at national level

1. When a national member exercises the powers referred to in Articles 9b, 9c and 9d, he does so in his capacity as a competent national authority acting in accordance with national law and subject to the conditions laid down in this Article and Articles 9b to 9e. In the performance of his tasks the national member shall, where appropriate, make it known whenever he is acting in accordance with the powers granted to national members under this Article and Articles 9b, 9c and 9d.
2. Each Member State shall define the nature and extent of the powers it grants its national member as regards judicial cooperation in respect of that Member State. However, each Member State shall grant its national member at least the powers described in Article 9b and, subject to Article 9e, the powers described in Articles 9c and 9d, which would be available to him as a judge, prosecutor or police officer, whichever is applicable, at national level.
3. When appointing its national member and at any other time if appropriate, the Member State shall notify Eurojust and the General Secretariat of the Council of its decision regarding the implementation of paragraph 2 so that the latter can inform the other Member States. The Member States shall undertake to accept and recognise the prerogatives thus granted in so far as they are in conformity with international commitments.
4. Each Member State shall define the right for a national member to act in relation to foreign judicial authorities, in accordance with its international commitments.

Article 9b

Ordinary powers

1. National members, in their capacity as competent national authorities, shall be entitled to receive, transmit, facilitate, follow up and provide supplementary information in relation to the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition. When powers referred to in this paragraph are exercised, the competent national authority shall be informed promptly.
2. In case of partial or inadequate execution of a request for judicial cooperation, national members, in their capacity as competent national authorities, shall be entitled to ask the competent national authority of their Member State for supplementary measures in order for the request to be fully executed.

Article 9c

Powers exercised in agreement with a competent national authority

1. National members may, in their capacity as competent national authorities, in agreement with a competent national authority, or at its request and on a case-by-

case basis, exercise the following powers:

- (a) issuing and completing requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition;
 - (b) executing in their Member State requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition;
 - (c) ordering in their Member State investigative measures considered necessary at a coordination meeting organised by Eurojust to provide assistance to competent national authorities concerned by a concrete investigation and to which competent national authorities concerned with the investigation are invited to participate;
 - (d) authorising and coordinating controlled deliveries in their Member State.
2. Powers referred to in this Article shall, in principle, be exercised by a competent national authority.

Article 9d

Powers exercised in urgent cases

In their capacity as competent national authorities, national members shall, in urgent cases and in so far as it is not possible for them to identify or to contact the competent national authority in a timely manner, be entitled:

- (a) to authorise and to coordinate controlled deliveries in their Member State;
- (b) to execute, in relation to their Member State a request for, or a decision on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition.

As soon as the competent national authority is identified or contacted, it shall be informed of the exercise of powers referred to in this Article.

Article 9e

Requests from national members where powers cannot be exercised

1. The national member, in his capacity as a competent national authority, shall be at least competent to submit a proposal to the authority competent for the carrying out of powers referred to in Articles 9c and 9d when granting such powers to the national member is contrary to:
 - (a) constitutional rules;
 - or
 - (b) fundamental aspects of the criminal justice system:

- (i) regarding the division of powers between the police, prosecutors and judges;
 - (ii) regarding the functional division of tasks between prosecution authorities;
 - or
 - (iii) related to the federal structure of the Member State concerned.
2. Member States shall ensure that, in cases referred to in paragraph 1, the request issued by the national member be handled without undue delay by the competent national authority.

Article 9f

Participation of national members in joint investigation teams

National members shall be entitled to participate in joint investigation teams, including in their setting up, in accordance with Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union or Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams⁸, concerning their own Member State. However, Member States may make the participation of the national member subject to the agreement of the competent national authority. National members, their deputies or their assistants, shall be invited to participate in any joint investigation team involving their Member State and for which Community funding is provided under the applicable financial instruments. Each Member State shall define whether the national member participates in the joint investigation team as a national competent authority or on behalf of Eurojust.

9. Article 10 shall be amended as follows:
- (a) in paragraph 2, the first sentence shall be replaced by the following:
 - ‘2. The Council shall, acting by qualified majority, approve Eurojust’s Rules of Procedure on a proposal from the College. The College shall adopt its proposal by a two-thirds majority after consulting the Joint Supervisory Board provided for in Article 23 as regards the provisions on the processing of personal data.’;
 - (b) in paragraph 3, the words ‘in accordance with Article 7(a)’ shall be replaced by ‘in accordance with Article 7(1)(a), (2) and (3)’;
10. Article 12 shall be replaced by the following:

Article 12

Eurojust national coordination system

- 1. Each Member State shall designate one or more national correspondents for Eurojust.
- 2. Each Member State shall, before 4 June 2011, set up a Eurojust national coordination system to ensure coordination of the work carried out by:

⁸ OJ L 162, 20.6.2002, p. 1.’;

- (a) the national correspondents for Eurojust;
 - (b) the national correspondent for Eurojust for terrorism matters;
 - (c) the national correspondent for the European Judicial Network and up to three other contact points of the European Judicial Network;
 - (d) national members or contact points of the Network for Joint Investigation Teams and of the networks set up by Council Decision 2002/494/JHA of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes⁹, Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime¹⁰ and by Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption¹¹.
3. The persons referred to in paragraphs 1 and 2 shall maintain their position and status under national law.
 4. The national correspondents for Eurojust shall be responsible for the functioning of the Eurojust national coordination system. When several correspondents for Eurojust are designated, one of them shall be responsible for the functioning of the Eurojust national coordination system.
 5. The Eurojust national coordination system shall facilitate, within the Member State, the carrying out of the tasks of Eurojust, in particular by:
 - (a) ensuring that the Case Management System referred to in Article 16 receives information related to the Member State concerned in an efficient and reliable manner;
 - (b) assisting in determining whether a case should be dealt with with the assistance of Eurojust or of the European Judicial Network;
 - (c) assisting the national member to identify relevant authorities for the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition;
 - (d) maintaining close relations with the Europol National Unit.
 6. In order to meet the objectives referred to in paragraph 5, persons referred to in paragraph 1 and paragraph 2(a), (b) and (c) shall, and persons referred to in paragraph 2(d) may, be connected to the Case Management System in accordance with this Article and Articles 16, 16a, 16b and 18 as well as with the Rules of Procedure of Eurojust. The connection to the Case Management System shall be at the charge of the general budget of the European Union.
 7. Nothing in this Article shall be construed to affect direct contacts between competent judicial authorities as provided for in instruments on judicial cooperation, such as Article 6 of the Convention on Mutual Assistance in Criminal Matters between the

⁹ OJ L 167, 26.6.2002, p. 1.

¹⁰ OJ L 332, 18.12.2007, p. 103.

¹¹ OJ L 301, 12.11.2008, p. 38.;

Member States of the European Union. Relations between the national member and national correspondents shall not preclude direct contacts between the national member and his competent authorities.

11. Article 13 shall be replaced by the following:

‘Article 13

Exchanges of information with the Member States and between national members

1. The competent authorities of the Member States shall exchange with Eurojust any information necessary for the performance of its tasks in accordance with Articles 4 and 5 as well as with the rules on data protection set out in this Decision. This shall at least include the information referred to in paragraphs 5, 6 and 7.
2. The transmission of information to Eurojust shall be interpreted as a request for the assistance of Eurojust in the case concerned only if so specified by a competent authority.
3. The national members of Eurojust shall be empowered to exchange any information necessary for the performance of the tasks of Eurojust, without prior authorisation, among themselves or with their Member State’s competent authorities. In particular national members shall be promptly informed of a case which concerns them.
4. This Article shall be without prejudice to other obligations regarding the transmission of information to Eurojust, including Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences¹².
5. Member States shall ensure that national members are informed of the setting up of a joint investigation team, whether it is set up under Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union or under Framework Decision 2002/465/JHA, and of the results of the work of such teams.
6. Member States shall ensure that their national member is informed without undue delay of any case in which at least three Member States are directly involved and for which requests for or decisions on judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition, have been transmitted to at least two Member States and
 - (a) the offence involved is punishable in the requesting or issuing Member State by a custodial sentence or a detention order for a maximum period of at least five or six years, to be decided by the Member State concerned, and is included in the following list:
 - (i) trafficking in human beings;
 - (ii) sexual exploitation of children and child pornography;
 - (iii) drug trafficking;
 - (iv) trafficking in firearms, their parts and components and ammunition;

- (v) corruption;
- (vi) fraud affecting the financial interests of the European Communities;
- (vii) counterfeiting of the euro;
- (viii) money laundering;
- (ix) attacks against information systems;

or

- (b) there are factual indications that a criminal organisation is involved;

or

- (c) there are indications that the case may have a serious cross-border dimension or repercussions at European Union level or that it might affect Member States other than those directly involved.

7. Member States shall ensure that their national member is informed of:

- (a) cases where conflicts of jurisdiction have arisen or are likely to arise;
- (b) controlled deliveries affecting at least three States, at least two of which are Member States;
- (c) repeated difficulties or refusals regarding the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition.

8. National authorities shall not be obliged in a particular case to supply information if this would mean:

- (a) harming essential national security interests; or
- (b) jeopardising the safety of individuals.

9. This Article shall be without prejudice to conditions set in bilateral or multilateral agreements or arrangements between Member States and third countries including any conditions set by third countries concerning the use of information once supplied.

10. Information transmitted to Eurojust pursuant to paragraphs 5, 6 and 7 shall at least include, where available, the types of information contained in the list provided for in the Annex.

11. Information referred to in this Article shall be transmitted to Eurojust in a structured way.

12. By 4 June 2014¹², the Commission shall establish, on the basis of information transmitted by Eurojust, a report on the implementation of this Article, accompanied by any proposal it may deem appropriate, including with a view to considering an amendment of paragraphs 5, 6 and 7 and the Annex.

12. the following Article shall be inserted:

¹² OJ L 253, 29.9.2005, p. 22.;

Article 13a

Information provided by Eurojust to competent national authorities

1. Eurojust shall provide competent national authorities with information and feedback on the results of the processing of information, including the existence of links with cases already stored in the Case Management System.
2. Furthermore, where a competent national authority requests Eurojust to provide it with information, Eurojust shall transmit it in the timeframe requested by that authority.’;
13. Article 14 shall be amended as follows:
 - (a) in paragraph 3, the words ‘in accordance with Articles 13 and 26’ shall be replaced by ‘in accordance with Articles 13, 26 and 26a’;
 - (b) paragraph 4 shall be deleted;
14. Article 15(1) shall be amended as follows:
 - (a) in the introductory phrase the words ‘are the subject of a criminal investigation or prosecution for one or more of the types of crime and the offences defined in Article 4’ shall be replaced by ‘are suspected of having committed or having taken part in a criminal offence in respect of which Eurojust is competent or who have been convicted of such an offence’;
 - (b) the following points shall be added:
 - ‘(l) telephone numbers, e-mail addresses and data referred to in Article 2(2)(a) of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks¹³;
 - (m) vehicle registration data;
 - (n) DNA profiles established from the non-coding part of DNA, photographs and fingerprints.
15. Article 16 shall be replaced by the following:

Article 16

Case Management System, index and temporary work files

1. In accordance with this Decision, Eurojust shall establish a Case Management System composed of temporary work files and of an index which contain personal and non-personal data.
2. The Case Management System shall be intended to:
 - (a) support the management and coordination of investigations and prosecutions for

¹³ OJ L 105, 13.4.2006, p. 54.’;

which Eurojust is providing assistance, in particular by the cross-referencing of information;

- (b) facilitate access to information on ongoing investigations and prosecutions;
 - (c) facilitate the monitoring of lawfulness and compliance with the provisions of this Decision concerning the processing of personal data.
3. The Case Management System, in so far as this is in conformity with rules on data protection contained in this Decision, may be linked to the secure telecommunications connection referred to in Article 9 of Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network¹⁴.
 4. The index shall contain references to temporary work files processed within the framework of Eurojust and may contain no personal data other than those referred to in Article 15(1)(a) to (i), (k) and (m) and in Article 15(2).
 5. In the performance of their duties in accordance with this Decision, the national members of Eurojust may process data on the individual cases on which they are working in a temporary work file. They shall allow the Data Protection Officer to have access to the work file. The Data Protection Officer shall be informed by the national member concerned of the opening of each new temporary work file that contains personal data.
 6. For the processing of case related personal data, Eurojust may not establish any automated data file other than the Case Management System.
16. the following Articles shall be inserted:

Article 16a

Functioning of temporary work files and the index

1. A temporary work file shall be opened by the national member concerned for every case with respect to which information is transmitted to him in so far as this transmission is in accordance with this Decision or with instruments referred to in Article 13(4). The national member shall be responsible for the management of the temporary work files which he has opened.
2. The national member who has opened a temporary work file shall decide, on a case-by-case basis, whether to keep the temporary work file restricted or to give access to it or to parts of it, where necessary to enable Eurojust to carry out its tasks, to other national members or to authorised Eurojust staff.
3. The national member who has opened a temporary work file shall decide which information related to this temporary work file shall be introduced in the index.

¹⁴ OJ L 348, 24.12.2008, p. 130.’;

Article 16b

Access to the Case Management System at national level

1. Persons referred to in Article 12(2) in so far as they are connected to the Case Management System in accordance with Article 12(6) may only have access to:
 - (a) the index, unless the national member who has decided to introduce the data in the index expressly denied such access;
 - (b) temporary work files opened or managed by the national member of their Member State;
 - (c) temporary work files opened or managed by national members of other Member States and to which the national member of their Member States has received access unless the national member who opened or manages the temporary work file expressly denied such access.
2. The national member shall, within the limitations provided for in paragraph 1, decide on the extent of access to the temporary work files which is granted in his Member State to persons referred to in Article 12(2) in so far as they are connected to the Case Management System in accordance with Article 12(6).
3. Each Member State shall decide, after consultation with its national member, on the extent of access to the index which is granted in that Member State to persons referred to in Article 12(2) in so far as they are connected to the Case Management System in accordance with Article 12(6). Member States shall notify Eurojust and the General Secretariat of the Council of their decision regarding the implementation of this paragraph so that the latter can inform the other Member States.

However, persons referred to in Article 12(2), in so far as they are connected to the Case Management System in accordance with Article 12(6), shall at least have access to the index to the extent necessary to access the temporary work files to which they have been granted access in accordance with paragraph 2 of this Article.

4. By 4 June 2013, Eurojust shall report to the Council and the Commission on the implementation of paragraph 3. Each Member State shall consider, on the basis of that report, the opportunity to review the extent of access provided in accordance with paragraph 3.’;
17. Article 17 shall be amended as follows:
 - (a) in paragraph 1, the words ‘take instructions from no-one’ shall be replaced by ‘act independently’;
 - (b) in paragraphs 3 and 4, the words ‘the Officer’ shall be replaced by ‘the Data Protection Officer’;
18. Article 18 shall be replaced by the following:

Article 18

Authorised access to personal data

Only national members, their deputies and their assistants referred to in Article 2(2), persons referred to in Article 12(2) in so far as they are connected to the Case Management System in accordance with Article 12(6) and authorised Eurojust staff may, for the purpose of achieving Eurojust's objectives and within the limits provided for in Articles 16, 16a and 16b, have access to personal data processed by Eurojust.';

19. in Article 19(4)(b), the words 'which Eurojust is assisting' shall be deleted;
20. Article 21 shall be amended as follows:
 - (a) paragraph 2 shall be amended as follows:
 - (i) in the introductory phrase the words 'the first applicable date among the following dates' shall be inserted after the word 'beyond';
 - (ii) the following point shall be inserted:

'(aa) the date on which the person was acquitted and the decision became final;'
 - (iii) point (b) shall be replaced by the following:

'(b) three years after the date on which the judicial decision of the last of the Member States concerned by the investigation or prosecutions became final;'
 - (iv) in point (c), the words ', unless there is an obligation to provide Eurojust with this information in accordance with Article 13(6) and (7) or with instruments referred to in Article 13(4)' shall be added after the word 'prosecutions';
 - (v) the following point shall be added:

'(d) three years after the date on which data were transmitted in accordance with Article 13(6) and (7) or with the instruments referred to in Article 13(4).'
 - (b) paragraph 3 shall be amended as follows:
 - (i) in points (a) and (b) the words 'in paragraph 2' shall be replaced by 'in paragraph 2(a), (b), (c) and (d)';
 - (ii) in point (b) the following sentence shall be added:

'However, once prosecution is statute barred in all Member States concerned as referred to in paragraph 2(a), data may only be stored if they are necessary in order for Eurojust to provide assistance in accordance with this Decision.';
21. Article 23 shall be amended as follows:
 - (a) paragraph 1 shall be amended as follows:
 - (i) in the first subparagraph, the words 'in Articles 14 to 22' shall be replaced by 'in Articles 14 to 22, 26, 26a and 27';

(ii) the second subparagraph shall be replaced by the following:

‘The Joint Supervisory Body shall meet at least once in each half year. It shall also meet within the three months following the lodging of an appeal referred to in Article 19(8) or within three months following the date when a case was referred to it in accordance with Article 20(2). The Joint Supervisory Body may also be convened by its chairman when at least two Member States so request.’;

(iii) in the third subparagraph, second sentence, the words ‘eighteen months’ shall be replaced by ‘three years’;

(b) paragraph 3 shall be replaced by the following:

‘3. A judge appointed by a Member State shall become a permanent member after being elected by the plenary meeting of the persons appointed by the Member States in accordance with paragraph 1, and shall remain a permanent member for three years. Elections shall be held yearly for one permanent member of the Joint Supervisory Body by means of secret ballot. The Joint Supervisory Body shall be chaired by the member who is in his third year of mandate after elections. Permanent members may be re-elected. Appointees wishing to be elected shall present their candidacy in writing to the Secretariat of the Joint Supervisory Body 10 days before the meeting in which the election is to take place.’;

(c) the following paragraph shall be inserted:

‘4a. The Joint Supervisory Body shall adopt in its rules of procedure measures necessary to implement paragraphs 3 and 4.’;

(d) in paragraph 10, the following sentence shall be added:

‘The Secretariat of the Joint Supervisory Body may rely upon the expertise of the secretariat established by Decision 2000/641/JHA¹⁵.’

22. Article 25 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

‘1. The national members, their deputies and their assistants referred to in Article 2(2), Eurojust staff, national correspondents and the Data Protection Officer shall be bound by an obligation of confidentiality, without prejudice to Article 2(4).’;

(b) in paragraph 4, the words ‘Article 9(1)’ shall be replaced by ‘Article 2(4)’.

23. the following Article shall be inserted:

¹⁵ Council Decision 2000/641/JHA of 17 October 2000 establishing a secretariat for the joint supervisory data-protection bodies set up by the Convention on the Establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention) (OJ L 271, 24.10.2000, p.1).’;

‘Article 25a

Cooperation with the European Judicial Network and other networks of the European Union involved in cooperation in criminal matters

1. Eurojust and the European Judicial Network shall maintain privileged relations with each other, based on consultation and complementarity, especially between the national member, the European Judicial Network contact points of the same Member State and the national correspondents for Eurojust and the European Judicial Network. In order to ensure efficient cooperation, the following measures shall be taken:
 - (a) national members shall, on a case-by-case basis, inform the European Judicial Network contact points of all cases which they consider the Network to be in a better position to deal with;
 - (b) the Secretariat of the European Judicial Network shall form part of the staff of Eurojust. It shall function as a separate unit. It may draw on the administrative resources of Eurojust which are necessary for the performance of the European Judicial Network’s tasks, including for covering the costs of the plenary meetings of the Network. Where plenary meetings are held at the premises of the Council in Brussels, the costs may only cover travel expenses and costs for interpretation. Where plenary meetings are held in the Member State holding the Presidency of the Council, the costs may only cover part of the overall costs of the meeting;
 - (c) European Judicial Network contact points may be invited on a case-by-case basis to attend Eurojust meetings.
2. Without prejudice to Article 4(1), the Secretariat of the Network for Joint Investigation Teams and of the network set up by Decision 2002/494/JHA shall form part of the staff of Eurojust. These secretariats shall function as separate units. They may draw on the administrative resources of Eurojust which are necessary for the performance of their tasks. Coordination between the secretariats shall be ensured by Eurojust.

This paragraph shall apply to the secretariat of any new network set up by a decision of the Council where that decision provides that the secretariat shall be provided by Eurojust.
3. The network set up by Decision 2008/852/JHA may request that Eurojust provide a secretariat to the network. If such request is made, paragraph 2 shall apply.’;
24. Article 26 shall be replaced by the following:

‘Article 26

Relations with Community or Union related institutions, bodies and agencies

1. In so far as is relevant for the performance of its tasks, Eurojust may establish and maintain cooperative relations with the institutions, bodies and agencies set up by, or on the basis of, the Treaties establishing the European Communities or the Treaty on

European Union. Eurojust shall establish and maintain cooperative relations with at least:

- (a) Europol;
- (b) OLAF;
- (c) the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex);
- (d) the Council, in particular its Joint Situation Centre.

Eurojust shall also establish and maintain cooperative relations with the European Judicial Training Network.

2. Eurojust may conclude agreements or working arrangements with the entities referred to in paragraph 1. Such agreements or working arrangements may, in particular, concern the exchange of information, including personal data, and the secondment of liaison officers to Eurojust. Such agreements or working arrangements may only be concluded after consultation by Eurojust with the Joint Supervisory Body concerning the provisions on data protection and after the approval by the Council, acting by qualified majority. Eurojust shall inform the Council of any plans it has for entering into any such negotiations and the Council may draw any conclusions it deems appropriate.
3. Prior to the entry into force of an agreement or arrangement as referred to in paragraph 2, Eurojust may directly receive and use information, including personal data, from the entities referred to in paragraph 1, in so far as this is necessary for the legitimate performance of its tasks, and it may directly transmit information, including personal data, to such entities, in so far as this is necessary for the legitimate performance of the recipient's tasks and in accordance with the rules on data protection provided in this Decision.
4. OLAF may contribute to Eurojust's work to coordinate investigations and prosecution procedures regarding the protection of the financial interests of the European Communities, either on the initiative of Eurojust or at the request of OLAF where the competent national authorities concerned do not oppose such participation.
5. For purposes of the receipt and transmission of information between Eurojust and OLAF, and without prejudice to Article 9, Member States shall ensure that the national members of Eurojust shall be regarded as competent authorities of the Member States solely for the purposes of Regulation (EC) No 1073/1999 and Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹⁶. The exchange of information between OLAF and national members shall be without prejudice to the information which must be given to other competent authorities under those Regulations.

25. the following Article shall be inserted:

¹⁶ OJ L 136, 31.5.1999, p. 8.';

Article 26a

Relations with third States and organisations

1. In so far as is required for the performance of its tasks, Eurojust may establish and maintain cooperative relations with the following entities:
 - (a) third States;
 - (b) organisations such as:
 - (i) international organisations and their subordinate bodies governed by public law;
 - (ii) other bodies governed by public law which are based on an agreement between two or more States; and
 - (iii) the International Criminal Police Organisation (Interpol).
2. Eurojust may conclude agreements with the entities referred to in paragraph 1. Such agreements may, in particular, concern the exchange of information, including personal data, and the secondment of liaison officers or liaison magistrates to Eurojust. Such agreements may only be concluded after consultation by Eurojust with the Joint Supervisory Body concerning the provisions on data protection and after the approval by the Council, acting by qualified majority. Eurojust shall inform the Council of any plans it has for entering into any such negotiations and the Council may draw any conclusions it deems appropriate.
3. Agreements referred to in paragraph 2 containing provisions on the exchange of personal data may only be concluded if the entity concerned is subject to the Council of Europe Convention of 28 January 1981 or after an assessment confirming the existence of an adequate level of data protection ensured by that entity.
4. Agreements referred to in paragraph 2 shall include provisions on the monitoring of their implementation, including implementation of the rules on data protection.
5. Prior to the entry into force of the agreements referred to in paragraph 2, Eurojust may directly receive information, including personal data in so far as this is necessary for the legitimate performance of its tasks.
6. Prior to the entry into force of the agreements referred to in paragraph 2, Eurojust may under the conditions laid down in Article 27(1), directly transmit information, except for personal data, to these entities, in so far as this is necessary for the legitimate performance of the recipient's tasks.
7. Eurojust may, under the conditions laid down in Article 27(1), transmit personal data to the entities referred to in paragraph 1, where:
 - (a) this is necessary in individual cases for the purposes of preventing or combating criminal offences for which Eurojust is competent; and

- (b) Eurojust has concluded an agreement as referred to in paragraph 2 with the entity concerned which has entered into force and which permits the transmission of such data.
8. Any subsequent failure, or substantial likelihood of failure, on the part of the entities referred to in paragraph 1 to meet the conditions referred to in paragraph 3, shall immediately be communicated by Eurojust to the Joint Supervisory Body and the Member States concerned. The Joint Supervisory Body may prevent the further exchange of personal data with the relevant entities until it is satisfied that adequate remedies have been provided.
9. However, even if the conditions referred to in paragraph 7 are not fulfilled, a national member may, acting in his capacity as a competent national authority and in conformity with the provisions of his own national law, by way of exception and with the sole aim of taking urgent measures to counter imminent serious danger threatening a person or public security, carry out an exchange of information involving personal data. The national member shall be responsible for the legality of authorising the communication. The national member shall keep a record of communications of data and of the grounds for such communications. The communication of data shall be authorised only if the recipient gives an undertaking that the data will be used only for the purpose for which they were communicated.’
26. Article 27 shall be replaced by the following:

‘Article 27

Transmission of data

1. Before Eurojust exchanges any information with the entities referred to in Article 26a, the national member of the Member State which submitted the information shall give his consent to the transfer of that information. In appropriate cases the national member shall consult the competent authorities of the Member States.
2. Eurojust shall be responsible for the legality of the transmission of data. Eurojust shall keep a record of all transmissions of data under Articles 26 and 26a and of the grounds for such transmissions. Data shall only be transmitted if the recipient gives an undertaking that the data will be used only for the purpose for which they were transmitted.’;
27. the following Articles shall be inserted:

‘Article 27a

Liaison magistrates posted to third States

1. For the purpose of facilitating judicial cooperation with third States in cases in which Eurojust is providing assistance in accordance with this Decision, the College may post liaison magistrates to a third State, subject to an agreement as referred to in

Article 26a with that third State. Before negotiations are entered into with a third State, the Council, acting by qualified majority, shall give its approval. Eurojust shall inform the Council of any plans it has for entering into any such negotiations and the Council may draw any conclusions it deems appropriate.

2. The liaison magistrate referred to in paragraph 1 is required to have experience of working with Eurojust and adequate knowledge of judicial cooperation and how Eurojust operates. The posting of a liaison magistrate on behalf of Eurojust shall be subject to the prior consent of the magistrate and of his Member State.
3. Where the liaison magistrate posted by Eurojust is selected among national members, deputies or assistants:
 - (i) he shall be replaced in his function as a national member, deputy or assistant, by the Member State;
 - (ii) he ceases to be entitled to exercise the powers granted to him in accordance with Articles 9a to 9e.
4. Without prejudice to Article 110 of the Staff Regulations of Officials of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68¹⁷, the College shall draw up rules on the posting of liaison magistrates and adopt the necessary implementing arrangements in this respect in consultation with the Commission.
5. The activities of liaison magistrates posted by Eurojust shall be the subject of supervision by the Joint Supervisory Body. The liaison magistrates shall report to the College, which shall inform the European Parliament and the Council in the annual report and in an appropriate manner of their activities. The liaison magistrates shall inform national members and national competent authorities of all cases concerning their Member State.
6. Competent authorities of the Member States and liaison magistrates referred to in paragraph 1 may contact each other directly. In such cases, the liaison magistrate shall inform the national member concerned of such contacts.
7. The liaison magistrates referred to in paragraph 1 shall be connected to the Case Management System.

Article 27b

Requests for judicial cooperation to and from third States

1. Eurojust may, with the agreement of the Member States concerned, coordinate the execution of requests for judicial cooperation issued by a third State where these requests are part of the same investigation and require execution in at least two Member States. Requests referred to in this paragraph may also be transmitted to Eurojust by a competent national authority.
2. In case of urgency and in accordance with Article 5a, the OCC may receive and process requests referred to in paragraph 1 of this Article and issued by a third State

¹⁷ OJ L 56, 4.3.1968, p. 1.

which has concluded a cooperation agreement with Eurojust.

3. Without prejudice to Article 3(2), where requests for judicial cooperation, which relate to the same investigation and require execution in a third State, are made, Eurojust may also, with the agreement of the Member States concerned, facilitate judicial cooperation with that third State.
4. Requests referred to in paragraphs 1, 2 and 3 may be transmitted through Eurojust if it is in conformity with the instruments applicable to the relationship between that third State and the European Union or the Member States concerned.

Article 27c

Liability other than liability for unauthorised or incorrect processing of data

1. Eurojust's contractual liability shall be governed by the law applicable to the contract in question.
 2. In the case of non-contractual liability, Eurojust shall, independently of any liability under Article 24, make good any damage caused through the fault of the College or the staff of Eurojust in the performance of their duties in so far as it may be imputed to them and regardless of the different procedures for claiming damages which exist under the law of the Member States.
 3. Paragraph 2 shall also apply to damage caused through the fault of a national member, a deputy or an assistant in the performance of his duties. However, when he is acting on the basis of the powers granted to him pursuant to Articles 9a to 9e, his Member State of origin shall reimburse Eurojust the sums which Eurojust has paid to make good such damage.
 4. The injured party shall have the right to demand that Eurojust refrain from taking, or cease, any action.
 5. The national courts of the Member States competent to deal with disputes involving Eurojust's liability as referred to in this Article shall be determined by reference to Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters¹⁸.
28. in the second sentence of Article 28(2), the words 'acting by qualified majority,' shall be inserted after 'the Council';
29. Article 29 shall be amended as follows:
- (a) in paragraph 1:
 - (i) the words 'unanimously' shall be replaced by 'by two-thirds majority';
 - (ii) the following sentence shall be added:

'The Commission shall be entitled to participate in the selection process and to sit on the selection board.';
 - (b) in paragraph 2, the second sentence shall be replaced by the following:

¹⁸ OJ L 12, 16.1.2001, p. 1.';

‘It may be extended once without a need for a call for applications, provided that the College so decides by a three-fourths majority and appoints the Administrative Director with the same majority.’;

(c) in paragraph 5, the following sentence shall be added:

‘To that end, he shall be responsible for establishing and implementing, in cooperation with the College, an effective monitoring and evaluation procedure relating to the performance of Eurojust’s administration in terms of achieving its objectives. The Administrative Director shall report regularly to the College on the results of that monitoring.’;

30. Article 30 shall be amended as follows:

(a) in paragraph 2:

(i) in the fourth sentence, the words ‘who may also assist the national member’ shall be added;

(ii) the last sentence shall be replaced by the following:

‘The College shall adopt the necessary implementing arrangements for seconded national experts.’;

(b) in paragraph 3, the words ‘without prejudice to Article 25a(1)(c) and (2)’ shall be added;

31. Article 32 shall be amended as follows:

(a) the title shall be replaced by the following:

‘Informing the European Parliament, the Council and the Commission’;

(b) the following paragraph shall be added:

‘3. The Commission or the Council may seek Eurojust’s opinion on all draft instruments prepared under Title VI of the Treaty.’;

32. Article 33 shall be replaced by the following:

Article 33

Finance

1. The salaries and emoluments of the national members, deputies and assistants referred to in Article 2(2) shall be borne by their Member State of origin.
2. Where national members, deputies and assistants act within the framework of Eurojust’s tasks, the relevant expenditure related to these activities shall be regarded as operational expenditure within the meaning of Article 41(3) of the Treaty.’;

33. Article 35(1) shall be amended as follows:

(a) the words ‘31 March’ shall be replaced by ‘10 February’;

(b) the following sentence shall be added:

‘The European Judicial Network and networks referred to in Article 25a(2) shall be informed on the parts related to the activities of their secretariats in due time before the forwarding of the estimate to the Commission.’;

34. Article 36 shall be amended as follows:

(a) in paragraph 2, the first sentence shall be replaced by the following:

‘2. By 1 March at the latest following each financial year, the accounting officer of Eurojust shall communicate the provisional accounts to the Commission’s accounting officer and the Court of Auditors together with a report on the budgetary and financial management for that financial year.’;

(b) paragraph 3 shall be replaced by the following:

‘3. Eurojust shall send the report on the budgetary and financial management for the financial year to the European Parliament and the Council by 31 March of the following year.’;

(c) in paragraph 10, the words ‘30 April’ shall be replaced by ‘15 May’;

35. the following Article shall be inserted:

‘Article 39a

EU classified information

Eurojust shall apply the security principles and minimum standards set out in Council Decision 2001/264/EC of 19 March 2001 adopting the Council’s security regulations¹⁹ _ in the management of EU classified information.

36. Article 41 shall be replaced by the following:

‘Article 41

Reporting

1. Member States shall notify Eurojust and the General Secretariat of the Council of the designation of national members, deputies, assistants as well as persons referred to in Article 12(1) and (2) and of any change to this designation. The General Secretariat of the Council shall keep an updated list of these persons and shall make their names and contact details available to all Member States and to the Commission.
2. The definitive appointment of a national member can not take effect before the day on which the General Secretariat of the Council receives the official notifications referred to in paragraph 1 and Article 9a(3).’;

37. the following Article shall be inserted:

¹⁹ OJ L 101, 11.4.2001, p. 1.’;

Article 41a

Evaluation

1. Before 4 June 2014 and every five years thereafter, the College shall commission an independent external evaluation of the implementation of this Decision as well as of the activities carried out by Eurojust.
 2. Each evaluation shall assess the impact of this Decision, Eurojust's performance in terms of achieving the objectives referred to in this Decision as well as the effectiveness and efficiency of Eurojust. The College shall issue specific terms of reference in consultation with the Commission.
 3. The evaluation report shall include the evaluation findings and recommendations. This report shall be forwarded to the European Parliament, the Council and the Commission and shall be made public.';
38. the Annex whose text appears in the Annex to this Decision shall be added.

Article 2

Transposition

1. If necessary the Member States shall bring their national law into conformity with this Decision at the earliest opportunity and in any case no later than 4 June 2011.
2. The Commission shall at regular intervals examine the implementation by the Member States of Decision 2002/187/JHA as amended and shall submit a report thereon to the European Parliament and to the Council together with, if appropriate, necessary proposals to improve judicial cooperation and the functioning of Eurojust. This shall in particular apply to Eurojust's capacities to support Member States in fighting terrorism.

Article 3

Taking of effect

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

Done at Brussels, 16 December 2008.

For the Council
The President
R. BACHELOT-NARQUIN

ANNEX

'ANNEX

List referred to in Article 13(10) setting out the minimum types of information to be transmitted, where available, to Eurojust pursuant to Article 13(5), (6) and (7)

1. For situations referred to in Article 13(5):
 - (a) participating Member States;
 - (b) type of offences concerned;
 - (c) date of the agreement setting up the team;
 - (d) planned duration of the team, including modification of this duration;
 - (e) details of the leader of the team for each participating Member State;
 - (f) short summary of the results of the joint investigation teams.
2. For situations referred to in Article 13(6):
 - (a) data which identify the person, group or entity that is the object of a criminal investigation or prosecution;
 - (b) Member States concerned;
 - (c) the offence concerned and its circumstances;
 - (d) data related to the requests for, or decisions on, judicial cooperation including regarding instruments giving effect to the principle of mutual recognition, which are issued, including:
 - (i) date of the request;
 - (ii) requesting or issuing authority;
 - (iii) requested or executing authority;
 - (iv) type of request (measures requested);
 - (v) whether or not the request has been executed, and if not on what grounds.
3. For situations referred to in Article 13(7)(a):
 - (a) Member States and competent authorities concerned;
 - (b) data which identify the person, group or entity that is the object of a criminal investigation or prosecution;
 - (c) the offence concerned and its circumstances.
4. For situations referred to in Article 13(7)(b):
 - (a) Member States and competent authorities concerned;
 - (b) data which identify the person, group or entity that is the object of a criminal investigation or prosecution;

- (c) type of delivery;
 - (d) type of offence in connection with which the controlled delivery is carried out.
5. For situations referred to in Article 13(7)(c):
- (a) requesting or issuing State;
 - (b) requested or executing State;
 - (c) description of the difficulties.”.
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