



[Click here for
Explanatory Memorandum](#)

Number 7 of 2008

CRIMINAL JUSTICE (MUTUAL ASSISTANCE) ACT 2008

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

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

PART 2

INFORMATION ABOUT FINANCIAL TRANSACTIONS FOR CRIMINAL
INVESTIGATION PURPOSES

12. Interpretation (*Part 2*).

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.]
Act 2008.*

Information about financial transactions for use in the State

13. Account information order and account monitoring order.
14. Request to designated state for information about financial transactions.

Information about financial transactions for use in designated state

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

Supplementary

20. Variation or discharge of account information order or account monitoring order.
21. Offences under this Part.

PART 3

INTERCEPTION OF TELECOMMUNICATIONS MESSAGES

Introductory

22. Interpretation (*Part 3*).

Requests for interception where technical assistance required

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

Notifications of other interceptions

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

Miscellaneous

28. Indirect interception of telecommunications messages.
29. Application of Act of 1993 in relation to this Part.
30. Amendment of section 110 of Act of 1983.

PART 4

FREEZING, CONFISCATION AND FORFEITURE OF PROPERTY

CHAPTER 1

Interpretation

31. Interpretation (*Part 4*).

CHAPTER 2

Freezing of Property

32. Freezing order relating to evidence.
33. Transmission of freezing order for enforcement outside the State.
34. Transmission of external freezing orders to State for enforcement.
35. Recognition and enforcement of external freezing orders.
36. Application, etc., of freezing co-operation orders.
37. Registration of freezing co-operation orders.
38. Exercise of powers under this Chapter by High Court or receiver.
39. Receivers: supplementary provisions.
40. Bankruptcy of defendant, etc.
41. Property subject to freezing co-operation order dealt with by Official Assignee.
42. Application of proceeds of realisation.
43. Winding up of company holding realisable property.
44. Duration of freezing co-operation order.
45. Variation or discharge of freezing co-operation order.
46. Refusal to make freezing co-operation order.
47. Postponement of freezing co-operation order.
48. Subsequent treatment of frozen property.

CHAPTER 3

Confiscation of Property

49. Request for confiscation of property in designated state.
50. Transmission to State of external confiscation order.
51. Confiscation co-operation order.
52. Enforcement, etc., of confiscation co-operation orders.

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

53. Realisation of property subject to confiscation co-operation order.
54. Interest on sums unpaid under confiscation co-operation orders.
55. Payments under confiscation co-operation orders to be expressed in euro.
56. Exercise of powers under this Chapter by High Court or receiver.
57. Application to confiscation co-operation orders of certain provisions relating to freezing co-operation orders.

CHAPTER 4

Forfeiture of Property

58. Transmission of external forfeiture order to designated state for enforcement.
59. Transmission of external forfeiture order to State for enforcement.
60. Forfeiture co-operation order.

PART 5

PROVISION OF EVIDENCE

CHAPTER 1

Interpretation

61. Interpretation (*Part 5*).

CHAPTER 2

Taking of Evidence

62. Evidence from person in designated state.
63. Evidence for use in designated state.
64. Privilege of witnesses.

Evidence of prisoners

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

Evidence through television link

67. Evidence through television link for use in State.
68. Request for evidence through television link for use outside State.
69. Action on request.
70. Taking of the evidence.

Evidence by telephone link for use outside State

71. Request for evidence by telephone link.
 72. Taking of evidence.
- Search for Evidence*
73. Search for evidence at place in designated state.
 74. Search for evidence for use outside State (general).
 75. Search for particular evidence for use outside State.

CHAPTER 3

Identification evidence

76. Definitions (*Chapter 3*).
77. Identification evidence for use in State.
78. Identification evidence for use outside State.
79. Action on request.

PART 6

OTHER FORMS OF ASSISTANCE

CHAPTER 1

Service of documents

80. Documents for service outside State.
81. Mode of service.
82. Service of documents in State.

CHAPTER 2

Examining objects and sites

83. Examining objects and sites.

CHAPTER 3

Restitution

84. Restitution of stolen property from designated state.
85. Request to State for restitution of stolen property.
86. Action on request.
87. Order for restitution.

CHAPTER 4

Controlled deliveries

88. Interpretation (*Chapter 4*).
89. Controlled delivery in designated state.
90. Controlled delivery in State.

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.]
Act 2008.*

91. Amendment of Garda Síochána Act 2005.
92. Application of Criminal Justice (Joint Investigation Teams) Act 2004 in relation to controlled deliveries.

PART 7

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

93. Definitions (*Part 7*).
94. Application in State of Ireland - US Treaty.

PART 8

MISCELLANEOUS

95. Exchange of information concerning terrorist offences between Europol, Eurojust and member states.
96. Application and amendment of Criminal Justice (Joint Investigation Teams) Act 2004.
97. Presence of representatives of requesting state at execution of request.
98. Presence of members of Garda Síochána at execution of request in designated state.
99. Use of information or evidence obtained in response to request in designated state.
100. Disclosure prejudicing investigation.
101. Liability of officers of body corporate.
102. Evidence in proceedings (general).
103. Provisional measures.
104. Recognition of third party rights.
105. Amendment of Criminal Justice Act 1994.
106. Amendment of section 8(7) of Criminal Assets Bureau Act 1996.
107. Personal data protection.
108. Exercise of powers by judge of District Court outside district court district.
109. Regulations.
110. Expenses.
111. Laying of orders or regulations before Houses of Oireachtas.

SCHEDULE 1

TEXT OF 2000 CONVENTION

[2008.] *Criminal Justice (Mutual Assistance)* [No. 7.]
Act 2008.

SCHEDULE 2

TEXT OF 2001 PROTOCOL

SCHEDULE 3

TEXT OF AGREEMENT WITH ICELAND AND NORWAY

SCHEDULE 4

TEXT OF ARTICLES 49 AND 51 OF SCHENGEN CONVENTION

SCHEDULE 5

TEXT OF FRAMEWORK DECISION

SCHEDULE 6

TEXT OF TITLE III OF EC/SWISS CONFEDERATION AGREEMENT

SCHEDULE 7

TEXT OF 2005 COUNCIL DECISION

SCHEDULE 8

PART 1

TEXT OF 1959 CONVENTION

PART 2

TEXT OF FIRST ADDITIONAL PROTOCOL TO 1959 CONVENTION

SCHEDULE 9

TEXT OF SECOND ADDITIONAL PROTOCOL TO 1959 CONVENTION

SCHEDULE 10

TEXT OF CHAPTER IV OF 2005 CONVENTION

SCHEDULE 11

TEXT OF ARTICLES 13, 14, 18, 19 AND 20 OF THE UNITED NATIONS
CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME, DONE AT
NEW YORK ON 15 NOVEMBER 2000.

SCHEDULE 12

TEXT OF ARTICLES 46, 49, 50 AND 54 TO 57 OF THE UNITED NATIONS
CONVENTION AGAINST CORRUPTION, DONE AT NEW YORK ON 31
OCTOBER 2003

SCHEDULE 13

TEXT OF EU/US AGREEMENT ON MUTUAL LEGAL ASSISTANCE

SCHEDULE 14

TEXT OF IRELAND/US TREATY OF 18 JANUARY 2001, AS APPLIED BY
INSTRUMENT OF 14 JULY 2005

[No. 7.] *Criminal Justice (Mutual Assistance) Act 2008.* [2008.]

ACTS REFERRED TO

Bail Act 1997	1997, No. 16
Bankers' Books Evidence Act 1879	42 & 43 Vic., c. 11
Bankruptcy Act 1988	1988, No. 27
Central Bank Act 1971	1971, No. 24
Children Act 2001	2001, No. 24
Companies Act 1963	1963, No. 33
Companies Acts 1963 to 2006	
Courts (Supplemental Provisions) Act 1961	1961, No. 39
Criminal Assets Bureau Act 1996	1996, No. 31
Criminal Justice Act 1994	1994, No. 15
Criminal Justice Act 2006	2006, No. 26
Criminal Justice (Joint Investigation Teams) Act 2004	2004, No. 20
Criminal Justice (Miscellaneous Provisions) Act 1997	1997, No. 4
Criminal Justice (Terrorist Offences) Act 2005	2005, No. 2
Criminal Justice (Theft and Fraud Offences) Act 2001	2001, No. 50
Criminal Justice (United Nations Convention against Torture) Act 2000	2000, No. 11
Data Protection Act 1988	1988, No. 25
Data Protection Acts 1988 and 2003	
Dentists Act 1985	1985, No. 9
European Arrest Warrant Act 2003	2003, No. 45
Europol Act 1997	1997, No. 38
Extradition Acts 1965 to 2001	
Extradition (Amendment) Act 1994	1994, No. 6
Extradition (European Convention on the Suppression of Terrorism) Act 1987	1987, No. 1
Extradition (European Union Conventions) Act 2001	2001, No. 49
Garda Síochána Act 2005	2005, No. 20
Immigration Act 1999	1999, No. 22
Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993	1993, No. 10
Medical Practitioners Act 1978	1978, No. 4
Misuse of Drugs Act 1977	1977, No. 12
Nurses Act 1985	1985, No. 18
Official Secrets Act 1963	1963, No. 1
Police (Property) Act 1897	60 & 61 Vic., c. 30
Postal and Telecommunications Services Act 1983	1983, No. 24
Prisons Act 1970	1970, No. 11
Prisons Act 1972	1972, No. 7
Probation of Offenders Act 1907	7 Edw. 7., c. 17
Registration of Deeds and Title Act 2006	2006, No. 12
Registration of Deeds and Title Acts 1964 and 2006	
Statutory Declarations Act 1938	1938, No. 37
Transfer of Sentenced Prisoners Act 1995	1995, No. 16



Number 7 of 2008

CRIMINAL JUSTICE (MUTUAL ASSISTANCE) ACT 2008

AN ACT—

- (a) TO ENABLE EFFECT TO BE GIVEN IN THE STATE TO CERTAIN INTERNATIONAL AGREEMENTS, OR PROVISIONS OF SUCH AGREEMENTS, BETWEEN THE STATE AND OTHER STATES RELATING TO MUTUAL ASSISTANCE IN CRIMINAL MATTERS;
- (b) TO REPEAL AND RE-ENACT, WITH AMENDMENTS, PART VII (INTERNATIONAL CO-OPERATION) OF THE CRIMINAL JUSTICE ACT 1994;

AND TO PROVIDE FOR RELATED MATTERS.

[28th April, 2008]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

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

Short title and commencement.

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

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

Interpretation (general).

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

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

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

“authority” includes a person;

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

“2000 Convention” means the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union², done at Brussels on 29 May 2000;

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

“2005 Council Decision” means Council Decision 2005/671/JHA³ of 20 September 2005 on the exchange of information and co-operation concerning terrorist offences;

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

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

“criminal conduct” means any conduct—

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

“criminal investigation”—

- (a) means an investigation into whether a person has committed an offence (within the meaning of the relevant Part) under the law of the State or a designated state in respect of which, where appropriate, a request for assistance may be made under the relevant international instrument, and
- (b) includes an investigation into whether a person has benefited from assets or proceeds deriving from criminal conduct or is in receipt of or controls such assets or proceeds;

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

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

¹OJ L64, 7.3.2002, p.20

²OJ C197, 12.7.2000, p.1

³OJ L253, 29.9.2005, p.22

- (b) proceedings concerning measures relating to—
 - (i) the deferral of delivery or suspension of enforcement of a sentence or preventive measure,
 - (ii) conditional release, or
 - (iii) a stay or interruption of enforcement of a sentence or preventive measure,
 - (c) in relation to requests for assistance by a requesting authority in a member state—
 - (i) without prejudice to *subsection (2)(b) of sections 74 and 75* (requests for evidence or evidential material), proceedings brought by an administrative authority in respect of conduct which is punishable under the law of the State or that state or of both of them, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters,
 - (ii) proceedings in claims for damages arising from wrongful prosecution or conviction,
 - (iii) clemency proceedings,
 - (iv) civil actions joined to criminal proceedings, as long as the criminal court concerned has not taken a final decision in the criminal proceedings, and
 - (v) proceedings in respect of measures relating to—
 - (I) the deferral of delivery or suspension of enforcement of a sentence or preventive measure,
 - (II) conditional release, or
 - (III) a stay or interruption of enforcement of a sentence or preventive measure,
- and
- (d) in relation to requests for assistance by a requesting authority in a designated state (other than a member state), without prejudice to *subsection (3) of sections 74 and 75* proceedings brought by an administrative authority in respect of conduct which is punishable under the law of the State or that state or of both of them, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

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

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

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

“Framework Decision” means Council Framework Decision (2003/577/JHA⁴) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence;

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

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

- (a) the 2000 Convention;
- (b) the 2001 Protocol;
- (c) the Agreement with Iceland and Norway;
- (d) Articles 49 and 51 of the Schengen Convention;
- (e) the Framework Decision;
- (f) Title III of the EC/Swiss Confederation Agreement;
- (g) the 2005 Council Decision;
- (h) the 1959 Convention;
- (i) the Second Additional Protocol;
- (j) Chapter IV of the 2005 Convention;
- (k) Articles 13, 14, 18, 19 and 20 of the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000;
- (l) Articles 46, 49, 50 and 54 to 57 of the United Nations Convention against Corruption, done at New York on 31 October 2003;
- (m) a bilateral agreement between the State and a designated state for the provision of such assistance; and
- (n) any reservation or declaration made in accordance with such an instrument;

“member state” means—

- (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, Framework Decision or 2005 Council Decision, and
- (b) Iceland and Norway or any other designated state, for the purposes of mutual assistance under any of those provisions;

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

“offence”—

⁴OJ L196, 2.8.2003, p.45

- (a) means an offence in respect of which a request for mutual assistance may be made under the relevant international instrument,
- (b) includes a revenue offence, if or to the extent that the relevant international instrument or the law of the designated state concerned provides for mutual assistance in respect of such an offence, but
- (c) does not include a political offence;

“place” means a physical location and includes—

- (a) a dwelling, residence, building or abode,
- (b) a site,
- (c) a vehicle, whether mechanically propelled or not,
- (d) a vessel, whether sea-going or not,
- (e) an aircraft, whether capable of operation or not, and
- (f) a hovercraft;

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

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

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

- (a) St. Patrick’s Institution,
- (b) a place provided under section 2 of the Prisons Act 1970, and
- (c) a place specified under section 3 of the Prisons Act 1972;

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

- (a) money and all other property, real or personal, movable or immovable,
- (b) a chose in action and any other intangible or incorporeal property,
- (c) proceeds of the disposal of property, and
- (d) evidence;

“2001 Protocol” means the Protocol⁵ to the 2000 Convention, done at Luxembourg on 16 October 2001;

⁵OJ C326, 21.11.2001, p.1

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

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

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

“requesting authority” means—

- (a) a court or tribunal exercising jurisdiction in criminal proceedings in a designated state and making a request, or
- (b) any other authority in that state appearing to the Minister to have the function of making the request;

“revenue offence”—

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

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

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

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

- (a) for whose external relations the state or its government is wholly or partly responsible, and
- (b) to which the relevant international instrument applies or whose law provides for mutual assistance in criminal matters,

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

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

(3) The following provisions of this Act give effect to Council Decision (2002/192/EC) of 28 February 2002 concerning Ireland’s

request to take part in some of the provisions of the Schengen *acquis*, in so far as those provisions relate to mutual assistance in criminal matters:

- (a) *paragraph (c)* of the definition of “criminal proceedings” in *subsection (1)*;
 - (b) *subsections (1) and (2)* of *sections 74 and 75*;
 - (c) *section 82(1)(b)*.
- (4) Judicial notice shall be taken of a relevant international instrument.
- (5) When interpreting any provision of this Act—
- (a) a court may consider the relevant international instrument and any explanatory document issued in connection with it, and
 - (b) give the instrument and any such document such weight as is appropriate in the circumstances.
- (6) For convenience of reference—
- (a) *Schedule 1* sets out the English text of the 2000 Convention,
 - (b) *Schedule 2* sets out the English text of the 2001 Protocol,
 - (c) *Schedule 3* sets out the English text of the Agreement with Iceland and Norway,
 - (d) *Schedule 4* sets out the English text of Articles 49 and 51 of the Schengen Convention,
 - (e) *Schedule 5* sets out the English text of the Framework Decision,
 - (f) *Schedule 6* sets out the English text of Title III of the EC/Swiss Confederation Agreement,
 - (g) *Schedule 7* sets out the English text of the 2005 Council Decision,
 - (h) *Schedule 8* sets out the English text of the 1959 Convention and the First Additional Protocol thereto,
 - (i) *Schedule 9* sets out the English text of the Second Additional Protocol to the 1959 Convention,
 - (j) *Schedule 10* sets out the English text of Chapter IV of the 2005 Convention,
 - (k) *Schedule 11* sets out the English text of Articles 13, 14, 18, 19 and 20 of the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000,
 - (l) *Schedule 12* sets out the English text of Articles 46, 49, 50 and 54 to 57 of the United Nations Convention against Corruption, done at New York on 31 October 2003,

- (m) *Schedule 13* sets out the English text of the Agreement on Mutual Legal Assistance between the European Union and the United States of America, done at Washington D.C. on 25 June 2003, and
- (n) *Schedule 14* sets out the English text of the Treaty between the Government of Ireland and the Government of the United States on Mutual Assistance in Criminal Matters, done at Washington D.C. on 18 January 2001, as applied by the Instrument contemplated by Article 3(2) of the said Agreement of 25 June 2003 and done at Dublin on 14 July 2005.

General restriction on providing assistance.

- 3.—(1) Assistance shall be refused—
- (a) if the Minister considers that providing assistance would be likely to prejudice the sovereignty, security or other essential interests of the State or would be contrary to public policy (*ordre public*),
 - (b) if there are reasonable grounds for believing—
 - (i) that the request concerned was made for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation,
 - (ii) that providing assistance—
 - (I) may prejudice a person’s position for any of those reasons, or
 - (II) may result in the person being subjected to torture or to any other contravention of the European Convention on Human Rights,
 - (c) if the request is not in accordance with the relevant international instrument, or
 - (d) if, and for as long as, the provision of assistance would prejudice a criminal investigation, or criminal proceedings, in the State,

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

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

Designated state.

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

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

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

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

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

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

Requests (general).

- (a) the form of the requests and the information they are to provide,
- (b) the action that may be taken where a request does not comply with the provisions of the instrument or where the information provided is not sufficient to enable the request to be dealt with,
- (c) any restrictions in the instrument in relation to the refusal of particular requests,
- (d) any requirements in the instrument relating to the protection, disclosure, use or transmission of information or evidence received under it,
- (e) the formalities and procedures in dealing with requests, unless those formalities and procedures are contrary to the fundamental principles of the law of the State, and
- (f) the transmission and mode of transmission of requests, including, where so provided for in the instrument, transmissions via the International Criminal Police Organisation (Interpol) in urgent cases.

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

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

(4) Requests shall—

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

- (b) where appropriate, indicate the relevant international instrument under which the request is being made, and
- (c) be in writing or in any form capable of producing a written record under conditions allowing their authenticity to be established.

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

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

(7) The Central Authority may—

- (a) accept requests and any supporting or related documents as evidence of the matters mentioned in them unless it has information to the contrary, and
- (b) seek such additional information from the requesting authority concerned as may be necessary to enable a decision to be taken on a request.

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

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

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

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

Transmission of evidence to designated state (general).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

- (a) Part VII (International Co-operation) of the Act of 1994 and the Second Schedule (taking of evidence for use outside State) thereto;
- (b) section 15 (amendment of Act of 1994) of the Criminal Justice (Miscellaneous Provisions) Act 1997; and
- (c) section 22 (amendment of section 56A of Act of 1994) of the Criminal Justice (Theft and Fraud Offences) Act 2001.

Saving.

11.—(1) Where—

- (a) mutual assistance between the State and another state was provided for by or under a provision of Part VII of the Act of 1994 before the repeal of that Part on the commencement of *section 10(a)*, and
- (b) the state is not designated under *section 4* for the purposes of that assistance,

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

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

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

PART 2

INFORMATION ABOUT FINANCIAL TRANSACTIONS FOR CRIMINAL INVESTIGATION PURPOSES

Interpretation
(Part 2).

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

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

- (a) an account held by the person under a different name or different version of the person’s name,
- (b) an account held by the person jointly with another person,
- (c) an account held by another person on which the person is authorised to operate, whether by way of a power of attorney or otherwise,
- (d) an account held by another person (in this Part referred to as a “sending or recipient account”) to or from which payments have been or are being made from or to an account in the name of a person specified in an account information order, and

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

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

- (a) state—

- (i) whether an account or accounts in the name or names of a specified person or persons or in a specified different version or versions of that name or those names is or are held in the financial institution, and
- (ii) whether it has become aware, in the ordinary course of business, of any other account or accounts in the institution on which the specified person or persons is or are authorised to operate, whether by way of a power of attorney or otherwise,

and

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

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

“financial institution” means—

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

- (i) a person who holds or has held a licence from the Central Bank and Financial Services Authority of Ireland under section 9 of the Central Bank Act 1971,
- (ii) a person referred to in section 7(4) of that Act, or
- (iii) a credit institution (within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992)) which has been authorised by that Authority to carry on the business of a credit institution in accordance with the supervisory enactments within the meaning of those Regulations,

or

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

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

- (a) is permanent and legible, whether or not it has been converted into such a form from an electronic or other non-legible form, or
- (b) if so specified by the applicant for such an order, is an electronic or other non-legible form which is capable of being converted into a permanent and legible form;

“political offence”—

- (a) includes an offence connected with a political offence,
- (b) does not include—
 - (i) an offence to which section 3 of the Extradition (European Convention on the Suppression of Terrorism) Act 1987 (the “Act of 1987”) applies, or
 - (ii) an offence, as defined in *subsection (3)*, of conspiracy or association to commit such an offence;

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

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

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

- (a) is a time within which a financial institution may reasonably be expected to provide the information specified in the order, and
- (b) may be extended for a period specified by the applicant in a further notice in writing, after consultation with the financial institution concerned.

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

- (a) which is constituted by the behaviour described in Article 3(4) of the Convention relating to Extradition between the Member States of the European Union, done at Brussels on 27 September 1996, namely, behaviour by a person which contributes to the commission, by a group of persons acting with a common purpose, of—
 - (i) one or more than one offence in the field of terrorism as mentioned in Articles 1 and 2 of the 1977 Terrorism Convention, drug trafficking or other forms of organised crime, or
 - (ii) other acts of violence against the life, physical integrity or liberty of a person or creating a collective danger for persons,

and

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

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

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

Information about financial transactions for use in the State

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

Account information order and account monitoring order.

(2) The application may relate to—

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

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

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

- (i) has committed an offence, or
- (ii) is in possession or control of assets or proceeds deriving from criminal conduct,

and

(b) there are reasonable grounds for believing—

- (i) that the financial institution or financial institutions concerned may have information which is required for the purposes of the investigation, and
- (ii) that it is in the public interest that any such information should be disclosed for those purposes, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances.

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

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

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

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

Request to designated state for information about financial transactions.

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

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

- (a) that a financial institution or financial institutions in the designated state may have information which is required for the purposes of the investigation, and
- (b) that it is in the public interest that any such information should be disclosed for those purposes, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances.

(3) Any request under this section shall include—

- (a) a statement by the Director that an investigation is taking place into a specified offence and that the person mentioned in the request is the subject of the investigation, and
- (b) the following information:
 - (i) why the Director considers that the requested information is likely to be of substantial value for the purposes of the investigation;
 - (ii) why he or she considers that a financial institution or financial institutions in the designated state may keep the account or accounts concerned;
 - (iii) if available, the name or names of that institution or those institutions;

- (iv) the maximum period of imprisonment to which a person of full capacity and not previously convicted is liable on conviction for the offence;
- (v) the content of *subsections (4) and (5)*; and
- (vi) any other information that may facilitate compliance with the request.

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

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

Information about financial transactions for use in designated state

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

Request from designated state for information about financial transactions.

- (2) The request shall include—
 - (a) a statement that a specified offence has been committed in the designated state concerned and that the person mentioned in the request is the subject of an investigation into the offence,
 - (b) a statement that—
 - (i) any information that may be supplied in response to the request will not, without the Minister’s prior consent, be used for any purpose other than that specified in the request, and
 - (ii) the record of any such information will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless the Minister indicates that its return is not required,

and

- (c) the following information:
 - (i) why the requesting authority considers that the requested information is likely to be of substantial value for the purposes of the investigation;
 - (ii) why it considers that a financial institution or financial institutions in the State may hold the account or accounts concerned;
 - (iii) if available, the name or names of that institution or those institutions;

- (iv) the maximum period of imprisonment under the law of the designated state by which the offence is punishable; and
- (v) any other information that may facilitate compliance with the request.

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

- (a) information as to whether a financial institution in the State keeps an account or accounts mentioned in that subsection,
- (b) details of any such account or accounts,
- (c) details of operations on any such account or accounts during a particular period.

Action on request.

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

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

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

(2) The application—

- (a) may relate to—
 - (i) all financial institutions in the State,
 - (ii) a category or categories of such financial institutions, or
 - (iii) a particular such financial institution or particular such financial institutions,
- and
- (b) shall be accompanied by a copy of the request concerned and of any supporting or related documents.

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

- (a) there are reasonable grounds for believing that an offence under the law of the designated state concerned has been committed,
- (b) the person mentioned in the request is the subject of an investigation into the offence,
- (c) the request is otherwise in accordance with the relevant international instrument, and

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

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

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

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

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

Transmission of information obtained to requesting authority.

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

Requesting authority to be informed of possible further investigations.

Supplementary

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

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

- (a) a member of the Garda Síochána not below the rank of inspector, or
- (b) any financial institution affected by the order.

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

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

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

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

Offences under this Part.

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

- (b) if, while purporting to comply with such an order, it—
- (i) makes a statement which it knows to be false or misleading in a material particular, or
 - (ii) recklessly makes a statement which is false or misleading in such a particular.

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

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

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

- (a) did not know or suspect that the disclosure to which the proceedings relate prejudiced, or was likely to prejudice, the criminal investigation concerned, or
- (b) had lawful authority or reasonable excuse for making the disclosure.

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

- (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, and
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

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

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

PART 3

INTERCEPTION OF TELECOMMUNICATIONS MESSAGES

Introductory

Interpretation
(Part 3).

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

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

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

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

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

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

Requests for interception where technical assistance required

23.—(1) This section applies where—

Request to member state for interception.

- (a) for the purpose of a criminal investigation the Minister has given an authorisation of an interception under section 2 of the Act of 1993,
- (b) the person specified in the authorisation is present in the State or a member state, and
- (c) technical assistance from a member state is needed to intercept the telecommunications messages concerned.

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

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

(3) The request shall—

- (a) confirm that an authorisation of an interception has been given by the Minister under the Act of 1993 for the purpose of a criminal investigation,
- (b) give sufficient information to identify the person whose telecommunications messages are to be intercepted,
- (c) give an indication of the criminal conduct under investigation,
- (d) state the desired duration of the interception,
- (e) provide sufficient technical data, including the network connection number of the telecommunications address concerned, to ensure that the request can be met, and
- (f) where the request—

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

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

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

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

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

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

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

Request to State for interception.

24.—(1) This section applies where—

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

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

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

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

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

(d) the specified person—

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

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

(2) The request shall—

(a) indicate the name of the competent authority,

- (b) confirm that a lawful interception order or warrant has been issued in connection with a criminal investigation,
- (c) give sufficient information to identify the person whose telecommunication messages are to be intercepted,
- (d) give an indication of the criminal conduct under investigation,
- (e) state the desired duration of the interception,
- (f) provide sufficient technical data, including the network connection number of the telecommunications address concerned, to ensure that the request can be met, and
- (g) if the person is present in a member state other than that in which the lawful interception order or warrant has been issued and from which no technical assistance is required to carry out the interception, confirm that that member state has been informed of the order or warrant pursuant to Article 20(2)(a) of the 2000 Convention.

(3) Where—

- (a) the person whose telecommunications messages are to be intercepted is present in the State, or
- (b) the request is for the interception and recording of the messages and transmission of the recording,

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

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

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

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

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

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

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

- (a) the conduct being investigated in the requesting state would, if it occurred in the State, constitute a serious offence within the meaning of the Act of 1993 and otherwise justify the giving of an authorisation under that Act, and
- (b) *section 24* applies and is complied with in relation to the case.

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

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

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

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

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

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

Notifications of other interceptions

Notification to member state of interception.

26.—(1) Where—

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

- (b) the telecommunications address of the person specified in the authorisation is being used on the territory of a member state, and
- (c) technical assistance from the member state is not required to carry out the interception,

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

- (i) before the interception, if the Minister is then aware that the person is present on that territory, or
- (ii) in any other case, immediately after the Minister becomes so aware.

(2) The notification shall include the following information:

- (a) confirmation that authorisation of an interception has been given by warrant under section 2 of the Act of 1993 in connection with a criminal investigation;
- (b) details sufficient to identify the subject of the interception;
- (c) an indication of the criminal conduct under investigation; and
- (d) the expected duration of the interception.

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

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

- (a) any interception made may be continued, but
- (b) material intercepted may not be used unless—
 - (i) otherwise agreed between the Minister and the competent authority, or
 - (ii) in connection with taking urgent measures to prevent an immediate and serious threat to public security (including measures in respect of any serious offence), in which case the Minister shall inform the competent authority of any such use and the reasons justifying it.

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

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

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

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

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

Notification by member state of interception.

27.—(1) This section applies where—

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

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

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

(4) If—

- (a) an authorisation under the said section 2 would not be given,
- (b) *section 3* applies, or
- (c) the offence concerned is a political offence or revenue offence,

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

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

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

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

- (a) a period not exceeding 96 hours; or
- (b) where it is necessary to determine whether an authorisation under section 2 of the Act of 1993 would be given in similar circumstances, a period not exceeding in total 12 days.

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

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

Miscellaneous

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

Indirect interception of telecommunications messages.

- (2) Where—
 - (a) a person is present in the State,
 - (b) an authorisation has been given under section 2 of the Act of 1993 for the interception of telecommunications messages to or from the person,
 - (c) the messages cannot be directly intercepted in the State, but
 - (d) an authorised undertaking which has received directions under section 110 of the Act of 1983 in relation to interceptions can facilitate interception of the messages by accessing interception equipment in a member state,

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

- (3) Where—
 - (a) a person is present in a member state,
 - (b) a lawful order or warrant for the interception of telecommunications messages to or from the person has been made or issued in the member state for the purposes of a criminal investigation and is in force,
 - (c) the messages cannot be directly intercepted in the member state, but
 - (d) an authorised undertaking which has received directions under section 110 of the Act of 1983 in relation to interceptions—

- (i) can directly intercept the messages, and
- (ii) has interception equipment enabling a provider of telecommunications services in the member state to intercept them,

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

Application of Act of 1993 in relation to this Part.

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

- (a) references in the Act of 1993 to “this Act” are to be construed as references to this Part;
- (b) references therein to an authorisation are to be construed as references to—
 - (i) an authorisation deemed under *section 25(8)* to be an authorisation under section 2 of the Act of 1993, or
 - (ii) an authorisation under *section 27(3)*,
 as the case may be;
- (c) references therein to a contravention of a provision of the Act of 1993 are to be construed as references to a contravention of a provision of this Part;
- (d) references therein to official documents are to be construed as references to official documents available to the Minister in connection with a request under this Part; and
- (e) references to a person in sections 8(5) and 9(11) of the Act of 1993 are to be construed as references to a person who is present in the State.

Amendment of section 110 of Act of 1983.

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

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

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

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

PART 4

FREEZING, CONFISCATION AND FORFEITURE OF PROPERTY

CHAPTER 1

Interpretation

31.—(1) In this Part:

Interpretation
(Part 4).

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

“certificate” means the certificate—

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

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

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

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

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

- (a) recovering property in the State which was received or obtained as a result of or in connection with conduct which would, if it occurred in the State, constitute an indictable offence,
- (b) recovering the value of such property, or
- (c) depriving a person of a pecuniary advantage so received or obtained;

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

“external freezing order” means any measure—

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

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

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

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

“freezing order” means—

- (a) an order under *section 24* (as amended by *section 105(a)* of this Act) of the Act of 1994,
- (b) an order under *section 14* or *section 15* of the Criminal Justice (Terrorist Offences) Act 2005, or
- (c) an order under *section 32*,

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

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

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

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

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

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

“realisable property” means—

- (a) in relation to a freezing co-operation order or confiscation co-operation order made in respect of specified property, the property specified in the order, and
- (b) in any other case—
 - (i) any property held by the defendant, and
 - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift,

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

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

- (a) where a debt is owed to that person, making a payment to any person in settlement or reduction of the debt, and
- (b) removing the property from the State.

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

CHAPTER 2

Freezing of Property

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

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

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

- (a) that criminal proceedings have been instituted or a criminal investigation is taking place,
- (b) that evidence relating to the offence concerned—
 - (i) is on specified premises,
 - (ii) is likely to be of substantial value (whether by itself or together with other evidence) to the proceedings or investigation, and
 - (iii) is likely to be admissible at a trial for the offence,and
- (c) in case the evidence is in a designated state, that a request has been or will be made for it to be transferred to the Commissioner of the Garda Síochána.

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

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

- (a) a member of the Garda Síochána not below the rank of inspector, or
- (b) any person affected by it,

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

(6) If—

- (a) an order under this section is transmitted for enforcement in a designated state pursuant to *section 33(4)*, and
- (b) the order is later varied or discharged in relation to property in the designated state,

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

Transmission of freezing order for enforcement outside the State.

33.—(1) If—

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

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

(2) The certificate shall—

- (a) bear a signature (which may be an electronic signature) by or on behalf of the court concerned, and
- (b) include a statement as to the accuracy of the information in the certificate.

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

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

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

- (a) a duly authenticated copy of the order, and
- (b) such other information as may be required by the appropriate authority in accordance with the relevant international instrument.

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

Transmission of external freezing orders to State for enforcement.

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

- (a) a duly certified copy of the order,
- (b) a statement of the grounds—
 - (i) for making the order, and
 - (ii) for believing that the evidence or property concerned will be subject to an order of confiscation,

and any other information required by the relevant international instrument.

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

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

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

- (a) request the issuing judicial authority to cause the original or a copy of the document to be transmitted to the Central Authority, and
- (b) agree with that judicial authority on the manner in which the original or copy is to be so transmitted.

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

- (a) prescribing procedures to be followed in connection with the transmission of documents in accordance with this section, and
- (b) specifying features to be present in any equipment being used in that connection.

35.—(1) The Central Authority shall, on receipt of an external freezing order, certificate (where appropriate), any other supporting or related documents and any translation, forthwith cause an application to be made to the High Court for an order (in this Part

Recognition and enforcement of external freezing orders.

referred to as a “freezing co-operation order”) recognising the external freezing order and prohibiting any person from dealing with the property specified in the external freezing order.

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

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

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

(5) The Court may—

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

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

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

(7) Where—

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

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

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

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

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

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

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

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

(b) in any other case—

- (i) to realisable property held by a specified person, whether the property is described in the freezing co-operation order or not, and
- (ii) to any realisable property held by a specified person, being property transferred to the person after the external freezing order was made.

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

(3) The Court—

(a) may at any time appoint a receiver—

- (i) to take possession of any realisable property to which a freezing co-operation order applies, and
- (ii) in accordance with the Court's directions, to manage or otherwise deal with the property, subject to such exceptions and conditions as it may specify,

and

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

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

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

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

Registration of freezing co-operation orders.

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

- (a) if the land is registered land, cause an entry to be made in the register kept by it under the Registration of Deeds and Title Acts 1964 and 2006 inhibiting, until the order is discharged, any dealing with the land and any charge thereon, and
- (b) if the order is subsequently varied or discharged, cause the entry to be varied accordingly or cancelled, as the case may be.

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

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

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

- (a) if the company is an existing company within the meaning of the Companies Acts 1963 to 2006, send a copy of the notice to each director and the secretary of the company at the company's registered office, or
- (b) in any other case, send a copy of the notice by post to the person resident in the State who has been authorised to accept, on behalf of the company concerned, service of process and any notices required to be served on it.

(6) In this section—

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

“registered company” means—

- (a) a company formed and registered under those Acts,
- (b) an existing company within the meaning of those Acts, or
- (c) a company registered under Part XI of the Companies Act 1963 or the European Communities (Branch Disclosure) Regulations 1993 (S.I. No. 395 of 1993).

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

38.—(1) The powers of the High Court under *section 36* or of a receiver appointed under that section shall be exercised, subject to this section, with a view to making available for recovery property which may become liable to be recovered under any confiscation co-operation order that may be made in the defendant's case.

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

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

(4) In exercising the powers no account shall be taken of any obligations of the defendant or the recipient of any gift that conflict with the obligation to satisfy any confiscation co-operation order that may be made in the defendant's case.

Receivers: supplementary provisions.

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

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

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

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

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

Bankruptcy of defendant, etc.

- (a) property for the time being subject to a freezing co-operation order made before the order adjudicating the person bankrupt, and
- (b) any proceeds of property realised by virtue of *section 36*, for the time being in the hands of a receiver,

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

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

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

- (a) no decision as to whether the gift is void shall be made under *section 57, 58 or 59* of the said Act of 1988 in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a freezing co-operation order, and
- (b) any decision as to whether it is void made under any of those sections after the discharge of the freezing co-operation order shall take into account any realisation under this Act of property held by the person to whom the gift was made.

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

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

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

- (a) the Official Assignee or a trustee appointed under Part V of the Bankruptcy Act 1988 seizes or disposes of any property in relation to which his or her functions are not exercisable because it is for the time being subject to a freezing co-operation order, and
- (b) at the time of the seizure or disposal he or she believes, and has reasonable grounds for believing, that he or she

is entitled (whether under an order of the court or otherwise) to seize or dispose of the property,

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

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

Application of proceeds of realisation.

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

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

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

Winding up of company holding realisable property.

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

- (a) property for the time being subject to a freezing co-operation order made before the relevant time, and
- (b) any proceeds of property realised by virtue of *section 36* for the time being in the hands of a receiver.

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

- (a) so as to inhibit him or her from exercising those functions for the purpose of distributing any property held by the company to the company's creditors, or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) In this section—

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

“relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for its voluntary winding up,
- (b) where such an order has been made and, before presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution, and
- (c) in any other case where such an order has been made, the time of the making of the order.

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

Duration of freezing co-operation order.

- (a) where the external freezing order is for the purpose of securing evidence, until the evidence is transferred to the issuing state or a request for such a transfer is refused,
- (b) where the order is for the purpose of subsequent confiscation of property, until a confiscation co-operation order is made or the request for such an order is refused and the refusal is upheld on any appeal against it, or
- (c) until the freezing co-operation order is discharged in accordance with *section 45*.

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

Variation or discharge of freezing co-operation order.

- (a) may vary or discharge it, and
- (b) shall discharge it—
 - (i) if proceedings in respect of the offence are not instituted, or an application for the transfer of the evidence or for a confiscation order is not made, within such time as the court considers reasonable, or
 - (ii) if the court considers that for any other reason the continuance in force of the order would not be in the interests of justice.

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

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

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

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

Refusal to make freezing co-operation order.

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

- (a) the offence to which the external freezing order relates is not an offence to which the relevant international instrument relates,
- (b) where the external freezing order was made in a member state, the certificate is not produced, is incomplete or manifestly does not correspond to the external freezing order,
- (c) there is an immunity or privilege under the law of the State which makes it impossible to make a freezing co-operation order,
- (d) it is immediately clear from the information provided in a certificate that compliance with a request for the transfer of evidence or confiscation of property in relation to the offence in respect of which the external freezing order has been made would infringe the *ne bis in idem* principle, or
- (e) in the case of an external freezing order from a designated state (other than a member state), there is not a reasonable basis for believing—
 - (i) that there are sufficient grounds for making the order, or
 - (ii) that the property will be subject to an external confiscation order.

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

- (a) specify a deadline for presentation of a certificate or for its completion or correction,
- (b) accept an equivalent document, or
- (c) if the Court considers that the information provided is sufficient, dispense with the requirement to produce the certificate.

(3) Where—

- (a) the High Court refuses to make a freezing co-operation order, or
- (b) notwithstanding consultation with the issuing judicial authority concerned, it is not possible to make such an order because—
 - (i) the evidence or property has disappeared, has been destroyed or cannot be found in the location indicated in the certificate, or
 - (ii) its location has not been indicated in a sufficiently precise manner,

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

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

Postponement of freezing co-operation order.

- (a) where making it might prejudice an ongoing criminal investigation in the State, until such time as the Court deems reasonable,
- (b) where the property or evidence concerned is already subject to a freezing order in criminal proceedings in the State, until that order is discharged, or
- (c) subject to *subsection (2)*, where, in the case of an external freezing order freezing property with a view to its subsequent confiscation, the property is already subject to an order made in other proceedings in the State, until that order is discharged.

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

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

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

- (a) any postponement under this section of the making of a freezing co-operation order, the reasons for the postponement and its expected duration,
- (b) the making of a freezing co-operation order under *subsection (3)*, and
- (c) any other measure of restraint to which the property concerned may be subject.

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

Subsequent treatment of frozen property.

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

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

- (a) a request from a member state concerns an offence to which Article 3(2) of the Framework Decision applies, and
- (b) the offence is punishable in the issuing state by a term of imprisonment of not less than 3 years,

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

CHAPTER 3

Confiscation of Property

Request for
confiscation of
property in
designated state.

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

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

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

- (a) the documents mentioned in *subsection (1)*,
 - (b) a document signed by or on behalf of the Director stating—
 - (i) that the order is in force and has not been satisfied, and
 - (ii) that the defendant appeared or was represented at the proceedings in which the order was made or, if not, the date on which the court proceedings began and the date on which the defendant received notice of them,
 - (c) a brief description of the conduct which resulted in the making of the order, and
 - (d) a request that the property concerned be realised and the proceeds applied in accordance with the law of that state.
- (3) If—
- (a) property is realised in pursuance of such a request, and

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

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

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

- (a) that property has been realised pursuant to the request,
- (b) the date of realisation, and
- (c) the proceeds of realisation,

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

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

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

Transmission to State of external confiscation order.

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

- (a) a duly certified copy of the order,
- (b) a statement by or on behalf of the court that made the order—
 - (i) that it is in force and not subject to appeal, and
 - (ii) that, if the person against whom it was made did not appear in the proceedings concerned, notice thereof was received by the person in good time to defend the proceedings,
- (c) a brief description of the conduct constituting the offence which resulted in the making of the order, and
- (d) any required translations,

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

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

Confiscation co-operation order.

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

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

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

(a) it is satisfied—

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

(ii) as to the matters mentioned in *section 50(2)(b)*,

(iii) that the conduct which resulted in the making of the external confiscation order constitutes criminal conduct, and

(iv) that the making of the order is otherwise in accordance with the relevant international instrument,

and

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

(5) The Court—

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

(b) shall—

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

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

Enforcement, etc., of confiscation co-operation orders.

52.—(1) Where the High Court makes a confiscation co-operation order for the payment of a sum of money, the order may, without prejudice to *section 38* enabling property of the defendant in the hands of a receiver appointed under this Act to be applied in satisfaction of the order, be enforced by the Director of Public Prosecutions at any time after it is made (or, if the order provides for payment at a later time, then at any time after the later time) as if it were a judgment of the Court for the payment to the State of the sum specified in the order or of any lesser sum remaining due under it.

(2) Nothing in *subsection (1)* enables a person to be imprisoned.

(3) Subject to *subsections (4)* and *(5)*, if, at any time after payment of a sum due under a confiscation co-operation order has become enforceable in the manner provided for by *subsection (1)*, it is

reported to the Court by the Director of Public Prosecutions that any such sum or any part of it remains unpaid, the Court may, without prejudice to the validity of anything previously done under the order or to the power to enforce the order subsequently in accordance with *subsection (1)*, order that the defendant be imprisoned for a period not exceeding that set out in the second column of the table to this section opposite to the amount remaining unpaid under the confiscation co-operation order as set out in the first column thereof.

(4) An order under *subsection (3)* shall not be made unless—

- (a) the defendant has been given a reasonable opportunity to make any representations to the Court, and
- (b) the Court has taken into account those representations and any representations made by the Director of Public Prosecutions in reply.

(5) A defendant shall not be imprisoned for non-compliance with a confiscation co-operation order if the request for the enforcement of the external confiscation order so specifies and the relevant international instrument so provides.

(6) Any term of imprisonment imposed under *subsection (3)* of this section shall be reduced in proportion to any sum or sums paid or recovered from time to time under the confiscation co-operation order.

TABLE

Amount outstanding under confiscation order	Period of imprisonment
Not exceeding €650	45 days
Exceeding €650 but not exceeding €1,300	3 months
Exceeding €1,300 but not exceeding €3,250	4 months
Exceeding €3,250 but not exceeding €6,500	6 months
Exceeding €6,500 but not exceeding €13,000	9 months
Exceeding €13,000 but not exceeding €26,000	12 months
Exceeding €26,000 but not exceeding €65,000	18 months
Exceeding €65,000 but not exceeding €130,000	2 years
Exceeding €130,000 but not exceeding €325,000	3 years
Exceeding €325,000 but not exceeding €1,300,000	5 years
Exceeding €1,300,000	10 years

53.—(1) Where—

- (a) a confiscation co-operation order for the payment of a sum of money has not been satisfied, or
- (b) such an order is for the confiscation of property other than such a sum,

Realisation of property subject to confiscation co-operation order.

the High Court may, on application by the Director of Public Prosecutions, appoint a person to be a receiver in respect of realisable property.

(2) The Court may empower the receiver to take possession of any realisable property subject to such conditions or exceptions as may be specified by the Court.

(3) The Court may order any person having possession or control of any realisable property to give possession of it to the receiver.

(4) The Court may empower the receiver to realise any realisable property in such manner as the Court may direct.

(5) The Court may order any person holding an interest in realisable property to make such payment to the receiver as the Court may direct in respect of any beneficial interest held by the defendant or the recipient of any gift caught by this Act and the Court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(6) The Court shall not, in respect of any property, exercise the powers conferred by this section unless a reasonable opportunity has been given to persons holding any interest in the property to make representations to it.

Interest on sums unpaid under confiscation co-operation orders.

54.—(1) Subject to *subsection (2)*, if any sum required to be paid by a person under a confiscation co-operation order is not paid when it is required to be paid (whether on the making of the order or at a later time specified by the Court), the person shall be liable to pay interest on the sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from the person under the order.

(2) The amount of interest payable under *subsection (1)* shall be disregarded when calculating the term of imprisonment to be imposed under *section 52*.

(3) The rate of interest payable under *subsection (1)* is that for the time being applying in relation to a High Court civil judgment debt.

Payments under confiscation co-operation orders to be expressed in euro.

55.—(1) Where a sum of money payable or remaining to be paid under an external confiscation order is expressed in a currency other than the euro, the confiscation co-operation order shall require payment of an equivalent euro amount, calculated at the baseline rate of exchange prevailing between that currency and the euro on the date of the making of the confiscation co-operation order.

(2) For the purposes of *subsection (1)*, a certificate—

- (a) purporting to be signed by an officer of a financial institution (within the meaning of *Part 2*) in the State, and
- (b) stating the baseline rate of exchange prevailing on a specified date between a specified currency and the euro,

is admissible, without further proof, as evidence of the exchange rate so prevailing on that date.

56.—(1) The powers of the High Court under *section 53* or of a receiver appointed under that section shall be exercised, subject to this section, with a view to recovering property which is liable to be recovered under the confiscation co-operation order concerned.

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

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

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

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

57.—*Sections 39, 40, 41, 42 and 43* apply in relation to confiscation co-operation orders as they apply in relation to freezing co-operation orders, and accordingly—

Application to confiscation co-operation orders of certain provisions relating to freezing co-operation orders.

(a) references to *section 36* in *sections 39, 40 and 43* shall be construed as references to *section 53*, and

(b) references in *sections 40, 41, 42 and 43* to a freezing co-operation order shall be construed as references to a confiscation co-operation order.

CHAPTER 4

Forfeiture of Property

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

Transmission of external forfeiture order to designated state for enforcement.

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

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

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

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

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

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

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

the date on which the defendant received notice of them,

- (c) a brief description of the conduct which resulted in the making of the order,
- (d) any other information required by the relevant international instrument, and
- (e) a request for forfeiture of the property concerned and its disposal.

Transmission of external forfeiture order to State for enforcement.

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

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

- (a) a duly certified copy of the order,
- (b) a statement by or on behalf of the court that made the order—
 - (i) that it is in force and not subject to appeal, and
 - (ii) that, if the person against whom it was made did not appear in the proceedings concerned, notice thereof was received by the person in good time to defend the proceedings,
- (c) a brief description of the conduct constituting the offence which resulted in the making of the order, and
- (d) any required translations,

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

Forfeiture co-operation order.

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

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

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

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

- (a) it is satisfied—
 - (i) that the application is made with the consent of the Minister,

- (ii) as to the matters mentioned in *section 59(2)(b)*,
- (iii) that the conduct which resulted in the making of the external forfeiture order constitutes criminal conduct, and
- (iv) that the making of the order is otherwise in accordance with the relevant international instrument,

and

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

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

(6) The forfeited property or the proceeds of any sale of the property shall be disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance, unless, on request by or on behalf of the designated state concerned and in accordance with the relevant international instrument, the Court provides otherwise.

(7) The Court—

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

(b) shall—

- (i) vary a forfeiture co-operation order in accordance with any variation in the external forfeiture order, and
- (ii) if satisfied that the external forfeiture order has been revoked, discharge it.

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

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

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

PART 5

PROVISION OF EVIDENCE

CHAPTER 1

Interpretation

Interpretation
(Part 5).

61.—In this Part—

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

“place” includes premises;

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

CHAPTER 2

Taking of Evidence

Evidence from
person in
designated state.

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

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

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

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

(5) The letter of request shall include—

(a) a statement that the evidence is required for the purpose of criminal proceedings or a criminal investigation,

(b) a brief description of the conduct constituting the offence concerned, and

(c) any other available information that may assist the appropriate authority in complying with the request.

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

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

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

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

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

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

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

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

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

- (a) a court or tribunal specified in the letter of request and exercising jurisdiction in that place, or
- (b) any other authority recognised by the government of the state concerned as the appropriate authority for receiving the letter.

63.—(1) This section applies, subject to *section 64*, in relation to a request for assistance in obtaining evidence in the State from a person (in this section referred to as a “witness”) for the purpose of criminal proceedings, or a criminal investigation, in a designated state. Evidence for use in designated state.

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

- (a) request the President of the District Court to nominate a judge of that Court to receive the evidence to which the request relates, and
- (b) send the judge a copy of the request and of any accompanying or related documents.

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

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

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

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

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

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

(i) the witness or other person, or

(ii) confidential or sensitive information, and

(c) shall inform the witness of his or her rights under *section 64*.

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

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

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

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

Privilege of witnesses.

64.—(1) A person is not compelled to give any evidence in proceedings under *section 63* which he or she could not be compelled to give—

(a) in criminal proceedings in the State, or

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

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

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

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

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

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

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

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

Evidence of prisoners

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

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

(a) under a sentence or order of a court exercising criminal jurisdiction in that state, or

(b) having been transferred there from the State under section 5 (issue of warrants for the transfer of sentenced prisoners outside State) of the Transfer of Sentenced Prisoners Act 1995.

(2) Where—

(a) a witness order has been made or a witness summons issued in criminal proceedings in respect of a prisoner, or

(b) it appears to the Minister that it is desirable for a prisoner to be identified in, or otherwise to assist by his or her presence, such proceedings or a criminal investigation,

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

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

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

- (5) The warrant is authority for—
- (a) bringing the prisoner to the State,
 - (b) taking the prisoner to, and detaining him or her in, a prison,
 - (c) taking the prisoner to and from the place where the prisoner's evidence is to be heard, and
 - (d) returning the prisoner in custody to the designated state.

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

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

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

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

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

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

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

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

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

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

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

(4) A warrant is authority for—

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

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

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

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

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

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

Evidence through television link

67.—(1) This section applies where—

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

Evidence through television link for use in State.

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

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

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

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

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

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

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

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

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

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

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

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

- (a) on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years or both.

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

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

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

Request for evidence through television link for use outside State.

(2) The request shall include the following information:

- (a) the name, address and, if known, the nationality of the witness;
- (b) the court or authority making the request;
- (c) the name of the person or persons who will conduct the hearing;
- (d) a statement as to why it is not desirable or possible for the witness to give evidence in person;
- (e) the likely date of the hearing.

69.—The Minister, if of opinion—

Action on request.

- (a) that it is not desirable or possible for the witness to give evidence in person in the state concerned, and
- (b) that the request complies with *section 68*,

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

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

Taking of the evidence.

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

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

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

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

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

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

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

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

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

- (a) the date and place of the taking of the evidence,
- (b) the name of the witness,
- (c) the name and function of any other person present and participating in the proceedings,
- (d) whether an oath was administered to the witness, and
- (e) the technical conditions under which the proceedings took place.

(10) A witness who—

- (a) makes a statement material in the proceedings which he or she knows to be false or does not believe to be true, or
- (b) does not testify when under an obligation to do so,

is guilty of an offence and liable—

- (i) on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both, or
- (ii) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years or both.

Evidence by telephone link for use outside State

Request for evidence by telephone link.

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

(2) The request shall include the following information:

- (a) the name, address and, if known, the nationality of the witness;
- (b) the court or tribunal which is to hear the evidence;
- (c) the person or persons who will conduct the proceedings;
- (d) a statement that the witness is willing to give evidence by telephone link in the proceedings;
- (e) the likely date of the hearing.

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

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

(3) *Section 70* applies in relation to taking evidence under this section by telephone link as it applies in relation to taking evidence under that section by television link.

Search for evidence

73.—(1) Where it appears to a judge at a sitting of any court that— Search for evidence at place in designated state.

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

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

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

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

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

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

(5) The letter of request shall include—

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

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

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

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

(8) In any proceedings relating to the offence—

- (a) evidence (other than documentary evidence) which purports—
 - (i) to have been obtained as a result of a request under this section, and
 - (ii) to be certified by or on behalf of the appropriate authority to be such evidence,
 is admissible without further proof, and
- (b) documentary evidence which purports—
 - (i) to have been so obtained, and
 - (ii) to be so certified,

is admissible, without further proof, as evidence of any fact stated in it of which oral evidence would be admissible.

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

- (a) a court or tribunal exercising criminal jurisdiction in the place in a designated state where the evidence referred to in the letter of request is to be obtained, or
- (b) any other body or authority recognised by the government of that state as the appropriate authority for receiving the letter.

Search for evidence for use outside State (general).

74.—(1) Subject to *subsections (2) and (3)*, this section applies to a request for assistance in obtaining evidence for the purposes of criminal proceedings, or a criminal investigation, in a designated state, where there is power under any enactment to issue a warrant

for the search of a place in respect of an offence constituted by the conduct giving rise to the request.

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

- (a) under the law of the State and the member state by imprisonment for a maximum period of at least 6 months, or
- (b) under the law of the State by such imprisonment and under the law of the member state by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

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

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

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

- (a) that any evidence that may be supplied in response to the request will not, without the Minister's prior consent, be used for any purpose other than that permitted by the relevant international instrument or specified in the request, and
- (b) that the evidence will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless the Minister indicates that its return is not required.

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

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

(8) If, on the application, the judge is satisfied that this section applies to the request and it appears to him or her that there are reasonable grounds for believing that entry to any place is necessary for the purposes of complying with it, the judge may issue a warrant for the search of the place and any persons found there.

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

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

- (a) to enter the place named in the warrant at any time or times within one week of the date of its issue, on production, if so requested, of the warrant and, if necessary, by the use of reasonable force,
 - (b) to search it and any person found there,
 - (c) to access, examine, seize, take away and retain any material found there, or in the possession of a person present there at the time of the search—
 - (i) which the member reasonably believes to be evidence of, or relating to, the commission of the offence concerned or assets or proceeds deriving from criminal conduct in the designated state or their identity or whereabouts, or
 - (ii) whose retention is necessary to comply with the request,
 - (d) to make a copy of any document so seized and to take the copy away, and
 - (e) to take such other steps as appear to the member to be necessary for preserving any such material and preventing interference with it.
- (10) Where material referred to in *subsection (9)* consists of or includes information in non-legible form, the warrant has effect as an order to produce the material, or to give access to it, in a form which is legible and in which it can be taken away.
- (11) The warrant—
- (a) does not confer any right to examine, seize, take away or retain documents which are subject to legal privilege or to have them produced or to be given access to them, and
 - (b) subject to *paragraph (a)* and *subsection (14)*, has effect notwithstanding any other obligation as to secrecy or other restriction on the disclosure of information under any enactment or rule of law.
- (12) A member acting under the warrant may—
- (a) require any person present at the place where the search is being carried out to give his or her name and address to the member, and
 - (b) arrest without warrant any person who—
 - (i) obstructs or attempts to obstruct the member in carrying out his or her duties,
 - (ii) does not comply with a requirement under *paragraph (a)*, or
 - (iii) gives a name or address which the member has reasonable cause for believing is false or misleading.
- (13) A person who—

- (a) obstructs or attempts to obstruct a member acting under the authority of a warrant under this section,
- (b) does not comply with a requirement under *subsection (12)(a)*, or
- (c) gives a false or misleading name or address to a member,

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

(14) Where—

- (a) material has been supplied to a Government department or other authority by or on behalf of the government of another state, and
- (b) an undertaking was given that the material would be used only for a particular purpose or purposes,

an order under this section does not have the effect of requiring or permitting the production of, or the giving of access to, the material for any other purpose without the consent of that government.

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

(16) In this section—

“evidence” includes evidence of or relating to assets or proceeds deriving from criminal conduct in the designated state concerned or their identity or whereabouts;

“member state” includes the Swiss Confederation.

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

Search for particular evidence for use outside State.

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

- (a) under the law of the State and the member state by imprisonment for a maximum period of at least 6 months, or
- (b) under the law of the State by such imprisonment and under the law of the member state by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

(3) This section does not apply to such a request from a designated state (other than a member state) unless the conduct giving

rise to the request is punishable under both the law of the State and the law of that state.

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

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

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

- (a) that any material that may be furnished in response to the request will not, without his or her prior consent, be used for any purpose other than that permitted by the relevant international instrument or specified in the request, and
- (b) that the material will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless he or she indicates that its return is not required.

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

(8) Unless the material sought is already in the custody of the Garda Síochána, a member of the Garda Síochána not below the rank of inspector shall, on production of a copy of the request and of any accompanying or related documents, apply to the judge of the District Court for the district where the evidential material is situated for an order under *subsection (10)*.

(9) If, on the application, the judge is satisfied that this section applies to the request and it appears to him or her that there are reasonable grounds for believing that the person named in the request possesses the evidential material, the judge may make an order under *subsection (10)*.

(10) An order under this subsection—

- (a) shall require any person who appears to the judge to be in possession of the evidential material—
 - (i) to produce it to a named member of the Garda Síochána so that he or she may take it away, or
 - (ii) to give the member access to it, either immediately or within a period specified in the order,
- (b) may, if the order relates to evidential material at any place and on application by a member of the Garda Síochána, require any person who appears to the judge to be entitled to grant entry to the place to allow the member to enter it to obtain access to the material,

- (c) shall authorise such a member, if the person who is so required to grant entry to the place does not do so—
 - (i) to enter the place, accompanied by such other members or persons or both as the member thinks necessary, on production if so requested of the order and, if necessary, by the use of reasonable force,
 - (ii) to search the place and any persons present there,
 - (iii) to access, examine, seize, take away and retain any evidential material which is found at the place or in the possession of a person so present and which the member reasonably believes to be the material concerned, and
 - (iv) to take such other steps as appear to the member to be necessary for preserving the evidential material and preventing interference with it.

(11) Where the evidential material consists of information contained in a computer, an order under this section has effect as an order to produce the material, or to give access to it, in a form which is legible and comprehensible or can be made so and in which it can be taken away.

(12) Such an order—

- (a) in so far as it may empower a member of the Garda Síochána to take away a document or to be given access to it, authorises him or her to make a copy of it and to take the copy away,
- (b) does not confer any right to production of, or access to, any evidential material subject to legal privilege, and
- (c) subject to *paragraph (b)* and *subsection (17)*, has effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise.

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

(14) A judge of the District Court may at a sitting of the Court vary or discharge an order under this section on the application of a member of the Garda Síochána or of any person to whom the order relates.

(15) A member searching a place under the authority of an order under *subsection (10)* may—

- (a) require any person present at the place where the search is being carried out to give his or her name and address to the member, and
- (b) arrest without warrant any person who—
 - (i) obstructs or attempts to obstruct the member in carrying out his or her duties,

(ii) fails to comply with a requirement under *paragraph (a)*, or

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

(16) A person who—

(a) obstructs or attempts to obstruct a member of the Garda Síochána acting under the authority of an order under this section,

(b) fails to comply with a requirement in an order under this section, or

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

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

(17) Where—

(a) material has been supplied to a Government department or other authority by or on behalf of the government of another state,

(b) an undertaking was given that the material would be used only for a particular purpose or purposes,

an order under this section does not have the effect of requiring or permitting the production of, or the giving of access to, the material for any other purpose without the consent of that government.

(18) This section is without prejudice to *section 74*.

(19) In this section—

“evidential material” includes any such material relating to assets or proceeds deriving from criminal conduct in the designated state concerned or their identity or whereabouts;

“member state” includes the Swiss Confederation.

CHAPTER 3

Identification evidence

Definitions
(Chapter 3).

76.—In this Chapter—

“bodily sample” means any of the following:

(a) a sample of blood, hair, urine or saliva;

(b) a nail or any material found under a nail;

(c) a swab from any part of the body;

(d) a footprint or a similar impression of any part of the body, including a dental impression;

“dentist” means a person whose name is entered for the time being in the Register of Dentists maintained under the Dentists Act 1985;

“doctor” means a person whose name is entered for the time being in the General Register of Medical Practitioners established under section 26 of the Medical Practitioners Act 1978;

“identification evidence” means a fingerprint, palm print or photograph of, or bodily sample from, a person and includes any related records;

“nurse” means a person whose name is entered for the time being in the register of nurses established under section 27 of the Nurses Act 1985.

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

Identification evidence for use in State.

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

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

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

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

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

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

(5) The letter of request shall include—

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

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

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

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

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

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

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

Identification evidence for use outside State.

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

- (a) a statement that the evidence is required in connection with criminal proceedings, or a criminal investigation, in that state, and
- (b) a brief description of the conduct constituting the offence.

Action on request.

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

- (a) that it complies with *section 78*,
- (b) that any identification evidence that may be furnished in response to the request will not, without the consent of the Minister, be used for any purpose other than that specified in the request, and
- (c) that the evidence—
 - (i) will be returned by the requesting authority when no longer required for that purpose (or any other purpose for which such consent has been obtained), unless the Minister indicates otherwise, or
 - (ii) will be dealt with in accordance with *subsections (10) and (11)*.

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

- (a) of the nature of the evidence,

- (b) that it has been requested in connection with criminal proceedings, or a criminal investigation, in the designated state concerned,
- (c) that he or she is not obliged to provide the evidence, and
- (d) that, if he or she does consent to provide it, it may be given in evidence in any proceedings in that state.

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

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

- (a) evidence may be taken under this section only if it relates to an offence other than that for which the person is in custody, and
- (b) any evidence provided may be taken at the prison or at another place.

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

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

(7) Where a sample of hair other than pubic hair is taken in accordance with this section—

- (a) the sample may be taken by plucking hairs with their roots and, in so far as it is reasonably practicable, the hairs shall be plucked singly, and
- (b) no more hairs shall be plucked than the person taking the sample reasonably considers to be necessary to constitute a sufficient sample for the purpose of forensic testing.

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

- (a) the place, time and date at which it was taken;
- (b) the result of any forensic test on the evidence;
- (c) any other relevant particulars, including any specified by the requesting authority,

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

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

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

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

for transmission to the requesting authority.

(10) When transmitting the identification evidence and record to the requesting authority the Central Authority shall, if *subsection (1)(c)(i)* does not apply and subject to *subsection (11)*, obtain an assurance that the evidence, as well as the record of any analysis of the evidence, or any other record relating to it, that may be made in the requesting state, will be destroyed—

- (a) if the person the subject of the investigation is not prosecuted, on the expiration of 12 months from the taking of the evidence, unless the failure to prosecute is not due to the fact that the person has absconded or cannot be found,
- (b) if the person is prosecuted and is acquitted or discharged or the proceedings are discontinued, on the expiration of 21 days thereafter, or
- (c) if the person is prosecuted and made subject to an order corresponding to or in the nature of a probation order under section 1(1) of the Probation of Offenders Act 1907, on the expiration of a period of 3 years from the making of the order, unless the person is convicted during that period of an offence under the law of the country concerned corresponding to an arrestable offence.

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

(12) In this section—

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

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

- (a) in the case of a person who has attained the age of 18 years, the consent of that person,
- (b) in the case of a person who has not attained the age of 18 years but has attained the age of 12 years, the consent of that person and of his or her parent or guardian, and
- (c) in the case of a child aged 10 or 11 years who is detained on suspicion of having committed an offence mentioned in *subsection (2)* of section 52 (restriction on criminal proceedings against children) of the Children Act 2001, as substituted by section 129 of the Criminal Justice Act 2006, the consent of his or her parent or guardian.

PART 6

OTHER FORMS OF ASSISTANCE

CHAPTER 1

Service of documents

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

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

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

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

(4) The document—

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

(b) shall be accompanied by—

(i) a notice stating that—

(I) no measure of restraint or punishment may be enforced directly by the court in the territory of the other state, and

(II) the person to be served may obtain information regarding his or her rights or obligations concerning the document from the court or a specified person or authority,

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

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

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

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

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

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

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

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

Mode of service.

81.—(1) A document referred to in *section 80* may be served in a designated state by post.

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

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

- (a) the address of the person is unknown or uncertain,
- (b) it has not been possible to serve the document by post, or
- (c) the person at whose request the document was issued has good reason for believing that service by post would not be effective or is inappropriate.

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

Service of documents in State.

82.—(1) This section applies to a request for service on a person in the State of—

- (a) a document requiring the person to appear as a defendant or attend as a witness in criminal proceedings in a designated state, and
- (b) any other document issued by a court or authority (including a prosecuting authority) in that state in criminal proceedings, including a document relating to the enforcement of a sentence or a preventive measure, the imposition of a fine or the payment of costs of proceedings.

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

(3) Where the request is for personal service, the document, if not in Irish or English, shall be accompanied—

- (a) by a translation of the document, or of the material parts of it, into either of those languages, and
- (b) if it is known that the person understands only another language or languages and the document is not in that language or one of those languages, by such a translation into that other language or one of those other languages.

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

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

- (a) the address of the person concerned is unknown or uncertain,
- (b) under the law of the member state proof of service on the person is required, other than proof that can be obtained by post,
- (c) it has not been possible to serve the document by post, or
- (d) the applicant for the issue of the document or the issuing authority has good reason for believing that service by post would not be effective or is inappropriate.

(6) The Commissioner shall—

- (a) cause the document, together with the notice referred to in *subsection (1)*, to be served by a member of the Garda Síochána in accordance with the request and send proof of the service to the Minister for transmission to the requesting authority concerned, or
- (b) if it is not possible to effect service, cause the Minister to be notified accordingly, stating the reason for the non-service.

(7) A person served under this section with a document is not under any obligation under the law of the State to comply with any requirement in it.

(8) A document requiring a person to appear as a defendant in criminal proceedings in a designated state may not be served under this section unless an assurance is given by the requesting authority concerned that, if the person so appears, he or she will not, subject to *subsection (10)*, be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in that state in respect of any conduct taking place before his or her departure from the State, other than conduct constituting the offence or offences specified in the document.

(9) A document requiring a person to attend as a witness in criminal proceedings in a designated state may not be served under this section unless an assurance is given by the requesting authority concerned that, if the person so attends, he or she will not, subject to *subsection (10)*, be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in that state in respect of any offence committed before his or her departure from the State.

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

- (a) a period of at least 15 days has elapsed from the date when the person's presence in the designated state is no longer required by the judicial authorities concerned and the person, having had an opportunity to leave the designated state during that period, has not done so, or
- (b) the person, having left the state during that period, returns to it.

(11) The notice to accompany a document served under this section shall—

- (a) state the content of *subsection (7), (8) or (9)*, as appropriate, and *subsection (10)*,
- (b) indicate that the person on whom the document is served may wish to seek advice as to the possible consequences of failure to comply with it under the law of the state where it was issued, and
- (c) indicate that under that law the person may not, as a defendant or witness, have the same rights and privileges as he or she would have in that capacity in criminal proceedings in the State.

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

CHAPTER 2

Examining objects and sites

Examining objects and sites.

83.—(1) A request for the examination of an object or site in a designated state for the purposes of a criminal investigation or criminal proceedings may be sent by the Director of Public Prosecutions either to the Central Authority for transmission to the appropriate authority in the designated state or directly to that authority.

(2) A request from a designated state for the examination of an object or site for such purposes may be sent by the Minister to the Commissioner of the Garda Síochána to arrange for the request to be complied with.

(3) A request under this section shall include a description of the object or site that is sufficient to enable it to be clearly identified.

(4) *Section 74* shall apply and have effect in relation to such a request from a designated state with the modification that, where

necessary, a warrant may be issued under *subsection (8)* of that section requiring the owner or occupier of the object or site to allow access to it by a member of the Garda Síochána and such other persons as may accompany the member for the purposes of the examination and with any other necessary modifications.

(5) *Subsection (4)* is without prejudice to *section 97*.

CHAPTER 3

Restitution

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

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

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

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

(a) a statement that—

- (i) a specified person obtained the property concerned by committing an offence under the law of the State, and
- (ii) the return of the property to its owner does not prejudice the rights of any *bona fide* third parties in relation to it,

and

(b) the following information:

- (i) a description of the property;
- (ii) its location;
- (iii) the name and address of its owner; and
- (iv) any other information likely to facilitate compliance with the request.

85.—(1) This section applies to a request for property obtained by criminal means to be placed at the disposal of the requesting authority with a view to the return of the property to its owner. Request to State for restitution of stolen property.

(2) The request shall be in writing and shall include or be accompanied by—

- (a) a statement that—
 - (i) a specified person has obtained the property by committing an offence under the law of the requesting state, and
 - (ii) the return of the property to its owner does not prejudice the rights of any *bona fide* third parties in relation to it,
- and
- (b) the following information:
 - (i) a description of the property;
 - (ii) its location;
 - (iii) the name and address of its owner; and
 - (iv) any other information likely to facilitate compliance with the request.

Action on request. **86.**—(1) On receipt of the request the Minister may, if of opinion that the request complies with *section 85*, cause an application to be made to the District Court for an order under *section 87* in relation to the property.

(2) The Court shall provide for notice of the application to be given to any person who appears to be or is affected by such an order unless the Court is satisfied that it is not reasonably possible to ascertain the person's whereabouts.

Order for restitution.

87.—(1) On application by or on behalf of the Minister, the District Court may, if satisfied—

- (a) that *sections 85* and *86(2)* have been complied with, and
- (b) that the property concerned is in the possession or control of a specified person,

order that person to deliver the property to the member in charge of the Garda Síochána station named in the application.

(2) The Central Authority shall arrange for the delivery of the property to the requesting authority with a view to the return of the property to its owners.

(3) An order may also be made by the District Court under this section for the delivery of property which is in the custody of the Garda Síochána.

(4) An order under this section may not be made—

- (a) where the property is required as evidence in civil or criminal proceedings, or
- (b) unless an opportunity has been given to any person claiming to own, or have an interest in, the property to show cause why the order should not be made.

(5) A person who does not comply with an order under this section is guilty of an offence and liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(6) The jurisdiction of the District Court under this section may be exercised—

- (a) by the judge of that Court assigned to the district court district in which the property is located, or
- (b) if the property is located in more than one district court district, by a judge of that Court assigned to any one of those districts.

CHAPTER 4

Controlled deliveries

88.—(1) In this Chapter—

Interpretation
(Chapter 4).

“competent authority in a designated state”, in relation to a request for a controlled delivery to or from a designated state, means a person or body in that state appearing to the Competent Authority in the State to have the function of receiving or making the request;

“Competent Authority in the State”, in relation to a request for a controlled delivery to or from a designated state, means—

- (a) the Commissioner of the Garda Síochána or a member of the Garda Síochána authorised by him or her for the time being to exercise his or her functions under this Chapter, or
- (b) if the controlled delivery is concerned with a revenue offence, the Revenue Commissioners or a person authorised by them for the time being to exercise their functions under this Chapter;

“controlled delivery” means a delivery permitted in the State in accordance with this Chapter or in a designated state in accordance with the relevant international instrument for the purposes of an investigation into an offence;

“controlled drug” has the meaning given to it by section 2 of the Misuse of Drugs Act 1977;

“offence” includes an offence which is suspected, with reasonable cause, to have been or to be about to be committed.

(2) Where the competent authority of a designated state requires requests under this Chapter to be received or made by a judicial authority, the requests shall be addressed to or made by the Minister, and for that purpose references in this Chapter to the Competent Authority in the State are to be construed as references to the Minister.

89.—(1) The Competent Authority in the State may request the competent authority in a designated state to permit—

Controlled delivery
in designated state.

- (a) a controlled delivery to be made in that state, and
- (b) specified persons or persons of a specified description, including members of the Garda Síochána and officers of customs and excise, to participate in the operations connected with the delivery.

(2) The request shall include particulars of the offence with which the controlled delivery is concerned.

Controlled delivery
in State.

90.—(1) This section applies to a request to the Competent Authority in the State from a competent authority in a designated state to permit—

- (a) a controlled delivery to be made in the State, and
- (b) specified persons, or persons of a specified description, from the designated state to participate in the operations connected with the controlled delivery.

(2) The request shall include particulars of the offence with which the controlled delivery is concerned.

(3) The Competent Authority in the State may grant the request if satisfied that—

- (a) the controlled delivery is being made for the purposes of an investigation into an offence, or
- (b) there are reasonable grounds for believing that it is in the public interest, having regard to the benefit likely to accrue to the investigation, to permit the delivery to take place.

(4) The operations related to a controlled delivery shall, if the delivery is concerned with the illegal importation of controlled drugs, be regulated in accordance with—

- (a) the Memorandum of Understanding of 12 January 1996 concerning the relationship between the Customs and Excise Service of the Revenue Commissioners and the Garda Síochána with respect to Drugs Law Enforcement and agreed between the Commissioner of the Garda Síochána and the chairman of the Revenue Commissioners, and
- (b) the Operational Protocol for co-operation between An Garda Síochána, the Customs and Excise and the Naval Service in relation to Drugs Law Enforcement,

including any modifications or extensions of the Memorandum or Protocol for the time being in force.

(5) If the delivery is concerned with a revenue offence (other than an offence constituted by the illegal importation of controlled drugs), the operations shall be under the direction and control of the officers of customs and excise assigned to the delivery.

(6) If the delivery is concerned with any other offence, the operations shall be under the direction and control of the members of the Garda Síochána so assigned.

(7) A member of the Garda Síochána or officer of customs and excise participating in operations connected with a controlled delivery in the State may, at the request of a person from a designated state so participating, take such action as may be open to the member or officer in furtherance of the operations.

(8) Copies of the Memorandum of Understanding and Operational Protocol have been placed in the Oireachtas Library.

91.—Section 51 (international service) of the Garda Síochána Act 2005 is amended— Amendment of Garda Síochána Act 2005.

(a) in subsection (2)(a), by the deletion of “State, or” and the substitution of “State,”, and

(b) by the substitution of the following subsections for subsections (b) and (c):

“(b) as members of a joint investigation team within the meaning of the Criminal Justice (Joint Investigation Teams) Act 2004, as amended by section 96 of the *Criminal Justice (Mutual Assistance) Act 2008*,

(c) in connection with the making of a controlled delivery outside the State pursuant to a request under section 89 of the said Act of 2008, or

(d) on secondment to an international organisation with the consent of the Minister.”.

92.—Sections 11 (use of information), 12 (criminal liability) and 13 (civil liability) of the Criminal Justice (Joint Investigation Teams) Act 2004 apply, with the necessary modifications, in relation to a person participating in operations connected with a controlled delivery as they apply in relation to a member or seconded member of a joint investigation team within the meaning of that Act. Application of Criminal Justice (Joint Investigation Teams) Act 2004 in relation to controlled deliveries.

PART 7

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

93.—In this Part—

Definitions (*Part 7*).

“Article” means an Article of the Ireland-US Treaty;

“Explanatory Note” means the Explanatory Note⁶ which—

(a) is annexed to the Council Decision⁷ of 6 June 2003 concerning the signature of the Agreements between the European Union and the United States of America on extradition and mutual assistance in criminal matters, and

⁶OJ L181, 19.7.2003, p.41

⁷OJ L181, 19.7.2003, p.25

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

- (b) records an understanding between the European Union and the United States of America on the EU - US Agreement;

“Instrument” means the Instrument contemplated by Article 3(2) of the EU - US Agreement⁸ as to the application of the US - Ireland Treaty and done at Dublin on 14 July 2005;

“EU - US Agreement” means the Agreement on Mutual Legal Assistance between the European Union and the United States of America, done at Washington D.C. on 25 June 2003;

“Ireland - US Treaty” means the Treaty between the Government of Ireland and the Government of the United States of America on Mutual Assistance in Criminal Matters, done at Washington D.C. on 18 January 2001, as applied by the Instrument.

Application in State of Ireland - US Treaty.

94.—(1) The Ireland - US Treaty has the force of law in its application in relation to the State.

(2) Judicial notice shall be taken of the Treaty.

(3) For the purpose of giving full effect to the Treaty, the relevant provisions of this Act relating to requests for mutual legal assistance between the State and member states, including those relating to applications to courts or judges—

- (a) to make orders to give effect to or enforce compliance with requests for such assistance, and
- (b) to make, vary or discharge those orders,

have also effect, subject to the Treaty, in relation to requests for mutual legal assistance between the State and the United States of America, where necessary for that purpose and with the necessary modifications; in particular, for that purpose the reference in Article 16 *bis* 4 to money laundering and terrorist activity include, respectively, an offence under section 31 of the Criminal Justice Act 1994, as substituted by section 21 of the Criminal Justice (Theft and Fraud Offences) Act 2001, and an offence under section 6 of the Criminal Justice (Terrorist Offences) Act 2005.

(4) Section 7 (operation of joint investigation teams) of the Criminal Justice (Joint Investigation Teams) Act 2004 applies in relation to a joint investigation team established under Article 16 *ter* and operating in the State as if it were a joint investigation team established under that Act.

(5) Article 7, in its application in relation to the use of personal data contained in evidence or information obtained under the Treaty by a person in the State, is without prejudice to the application of section 7 (duty of care owed by data controllers and data processors) of the Data Protection Act 1988 in respect of the use of such data.

(6) The Data Protection Acts 1988 and 2003 apply in relation to such data in respects other than those related to their use.

(7) A court may consider—

⁸OJ L181, 19.7.2003, p.34

- (a) the Explanatory Note when interpreting any provision of the EU - US Agreement, and
- (b) the Note and Agreement when interpreting any provision of the Treaty,

and give them such weight as is appropriate in the circumstances.

PART 8

MISCELLANEOUS

95.—(1) The national unit designated under the Europol Act 1997 is deemed to be the specialised service within the Garda Síochána referred to in Article 2(1) of the 2005 Council Decision and has the functions assigned under that Article to such a service.

Exchange of information concerning terrorist offences between Europol, Eurojust and member states.

(2) The Minister may, in accordance with Article 2(2) of the 2005 Council Decision, designate an authority or authorities as the Eurojust national correspondent for terrorism matters, and any authority so designated has the functions assigned under that Article to such a correspondent.

96.—(1) The Criminal Justice (Joint Investigation Teams) Act 2004 applies and has effect, with the necessary modifications, as if references in it to another Member State or other such States included references to a designated state or states (other than a member state or states).

Application and amendment of Criminal Justice (Joint Investigation Teams) Act 2004.

(2) Section 9 (participants in joint investigation teams) of the said Act of 2004 is amended—

- (a) in *subsection (1)*, by the substitution of the following paragraph for paragraph (d):

“(d) one or more officers designated by an authority of a designated state (other than a Member State or part of such a State) within the meaning of the *Criminal Justice (Mutual Assistance) Act 2008*,”

and

- (b) by the deletion of subsections (5) and (6).

97.—(1) The Minister may, at the instance of the designated state concerned, authorise a representative of the authority concerned in that state (in this section referred to as “the representative”) to be present at the place where its request is being executed by a member or members of the Garda Síochána.

Presence of representatives of requesting state at execution of request.

(2) Such an authorisation may be subject to such conditions as the Minister may determine.

(3) The presence of the representative at any such place does not require the consent of the person affected by the execution of the request.

- (4) The representative, while so present—
- (a) shall be subject to the direction of the member or members executing the request,
 - (b) shall have access to the same places and objects (including documents) as that member or those members, and
 - (c) may be authorised to put or propose questions and suggest measures of investigation.

(5) The representative shall not disclose, in breach of the rights of the person affected by the execution of the request, confidential information resulting from his or her presence, except to any other such representative or representatives and to his or her authorities.

Presence of members of Garda Síochána at execution of request in designated state.

98.—Where a member of the Garda Síochána is authorised by the relevant authority in a designated state to be present at the execution of a request—

- (a) the member shall not disclose, in breach of judicial confidentiality or the rights of the person affected by the execution of the request, information resulting from his or her presence, except to any other member, and
- (b) any such information may not be admitted as evidence in any proceedings until a decision on transmission of the documents relating to execution has acquired the force of *res judicata* in the designated state.

Use of information or evidence obtained in response to request in designated state.

99.—Information or evidence obtained in response to a request by a court or the Director of Public Prosecutions may not be used for purposes other than those for which the request was made unless such use is in accordance with the relevant international instrument.

Disclosure prejudicing investigation.

100.—(1) Where a request is made in connection with a criminal investigation in the State or a designated state, any person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.
- (3) In proceedings for an offence under this section it is a defence to prove that the defendant—
- (a) did not know or suspect that the disclosure to which the proceedings relate was likely to prejudice the investigation concerned, or
 - (b) had lawful authority or reasonable excuse for making the disclosure.

101.—(1) Where—

Liability of officers
of body corporate.

- (a) an offence under this Act is committed by a body corporate, and
- (b) it is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person who—
 - (i) was a director, manager, secretary or other similar officer of the body corporate, or
 - (ii) was purporting to act in any such capacity,

the person is guilty of an offence and liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts or defaults of a member in connection with the member's functions of management as if he or she were a director or manager of the body corporate.

(3) *Subsections (1)* and *(2)* apply, with the necessary modifications, in relation to offences under this Act committed by an unincorporated body.

102.—(1) In any proceedings a document purporting—

Evidence in
proceedings
(general).

- (a) to be—
 - (i) a request or a supporting or related document,
 - (ii) an order made or warrant issued by a court, tribunal or authority in a designated state,
 - (iii) a record of the making or issue of such an order or warrant, or
 - (iv) a record of the date and mode of service of a document in a designated state,
- and
- (b) to be signed by or on behalf of the court or tribunal concerned or an authority appearing to be competent to do so,

is admissible, without further proof, as evidence of the matters mentioned in the document.

(2) In any proceedings a document purporting to—

- (a) relate to—
 - (i) the identity of an item required as evidence in criminal proceedings or for the purposes of a criminal investigation,

[No. 7.] *Criminal Justice (Mutual Assistance) Act 2008.* [2008.]

(ii) the continuity of its custody, or

(iii) the integrity of its condition,

and

(b) to be signed by a person appearing to have responsibility for custody of the item,

is admissible, without further proof, as evidence of the matters mentioned in the document.

(3) In any proceedings a document purporting—

(a) to be a translation of a document mentioned in *subsection (1) or (2)* or of a statement or document mentioned in *section 62(8), 73(8) or 77(8)*, and

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

is admissible, without further proof, as evidence of the translation.

(4) In any proceedings a document purporting to be a copy of a document mentioned in *subsection (1) or (2)*, and—

(a) to be certified to be such a copy by or on behalf of the court, tribunal or authority issuing it or by an officer of the central authority of the state concerned, or

(b) to bear the seal of the court, tribunal or either such authority concerned,

is deemed to be a true copy of the document.

(5) In any proceedings a document purporting—

(a) to be a certificate given by or on behalf of a court, tribunal or authority in a designated state, or

(b) to bear the seal of such a court, tribunal or other authority,

is admissible, without further proof, as evidence of such a certificate or seal.

(6) In any proceedings a document purporting—

(a) to set out the text of a reservation or declaration under a relevant international instrument, and

(b) to be signed by an officer of the Department of Foreign Affairs,

is admissible, without further proof, as evidence of the reservation or declaration.

Provisional measures.

103.—(1) Where—

(a) criminal proceedings have been instituted, or a criminal investigation is taking place, in a designated state, and

- (b) a competent authority in that state makes a request to the Minister, in accordance with the relevant international instrument, for the taking of provisional measures within the meaning of that instrument,

the Minister may cause an application to be made to the High Court for the grant of the requested measures.

(2) On such an application the High Court may grant provisional, including protective, measures of any kind that the Court has power to grant in proceedings that, apart from this section, are within its jurisdiction.

(3) The measures may be granted for such period, and subject to such conditions or limitations, as the Court, having had regard to the provisions of the relevant international instrument, may specify.

(4) The Court may refuse to grant the measures sought if, in its opinion, the fact that it has not jurisdiction, apart from this section, in relation to the subject matter of the proceedings concerned makes it inexpedient for it to grant such measures.

104.—(1) A court, when having regard under this Act to the rights of third parties, may, and shall if so required by the relevant international instrument, recognise any decision relating to those rights made by a court or tribunal in the designated state concerned. Recognition of third party rights.

(2) Such recognition may be refused if—

- (a) the third parties did not have an adequate opportunity to assert their rights,
- (b) the decision is irreconcilable with a court decision already made in the State in regard to those rights, or
- (c) it is contrary to public policy (*ordre public*).

105.—The Act of 1994 is amended—

Amendment of
Criminal Justice
Act 1994.

- (a) in sections 3(1), 24 and 25, 28 to 30 and 65, by the substitution of “freezing order” for “restraint order”,
- (b) in section 30, by the substitution of “freezing” for “restraint”,
- (c) by the insertion of the following subsection after section 3(16):

“(16A) References in this Act (other than section 9) to an offence in respect of which a confiscation order might be made under section 9 of this Act shall be construed as references to an indictable offence (other than a drug trafficking offence), irrespective of whether a person has been convicted of it on indictment.”,

- (d) by the substitution of the following Table for the Table to section 19:

“

Amount outstanding under confiscation order	Period of imprisonment
Not exceeding €650	45 days
Exceeding €650 but not exceeding €1,300	3 months
Exceeding €1,300 but not exceeding €3,250	4 months
Exceeding €3,250 but not exceeding €6,500	6 months
Exceeding €6,500 but not exceeding €13,000	9 months
Exceeding €13,000 but not exceeding €26,000	12 months
Exceeding €26,000 but not exceeding €65,000	18 months
Exceeding €65,000 but not exceeding €130,000	2 years
Exceeding €130,000 but not exceeding €325,000	3 years
Exceeding €325,000 but not exceeding €1,300,000	5 years
Exceeding €1,300,000	10 years

”

(e) by the addition to Part IV of the following section:

“Revenue offence.

32A.—For the avoidance of doubt it is hereby declared that, in relation to an offence under the law of a country or territory other than the State, references in this Part to an offence shall be construed as including references to an offence in connection with taxes, duties, customs or exchange regulation.”

and

(f) in section 60, by the substitution of “restraint (including a freezing order)” for “restraint”,

(g) by the substitution of the following section for section 63:

“Order to make material available.

63.—(1) For the purposes of an investigation into whether a person has engaged in criminal conduct or criminal proceedings in relation thereto, a member of the Garda Síochána may apply for an order under subsection (3) of this section in relation to any particular material or material of a particular description to a judge of the District Court for the district where the material is situated.

(2) On such an application the judge may make an order under subsection (3) of this section, if satisfied—

(a) that there are reasonable grounds for suspecting that the person has engaged in criminal conduct,

(b) that the material concerned is likely to be of substantial value (whether by itself or together

with other material) for the purposes of such investigation or proceedings, and

- (c) that there are reasonable grounds for believing that material should be produced or that access to it should be given, having regard to the benefit likely to accrue to the investigation or proceedings and any other relevant circumstances.

(3) An order under this subsection—

- (a) shall require any person who appears to the judge to be in possession of the material—

- (i) to produce it to a named member of the Garda Síochána so that he or she may take it away, or

- (ii) to give the member access to it within 7 days, unless it appears to the judge that another period would be appropriate in the particular circumstances of the case,

- (b) may, if the order relates to material at any place and on application by the member concerned, require any person who appears to the judge to be entitled to grant entry to the place to allow the member to enter it to obtain access to the material,

- (c) shall authorise the member, if the person so required to grant entry to the place does not do so—

- (i) to enter the place, accompanied by such other members or persons or both as the member thinks necessary, on production if so requested of the order and, if necessary, by the use of reasonable force,

- (ii) to search the place and any persons present there,

- (iii) to take away the material, and

- (iv) to take such other steps as appear to the member to be necessary for preserving the material and preventing interference with it.

(4) Where the material consists of information contained in a computer, an order under subsection (3) of this section shall have effect as an order to produce the material, or to give access to it, in a form which is legible and comprehensible or can be made so and in which it can be taken away.

(5) Such an order—

- (a) in so far as it may empower a member to take away a document or to be given access to it, shall authorise him or her to make a copy of it and to take the copy away,
- (b) shall not confer any right to production of, or access to, any material subject to legal privilege, and
- (c) subject to paragraph (b) of this subsection and subsection (10) of this section, shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise.

(6) Any material taken away by a member under this section may be retained by him or her for use as evidence in any proceedings.

(7) A judge of the District Court may at a sitting of the Court vary or discharge an order under this section on the application of a member or any person to whom the order relates.

(8) A member searching a place under the authority of an order under this section may—

- (a) require any person present at the place where the search is being carried out to give his or her name and address to the member, and
- (b) arrest without warrant any person who—

- (i) obstructs or attempts to obstruct the member in the carrying out of his or her duties,
- (ii) fails to comply with a requirement under paragraph (a) of this subsection, or
- (iii) gives a name or address which the member has reasonable cause to believe is false or misleading.

(9) A person who—

- (a) obstructs or attempts to obstruct a member acting under the authority of an order under this section,
- (b) fails to comply with a requirement under subsection (3)(a) of this section, or
- (c) gives a false or misleading name or address to a member,

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

(10) Where—

- (a) material has been supplied to a Government department or other authority by or on behalf of the government of another state, and
- (b) an undertaking was given that the material would be used only for a particular purpose or purposes,

an order under subsection (3) of this section shall not have the effect of requiring or permitting the production of, or the giving of access to, the material for any other purpose without the consent of that government.

(11) In this section—

“criminal conduct” means—

- (a) drug trafficking,

- (b) the commission of an indictable offence or more than one such offence,
- (c) holding funds subject to confiscation,
- (d) benefiting from—
 - (i) drug trafficking,
 - (ii) an indictable offence or more than one such offence,
 - (iii) assets or proceeds deriving from criminal conduct or the receipt or control of such assets or proceeds, including conduct which occurs outside the State and which would constitute an indictable offence or more than one such offence—
 - (I) if it occurred in the State, and
 - (II) if it constituted an offence or more than one such offence under the law of the state or territory concerned.”.

Amendment of section 8(7) of Criminal Assets Bureau Act 1996.

106.—Section 8(7) of the Criminal Assets Bureau Act 1996 is amended by the deletion of “Any information” and the substitution of “Subject to section 5(1), any information”.

Personal data protection.

107.—(1) The provisions of the relevant international instrument have effect in respect of the use of personal data communicated to or otherwise obtained by a person in the State under the instrument.

(2) *Subsection (1)* is without prejudice to the application of section 7 (duty of care owed by data controllers and data processors) of the Data Protection Act 1988 in respect of the use of such data.

(3) The Data Protection Acts 1988 and 2003 apply in relation to such data in respects other than those relating to their use.

Exercise of powers by judge of District Court outside district court district.

108.—Section 32A of the Courts (Supplemental Provisions) Act 1961 applies, with any necessary modifications, in relation to the exercise by a judge of the District Court of a power conferred by *section 74(8), 75(9) or 87* of this Act or under *subsection (2) of section 63* (as substituted by *section 105(g)* of this Act) of the Act of 1994.

109.—(1) Regulations may be made by the Minister for the purpose of enabling any provision of this Act, and of any of the following international instruments in their application to the State, to have full effect: Regulations.

- (a) a relevant international instrument;
- (b) the EU - US Agreement, the Ireland - US Treaty, and the Instrument as to the application of that Treaty, as defined in *section 93*.

(2) Regulations under this section may include such consequential, incidental, transitional or supplementary provisions as may be necessary for that purpose.

110.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses.

111.—An order (other than an order under *section 1(2)*) or regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling it is passed by either such House within the next 21 days on which that House has sat after it is laid before it, the order or regulation is annulled accordingly, but without prejudice to the validity of anything previously done under it. Laying of orders or regulations before Houses of Oireachtas.

SCHEDULE 1

Section 2(6).

TEXT OF 2000 CONVENTION

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

REFERRING to the Council Act establishing the Convention on
Mutual Assistance in Criminal Matters between the Member States
of the European Union,

WISHING to improve judicial cooperation in criminal matters
between the Member States of the Union, without prejudice to the
rules protecting individual freedom,

POINTING OUT the Member States' common interest in ensuring
that mutual assistance between the Member States is provided in a
fast and efficient manner compatible with the basic principles of their
national law, and in compliance with the individual rights and prin-
ciples of the European Convention for the Protection of Human
Rights and Fundamental Freedoms, signed in Rome on 4
November 1950,

EXPRESSING their confidence in the structure and functioning of
their legal systems and in the ability of all Member States to guaran-
tee a fair trial,

RESOLVED to supplement the European Convention on Mutual
Assistance in Criminal Matters of 20 April 1959 and other Conven-
tions in force in this area, by a Convention of the European Union,

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

CONSIDERING that the Member States attach importance to
strengthening judicial cooperation, while continuing to apply the
principle of proportionality,

RECALLING that this Convention regulates mutual assistance in
criminal matters, based on the principles of the Convention of 20
April 1959,

WHEREAS, however, Article 20 of this Convention covers certain
specific situations concerning interception of telecommunications,
without having any implications with regard to other such situations
outside the scope of the Convention,

WHEREAS the general principles of international law apply in
situations which are not covered by this Convention,

RECOGNISING that this Convention does not affect the exercise
of the responsibilities incumbent upon Member States with regard
to the maintenance of law and order and the safeguarding of internal
security, and that it is a matter for each Member State to determine,
in accordance with Article 33 of the Treaty on European Union,
under which conditions it will maintain law and order and safeguard
internal security,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

TITLE I

GENERAL PROVISIONS

Article 1

Relationship to other conventions on mutual assistance

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

- (a) the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, hereinafter referred to as the ‘European Mutual Assistance Convention’;
- (b) the Additional Protocol of 17 March 1978 to the European Mutual Assistance Convention;
- (c) the provisions on mutual assistance in criminal matters of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (hereinafter referred to as the ‘Schengen Implementation Convention’) which are not repealed pursuant to Article 2(2);
- (d) Chapter 2 of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1962, as amended by the Protocol of 11 May 1974, (hereinafter referred to as the ‘Benelux Treaty’), in the context of relations between the Member States of the Benelux Economic Union.

2. This Convention shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States or, as provided for in Article 26(4) of the European Mutual Assistance Convention, arrangements in the field of mutual assistance in criminal matters agreed on the basis of uniform legislation or of a special system providing for the reciprocal application of measures of mutual assistance in their respective territories.

Article 2

Provisions relating to the Schengen *acquis*

1. The provisions of Articles 3, 5, 6, 7, 12 and 23 and, to the extent relevant to Article 12, of Articles 15 and 16, to the extent relevant to the Articles referred to, of Article 1 constitute measures amending or building upon the provisions referred to in Annex A to the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter’s association with the implementation, application and development of the Schengen *acquis*¹.

¹OJ L 176, 10.7.1999, p. 36.

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.]
Act 2008.*

2. The provisions of Articles 49(a), 52, 53 and 73 of the Schengen Implementation Convention are hereby repealed.

Article 3

Proceedings in connection with which mutual assistance is also to be afforded

1. Mutual assistance shall also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Member State, or both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

2. Mutual assistance shall also be afforded in connection with criminal proceedings and proceedings as referred to in paragraph 1 which relate to offences or infringements for which a legal person may be held liable in the requesting Member State.

Article 4

Formalities and procedures in the execution of requests for mutual assistance

1. Where mutual assistance is afforded, the requested Member State shall comply with the formalities and procedures expressly indicated by the requesting Member State, unless otherwise provided in this Convention and provided that such formalities and procedures are not contrary to the fundamental principles of law in the requested Member State.

2. The requested Member State shall execute the request for assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the requesting Member State. The requesting Member State shall explain the reasons for the deadline.

3. If the request cannot, or cannot fully, be executed in accordance with the requirements set by the requesting Member State, the authorities of the requested Member State shall promptly inform the authorities of the requesting Member State and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting and the requested Member State may subsequently agree on further action to be taken concerning the request, where necessary by making such action subject to the fulfilment of those conditions.

4. If it is foreseeable that the deadline set by the requesting Member State for executing its request cannot be met, and if the reasons referred to in paragraph 2, second sentence, indicate explicitly that any delay will lead to substantial impairment of the proceedings being conducted in the requesting Member State, the authorities of the requested Member State shall promptly indicate the estimated time needed for execution of the request. The authorities of the requesting Member State shall promptly indicate whether the request is to be upheld nonetheless. The authorities of the requesting and requested Member States may subsequently agree on further action to be taken concerning the request.

Article 5

Sending and service of procedural documents

1. Each Member State shall send procedural documents intended for persons who are in the territory of another Member State to them directly by post.

2. Procedural documents may be sent via the competent authorities of the requested Member State only if:

- (a) the address of the person for whom the document is intended is unknown or uncertain; or
- (b) the relevant procedural law of the requesting Member State requires proof of service of the document on the addressee, other than proof that can be obtained by post; or
- (c) it has not been possible to serve the document by post; or
- (d) the requesting Member State has justified reasons for considering that dispatch by post will be ineffective or is inappropriate.

3. Where there is reason to believe that the addressee does not understand the language in which the document is drawn up, the document, or at least the important passages thereof, must be translated into (one of) the language(s) of the Member State in the territory of which the addressee is staying. If the authority by which the procedural document was issued knows that the addressee understands only some other language, the document, or at least the important passages thereof, must be translated into that other language.

4. All procedural documents shall be accompanied by a report stating that the addressee may obtain information from the authority by which the document was issued or from other authorities in that Member State regarding his or her rights and obligations concerning the document. Paragraph 3 shall also apply to that report.

5. This Article shall not affect the application of Articles 8, 9 and 12 of the European Mutual Assistance Convention and Articles 32, 34 and 35 of the Benelux Treaty.

Article 6

Transmission of requests for mutual assistance

1. Requests for mutual assistance and spontaneous exchanges of information referred to in Article 7 shall be made in writing, or by any means capable of producing a written record under conditions allowing the receiving Member State to establish authenticity. Such requests shall be made directly between judicial authorities with territorial competence for initiating and executing them, and shall be returned through the same channels unless otherwise specified in this Article. Any information laid by a Member State with a view to proceedings before the courts of another Member State within the meaning of Article 21 of the European Mutual Assistance Convention and Article 42 of the Benelux Treaty may be the subject of direct communications between the competent judicial authorities.

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

2. Paragraph 1 shall not prejudice the possibility of requests being sent or returned in specific cases:

- (a) between a central authority of a Member State and a central authority of another Member State; or
- (b) between a judicial authority of one Member State and a central authority of another Member State.

3. Notwithstanding paragraph 1, the United Kingdom and Ireland, respectively, may, when giving the notification provided for in Article 27(2), declare that requests and communications to it, as specified in the declaration, must be sent via its central authority. These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 1. They shall do so when the provisions on mutual assistance of the Schengen Implementation Convention are put into effect for them. Any Member State may apply the principle of reciprocity in relation to the declarations referred to above.

4. Any request for mutual assistance may, in case of urgency, be made via the International Criminal Police Organisation (Interpol) or any body competent under provisions adopted pursuant to the Treaty on European Union.

5. Where, in respect of requests pursuant to Articles 12, 13 or 14, the competent authority is a judicial authority or a central authority in one Member State and a police or customs authority in the other Member State, requests may be made and answered directly between these authorities. Paragraph 4 shall apply to these contacts.

6. Where, in respect of requests for mutual assistance in relation to proceedings as envisaged in Article 3(1), the competent authority is a judicial authority or a central authority in one Member State and an administrative authority in the other Member State, requests may be made and answered directly between these authorities.

7. Any Member State may declare, when giving the notification provided for in Article 27(2), that it is not bound by the first sentence of paragraph 5 or by paragraph 6 of this Article, or both or that it will apply those provisions only under certain conditions which it shall specify. Such a declaration may be withdrawn or amended at any time.

8. The following requests or communications shall be made through the central authorities of the Member States:

- (a) requests for temporary transfer or transit of persons held in custody as referred to in Article 9 of this Convention, in Article 11 of the European Mutual Assistance Convention and in Article 33 of the Benelux Treaty;
- (b) notices of information from judicial records as referred to in Article 22 of the European Mutual Assistance Convention and Article 43 of the Benelux Treaty. However, requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the European Mutual Assistance Convention may be made directly to the competent authorities.

Article 7

Spontaneous exchange of information

1. Within the limits of their national law, the competent authorities of the Member States may exchange information, without a request to that effect, relating to criminal offences and the infringements of rules of law referred to in Article 3(1), the punishment or handling of which falls within the competence of the receiving authority at the time the information is provided.
2. The providing authority may, pursuant to its national law, impose conditions on the use of such information by the receiving authority.
3. The receiving authority shall be bound by those conditions.

TITLE II

REQUEST FOR CERTAIN SPECIFIC FORMS OF MUTUAL ASSISTANCE

Article 8

Restitution

1. At the request of the requesting Member State and without prejudice to the rights of *bona fide* third parties, the requested Member State may place articles obtained by criminal means at the disposal of the requesting State with a view to their return to their rightful owners.
2. In applying Articles 3 and 6 of the European Mutual Assistance Convention and Articles 24(2) and 29 of the Benelux Treaty, the requested Member State may waive the return of articles either before or after handing them over to the requesting Member State if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of *bona fide* third parties shall not be affected.
3. In the event of a waiver before handing over the articles to the requesting Member State, the requested Member State shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles.

A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Member State to collect taxes or duties from the rightful owner.

Article 9

Temporary transfer of persons held in custody for purpose of investigation

1. Where there is agreement between the competent authorities of the Member States concerned, a Member State which has requested an investigation for which the presence of the person held in custody on its own territory is required may temporarily transfer that person to the territory of the Member State in which the investigation is to take place.

2. The agreement shall cover the arrangements for the temporary transfer of the person and the date by which he or she must be returned to the territory of the requesting Member State.
3. Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Member State.
4. The period of custody in the territory of the requested Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Member State.
5. The provisions of Articles 11(2) and (3), 12 and 20 of the European Mutual Assistance Convention shall apply *mutatis mutandis* to this Article.
6. When giving the notification provided for in Article 27(2), each Member State may declare that, before an agreement is reached under paragraph 1 of this Article, the consent referred to in paragraph 3 of this Article will be required or will be required under certain conditions indicated in the declaration.

Article 10

Hearing by videoconference

1. If a person is in one Member State's territory and has to be heard as a witness or expert by the judicial authorities of another Member State, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by videoconference, as provided for in paragraphs 2 to 8.
2. The requested Member State shall agree to the hearing by videoconference provided that the use of the videoconference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Member State has no access to the technical means for videoconferencing, such means may be made available to it by the requesting Member State by mutual agreement.
3. Requests for a hearing by videoconference shall contain, in addition to the information referred to in Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.
4. The judicial authority of the requested Member State shall summon the person concerned to appear in accordance with the forms laid down by its law.
5. With reference to hearing by videoconference, the following rules shall apply:
 - (a) a judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State. If the judicial authority of the

requested Member State is of the view that during the hearing the fundamental principles of the law of the requested Member State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;

- (b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Member States;
- (c) the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Member State in accordance with its own laws;
- (d) at the request of the requesting Member State or the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary;
- (e) the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Member State.

6. Without prejudice to any measures agreed for the protection of the persons, the judicial authority of the requested Member State shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Member State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Member State to the competent authority of the requesting Member State.

7. The cost of establishing the video link, costs related to the servicing of the video link in the requested Member State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the requested Member State shall be refunded by the requesting Member State to the requested Member State, unless the latter waives the refunding of all or some of these expenses.

8. Each Member State shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory in accordance with this Article and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.

9. Member States may at their discretion also apply the provisions of this Article, where appropriate and with the agreement of their competent judicial authorities, to hearings by videoconference involving an accused person. In this case, the decision to hold the videoconference, and the manner in which the videoconference shall be carried out, shall be subject to agreement between the Member States concerned, in accordance with their national law and relevant international instruments, including the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.

Any Member State may, when giving its notification pursuant to Article 27(2), declare that it will not apply the first subparagraph.

Such a declaration may be withdrawn at any time. Hearings shall only be carried out with the consent of the accused person. Such rules as may prove to be necessary, with a view to the protection of the rights of accused persons, shall be adopted by the Council in a legally binding instrument.

Article 11

Hearing of witnesses and experts by telephone conference

1. If a person is in one Member State's territory and has to be heard as a witness or expert by judicial authorities of another Member State, the latter may, where its national law so provides, request assistance of the former Member State to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 5.
2. A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.
3. The requested Member State shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.
4. A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.
5. The practical arrangements regarding the hearing shall be agreed between the Member States concerned.

When agreeing such arrangements, the requested Member State shall undertake to:

- (a) notify the witness or expert concerned of the time and the venue of the hearing;
- (b) ensure the identification of the witness or expert;
- (c) verify that the witness or expert agrees to the hearing by telephone conference.

The requested Member State may make its agreement subject, fully or in part, to the relevant provisions of Article 10(5) and (8). Unless otherwise agreed, the provisions of Article 10(7) shall apply *mutatis mutandis*.

Article 12

Controlled deliveries

1. Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.
2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that Member State.

3. Controlled deliveries shall take place in accordance with the procedures of the requested Member State. The right to act and to direct and control operations shall lie with the competent authorities of that Member State.

Article 13

Joint investigation teams

1. By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

- (a) a Member State's investigations into criminal offences require difficult and demanding investigations having links with other Member States;
- (b) a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved.

A request for the setting up of a joint investigation team may be made by any of the Member States concerned. The team shall be set up in one of the Member States in which the investigations are expected to be carried out.

2. In addition to the information referred to in the relevant provisions of Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3. A joint investigation team shall operate in the territory of the Member States setting up the team under the following general conditions:

- (a) the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
- (b) the team shall carry out its operations in accordance with the law of the Member State in which it operates. The members of the team shall carry out their tasks under the leadership of the person referred to in subparagraph (a), taking into account the conditions set by their own authorities in the agreement on setting up the team;
- (c) the Member State in which the team operates shall make the necessary organisational arrangements for it to do so.

4. In this Article, members of the joint investigation team from Member States other than the Member State in which the team operates are referred to as being 'seconded' to the team.

5. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Member State of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Member State where the team operates, decide otherwise.

6. Seconded members of the joint investigation team may, in accordance with the law of the Member State where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Member State of operation and the seconding Member State.

7. Where the joint investigation team needs investigative measures to be taken in one of the Member States setting up the team, members seconded to the team by that Member State may request their own competent authorities to take those measures. Those measures shall be considered in that Member State under the conditions which would apply if they were requested in a national investigation.

8. Where the joint investigation team needs assistance from a Member State other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operations to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.

9. A member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Member State which has seconded him or her for the purpose of the criminal investigations conducted by the team.

10. Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Member States concerned may be used for the following purposes:

- (a) for the purposes for which the team has been set up;
- (b) subject to the prior consent of the Member State where the information became available, for detecting, investigation and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Member State concerned or in respect of which that Member State could refuse mutual assistance;
- (c) for preventing an immediate and serious threat to public security, and without prejudice to subparagraph (b) if subsequently a criminal investigation is opened;
- (d) for other purposes to the extent that this is agreed between Member States setting up the team.

11. This Article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

12. To the extent that the laws of the Member States concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Member States setting up the joint investigation team to take part in the activities of the team. Such persons may, for example, include officials of bodies set up pursuant to the Treaty on European Union. The rights conferred upon the members or seconded members of the team by virtue of this Article shall not apply to these persons unless the agreement expressly states otherwise.

Article 14

Covert investigations

1. The requesting and the requested Member State may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).

2. The decision on the request is taken in each individual case by the competent authorities of the requested Member State with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Member States with due regard to their national law and procedures.

3. Covert investigations shall take place in accordance with the national law and procedures of the Member States on the territory of which the covert investigation takes place. The Member States involved shall cooperate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.

4. When giving the notification provided for in Article 27(2), any Member State may declare that it is not bound by this Article. Such a declaration may be withdrawn at any time.

Article 15

Criminal liability regarding officials

During the operations referred to in Articles 12, 13 and 14, officials from a Member State other than the Member State of operation shall be regarded as officials of the Member State of operation with respect of offences committed against them or by them.

Article 16

Civil liability regarding officials

1. Where, in accordance with Articles 12, 13 and 14, officials of a Member State are operating in another Member State, the first Member State shall be liable for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.

2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.

3. The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.

4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Member State.

TITLE III

INTERCEPTION OF TELECOMMUNICATIONS

Article 17

Authorities competent to order interception of telecommunications

For the purpose of the application of the provisions of Articles 18, 19 and 20, 'competent authority' shall mean a judicial authority, or, where judicial authorities have no competence in the area covered by those provisions, an equivalent competent authority, specified pursuant to Article 24(1)(e) and acting for the purpose of a criminal investigation.

Article 18

Requests for interception of telecommunications

1. For the purpose of a criminal investigation, a competent authority in the requesting Member State may, in accordance with the requirements of its national law, make a request to a competent authority in the requested Member State for:

- (a) the interception and immediate transmission to the requesting Member State of telecommunications; or
- (b) the interception, recording and subsequent transmission to the requesting Member State of the recording of telecommunications.

2. Requests under paragraph 1 may be made in relation to the use of means of telecommunications by the subject of the interception, if this subject is present in:

- (a) the requesting Member State and the requesting Member State needs the technical assistance of the requested Member State to intercept his or her communications;
- (b) the requesting Member State and his or her communications can be intercepted in that Member State;
- (c) a third Member State which has been informed pursuant to Article 20(2)(a) and the requesting Member State needs the technical assistance of the requested Member State to intercept his or her communications.

3. By way of derogation from Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests under this Article shall include the following:

- (a) an indication of the authority making the request;

- (b) confirmation that a lawful interception order or warrant has been issued in connection with a criminal investigation;
- (c) information for the purpose of identifying the subject of this interception;
- (d) an indication of the criminal conduct under investigation;
- (e) the desired duration of the interception; and
- (f) if possible, the provision of sufficient technical data, in particular the relevant network connection number, to ensure that the request can be met.

4. In the case of a request pursuant to paragraph 2(b), a request shall also include a summary of the facts. The requested Member State may require any further information to enable it to decide whether the requested measure would be taken by it in a similar national case.

5. The requested Member State shall undertake to comply with requests under paragraph 1(a):

- (a) in the case of a request pursuant to paragraph 2(a) and 2(c), on being provided with the information in paragraph 3. The requested Member State may allow the interception to proceed without further formality;
- (b) in the case of a request pursuant to paragraph 2(b), on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested Member State may make its consent subject to any conditions which would have to be observed in a similar national case.

6. Where immediate transmission is not possible, the requested Member State shall undertake to comply with requests under paragraph 1(b) on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested Member State may make its consent subject to any condition which would have to be observed in a similar national case.

7. When giving the notification provided for in Article 27(2), any Member State may declare that it is bound by paragraph 6 only when it is unable to provide immediate transmission. In this case the other Member State may apply the principle of reciprocity.

8. When making a request under paragraph 1(b), the requesting Member State may, where it has a particular reason to do so, also request a transcription of the recording. The requested Member State shall consider such requests in accordance with its national law and procedures.

9. The Member State receiving the information provided under paragraphs 3 and 4 shall keep that information confidential in accordance with its national law.

Article 19

**Interceptions of telecommunications on national territory by the
use of service providers**

1. Member States shall ensure that systems of telecommunications services operated via a gateway on their territory, which for the lawful interception of the communications of a subject present in another Member State are not directly accessible on the territory of the latter, may be made directly accessible for the lawful interception by that Member State through the intermediary of a designated service provider present on its territory.

2. In the case referred to in paragraph 1, the competent authorities of a Member State shall be entitled, for the purposes of a criminal investigation and in accordance with applicable national law and provided that the subject of the interception is present in that Member State, to carry out the interception through the intermediary of a designated service provider present on its territory without involving the Member State on whose territory the gateway is located.

3. Paragraph 2 shall also apply where the interception is carried out upon a request made pursuant to Article 18(2)(b).

4. Nothing in this Article shall prevent a Member State from making a request to the Member State on whose territory the gateway is located for the lawful interception of telecommunications in accordance with Article 18, in particular where there is no intermediary in the requesting Member State.

Article 20

**Interception of telecommunications without the technical assistance
of another Member State**

1. Without prejudice to the general principles of international law as well as to the provisions of Article 18(2)(c), the obligations under this Article shall apply to interception orders made or authorised by the competent authority of one Member State in the course of criminal investigations which present the characteristics of being an investigation following the commission of a specific criminal offence, including attempts in so far as they are criminalised under national law, in order to identify and arrest, charge, prosecute or deliver judgment on those responsible.

2. Where for the purpose of a criminal investigation, the interception of telecommunications is authorised by the competent authority of one Member State (the 'intercepting Member State'), and the telecommunication address of the subject specified in the interception order is being used on the territory of another Member State (the 'notified Member State') from which no technical assistance is needed to carry out the interception, the intercepting Member State shall inform the notified Member State of the interception:

- (a) prior to the interception in cases where it knows when ordering the interception that the subject is on the territory of the notified Member State;
- (b) in other cases, immediately after it becomes aware that the subject of the interception is on the territory of the notified Member State.

3. The information to be notified by the intercepting Member State shall include:

- (a) an indication of the authority ordering the interception;
- (b) confirmation that a lawful interception order has been issued in connection with a criminal investigation;
- (c) information for the purpose of identifying the subject of the interception;
- (d) an indication of the criminal conduct under investigation; and
- (e) the expected duration of the interception.

4. The following shall apply where a Member State is notified pursuant to paragraphs 2 and 3:

- (a) Upon receipt of the information provided under paragraph 3 the competent authority of the notified Member State shall, without delay, and at the latest within 96 hours, reply to the intercepting Member State, with a view to:
 - (i) allowing the interception to be carried out or to be continued. The notified Member State may make its consent subject to any conditions which would have to be observed in a similar national case;
 - (ii) requiring the interception not to be carried out or to be terminated where the interception would not be permissible pursuant to the national law of the notified Member State, or for the reasons specified in Article 2 of the European Mutual Assistance Convention. Where the notified Member State imposes such a requirement, it shall give reasons for its decision in writing;
 - (iii) in cases referred to in point (ii), requiring that any material already intercepted while the subject was on its territory may not be used, or may only be used under conditions which it shall specify. The notified Member State shall inform the intercepting Member State of the reasons justifying the said conditions;
 - (iv) requiring a short extension, of up to a maximum period of eight days, to the original 96-hour deadline, to be agreed with the intercepting Member State, in order to carry out internal procedures under its national law. The notified Member State shall communicate, in writing, to the intercepting Member State, the conditions which, pursuant to its national law, justify the requested extension of the deadline.
- (b) Until a decision has been taken by the notified Member State pursuant to points (i) or (ii) of subparagraph (a), the intercepting Member State:

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

- (i) may continue the interception; and
- (ii) may not use the material already intercepted, except:
 - if otherwise agreed between the Member States concerned; or
 - for taking urgent measures to prevent an immediate and serious threat to public security. The notified Member State shall be informed of any such use and the reasons justifying it.

(c) The notified Member State may request a summary of the facts of the case and any further information necessary to enable it to decide whether interception would be authorised in a similar national case. Such a request does not affect the application of subparagraph (b), unless otherwise agreed between the notified Member State and the intercepting Member State.

(d) The Member States shall take the necessary measures to ensure that a reply can be given within the 96-hour period. To this end they shall designate contact points, on duty twenty-four hours a day, and include them in their statements under Article 24(1)(e).

5. The notified Member State shall keep the information provided under paragraph 3 confidential in accordance with its national law.

6. Where the intercepting Member State is of the opinion that the information to be provided under paragraph 3 is of a particularly sensitive nature, it may be transmitted to the competent authority through a specific authority where that has been agreed on a bilateral basis between the Member States concerned.

7. When giving its notification under Article 27(2), or at any time thereafter, any Member State may declare that it will not be necessary to provide it with information on interceptions as envisaged in this Article.

Article 21

Responsibility for charges made by telecommunications operators

Costs which are incurred by telecommunications operators or service providers in executing requests pursuant to Article 18 shall be borne by the requesting Member State.

Article 22

Bilateral arrangements

Nothing in this Title shall preclude any bilateral or multilateral arrangements between Member States for the purpose of facilitating the exploitation of present and future technical possibilities regarding the lawful interception of telecommunications.

TITLE IV

Article 23

Personal data protection

1. Personal data communicated under this Convention may be used by the Member State to which they have been transferred:

- (a) for the purpose of proceedings to which this Convention applies;
- (b) for other judicial and administrative proceedings directly related to proceedings referred to under point (a);
- (c) for preventing an immediate and serious threat to public security;
- (d) for any other purpose, only with the prior consent of the communicating Member State, unless the Member State concerned has obtained the consent of the data subject.

2. This Article shall also apply to personal data not communicated but obtained otherwise under this Convention.

3. In the circumstances of the particular case, the communicating Member State may require the Member State to which the personal data have been transferred to give information on the use made of the data.

4. Where conditions on the use of personal data have been imposed pursuant to Articles 7(2), 18(5)(b), 18(6) or 20(4), these conditions shall prevail. Where no such conditions have been imposed, this Article shall apply.

5. The provisions of Article 13(10) shall take precedence over this Article regarding information obtained under Article 13.

6. This Article does not apply to personal data obtained by a Member State under this Convention and originating from that Member State.

7. Luxembourg may, when signing the Convention, declare that where personal data are communicated by Luxembourg under this Convention to another Member State, the following applies:

Luxembourg may, subject to paragraph 1(c), in the circumstances of a particular case require that unless that Member State concerned has obtained the consent of the data subject, the personal data may only be used for the purposes referred to in paragraph 1(a) and (b) with the prior consent of Luxembourg in respect of proceedings for which Luxembourg could have refused or limited the transmission or use of the personal data in accordance with the provisions of this Convention or the instruments referred to in Article 1.

If, in a particular case, Luxembourg refuses to give its consent to a request from a Member State pursuant to the provisions of paragraph 1, it must give reasons for its decision in writing.

TITLE V

FINAL PROVISIONS*Article 24***Statements**

1. When giving the notification referred to in Article 27(2), each Member State shall make a statement naming the authorities which, in addition to those already indicated in the European Mutual Assistance Convention and the Benelux Treaty, are competent for the application of this Convention and the application between the Member States of the provisions on mutual assistance in criminal matters of the instruments referred to in Article 1(1), including in particular:

- (a) the competent administrative authorities within the meaning of Article 3(1), if any;
- (b) one or more central authorities for the purposes of applying Article 6 as well as the authorities competent to deal with the requests referred to in Article 6(8);
- (c) the police or customs authorities competent for the purpose of Article 6(5), if any;
- (d) the administrative authorities competent for the purposes of Article 6(6), if any; and
- (e) the authority or authorities competent for the purposes of the application of Articles 18 and 19 and Article 20(1) to (5).

2. Statements made in accordance with paragraph 1 may be amended in whole or in part at any time by the same procedure.

*Article 25***Reservations**

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

*Article 26***Territorial application**

The application of this Convention to Gibraltar will take effect upon extension of the European Mutual Assistance Convention to Gibraltar.

The United Kingdom shall notify in writing the President of the Council when it wishes to apply the Convention to the Channel Islands and the Isle of Man following extension of the European Mutual Assistance Convention to those territories. A decision on this request shall be taken by the Council acting with the unanimity of its members.

Article 27

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.
2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Convention.
3. This Convention shall, 90 days after the notification referred to in paragraph 2 by the State, member of the European Union at the time of adoption by the Council of the Act establishing this Convention, which is the eighth to complete this formality, enter into force for the eight Member States concerned.
4. Any notification by a Member State subsequent to the receipt of the eighth notification referred to in paragraph 2 shall have the effect that, 90 days after the subsequent notification, this Convention shall enter into force as between this Member State and those Member States for which the Convention has already entered into force.
5. Before the Convention has entered into force pursuant to paragraph 3, any Member State may, when giving the notification referred to in paragraph 2 or at any time thereafter, declare that it will apply this Convention in its relations with Member States which have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.
6. This Convention shall apply to mutual assistance initiated after the date on which it has entered into force, or is applied pursuant to paragraph 5, between the Member States concerned.

Article 28

Accession of new Member States

1. This Convention shall be open to accession by any State which becomes a member of the European Union.
2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.
3. The instruments of accession shall be deposited with the depositary.
4. This Convention shall enter into force with respect to any State which accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Convention if it has not already entered into force at the time of expiry of the said period of 90 days.
5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 27(5) shall apply to acceding Member States.

Article 29

Entry into force for Iceland and Norway

1. Without prejudice to Article 8 of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* (the 'Association Agreement'), the provisions referred to in Article 2(1) shall enter into force for Iceland and Norway 90 days after the receipt by the Council and the Commission of the information pursuant to Article 8(2) of the Association Agreement upon fulfilment of their constitutional requirements, in their mutual relations with any Member State for which this Convention has already entered into force pursuant to Article 27(3) or (4).
2. Any entry into force of this Convention for a Member State after the date of entry into force of the provisions referred to in Article 2(1) for Iceland and Norway, shall render these provisions also applicable in the mutual relations between that Member State and Iceland and Norway.
3. The provisions referred to in Article 2(1) shall in any event not become binding on Iceland and Norway before the date to be fixed pursuant to Article 15(4) of the Association Agreement.
4. Without prejudice to paragraphs 1, 2 and 3 above, the provisions referred to in Article 2(1) shall enter into force for Iceland and Norway not later than on the date of entry into force of this Convention for the fifteenth State, being a member of the European Union at the time of the adoption by the Council of the Act establishing this Convention.

Article 30

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.
2. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, statements and reservations and also any other notification concerning this Convention.

Done at Brussels on the twenty-ninth day of May in the year two thousand in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all texts being equally authentic, such original being deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall forward a certified copy thereof to each Member State.

Council Declaration on Article 10(9)

When considering the adoption of an instrument as referred to in Article 10(9), the Council shall respect Member States' obligations under the European Convention on Human Rights.

Declaration by the United Kingdom on Article 20

This Declaration shall form an agreed, integral part of the Convention.

In the United Kingdom, Article 20 will apply in respect of interception warrants issued by the Secretary of State to the police service or HM Customs & Excise where, in accordance with national law on the interception of communications, the stated purpose of the warrant is the detection of serious crime. It will also apply to such warrants issued to the Security Service where, in accordance with national law, it is acting in support of an investigation presenting the characteristics described in Article 20(1).

SCHEDULE 2

TEXT OF 2001 PROTOCOL

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

REFERRING to the Council Act of 16 October 2001 establishing the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union,

TAKING ACCOUNT of the conclusions adopted at the European Council held in Tampere on 15 and 16 October 1999, and of the need to implement them immediately in order to achieve an area of freedom, security and justice,

BEARING IN MIND the recommendations made by the experts when presenting the mutual evaluation reports based on Council Joint Action 97/827/JHA of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime⁽¹⁾,

CONVINCED of the need for additional measures in the field of mutual assistance in criminal matters for the purpose of the fight against crime, including in particular organised crime, money laundering and financial crime,

HAVE AGREED UPON THE FOLLOWING PROVISIONS, which shall be annexed to, and form an integral part of, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000⁽²⁾, hereinafter referred to as the 2000 Mutual Assistance Convention:

Article 1

Request for information on bank accounts

1. Each Member State shall, under the conditions set out in this Article, take the measures necessary to determine, in answer to a request sent by another Member State, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide all the details of the identified accounts.

The information shall also, if requested and to the extent that it can be provided within a reasonable time, include accounts for which the person that is the subject of the proceedings has powers of attorney.

2. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank keeping the account.

3. The obligation set out in this Article shall apply only if the investigation concerns:

— an offence punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State, or

⁽¹⁾OJ L 344, 15.12.1997, p. 7.

⁽²⁾OJ C 197, 12.7.2000, p. 3.

— an offence referred to in Article 2 of the 1995 Convention on the Establishment of a European Police Office (Europol Convention), or in the Annex to that Convention, as amended, or

— to the extent that it may not be covered by the Europol Convention, an offence referred to in the 1995 Convention on the Protection of the European Communities' Financial Interests, the 1996 Protocol thereto, or the 1997 Second Protocol thereto.

4. The authority making the request shall, in the request:

— state why it considers that the requested information is likely to be of substantial value for the purpose of the investigation into the offence,

— state on what grounds it presumes that banks in the requested Member State hold the account and, to the extent available, which banks may be involved,

— include any information available which may facilitate the execution of the request.

5. Member States may make the execution of a request according to this Article dependent on the same conditions as they apply in respect of requests for search and seizure.

6. The Council may decide, pursuant to Article 34(2)(c) of the Treaty of European Union, to extend the scope of paragraph 3.

Article 2

Requests for information on banking transactions

1. On request by the requesting State, the requested State shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.

2. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.

3. The requesting Member State shall in its request indicate why it considers the requested information relevant for the purpose of the investigation into the offence.

4. Member States may make the execution of a request according to this Article dependent on the same conditions as they apply in respect of requests for search and seizure.

Article 3

Requests for the monitoring of banking transactions

1. Each Member State shall undertake to ensure that, at the request of another Member State, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Member State.

[No. 7.] *Criminal Justice (Mutual Assistance)* [2008.]
Act 2008.

2. The requesting Member State shall in its request indicate why it considers the requested information relevant for the purpose of the investigation into the offence.

3. The decision to monitor shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that Member State.

4. The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested Member States.

Article 4

Confidentiality

Each Member State shall take the necessary measures to ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been transmitted to the requesting State in accordance with Articles 1, 2 or 3 or that an investigation is being carried out.

Article 5

Obligation to inform

If the competent authority of the requested Member State in the course of the execution of a request for mutual assistance considers that it may be appropriate to undertake investigations not initially foreseen, or which could not be specified when the request was made, it shall immediately inform the requesting authority accordingly in order to enable it to take further action.

Article 6

Additional requests for mutual assistance

1. Where the competent authority of the requesting Member State makes a request for mutual assistance which is additional to an earlier request, it shall not be required to provide information already provided in the initial request. The additional request shall contain information necessary for the purpose of identifying the initial request.

2. Where, in accordance with the provisions in force, the competent authority which has made a request for mutual assistance participates in the execution of the request in the requested Member State, it may, without prejudice to Article 6(3) of the 2000 Mutual Assistance Convention, make an additional request directly to the competent authority of the requested Member State while present in that State.

Article 7

Banking secrecy

A Member State shall not invoke banking secrecy as a reason for refusing any cooperation regarding a request for mutual assistance from another Member State.

Article 8

Fiscal offences

1. Mutual assistance may not be refused solely on the ground that the request concerns an offence which the requested Member State considers a fiscal offence.

2. If a Member State has made the execution of a request for search and seizure dependent on the condition that the offence giving rise to the request is also punishable under its law, this condition shall be fulfilled, with regard to offences referred to in paragraph 1, if the offence corresponds to an offence of the same nature under its law.

The request may not be refused on the ground that the law of the requested Member State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the requesting Member State.

3. Article 50 of the Schengen Implementation Convention is hereby repealed.

Article 9

Political offences

1. For the purposes of mutual legal assistance between Member States, no offence may be regarded by the requested Member State as a political offence, an offence connected with a political offence or an offence inspired by political motives.

2. Each Member State may, when giving the notification referred to in Article 13(2), declare that it will apply paragraph 1 only in relation to:

- (a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism of 27 January 1977; and
- (b) offences of conspiracy or association, which correspond to the description of behaviour referred to in Article 3(4) of the Convention of 27 September 1996 relating to extradition between the Member States of the European Union, to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

3. Reservations made pursuant to Article 13 of the European Convention on the Suppression of Terrorism shall not apply to mutual legal assistance between Member States.

Article 10

Forwarding refusals to the Council and involvement of Eurojust

1. If a request is refused on the basis of:

- Article 2(b) of the European Mutual Assistance Convention or Article 22(2)(b) of the Benelux Treaty, or

[No. 7.] *Criminal Justice (Mutual Assistance)* [2008.]
Act 2008.

— Article 51 of the Schengen Implementation Convention or Article 5 of the European Mutual Assistance Convention, or

— Article 1(5) or Article 2(4) of this Protocol,

and the requesting Member State maintains its request, and no solution can be found, the reasoned decision to refuse the request shall be forwarded to the Council for information by the requested Member State, for possible evaluation of the functioning of judicial cooperation between Member States.

2. The competent authorities of the requesting Member State may report to Eurojust, once it has been established, any problem encountered concerning the execution of a request in relation to the provisions referred to in paragraph 1 for a possible practical solution in accordance with the provisions laid down in the instrument establishing Eurojust.

Article 11

Reservations

No reservations may be entered in respect of this Protocol, other than those provided for in Article 9(2).

Article 12

Territorial application

The application of this Protocol to Gibraltar will take effect when the 2000 Mutual Assistance Convention has taken effect in Gibraltar, in accordance with Article 26 of that Convention.

Article 13

Entry into force

1. This Protocol shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Protocol.

3. This Protocol shall enter into force in the eight Member States concerned 90 days after the notification referred to in paragraph 2 by the State, member of the European Union at the time of adoption by the Council of the Act establishing this Protocol, which is the eighth to complete that formality. If, however, the 2000 Mutual Assistance Convention has not entered into force on that date, this Protocol shall enter into force on the date on which that Convention enters into force.

4. Any notification by a Member State subsequent to the entry into force of this Protocol under paragraph 3 shall have the effect that, 90 days after such notification, this Protocol shall enter into force as between that Member State and those Member States for which this Protocol has already entered into force.

5. Before the entry into force of this Protocol pursuant to paragraph 3, any Member State may, when giving the notification referred to

in paragraph 2 or at any time thereafter, declare that it will apply this Protocol in its relations with Member States which have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.

6. Notwithstanding paragraphs 3 to 5, the entry into force or application of this Protocol shall not take effect in relations between any two Member States before the entry into force or application of the 2000 Mutual Assistance Convention between these Member States.

7. This Protocol shall apply to mutual assistance initiated after the date on which it enters into force, or is applied pursuant to paragraph 5, between the Member States concerned.

Article 14

Acceding States

1. This Protocol shall be open to accession by any State which becomes a member of the European Union and which accedes to the 2000 Mutual Assistance Convention.

2. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. The instruments of accession shall be deposited with the depositary.

4. This Protocol shall enter into force with respect to any State which accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Protocol if it has not already entered into force at the time of expiry of the said period of 90 days.

5. Where this Protocol is not yet in force at the time of the deposit of their instrument of accession, Article 13(5) shall apply to acceding Member States.

6. Notwithstanding paragraphs 4 and 5, the entry into force or application of this Protocol with respect to the acceding State shall not take effect before the entry into force or application of the 2000 Mutual Assistance Convention with respect to that State.

Article 15

Position of Iceland and Norway

Article 8 shall constitute measures amending or based upon the provisions referred to in Annex A to the Agreement concluded by the Council of the European Union with the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*⁽¹⁾ (hereinafter referred to as the 'Association Agreement').

Article 16

Entry into force for Iceland and Norway

1. Without prejudice to Article 8 of the Association Agreement, the provision referred to in Article 15 shall enter into force for Iceland

⁽¹⁾OJ L 176, 10.7.1999, p. 36.

and Norway 90 days after the receipt by the Council and the Commission of the information pursuant to Article 8(2) of the Association Agreement upon fulfilment of their constitutional requirements, in their mutual relations with any Member State for which this Protocol has already entered into force pursuant to Article 13(3) or (4).

2. Any entry into force of this Protocol for a Member State after the date of entry into force of the provision referred to in Article 15 for Iceland and Norway, shall render that provision also applicable in the mutual relations between that Member State and Iceland and Norway.

3. The provision referred to in Article 15 shall in any event not become binding on Iceland and Norway before the entry into force of the provisions referred to in Article 2(1) of the 2000 Mutual Assistance Convention with respect to those two States.

4. Without prejudice to paragraphs 1, 2 and 3, the provision referred to in Article 15 shall enter into force for Iceland and Norway not later than on the date of entry into force of this Protocol for the fifteenth State, being a member of the European Union at the time of the adoption by the Council of the Act establishing this Protocol.

Article 17

Depositary

The Secretary-General of the Council of the European Union shall act as depositary of this Protocol. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and also any other notification concerning this Protocol.

IN WITNESS WHEREOF, the undersigned plenipotentiaries have hereunto set their hands. Done at Luxembourg, on 16 October 2001 in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, the original being deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall forward a certified copy thereof to each Member State.

SCHEDULE 3

TEXT OF AGREEMENT WITH ICELAND AND NORWAY

THE EUROPEAN UNION, on the one hand, and THE REPUBLIC OF ICELAND and THE KINGDOM OF NORWAY, on the other hand, hereinafter referred to as 'the Contracting Parties',

WISHING to improve judicial cooperation in criminal matters between the Member States of the European Union and Iceland and Norway, without prejudice to the rules protecting individual freedom,

CONSIDERING that current relationships among the Contracting Parties require close cooperation in the fight against crime,

POINTING OUT the Contracting Parties' common interest in ensuring that mutual assistance between the Member States of the European Union and Iceland and Norway is provided in a fast and efficient manner compatible with the basic principles of their national law, and in compliance with the individual rights and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950,

EXPRESSING their mutual confidence in the structure and functioning of their legal systems and in the ability of all Contracting Parties to guarantee a fair trial,

RESOLVED to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and other Conventions in force in this area, by an Agreement between the European Union, Iceland and Norway,

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

RECALLING that this Agreement, including Annex I thereto, regulates mutual assistance in criminal matters, based on the principles of the Convention of 20 April 1959,

CONSIDERING that in Article 2 paragraph 1 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, and in Article 15 of the Protocol of 16 October 2001 thereto, the provisions have been identified which constitute a development of the Schengen *acquis*, and which therefore have been accepted by Iceland and Norway by virtue of their obligations under the Agreement of 18 May 1999 concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway on the latter's association with the application, implementation and development of the provisions of the Schengen *acquis*,

CONSIDERING that Iceland and Norway have expressed their wish to enter into an agreement enabling them to apply also the other provisions of the 2000 Mutual Assistance Convention and of the 2001 Protocol in their relations with the Member States of the European Union,

CONSIDERING that the European Union also considers it necessary to have such an agreement in place,

HAVE AGREED AS FOLLOWS:

Article 1

1. Subject to the provisions of this Agreement, the content of the following provisions of the Convention of 29 May 2000, established by the Council of the European Union in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, hereinafter referred to as 'the EU Mutual Assistance Convention', shall be applicable in the relations between the Republic of Iceland and the Kingdom of Norway and in the mutual relations between each of these States and the Member States of the European Union:

Articles 4, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25 and 26, as well as Articles 1 and 24 to the extent that they are relevant for any of those other Articles.

2. Subject to the provisions of this Agreement, the content of the following provisions of the Protocol of 16 October 2001, established by the Council of the European Union in accordance with Article 34 of the Treaty on European Union, to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, hereinafter referred to as 'the EU Mutual Assistance Protocol', shall be applicable in the relations between the Republic of Iceland and the Kingdom of Norway and in the mutual relations between each of these States and the Member States of the European Union:

Articles 1 (paragraphs 1 to 5), 2, 3, 4, 5, 6, 7, 9, 11 and 12.

3. The declarations made by Member States under Articles 9(6), 10(9), 14(4), 18(7) and 20(7) of the EU Mutual Assistance Convention and Article 9(2) of the EU Mutual Assistance Protocol shall also be applicable in the relations with the Republic of Iceland and the Kingdom of Norway.

Article 2

1. The Contracting Parties, in order to achieve the objective of arriving at as uniform an application and interpretation as possible of the provisions referred to in Article 1, shall keep under constant review the development of the case-law of the Court of Justice of the European Communities, as well as the development of the case-law of the competent courts of Iceland and Norway relating to such provisions. To this end a mechanism shall be set up to ensure regular mutual transmission of such case-law.

2. Iceland and Norway shall be entitled to submit statements of case or written observations to the Court of Justice in cases where a question has been referred to it by a court or tribunal of a Member State for a preliminary ruling concerning the interpretation of any provisions referred to in Article 1.

Article 3

If a request is refused, Norway or Iceland may ask the requested Member State to report to Eurojust any problem encountered concerning the execution of the request, for a possible practical solution.

Article 4

Any dispute between either Iceland or Norway and a Member State of the European Union regarding the interpretation or the application of this Agreement or of any of the provisions referred to in Article 1 thereof may be referred by a Party to the dispute to a meeting of representatives of the governments of the Member States of the European Union and of Iceland and Norway, with a view to its settlement within six months.

Article 5

The Contracting Parties agree to carry out a common review of this Agreement no later than five years after its entry into force. The review shall in particular address the practical implementation, interpretation and development of the Agreement and may also include issues such as the consequences of further development of the European Union relating to the subject matter of this Agreement.

Article 6

1. The Contracting Parties shall notify each other of the completion of the procedures required to express their consent to be bound to this Agreement.

2. When giving their notification under paragraph 1 or, if so provided, at any time thereafter, Iceland and Norway may make any of the declarations provided for in Articles 9(6), 10(9), 14(4), 18(7) and 20(7) of the EU Mutual Assistance Convention and Article 9(2) of the EU Mutual Assistance Protocol.

3. As far as the relevant provisions of the EU Mutual Assistance Convention are concerned, this Agreement shall enter into force on the first day of the third month following the day on which the Secretary-General of the Council of the European Union establishes that all formal requirements concerning the expression of the consent by or on behalf of the Parties to this Agreement have been fulfilled, or on the date on which the EU Mutual Assistance Convention enters into force in accordance with Article 27(3) thereof, if such date is later. As far as the relevant provisions of the EU Mutual Assistance Convention are concerned, the entry into force of this Agreement creates rights and obligations between Iceland and Norway and between Iceland, Norway and those EU Member States in respect of which the EU Mutual Assistance Convention has entered into force.

4. As far as the relevant provisions of the EU Mutual Assistance Protocol are concerned, this Agreement shall enter into force on the first day of the third month following the day on which the Secretary-General of the Council of the European Union establishes that all formal requirements concerning the expression of the consent by or on behalf of the Parties to this Agreement have been fulfilled, or on the date on which the EU Mutual Assistance Protocol enters into force in accordance with Article 13(3) thereof, if such date is later. As far as the relevant provisions of the EU Mutual Assistance Protocol are concerned, the entry into force of this Agreement creates rights and obligations between Iceland and Norway and between Iceland, Norway and those EU Member States in respect of which the EU Mutual Assistance Protocol has entered into force.

[No. 7.] *Criminal Justice (Mutual Assistance)* [2008.]
Act 2008.

5. Subsequently, such rights and obligations shall come into being between Norway, Iceland and other EU Member States as from the dates on which the EU Mutual Assistance Convention and/or the EU Mutual Assistance Protocol enter into force for such other EU Member States.

6. This Agreement shall apply only to mutual assistance procedures initiated after the date on which it creates rights and obligations by virtue of paragraphs 3 and 4.

Article 7

Accession by new Member States of the European Union to the EU Mutual Assistance Convention and/or to the EU Mutual Assistance Protocol shall create rights and obligations under this Agreement between those new Member States and Iceland and Norway.

Article 8

1. This Agreement may be terminated by the Contracting Parties. In the event of termination by either Iceland or Norway, this Agreement shall remain in force between the European Union and the State for which it has not been terminated.

2. Termination of this Agreement pursuant to paragraph 1 shall take effect six months after the deposit of the notification of termination. Procedures for complying with requests for mutual legal assistance still pending at that date shall be completed in accordance with the provisions of this Agreement.

3. This Agreement shall be terminated in the event of termination of the Agreement of 18 May 1999 concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway on the latter's association with the application, implementation and development of the Schengen *acquis*.

4. Termination of this Agreement pursuant to paragraph 3 shall take effect for the same Party or Parties and on the same date as the termination of the Agreement of 18 May 1999 referred to in paragraph 3.

Article 9

1. The Secretary-General of the Council of the European Union shall act as the depositary of this Agreement.

2. The depositary shall make public information on any notification made concerning this Agreement.

Article 10

This Agreement shall be drawn up in one single copy in the Danish, Dutch, English, Finnish, French, German, Greek, Icelandic, Irish, Italian, Norwegian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

Done at Brussels, this nineteenth day of December, in the year two thousand and three.

ANNEX I

Application to Gibraltar

The United Kingdom of Great Britain and Northern Ireland, as Member State responsible for Gibraltar, including its external relations, confirms that this Agreement will take effect in the territory upon extension of the 2000 EU Mutual Assistance Convention and the 2001 Protocol to Gibraltar, which is contingent upon the 1959 Council of Europe Mutual Assistance Convention having been extended to Gibraltar. At that time, the United Kingdom will designate a relevant Gibraltar authority as competent for the purposes of the Agreement. Any formal communication with this authority will be conducted in accordance with the Agreed Arrangements between the United Kingdom and the Kingdom of Spain relating to Gibraltar authorities in the context of EU and EC instruments and related treaties, which were notified to the Member States and institutions of the European Union on 19 April 2000. A copy of these Arrangements shall be notified to the Republic of Iceland and Kingdom of Norway by the Secretary-General of the Council of the European Union.

ANNEX II

Declaration by the Contracting Parties to the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto

The Contracting Parties agree to consult, as appropriate, when the Republic of Iceland or the Kingdom of Norway or one of the Member States of the European Union considers that there is occasion to do so, to enable the most effective use to be made of this Agreement, including with a view to preventing any dispute regarding the practical implementation and interpretation of this Agreement. This consultation shall be organised in the most convenient way, taking into account the existing structures of cooperation.

Declaration by the Republic of Iceland and the Kingdom of Norway

The Republic of Iceland and the Kingdom of Norway declare, in view of the provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters enabling direct contact between judicial authorities, that their competent judicial authorities wish, where appropriate, to make requisite enquiries through the contact points of the European Judicial Network, in order to establish which judicial authority of a Member State of the European Union has the territorial competence for initiating and executing requests for mutual assistance.

SCHEDULE 4

TEXT OF ARTICLES 49 AND 51 OF SCHENGEN CONVENTION

Article 49

Mutual assistance shall also be afforded:

- (a) in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of one of the two Contracting Parties, or of both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
- (b) in proceedings for claims for damages arising from wrongful prosecution or conviction;
- (c) in clemency proceedings;
- (d) in civil actions joined to criminal proceedings, as long as the criminal court has not yet taken a final decision in the criminal proceedings;
- (e) in the service of judicial documents relating to the enforcement of a sentence or a preventive measure, the imposition of a fine or the payment of costs for proceedings;
- (f) in respect of measures relating to the deferral of delivery or suspension of enforcement of a sentence or a preventive measure, to conditional release or to a stay or interruption of enforcement of a sentence or a preventive measure.

Article 51

The Contracting Parties may not make the admissibility of letters rogatory for search or seizure dependent on conditions other than the following:

- (a) the act giving rise to the letters rogatory is punishable under the law of both Contracting Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of at least six months, or is punishable under the law of one of the two Contracting Parties by an equivalent penalty and under the law of the other Contracting Party by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
- (b) execution of the letters rogatory is consistent with the law of the requested Contracting Party.

SCHEDULE 5

TEXT OF FRAMEWORK DECISION

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative by the Republic of France, the Kingdom of Sweden and the Kingdom of Belgium⁽¹⁾,

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

Whereas:

(1) The European Council, meeting in Tampere on 15 and 16 October 1999, endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.

(2) The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent judicial authorities quickly to secure evidence and to seize property which are easily movable.

(3) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition in criminal matters, giving first priority (measures 6 and 7) to the adoption of an instrument applying the principle of mutual recognition to the freezing of evidence and property.

(4) Cooperation between Member States, based on the principle of mutual recognition and immediate execution of judicial decisions, presupposes confidence that the decisions to be recognised and enforced will always be taken in compliance with the principles of legality, subsidiarity and proportionality.

(5) Rights granted to the parties or bona fide interested third parties should be preserved.

(6) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to freeze property for which a freezing order has been issued when there are reasons to believe, on the basis of objective elements, that the freezing order is issued for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media,

HAS ADOPTED THIS FRAMEWORK DECISION:

⁽¹⁾OJ C 75, 7.3.2001, p. 3.

⁽²⁾Opinion delivered on 11 June 2002 (not yet published in the Official Journal).

TITLE I

SCOPE*Article 1***Objective**

The purpose of the Framework Decision is to establish the rules under which a Member State shall recognise and execute in its territory a freezing order issued by a judicial authority of another Member State in the framework of criminal proceedings. It shall not have the effect of amending the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

*Article 2***Definitions**

For the purposes of this Framework Decision:

- (a) ‘issuing State’ shall mean the Member State in which a judicial authority, as defined in the national law of the issuing State, has made, validated or in any way confirmed a freezing order in the framework of criminal proceedings;
- (b) ‘executing State’ shall mean the Member State in whose territory the property or evidence is located;
- (c) ‘freezing order’ property that could be subject to confiscation or evidence;
- (d) ‘property’ includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which the competent judicial authority in the issuing State considers:
 - is the proceeds of an offence referred to in Article 3, or equivalent to either the full value or part of the value of such proceeds, or
 - constitutes the instrumentalities or the objects of such an offence;
- (e) ‘evidence’ shall mean objects, documents or data which could be produced as evidence in criminal proceedings concerning an offence referred to in Article 3.

*Article 3***Offences**

1. This Framework Decision applies to freezing orders issued for purposes of:

- (a) securing evidence, or
- (b) subsequent confiscation of property.

2. The following offences, as they are defined by the law of the issuing State, and if they are punishable in the issuing State by a custodial sentence of a maximum period of at least three years shall not be subject to verification of the double criminality of the act:

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

- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Tribunal,
- unlawful seizure of aircraft/ships,
- sabotage.

3. The Council may decide, at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty, to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 14 of this Framework Decision, whether the list should be extended or amended.

4. For cases not covered by paragraph 2, the executing State may subject the recognition and enforcement of a freezing order made for purposes referred to in paragraph 1(a) to the condition that the acts for which the order was issued constitute an offence under the laws of that State, whatever the constituent elements or however described under the law of the issuing State.

For cases not covered by paragraph 2, the executing State may subject the recognition and enforcement of a freezing order made for purposes referred to in paragraph 1(b) to the condition that the acts for which the order was issued constitute an offence which, under the laws of that State, allows for such freezing, whatever the constituent elements or however described under the law of the issuing State.

TITLE II

PROCEDURE FOR EXECUTING FREEZING ORDERS

Article 4

Transmission of freezing orders

1. A freezing order within the meaning of this Framework Decision, together with the certificate provided for in Article 9, shall be transmitted by the judicial authority which issued it directly to the competent judicial authority for execution by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.

2. The United Kingdom and Ireland, respectively, may, before the date referred to in Article 14(1), state in a declaration that the freezing order together with the certificate must be sent via a central authority or authorities specified by it in the declaration. Any such declaration may be modified by a further declaration or withdrawn any time. Any declaration or withdrawal shall be deposited with the General Secretariat of the Council and notified to the Commission.

These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 1. They shall do so when the provisions on mutual assistance of the Convention implementing the Schengen Agreement are put into effect for them.

3. If the competent judicial authority for execution is unknown, the judicial authority in the issuing State shall make all necessary inquiries, including via the contact points of the European Judicial Network⁽¹⁾, in order to obtain the information from the executing State.

4. When the judicial authority in the executing State which receives a freezing order has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, *ex officio*, transmit the freezing order to the competent judicial authority for execution and shall so inform the judicial authority in the issuing State which issued it.

Article 5

Recognition and immediate execution

1. The competent judicial authorities of the executing State shall recognise a freezing order, transmitted in accordance with Article 4, without any further formality being required and shall forthwith take the necessary measures for its immediate execution in the same way as for a freezing order made by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7 or one of the grounds for postponement provided for in Article 8.

Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order.

A report on the execution of the freezing order shall be made forthwith to the competent authority in the issuing State by any means capable of producing a written record.

2. Any additional coercive measures rendered necessary by the freezing order shall be taken in accordance with the applicable procedural rules of the executing State.

3. The competent judicial authorities of the executing State shall decide and communicate the decision on a freezing order as soon as possible and, whenever practicable, within 24 hours of receipt of the freezing order.

Article 6

Duration of the freezing

1. The property shall remain frozen in the executing State until that State has responded definitively to any request made under Article 10(1)(a) or (b).

⁽¹⁾Council Joint Action 98/428/JHA of 29 June 1998 on the Creation of the European Judicial Network (OJ L 191, 7.7.1998, p. 4).

2. However, after consulting the issuing State, the executing State may in accordance with its national law and practices lay down appropriate conditions in the light of the circumstances of the case in order to limit the period for which the property will be frozen. If, in accordance with those conditions, it envisages lifting the measure, it shall inform the issuing State, which shall be given the opportunity to submit its comments.

3. The judicial authorities of the issuing State shall forthwith notify the judicial authorities of the executing State that the freezing order has been lifted. In these circumstances it shall be the responsibility of the executing State to lift the measure as soon as possible.

Article 7

Grounds for non-recognition or non-execution

1. The competent judicial authorities of the executing State may refuse to recognise or execute the freezing order only if:

- (a) the certificate provided for in Article 9 is not produced, is incomplete or manifestly does not correspond to the freezing order;
- (b) there is an immunity or privilege under the law of the executing State which makes it impossible to execute the freezing order;
- (c) it is instantly clear from the information provided in the certificate that rendering judicial assistance pursuant to Article 10 for the offence in respect of which the freezing order has been made, would infringe the *ne bis in idem* principle;
- (d) if, in one of the cases referred to in Article 3(4), the act on which the freezing order is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of the freezing order may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

2. In case of paragraph 1(a), the competent judicial authority may:

- (a) specify a deadline for its presentation, completion or correction; or
- (b) accept an equivalent document; or
- (c) exempt the issuing judicial authority from the requirement if it considers that the information provided is sufficient.

3. Any decision to refuse recognition or execution shall be taken and notified forthwith to the competent judicial authorities of the issuing State by any means capable of producing a written record.

4. In case it is in practice impossible to execute the freezing order for the reason that the property or evidence have disappeared, have

been destroyed, cannot be found in the location indicated in the certificate or the location of the property or evidence has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the competent judicial authorities of the issuing State shall likewise be notified forthwith.

Article 8

Grounds for postponement of execution

1. The competent judicial authority of the executing State may postpone the execution of a freezing order transmitted in accordance with Article 4:

- (a) where its execution might damage an ongoing criminal investigation, until such time as it deems reasonable;
- (b) where the property or evidence concerned have already been subjected to a freezing order in criminal proceedings, and until that freezing order is lifted;
- (c) where, in the case of an order freezing property in criminal proceedings with a view to its subsequent confiscation, that property is already subject to an order made in the course of other proceedings in the executing State and until that order is lifted. However, this point shall only apply where such an order would have priority over subsequent national freezing orders in criminal proceedings under national law.

2. A report on the postponement of the execution of the freezing order, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be made forthwith to the competent authority in the issuing State by any means capable of producing a written record.

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

4. The competent judicial authority of the executing State shall inform the competent authority of the issuing State about any other restraint measure to which the property concerned may be subjected.

Article 9

Certificate

1. The certificate, the standard form for which is given in the Annex, shall be signed, and its contents certified as accurate, by the competent judicial authority in the issuing State that ordered the measure.

2. The certificate must be translated into the official language or one of the official languages of the executing State.

3. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in

one or more other official languages of the institutions of the European Communities.

Article 10

Subsequent treatment of the frozen property

1. The transmission referred to in Article 4:
 - (a) shall be accompanied by a request for the evidence to be transferred to the issuing State; or
 - (b) shall be accompanied by a request for confiscation requiring either enforcement of a confiscation order that has been issued in the issuing State or confiscation in the executing State and subsequent enforcement of any such order; or
 - (c) shall contain an instruction in the certificate that the property shall remain in the executing State pending a request referred to in (a) or (b). The issuing State shall indicate in the certificate the (estimated) date for submission of this request. Article 6(2) shall apply.
2. Requests referred to in paragraph 1(a) and (b) shall be submitted by the issuing State and processed by the executing State in accordance with the rules applicable to mutual assistance in criminal matters and the rules applicable to international cooperation relating to confiscation.
3. However, by way of derogation from the rules on mutual assistance referred to in paragraph 2, the executing State may not refuse requests referred to under paragraph 1(a) on grounds of absence of double criminality, where the requests concern the offences referred to in Article 3(2) and those offences are punishable in the issuing State by a prison sentence of at least three years.

Article 11

Legal remedies

1. Member States shall put in place the necessary arrangements to ensure that any interested party, including bona fide third parties, have legal remedies without suspensive effect against a freezing order executed pursuant to Article 5, in order to preserve their legitimate interests; the action shall be brought before a court in the issuing State or in the executing State in accordance with the national law of each.
2. The substantive reasons for issuing the freezing order can be challenged only in an action brought before a court in the issuing State.
3. If the action is brought in the executing State, the judicial authority of the issuing State shall be informed thereof and of the grounds of the action, so that it can submit the arguments that it deems necessary. It shall be informed of the outcome of the action.
4. The issuing and executing States shall take the necessary measures to facilitate the exercise of the right to bring an action mentioned in paragraph 1, in particular by providing adequate information to interested parties.

5. The issuing State shall ensure that any time limits for bringing an action mentioned in paragraph 1 are applied in a way that guarantees the possibility of an effective legal remedy for the interested parties.

Article 12

Reimbursement

1. Without prejudice to Article 11(2), where the executing State under its law is responsible for injury caused to one of the parties mentioned in Article 11 by the execution of a freezing order transmitted to it pursuant to Article 4, the issuing State shall reimburse to the executing State any sums paid in damages by virtue of that responsibility to the said party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State.

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

TITLE III

FINAL PROVISIONS

Article 13

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 14

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision before 2 August 2005.

2. By the same date Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established using this information and a written report by the Commission, the Council shall, before 2 August 2006, assess the extent to which Member States have complied with the provisions of this Framework Decision.

3. The General Secretariat of the Council shall notify Member States and the Commission of the declarations made pursuant to Article 9(3).

Article 15

Entry into force

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

Done at Brussels, 22 July 2003.

For the Council

The President

G. ALEMANNIO

ANNEX - CERTIFICATE PROVIDED FOR IN ARTICLE 9

(a) The judicial authority which issued the freezing order: Official name: Name of its representative: Post held (title/grade): File reference: Address: Tel: (country code) (area/city code) (...) Fax: (country code) (area/city code) (...) E-mail: Languages in which it is possible to communicate with the issuing judicial authority Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence (if applicable):

(b) The authority competent for the enforcement of the freezing order in the issuing State Official name: Name of representative: Post held (title/grade): File reference: Address: Tel: (country code) (area/city code) (...) Fax: (country code) (area/city code) (...) E-mail: Languages in which it is possible to communicate with the authority competent for the enforcement Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence (if applicable):

(c) In the case where points (a) and (b) have been filled, this point must be filled in order to indicate which/or both of these two authorities must be contacted:

Authority mentioned under point (a)

Authority mentioned under point (b)

(d) Where a central authority has been made responsible for the transmission and administrative reception of freezing orders (only applicable for Ireland and the United Kingdom):

Name of the central authority:

.....

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

.....

Address:

.....

File reference:

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

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

E-mail:

(e) The freezing order:

1. Date and if applicable reference number
2. State the purpose of the order
 - 2.1. Subsequent confiscation
 - 2.2. Securing evidence
3. Description of formalities and procedures to be observed when executing a freezing order concerning evidence (if applicable)

(f) Information regarding the property or evidence in the executing State covered by the freezing order:

Description of the property or evidence and location:

1. (a) Precise description of the property and, where applicable, the maximum amount for which recovery is sought (if such maximum amount is indicated in the order concerning the value of proceeds)
- (b) Precise description of the evidence
2. Exact location of the property or evidence (if not known, the last known location)
3. Party having custody of the property or evidence or known beneficial owner of the property or evidence, if different from the person suspected of the offence or convicted (if applicable under the national law of the issuing State)

.....

.....

(g) Information regarding the identity of the (1) natural or (2) legal person(s), suspected of the offence or convicted (if applicable under the national law of the issuing State) or/and the person(s) to whom the freezing order relates (if available):

1. Natural persons

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable: Sex: Nationality: Date of birth: Place of birth: Residence and/or known address if not known state the last known address: Language(s) which the person understands (if known): 2. Legal persons Name: Form of legal person: Registration number: Registered seat:

(h) Action to be taken by the executing State after executing the freezing order Confiscation 1.1. The property is to be kept in the executing State for the purpose of subsequent confiscation of the property 1.1.1. Find enclosed request regarding enforcement of a confiscation order issued in the issuing State on(date) 1.1.2. Find enclosed request regarding confiscation in the executing State and subsequent enforcement of that order 1.1.3. Estimated date for submission of a request referred to in 1.1.1 or 1.1.2 or Securing of evidence 2.1. The property is to be transferred to the issuing State to serve as evidence 2.1.1. Find enclosed a request for the transfer or 2.2. The property is to be kept in the executing State for the purpose of subsequent use as evidence in the issuing State 2.2.2. Estimated date for submission of a request referred to in 2.1.1.
--

(i) Offences: Description of the relevant grounds for the freezing order and a summary of facts as known to the judicial authority issuing the freezing order and certificate: Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the freezing order was made:

1. If applicable, tick one or more of the following offences to which the offence(s) identified above relate(s), if the offence(s) are punishable in the issuing State by a custodial sentence of a maximum of at least three years:

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

2. Full description of offence(s) not covered by section 1 above:

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

(j) Legal remedies against the freezing order for interested parties, including bona fide third parties, available in the issuing State:

Description of the legal remedies available including necessary steps to take

Court before which the action may be taken

Information as to those for whom the action is available

Time limit for submission of the action

Authority in the issuing State who can supply further information on procedures for submitting appeals in the issuing State and on whether legal assistance and translation is available:

Name

Contact person (if applicable):

Address:

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

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

E-mail:

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

.....

.....

(l) The text of the freezing order is attached to the certificate.

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

.....

Name:

Post held (title/grade):

Date:

Official stamp (if available)

SCHEDULE 6

TEXT OF TITLE III OF EC/SWISS CONFEDERATION AGREEMENT

TITLE III
MUTUAL LEGAL ASSISTANCE

ARTICLE 25

Relationship with other Agreements

1. The provisions of this Title are intended to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990, and to facilitate their implementation between the Contracting Parties.
2. More favourable provisions of bilateral or multilateral Agreements between the Contracting Parties are not affected.

ARTICLE 26

Procedures in which mutual legal assistance shall also be afforded

1. Mutual legal assistance shall also be afforded:
 - (a) in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of one of the two Contracting Parties, or of both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
 - (b) in civil actions joined to criminal proceedings, as long as the criminal court has not yet taken a final decision in the criminal proceedings;
 - (c) for offences or infringements for which a legal person of the requesting Contracting Party may be liable.
2. Assistance shall also be given for the purposes of investigations and proceedings for the seizure and confiscation of the instruments and products of these illegal activities.

ARTICLE 27

Transmission of requests

1. Requests under this Title shall be presented by the authority of the requesting Contracting Party either via a relevant central authority of the requested Contracting Party, or direct to the Contracting Party's authority which is empowered to execute the requesting Contracting Party's request. The authority of the requesting Contracting Party and, where appropriate, the authority of the Contracting Party requested shall send a copy of the request to its central authority for information.
2. All documents relating to requests or the execution thereof may be sent by the same channels. They, or at least a copy, must be sent directly to the authority of the requesting Contracting Party.
3. If the authority of the Contracting Party receiving a request has no power to authorise assistance, it shall forthwith forward it to the competent authority.

4. Defective or incomplete requests shall be applied if they contain the information needed to satisfy them, without prejudice to subsequent regularisation by the authority of the requesting Contracting Party. The authority of the Contracting Party requested shall inform the authority of the requesting Contracting Party of the defects and allow it time to regularise them.

The authority of the Contracting Party requested shall without delay send the authority of the requesting Contracting Party all other indications that may help it to complete its request or extend it to include other measures.

5. The Contracting Parties, when making the notification provided for by Article 44(2), shall announce which are the competent central authorities for the purposes of this Article.

ARTICLE 28

Service by post

1. As a rule the Contracting Parties shall, in proceedings for illegal activities covered by this Agreement, send procedural documents intended for persons who are in the territory of the other Contracting Party directly by post.

2. If the authority of the Contracting Party that issued the documents knows or has reason to believe that the addressee understands only some other language, the documents, or at least the most important passages thereof, shall be accompanied by a translation into that other language.

3. The authority of the serving Contracting Party shall advise the addressee that no measure of restraint or punishment may be enforced directly by that authority in the territory of the other Contracting Party.

4. All procedural documents shall be accompanied by a report indicating that the addressee may obtain information from the authority identified in the report regarding his or her rights and obligations concerning the documents.

ARTICLE 29

Provisional measures

1. Within the limits of its domestic law and its respective powers and at the request of the authority of the requesting Contracting Party, the competent authority of the requested Contracting Party shall order the necessary provisional measures for the purpose of maintaining an existing situation, protecting endangered legal interests or preserving evidence, if the request for mutual assistance does not appear manifestly inadmissible.

2. Preventive freezing and seizure of instrumentalities and proceeds of offences shall be ordered in cases where assistance is requested. If the proceeds of an offence no longer exist in whole or in part, the same measures shall be ordered in relation to assets located within the territory of the requested Contracting Party corresponding in value to the proceeds in question.

ARTICLE 30

Presence of the authorities of the requesting Contracting Party

1. The requested Contracting Party shall, at the request of the requesting Contracting Party, authorise the representatives of the latter Party's authorities to attend the execution of the request for mutual legal assistance. Their presence shall not require the consent of the person concerned by the measure.

Conditions may be attached to the authorisation.

2. The persons present shall have access to the same premises and the same documents as the representatives of the requested Contracting Party, through them and for the sole purposes of execution of the request for mutual legal assistance. In particular they may be authorised to put or propose questions and suggest measures of investigation.

3. Their presence shall not result in facts being divulged to persons other than those authorised by virtue of the preceding paragraphs in breach of judicial confidentiality or the rights of the person concerned. The information brought to the knowledge of the authority of the requesting Contracting Party may not be used as evidence until the decision on transmission of the documents relating to execution has acquired the force of *res judicata*.

ARTICLE 31

Searches and seizures

1. The Contracting Parties may not make the admissibility of letters rogatory for search or seizure dependent on conditions other than the following:

- (a) the act giving rise to the letters rogatory is punishable under the law of both Contracting Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of at least six months, or is punishable under the law of one of the two Contracting Parties by an equivalent penalty and under the law of the other Contracting Party by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
- (b) execution of the letters rogatory is consistent with the law of the requested Contracting Party.

2. Letters rogatory for purposes of search and seizure for laundering offences within the scope of this Agreement shall also be admissible provided that the activities making up the precursor offence are punishable under the law of the two Contracting Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of more than six months.

ARTICLE 32

Requests for banking and financial information

1. Where the conditions of Article 31 are met, the requested Contracting Party shall execute requests for assistance in obtaining and transmitting banking and financial information, including:

- (a) the identification of, and information concerning, bank accounts opened at banks established in its territory and where persons under investigation are the account holders, authorised signatories or in effective control;
 - (b) the identification of, and all information concerning, banking transactions and operations conducted from, to or via one or more bank accounts or by specified persons during a specified period.
2. To the extent authorised by virtue of its law governing criminal proceedings for similar domestic cases, the requested Contracting Party may order surveillance of banking operations conducted from, to or via one or more bank accounts or by specified persons during a specified period, and transmission of the results to the requesting Contracting Party. The decision to monitor transactions and transmit the results shall be taken in each individual case by the competent authorities of the requested Contracting Party and shall comply with that Contracting Party's national law. The practical details regarding the monitoring shall be determined by agreement between the competent authorities of the requesting and requested Contracting Parties.
3. Each Contracting Party shall take the necessary measures to ensure the financial institutions do not disclose to the customer concerned or to other third persons that measures are being executed at the request of the requesting Contracting Party or that an investigation is under way, for such time as is necessary to avoid compromising the results.
4. The authority of the Contracting Party issuing the request shall:
 - (a) state why it considers that the requested information is likely to be of substantial value for the purpose of the investigation into the offence;
 - (b) state on what grounds it presumes that banks in the requested Contracting Party hold the account and, to the extent available, which banks may be involved;
 - (c) include all information available which may facilitate the execution of the request.
5. A Contracting Party shall not invoke banking secrecy as grounds for rejecting all cooperation on a request for mutual assistance from another Contracting Party.

ARTICLE 33

Controlled deliveries

1. The competent authority in the requested Contracting Party shall undertake to ensure that, at the request of the authority of the requesting Contracting Party, controlled deliveries may be permitted in its territory within the framework of criminal investigations into extraditable offences.
2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Contracting Party, with due regard for its national law.

3. Controlled deliveries shall take place in accordance with the procedures provided for in the law of the requested Contracting Party. The right to act and to direct and control operations shall lie with the competent authorities of that Contracting Party.

ARTICLE 34

Handing-over for confiscation or return

1. At the request of the requesting Contracting Party, all objects, documents, funds or other items of value that have been seized on a precautionary basis may be handed over for confiscation or for return to the rightful owner.
2. The requested Contracting Party may not refuse to return funds on the sole ground that they correspond to a tax or customs debt.
3. Rights asserted by a third party in good faith shall remain reserved.

ARTICLE 35

Speeding up assistance

1. The authority of the requested Contracting Party shall execute the request for mutual legal assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the authority of the requesting Contracting Party. The requesting Contracting Party shall explain the reasons for the deadline.

2. If the request cannot, or cannot fully, be executed in accordance with the requirements set by the authority of the requesting Contracting Party, the authority of the requested Contracting Party shall promptly inform the authority of the requesting Contracting Party and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting and the requested Contracting Parties may subsequently agree on further action to be taken concerning the request, where necessary by making such action subject to the fulfilment of those conditions.

If it is foreseeable that the deadline set by the authority of the requesting Contracting Party for executing its request cannot be met and if the reasons referred to in the second sentence of paragraph 1, indicate explicitly that any delay will lead to substantial impairment of the proceedings being conducted by that authority, the authority of the requested Contracting Party shall promptly indicate the estimated time needed for execution of the request. The authority of the requesting Contracting Party shall promptly indicate whether the request is to be upheld nonetheless. The authorities of the requesting and requested Contracting Parties may subsequently agree on further action to be taken concerning the request.

ARTICLE 36

Use of information and evidence

Information and evidence transmitted in the course of the assistance procedure may be used for the following purposes in addition to the purposes of the assistance procedure for which it was supplied:

- (a) in criminal proceedings in the requesting Contracting Party against other persons who participated in the commission of the offence for which assistance was given;

- (b) where the infringements on which the request is based constitute another offence for which assistance ought also to be given;
- (c) in proceedings for the confiscation of the instrumentalities and proceeds of offences for which assistance ought to be given and in proceedings for damages in respect of infringements for which assistance had been given.

ARTICLE 37

Spontaneous transmission

1. Within the limits of their national law and their powers, the judicial authorities of a Contracting Party may spontaneously transmit information or evidence to the judicial authorities of another Contracting Party, when they consider that such information or evidence might assist the receiving Contracting Party's authority in initiating or carrying out investigations or proceedings, or might lead to a request for mutual legal assistance by the receiving authority.
2. The authority of the Contracting Party transmitting the information may, pursuant to its national law, impose conditions on the use of such information by the authority of the receiving Contracting Party.
3. All the authorities of the Contracting Parties shall be bound by such conditions.

ARTICLE 38

Procedures in the requested Contracting Party

The request for assistance shall be without prejudice to such rights as the requesting Contracting Party may enjoy as a result of its status as "partie civile" in domestic judicial criminal proceedings commenced before the authorities of the requested Contracting Party.

SCHEDULE 7

TEXT OF 2005 COUNCIL DECISION

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 30(1), 31 and 34(2)(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament¹,

Whereas:

(1) At its extraordinary meeting on 21 September 2001, the European Council stated that terrorism was a real challenge to the world and to Europe and that the fight against terrorism would be a priority objective of the European Union.

(2) On 19 October 2001 the European Council stated that it was determined to combat terrorism in every form throughout the world and that it would continue its efforts to strengthen the coalition of the international community to combat terrorism in every shape and form, for example by increased cooperation between the operational services responsible for combating terrorism: Europol, Eurojust, the intelligence services, police forces and judicial authorities.

(3) It is essential in the fight against terrorism for the relevant services to have the fullest and most up-to-date information possible in their respective fields. The Member States' specialised national services, the judicial authorities and relevant bodies of the European Union such as Europol and Eurojust absolutely need information if they are to perform their tasks.

(4) Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP² is a major step forward. The persistence of the terrorist threat and the complexity of the phenomenon raise the need for ever greater exchanges of information. The scope of information exchanges must be extended to all stages of criminal proceedings, including convictions, and to all persons, groups or entities investigated, prosecuted or convicted for terrorist offences.

(5) Since the objectives of this decision cannot be sufficiently achieved by the Member States acting alone and can therefore, given the need for reciprocity, be better achieved at Community level, the Community may adopt measures, act in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary to achieve those objectives.

(6) In the execution of the exchange of information, this Decision is without prejudice to essential national security interests, and it should not jeopardise the safety of individuals or the success of a current investigation or specific intelligence activities in the field of State security.

¹Opinion given on 7 June 2005 (not yet published in the Official Journal)

²OJ L 16, 22.1.2003, p. 68

(7) This Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS DECIDED AS FOLLOWS:

Article 1

Definitions

For the purposes of this Decision, the following definitions shall apply:

- (a) ‘terrorist offences’: the offences specified in Articles 1, 2 and 3 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism³;
- (b) ‘Europol Convention’: the Convention of 26 July 1995 on the establishment of a European Police Office⁴;
- (c) ‘Eurojust Decision’: Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime⁵;
- (d) ‘group or entity’: ‘terrorist groups’ within the meaning of Article 2 of Council Framework Decision 2002/475/JHA and the groups and entities listed in the Annex to Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism⁶.

Article 2

Provision of information concerning terrorist offences to Eurojust, Europol and the Member States

1. Each Member State shall designate a specialised service within its police services or other law enforcement authorities, which, in accordance with national law, will have access to and collect all relevant information concerning and resulting from criminal investigations conducted by its law enforcement authorities with respect to terrorist offences and send it to Europol in accordance with paragraphs 3 and 4.

2. Each Member State shall designate one, or where its legal system so provides more than one authority, as Eurojust national correspondent for terrorism matters or an appropriate judicial or other competent authority which, in accordance with national law, shall have access to and can collect all relevant information concerning prosecutions and convictions for terrorist offences and send it to Eurojust in accordance with paragraph 5.

3. Each Member State shall take the necessary measures to ensure that at least the information referred to in paragraph 4 concerning criminal investigations and the information referred to in paragraph 5 concerning prosecutions and convictions for terrorist offences

³OJ L 164, 22.6.2002, p. 3

⁴OJ C 316, 27.11.1995, p. 2. Convention as last amended by the Protocol of 27.11.2003 (OJ C 2, 6.1.2004, p. 3)

⁵OJ L 63, 6.3.2002, p. 1. Decision as amended by Council Decision 2003/659/JHA (OJ L 245, 29.9.2003, p. 44)

⁶OJ L 344, 28.12.2001, p. 93. Common Position as last amended by Common Position 2005/220/CFSP (OJ L 69, 16.3.2005, p. 59)

which affect or may affect two or more Member States, gathered by the relevant authority, is transmitted to:

- (a) Europol, in accordance with national law and with the provisions of the Europol Convention, for processing; and
- (b) Eurojust, in accordance with national law and where the provisions of the Eurojust Decision so allow.

4. The information to be transmitted in accordance with paragraph 3 to Europol shall be the following:

- (a) data which identify the person, group or entity;
- (b) acts under investigation and their specific circumstances;
- (c) the offence concerned;
- (d) links with other relevant cases;
- (e) the use of communication technologies;
- (f) the threat posed by the possession of weapons of mass destruction.

5. The information to be transmitted in accordance with paragraph 3 to Eurojust shall be the following:

- (a) data which identify the person, group or entity that is the object of a criminal investigation or prosecution;
- (b) the offence concerned and its specific circumstances;
- (c) information about final convictions for terrorist offences and the specific circumstances surrounding those offences;
- (d) links with other relevant cases;
- (e) requests for judicial assistance, including letters rogatory, addressed to or by another Member State and the response.

6. Each Member State shall take the necessary measures to ensure that any relevant information included in documents, files, items of information, objects or other means of evidence, seized or confiscated in the course of criminal investigations or criminal proceedings in connection with terrorist offences can be made accessible as soon as possible, taking account of the need not to jeopardise current investigations, to the authorities of other interested Member States in accordance with national law and relevant international legal instruments where investigations are being carried out or might be initiated or where prosecutions are in progress in connection with terrorist offences.

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.]
Act 2008.*

Article 3

Joint investigation teams

In appropriate cases Member States shall take the necessary measures to set up joint investigation teams to conduct criminal investigations into terrorist offences.

Article 4

Requests for judicial assistance and enforcement of judgments

Each Member State shall take the necessary measures to ensure that requests from other Member States for mutual legal assistance and recognition and enforcement of judgments in connection with terrorist offences are dealt with as a matter of urgency and are given priority.

Article 5

Repeal of existing provisions

Decision 2003/48/JHA is hereby repealed.

Article 6

Implementation

Member States shall take the necessary measures to comply with the provisions of this Decision at the latest by 30 June 2006.

Article 7

Territorial Application

This Decision shall apply to Gibraltar.

Article 8

Entry into force

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

Done at Brussels, 20 September 2005.

For the Council

The President

M. BECKETT

SCHEDULE 8

PART 1

TEXT OF 1959 CONVENTION

Preamble

The governments signatory hereto, being members of the Council of Europe, Considering that the aim of the Council of Europe is to achieve greater unity among its members;

Believing that the adoption of common rules in the field of mutual assistance in criminal matters will contribute to the attainment of this aim;

Considering that such mutual assistance is related to the question of extradition, which has already formed the subject of a Convention signed on 13th December 1957,

Have agreed as follows:

Chapter I – General provisions

Article 1

1. The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

2. This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

Article 2

Assistance may be refused:

- a) if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;
- b) if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of its country.

Chapter II – Letters rogatory

Article 3

1. The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

2. If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.

3. The requested Party may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in

[No. 7.] *Criminal Justice (Mutual Assistance)* [2008.]
Act 2008.

which case the requested Party shall make every effort to comply with the request.

Article 4

On the express request of the requesting Party the requested Party shall state the date and place of execution of the letters rogatory. Officials and interested persons may be present if the requested Party consents.

Article 5

1. Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, reserve the right to make the execution of letters rogatory for search or seizure of property dependent on one or more of the following conditions:

- a) that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party;
- b) that the offence motivating the letters rogatory is an extraditable offence in the requested country;
- c) that execution of the letters rogatory is consistent with the law of the requested Party.

2. Where a Contracting Party makes a declaration in accordance with paragraph 1 of this article, any other Party may apply reciprocity.

Article 6

1. The requested Party may delay the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings.

2. Any property, as well as original records or documents, handed over in execution of letters rogatory shall be returned by the requesting Party to the requested Party as soon as possible unless the latter Party waives the return thereof.

Chapter III — Service of writs and records of judicial verdicts —

Appearance of witnesses, experts and prosecuted persons

Article 7

1. The requested Party shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting Party.

Service may be effected by simple transmission of the writ or record to the person to be served. If the requesting Party expressly so requests, service shall be effected by the requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

2. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by

the requested Party that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the requesting Party. The requested Party shall, if the requesting Party so requests, state whether service has been effected in accordance with the law of the requested Party. If service cannot be effected, the reasons shall be communicated immediately by the requested Party to the requesting Party.

3. Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, request that service of a summons on an accused person who is in its territory be transmitted to its authorities by a certain time before the date set for appearance. This time shall be specified in the aforesaid declaration and shall not exceed 50 days.

This time shall be taken into account when the date of appearance is being fixed and when the summons is being transmitted.

Article 8

A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting Party and is there again duly summoned.

Article 9

The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by the requesting Party shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place.

Article 10

1. If the requesting Party considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the requested Party shall invite the witness or expert to appear.

The requested Party shall inform the requesting Party of the reply of the witness or expert.

2. In the case provided for under paragraph 1 of this article the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.

3. If a specific request is made, the requested Party may grant the witness or expert an advance. The amount of the advance shall be endorsed on the summons and shall be refunded by the requesting Party.

Article 11

1. A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting Party shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 in so far as these are applicable.

Transfer may be refused:

- a) if the person in custody does not consent,
- b) if his presence is necessary at criminal proceedings pending in the territory of the requested Party,
- c) if transfer is liable to prolong his detention, or
- d) if there are other overriding grounds for not transferring him to the territory of the requesting Party.

2. Subject to the provisions of Article 2, in a case coming within the immediately preceding paragraph, transit of the person in custody through the territory of a third State, Party to this Convention, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested.

A Contracting Party may refuse to grant transit to its own nationals.

3. The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his release.

Article 12

1. A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.

2. A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.

3. The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

Chapter IV – Judicial records

Article 13

1. A requested Party shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a Contracting Party and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case.

2. In any case other than that provided for in paragraph 1 of this article the request shall be complied with in accordance with the

conditions provided for by the law, regulations or practice of the requested Party.

Chapter V – Procedure

Article 14

1. Requests for mutual assistance shall indicate as follows:
 - a) the authority making the request,
 - b) the object of and the reason for the request,
 - c) where possible, the identity and the nationality of the person concerned, and
 - d) where necessary, the name and address of the person to be served.
2. Letters rogatory referred to in Articles 3, 4 and 5 shall, in addition, state the offence and contain a summary of the facts.

Article 15

1. Letters rogatory referred to in Articles 3, 4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.
2. In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this article.
3. Requests provided for in paragraph 1 of Article 13 may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.
4. Requests for mutual assistance, other than those provided for in paragraphs 1 and 3 of this article and, in particular, requests for investigation preliminary to prosecution, may be communicated directly between the judicial authorities.
5. In cases where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).
6. A Contracting Party may, when signing this Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, give notice that some or all requests for assistance shall be sent to it through channels other than those provided for in this article, or require that, in a case provided for in paragraph 2 of this article, a copy of the letters rogatory shall be transmitted at the same time to its Ministry of Justice.
7. The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Contracting

[No. 7.] *Criminal Justice (Mutual Assistance)* [2008.]
Act 2008.

Parties which provide for the direct transmission of requests for assistance between their respective authorities.

Article 16

1. Subject to paragraph 2 of this article, translations of requests and annexed documents shall not be required.
2. Each Contracting Party may, when signing or depositing its instrument of ratification or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, reserve the right to stipulate that requests and annexed documents shall be addressed to it accompanied by a translation into its own language or into either of the official languages of the Council of Europe or into one of the latter languages, specified by it. The other Contracting Parties may apply reciprocity.
3. This article is without prejudice to the provisions concerning the translation of requests or annexed documents contained in the agreements or arrangements in force or to be made between two or more Contracting Parties.

Article 17

Evidence or documents transmitted pursuant to this Convention shall not require any form of authentication.

Article 18

Where the authority which receives a request for mutual assistance has no jurisdiction to comply therewith, it shall, *ex officio*, transmit the request to the competent authority of its country and shall so inform the requesting Party through the direct channels, if the request has been addressed through such channels.

Article 19

Reasons shall be given for any refusal of mutual assistance.

Article 20

Subject to the provisions of Article 10, paragraph 3, execution of requests for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested Party or the transfer of a person in custody carried out under Article 11.

Chapter VI – Laying of information in connection with proceedings

Article 21

1. Information laid by one Contracting Party with a view to proceedings in the courts of another Party shall be transmitted between the Ministries of Justice concerned unless a Contracting Party avails itself of the option provided for in paragraph 6 of Article 15.
2. The requested Party shall notify the requesting Party of any action taken on such information and shall forward a copy of the record of any verdict pronounced.
3. The provisions of Article 16 shall apply to information laid under paragraph 1 of this article.

Chapter VII – Exchange of information from judicial records

Article 22

Each Contracting Party shall inform any other Party of all criminal convictions and subsequent measures in respect of nationals of the latter Party, entered in the judicial records. Ministries of Justice shall communicate such information to one another at least once a year. Where the person concerned is considered a national of two or more other Contracting Parties, the information shall be given to each of these Parties, unless the person is a national of the Party in the territory of which he was convicted.

Chapter VIII – Final provisions

Article 23

1. Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.
2. Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary General of the Council of Europe.
3. A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

Article 24

A Contracting Party may, when signing the Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities.

Article 25

1. This Convention shall apply to the metropolitan territories of the Contracting Parties.
2. In respect of France, it shall also apply to Algeria and to the overseas Departments, and, in respect of Italy, it shall also apply to the territory of Somaliland under Italian administration.
3. The Federal Republic of Germany may extend the application of this Convention to the Land of Berlin by notice addressed to the Secretary General of the Council of Europe.
4. In respect of the Kingdom of the Netherlands, the Convention shall apply to its European territory. The Netherlands may extend the application of this Convention to the Netherlands Antilles, Surinam and Netherlands New Guinea by notice addressed to the Secretary General of the Council of Europe.
5. By direct arrangement between two or more Contracting Parties and subject to the conditions laid down in the arrangement, the application of this Convention may be extended to any territory, other than the territories mentioned in paragraphs 1, 2, 3 and 4 of

[No. 7.] *Criminal Justice (Mutual Assistance)* [2008.]
Act 2008.

this article, of one of these Parties, for the international relations of which any such Party is responsible.

Article 26

1. Subject to the provisions of Article 15, paragraph 7, and Article 16, paragraph 3, this Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties.
2. This Convention shall not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given field.
3. The Contracting Parties may conclude between themselves bilateral or multilateral agreements on mutual assistance in criminal matters only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.
4. Where, as between two or more Contracting Parties, mutual assistance in criminal matters is practised on the basis of uniform legislation or of a special system providing for the reciprocal application in their respective territories of measures of mutual assistance, these Parties shall, notwithstanding the provisions of this Convention, be free to regulate their mutual relations in this field exclusively in accordance with such legislation or system. Contracting Parties which, in accordance with this paragraph, exclude as between themselves the application of this Convention shall notify the Secretary General of the Council of Europe accordingly.

Article 27

1. This Convention shall be open to signature by the members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary General of the Council.
2. The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.
3. As regards any signatory ratifying subsequently the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

Article 28

1. The Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, provided that the resolution containing such invitation obtains the unanimous agreement of the members of the Council who have ratified the Convention.
2. Accession shall be by deposit with the Secretary General of the Council of an instrument of accession which shall take effect 90 days after the date of its deposit.

Article 29

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice to the Secretary General of the Council

of Europe. Denunciation shall take effect six months after the date when the Secretary General of the Council received such notification.

Article 30

The Secretary General of the Council of Europe shall notify the members of the Council and the government of any State which has acceded to this Convention of:

- a) the names of the signatories and the deposit of any instrument of ratification or accession;
- b) the date of entry into force of this Convention;
- c) any notification received in accordance with the provisions of Article 5 – paragraph 1, Article 7 – paragraph 3, Article 15 – paragraph 6, Article 16 – paragraph 2, Article 24, Article 25 – paragraphs 3 and 4, Article 26 – paragraph 4;
- d) any reservation made in accordance with Article 23, paragraph 1;
- e) the withdrawal of any reservation in accordance with Article 23, paragraph 2;
- f) any notification of denunciation received in accordance with the provisions of Article 29 and the date on which such denunciation will take effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 20th day of April 1959, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to the signatory and acceding governments.

PART 2

TEXT OF FIRST ADDITIONAL PROTOCOL TO 1959 CONVENTION

The member States of the Council of Europe, signatory to this Protocol,

Desirous of facilitating the application of the European Convention on Mutual Assistance in Criminal Matters opened for signature in Strasbourg on 20th April 1959 (hereinafter referred to as "the Convention") in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain other respects,

Have agreed as follows:

Chapter I

Article 1

The Contracting Parties shall not exercise the right provided for in Article 2.a of the Convention to refuse assistance solely on the ground that the request concerns an offence which the requested Party considers a fiscal offence.

Article 2

1. In the case where a Contracting Party has made the execution of letters rogatory for search or seizure of property dependent on the condition that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party, this condition shall be fulfilled, as regards fiscal offences, if the offence is punishable under the law of the requesting Party and corresponds to an offence of the same nature under the law of the requested Party.

2. The request may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the requesting Party.

Chapter II

Article 3

The Convention shall also apply to:

- a) the service of documents concerning the enforcement of a sentence, the recovery of a fine or the payment of costs of proceedings;
- b) measures relating to the suspension of pronouncement of a sentence or of its enforcement, to conditional release, to deferment of the commencement of the enforcement of a sentence or to the interruption of such enforcement.

Chapter III

Article 4

Article 22 of the Convention shall be supplemented by the following text, the original Article 22 of the Convention becoming paragraph 1 and the below-mentioned provisions becoming paragraph 2:

"2 Furthermore, any Contracting Party which has supplied the above-mentioned information shall communicate to the Party concerned, on the latter's request in individual cases, a copy of the convictions and measures in question as well as any other information relevant thereto in order to enable it to consider whether they necessitate any measures at national level. This communication shall take place between the Ministries of Justice concerned."

Chapter IV

Article 5

1. This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.

3. In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.

4. A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

Article 6

1. Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.

2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

Article 7

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2. Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of the notification.

Article 8

1. Reservations made by a Contracting Party to a provision of the Convention shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to the declarations made by virtue of Article 24 of the Convention.

2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:

- a) not to accept Chapter I, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article I, or not to comply with letters rogatory for search or seizure of property in respect of fiscal offences;
- b) not to accept Chapter II;
- c) not to accept Chapter III.

[No. 7.] *Criminal Justice (Mutual Assistance)* [2008.]
Act 2008.

3. Any Contracting Party may withdraw a declaration it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

4. A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting Party; it may, however, if its reservation is partial or conditional claim the application of that provision in so far as it has itself accepted it.

5. No other reservation may be made to the provisions of this Protocol.

Article 9

The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Contracting Parties in application of Article 26, paragraph 3, of the Convention.

Article 10

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 11

1. Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

3. Denunciation of the Convention entails automatically denunciation of this Protocol.

Article 12

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

- a) any signature of this Protocol;
- b) any deposit of an instrument of ratification, acceptance, approval or accession;
- c) any date of entry into force of this Protocol in accordance with Articles 5 and 6;
- d) any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 7;
- e) any declaration received in pursuance of the provisions of paragraph 1 of Article 8;

- f) any reservation made in pursuance of the provisions of paragraph 2 of Article 8;
- g) the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 8;
- h) any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 17th day of March 1978, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

SCHEDULE 9

TEXT OF SECOND ADDITIONAL PROTOCOL TO 1959 CONVENTION

The member States of the Council of Europe, signatory to this Protocol,

Having regard to their undertakings under the Statute of the Council of Europe;

Desirous of further contributing to safeguard human rights, uphold the rule of law and support the democratic fabric of society;

Considering it desirable to that effect to strengthen their individual and collective ability to respond to crime;

Decided to improve on and supplement in certain aspects the European Convention on Mutual Assistance in Criminal Matters done at Strasbourg on 20 April 1959 (hereinafter referred to as “the Convention”), as well as the Additional Protocol thereto, done at Strasbourg on 17 March 1978;

Taking into consideration the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981,

Have agreed as follows:

Chapter I

Article 1 – Scope

Article 1 of the Convention shall be replaced by the following provisions:

“1 The Parties undertake promptly to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

2 This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

3 Mutual assistance may also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Party by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

4 Mutual assistance shall not be refused solely on the grounds that it relates to acts for which a legal person may be held liable in the requesting Party.”

Article 2 – Presence of officials of the requesting Party

Article 4 of the Convention shall be supplemented by the following text, the original Article 4 of the Convention becoming paragraph 1 and the provisions below becoming paragraph 2:

“2 Requests for the presence of such officials or interested persons should not be refused where that presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting Party and, therefore, likely to avoid the need for supplementary requests for assistance.”

Article 3 – Temporary transfer of detained persons to the territory of the requesting Party

Article 11 of the Convention shall be replaced by the following provisions:

“1 A person in custody whose personal appearance for evidentiary purposes other than for standing trial is applied for by the requesting Party shall be temporarily transferred to its territory, provided that he or she shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 of this Convention, in so far as these are applicable.

Transfer may be refused if:

- a the person in custody does not consent;
- b his or her presence is necessary at criminal proceedings pending in the territory of the requested Party;
- c transfer is liable to prolong his or her detention, or
- d there are other overriding grounds for not transferring him or her to the territory of the requesting Party.

2 Subject to the provisions of Article 2 of this Convention, in a case coming within paragraph 1, transit of the person in custody through the territory of a third Party, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested. A Party may refuse to grant transit to its own nationals.

3 The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his or her release.”

Article 4 – Channels of communication

Article 15 of the Convention shall be replaced by the following provisions:

“1 Requests for mutual assistance, as well as spontaneous information, shall be addressed in writing by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels. However, they may be forwarded directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party and returned through the same channels.

2 Applications as referred to in Article 11 of this Convention and Article 13 of the Second Additional Protocol to this Convention shall in all cases be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.

3 Requests for mutual assistance concerning proceedings as mentioned in paragraph 3 of Article 1 of this Convention may also be forwarded directly by the administrative or judicial authorities of the requesting Party to the administrative or judicial authorities of the requested Party, as the case may be, and returned through the same channels.

4 Requests for mutual assistance made under Articles 18 and 19 of the Second Additional Protocol to this Convention may also be forwarded directly by the competent authorities of the requesting Party to the competent authorities of the requested Party.

5 Requests provided for in paragraph 1 of Article 13 of this Convention may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 of this Convention shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.

6 Requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the Convention may be made directly to the competent authorities. Any Contracting State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of this paragraph, deem competent authorities.

7 In urgent cases, where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).

8 Any Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to make the execution of requests, or specified requests, for mutual assistance dependent on one or more of the following conditions:

- a that a copy of the request be forwarded to the central authority designated in that declaration;
- b that requests, except urgent requests, be forwarded to the central authority designated in that declaration;
- c that, in case of direct transmission for reasons of urgency, a copy shall be transmitted at the same time to its Ministry of Justice;
- d that some or all requests for assistance shall be sent to it through channels other than those provided for in this article.

9 Requests for mutual assistance and any other communications under this Convention or its Protocols may be forwarded through any electronic or other means of telecommunication provided that the requesting Party is prepared, upon request, to produce at any time a written record of it and the original. However, any Contracting State, may by a declaration addressed at any time to the

Secretary General of the Council of Europe, establish the conditions under which it shall be willing to accept and execute requests received by electronic or other means of telecommunication.

10 The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Parties which provide for the direct transmission of requests for assistance between their respective authorities.”

Article 5 – Costs

Article 20 of the Convention shall be replaced by the following provisions:

“1 Parties shall not claim from each other the refund of any costs resulting from the application of this Convention or its Protocols, except:

- a costs incurred by the attendance of experts in the territory of the requested Party;
- b costs incurred by the transfer of a person in custody carried out under Articles 13 or 14 of the Second Additional Protocol to this Convention, or Article 11 of this Convention;
- c costs of a substantial or extraordinary nature.

2 However, the cost of establishing a video or telephone link, costs related to the servicing of a video or telephone link in the requested Party, the remuneration of interpreters provided by it and allowances to witnesses and their travelling expenses in the requested Party shall be refunded by the requesting Party to the requested Party, unless the Parties agree otherwise.

3 Parties shall consult with each other with a view to making arrangements for the payment of costs claimable under paragraph 1.c above.

4 The provisions of this article shall apply without prejudice to the provisions of Article 10, paragraph 3, of this Convention.”

Article 6 – Judicial authorities

Article 24 of the Convention shall be replaced by the following provisions:

“Any State shall at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities. It subsequently may, at any time and in the same manner, change the terms of its declaration.”

Chapter II

Article 7 – Postponed execution of requests

1 The requested Party may postpone action on a request if such action would prejudice investigations, prosecutions or related proceedings by its authorities.

2 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

3 If the request is postponed, reasons shall be given for the postponement. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

Article 8 – Procedure

Notwithstanding the provisions of Article 3 of the Convention, where requests specify formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to fundamental principles of its law, unless otherwise provided for in this Protocol.

Article 9 – Hearing by video conference

1 If a person is in one Party's territory and has to be heard as a witness or expert by the judicial authorities of another Party, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs 2 to 7.

2 The requested Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting Party by mutual agreement.

3 Requests for a hearing by video conference shall contain, in addition to the information referred to in Article 14 of the Convention, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

4 The judicial authority of the requested Party shall summon the person concerned to appear in accordance with the forms laid down by its law.

5 With reference to hearing by video conference, the following rules shall apply:

- a a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;

- b measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;
- c the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party in accordance with its own laws;
- d at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;
- e the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Party.

6 Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Party to the competent authority of the requesting Party.

7 Each Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.

8 Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Parties concerned, in accordance with their national law and relevant international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.

9 Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to hearings by video conference involving the accused person or the suspect.

Article 10 – Hearing by telephone conference

1 If a person is in one Party's territory and has to be heard as a witness or expert by judicial authorities of another Party, the latter may, where its national law so provides, request the assistance of the former Party to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 6.

2 A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.]
Act 2008.*

3 The requested Party shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.

4 A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the Convention, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.

5 The practical arrangements regarding the hearing shall be agreed between the Parties concerned. When agreeing such arrangements, the requested Party shall undertake to:

- a notify the witness or expert concerned of the time and the venue of the hearing;
- b ensure the identification of the witness or expert;
- c verify that the witness or expert agrees to the hearing by telephone conference.

6 The requested Party may make its agreement subject, fully or in part, to the relevant provisions of Article 9, paragraphs 5 and 7.

Article 11 – Spontaneous information

1 Without prejudice to their own investigations or proceedings, the competent authorities of a Party may, without prior request, forward to the competent authorities of another Party information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under the Convention or its Protocols.

2 The providing Party may, pursuant to its national law, impose conditions on the use of such information by the receiving Party.

3 The receiving Party shall be bound by those conditions.

4 However, any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to be bound by the conditions imposed by the providing Party under paragraph 2 above, unless it receives prior notice of the nature of the information to be provided and agrees to its transmission.

Article 12 – Restitution

1 At the request of the requesting Party and without prejudice to the rights of bona fide third parties, the requested Party may place articles obtained by criminal means at the disposal of the requesting Party with a view to their return to their rightful owners.

2 In applying Articles 3 and 6 of the Convention, the requested Party may waive the return of articles either before or after handing them over to the requesting Party if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of bona fide third parties shall not be affected.

3 In the event of a waiver before handing over the articles to the requesting Party, the requested Party shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles.

4 A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Party to collect taxes or duties from the rightful owner.

Article 13 – Temporary transfer of detained persons to the requested Party

1 Where there is agreement between the competent authorities of the Parties concerned, a Party which has requested an investigation for which the presence of a person held in custody on its own territory is required may temporarily transfer that person to the territory of the Party in which the investigation is to take place.

2 The agreement shall cover the arrangements for the temporary transfer of the person and the date by which the person must be returned to the territory of the requesting Party.

3 Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Party.

4 The transferred person shall remain in custody in the territory of the requested Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from which the person was transferred applies for his or her release.

5 The period of custody in the territory of the requested Party shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Party.

6 The provisions of Article 11, paragraph 2, and Article 12 of the Convention shall apply *mutatis mutandis*.

7 Any Contracting State may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that before an agreement is reached under paragraph 1 of this article, the consent referred to in paragraph 3 of this article will be required, or will be required under certain conditions indicated in the declaration.

Article 14 – Personal appearance of transferred sentenced persons

The provisions of Articles 11 and 12 of the Convention shall apply *mutatis mutandis* also to persons who are in custody in the requested Party, pursuant to having been transferred in order to serve a sentence passed in the requesting Party, where their personal appearance for purposes of review of the judgement is applied for by the requesting Party.

Article 15 – Language of procedural documents and judicial decisions to be served

1 The provisions of this article shall apply to any request for service under Article 7 of the Convention or Article 3 of the Additional Protocol thereto.

2 Procedural documents and judicial decisions shall in all cases be transmitted in the language, or the languages, in which they were issued.

3 Notwithstanding the provisions of Article 16 of the Convention, if the authority that issued the papers knows or has reasons to believe that the addressee understands only some other language, the papers, or at least the most important passages thereof, shall be accompanied by a translation into that other language.

4 Notwithstanding the provisions of Article 16 of the Convention, procedural documents and judicial decisions shall, for the benefit of the authorities of the requested Party, be accompanied by a short summary of their contents translated into the language, or one of the languages, of that Party.

Article 16 – Service by post

1 The competent judicial authorities of any Party may directly address, by post, procedural documents and judicial decisions, to persons who are in the territory of any other Party.

2 Procedural documents and judicial decisions shall be accompanied by a report stating that the addressee may obtain information from the authority identified in the report, regarding his or her rights and obligations concerning the service of the papers. The provisions of paragraph 3 of Article 15 above shall apply to that report.

3 The provisions of Articles 8, 9 and 12 of the Convention shall apply *mutatis mutandis* to service by post.

4 The provisions of paragraphs 1, 2 and 3 of Article 15 above shall also apply to service by post.

Article 17 – Cross-border observations

1 Police officers of one of the Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, shall be authorised to continue their observation in the territory of another Party where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

On request, the observation will be entrusted to officers of the Party in whose territory it is carried out.

The request for assistance referred to in the first sub-paragraph must be sent to an authority designated by each Party and having jurisdiction to grant or to forward the requested authorisation.

2 Where, for particularly urgent reasons, prior authorisation of the other Party cannot be requested, the officers conducting the observation within the framework of a criminal investigation shall be authorised to continue beyond the border the observation of a person presumed to have committed offences listed in paragraph 6, provided that the following conditions are met:

- a the authorities of the Party designated under paragraph 4, in whose territory the observation is to be continued, must be notified immediately, during the observation, that the border has been crossed;
- b a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay.

Observation shall cease as soon as the Party in whose territory it is taking place so requests, following the notification referred to in a. or the request referred to in b. or where authorisation has not been obtained within five hours of the border being crossed.

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

- a The officers conducting the observation must comply with the provisions of this article and with the law of the Party in whose territory they are operating; they must obey the instructions of the local responsible authorities.
- b Except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorisation has been granted.
- c The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity.
- d The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by the requested Party; their use shall be prohibited save in cases of legitimate self-defence.
- e Entry into private homes and places not accessible to the public shall be prohibited.
- f The officers conducting the observation may neither stop and question, nor arrest, the person under observation.
- g All operations shall be the subject of a report to the authorities of the Party in whose territory they took place; the officers conducting the observation may be required to appear in person.
- h The authorities of the Party from which the observing officers have come shall, when requested by the authorities of the Party in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate both the officers and authorities that they designate for the purposes of paragraphs 1 and 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

5 The Parties may, at bilateral level, extend the scope of this article and adopt additional measures in implementation thereof.

6 The observation referred to in paragraph 2 may take place only for one of the following criminal offences:

- assassination;
- murder;
- rape;
- arson;
- counterfeiting;
- armed robbery and receiving of stolen goods;
- extortion;
- kidnapping and hostage taking;
- traffic in human beings;
- illicit traffic in narcotic drugs and psychotropic substances;
- breach of the laws on arms and explosives;
- use of explosives;
- illicit carriage of toxic and dangerous waste;
- smuggling of aliens;
- sexual abuse of children.

Article 18 – Controlled delivery

1 Each Party undertakes to ensure that, at the request of another Party, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.

2 The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Party, with due regard to the national law of that Party.

3 Controlled deliveries shall take place in accordance with the procedures of the requested Party. Competence to act, direct and control operations shall lie with the competent authorities of that Party.

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Article 19 – Covert investigations

1 The requesting and the requested Parties may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).

2 The decision on the request is taken in each individual case by the competent authorities of the requested Party with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Parties with due regard to their national law and procedures.

3 Covert investigations shall take place in accordance with the national law and procedures of the Party on the territory of which the covert investigation takes place. The Parties involved shall cooperate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of paragraph 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Article 20 – Joint investigation teams

1 By mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

- a a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties;
- b a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved.

A request for the setting up of a joint investigation team may be made by any of the Parties concerned. The team shall be set up in one of the Parties in which the investigations are expected to be carried out.

2 In addition to the information referred to in the relevant provisions of Article 14 of the Convention, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3 A joint investigation team shall operate in the territory of the Parties setting up the team under the following general conditions:

- a the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
- b the team shall carry out its operations in accordance with the law of the Party in which it operates. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in sub-paragraph a, taking into account the conditions set by their own authorities in the agreement on setting up the team;

c the Party in which the team operates shall make the necessary organisational arrangements for it to do so.

4 In this article, members of the joint investigation team from the Party in which the team operates are referred to as "members", while members from Parties other than the Party in which the team operates are referred to as "seconded members".

5 Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Party where the team operates, decide otherwise.

6 Seconded members of the joint investigation team may, in accordance with the law of the Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Party of operation and the seconding Party.

7 Where the joint investigation team needs investigative measures to be taken in one of the Parties setting up the team, members seconded to the team by that Party may request their own competent authorities to take those measures. Those measures shall be considered in that Party under the conditions which would apply if they were requested in a national investigation.

8 Where the joint investigation team needs assistance from a Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.

9 A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.

10 Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Parties concerned may be used for the following purposes:

- a for the purposes for which the team has been set up;
- b subject to the prior consent of the Party where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Party concerned or in respect of which that Party could refuse mutual assistance;
- c for preventing an immediate and serious threat to public security, and without prejudice to sub-paragraph b. if subsequently a criminal investigation is opened;
- d for other purposes to the extent that this is agreed between Parties setting up the team.

11 This article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

12 To the extent that the laws of the Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members or seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise.

Article 21 – Criminal liability regarding officials

During the operations referred to in Articles 17, 18, 19 or 20, unless otherwise agreed upon by the Parties concerned, officials from a Party other than the Party of operation shall be regarded as officials of the Party of operation with respect to offences committed against them or by them.

Article 22 – Civil liability regarding officials

1 Where, in accordance with Articles 17, 18, 19 or 20, officials of a Party are operating in another Party, the first Party shall be liable for any damage caused by them during their operations, in accordance with the law of the Party in whose territory they are operating.

2 The Party in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.

3 The Party whose officials have caused damage to any person in the territory of another Party shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.

4 Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Party shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Party.

5 The provisions of this article shall apply subject to the proviso that the Parties did not agree otherwise.

Article 23 – Protection of witnesses

Where a Party requests assistance under the Convention or one of its Protocols in respect of a witness at risk of intimidation or in need of protection, the competent authorities of the requesting and requested Parties shall endeavour to agree on measures for the protection of the person concerned, in accordance with their national law.

Article 24 – Provisional measures

1 At the request of the requesting Party, the requested Party, in accordance with its national law, may take provisional measures for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests.

2 The requested Party may grant the request partially or subject to conditions, in particular time limitation.

Article 25 – Confidentiality

The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

Article 26 – Data protection

1 Personal data transferred from one Party to another as a result of the execution of a request made under the Convention or any of its Protocols, may be used by the Party to which such data have been transferred, only:

- a for the purpose of proceedings to which the Convention or any of its Protocols apply;
- b for other judicial and administrative proceedings directly related to the proceedings mentioned under (a);
- c for preventing an immediate and serious threat to public security.

2 Such data may however be used for any other purpose if prior consent to that effect is given by either the Party from which the data had been transferred, or the data subject.

3 Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols where

- such data is protected under its national legislation, and
- the Party to which the data should be transferred is not bound by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, unless the latter Party undertakes to afford such protection to the data as is required by the former Party.

4 Any Party that transfers personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols may require the Party to which the data have been transferred to give information on the use made with such data.

5 Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, require that, within the framework of procedures for which it could have refused or limited the transmission or the use of personal data in accordance with the provisions of the Convention or one of its Protocols, personal data transmitted to another Party not be used by the latter for the purposes of paragraph 1 unless with its previous consent.

Article 27 – Administrative authorities

Parties may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities they will deem administrative authorities for the purposes of Article 1, paragraph 3, of the Convention.

Article 28 – Relations with other treaties

The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Parties in application of Article 26, paragraph 3, of the Convention.

Article 29 – Friendly settlement

The European Committee on Crime Problems shall be kept informed regarding the interpretation and application of the Convention and its Protocols, and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of their application.

Chapter III

Article 30 – Signature and entry into force

1 This Protocol shall be open for signature by the member States of the Council of Europe which are a Party to or have signed the Convention. It shall be subject to ratification, acceptance or approval. A signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.

3 In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit.

Article 31 – Accession

1 Any non-member State, which has acceded to the Convention, may accede to this Protocol after it has entered into force.

2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession.

3 In respect of any acceding State, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession.

Article 32 – Territorial application

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2 Any State may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three

months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date or receipt of such notification by the Secretary General.

Article 33 – Reservations

1 Reservations made by a Party to any provision of the Convention or its Protocol shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to any declaration made in respect or by virtue of any provision of the Convention or its Protocol.

2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the right not to accept wholly or in part any one or more of Articles 16, 17, 18, 19 and 20. No other reservation may be made.

3 Any State may wholly or partially withdraw a reservation it has made in accordance with the foregoing paragraphs, by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

4 Any Party which has made a reservation in respect of any of the articles of this Protocol mentioned in paragraph 2 above, may not claim the application of that article by another Party. It may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article 34 – Denunciation

1 Any Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

3 Denunciation of the Convention entails automatically denunciation of this Protocol.

Article 35 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Protocol of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 30 and 31;

d any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 8th day of November 2001, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the non-member States which have acceded to the Convention.

SCHEDULE 10

TEXT OF CHAPTER IV OF 2005 CONVENTION

Chapter IV — International co-operation

Section 1 — Principles of international co-operation

Article 15 — General principles and measures for international co-operation

1 The Parties shall mutually co-operate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.

2 Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:

a for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;

b for investigative assistance and provisional measures with a view to either form of confiscation referred to under a above.

3 Investigative assistance and provisional measures sought in paragraph 2.b shall be carried out as permitted by and in accordance with the internal law of the requested Party. Where the request concerning one of these measures specifies formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to the fundamental principles of its law.

4 Each Party shall adopt such legislative or other measures as may be necessary to ensure that the requests coming from other Parties in order to identify, trace, freeze or seize the proceeds and instrumentalities, receive the same priority as those made in the framework of internal procedures.

Section 2 — Investigative assistance

Article 16 — Obligation to assist

The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property.

Article 17 — Requests for information on bank accounts

1 Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the particulars of the identified accounts.

2 The obligation set out in this article shall apply only to the extent that the information is in the possession of the bank keeping the account.

3 In addition to the requirements of Article 37, the requesting party shall, in the request:

- a state why it considers that the requested information is likely to be of substantial value for the purpose of the criminal investigation into the offence;
- b state on what grounds it presumes that banks in the requested Party hold the account and specify, to the widest extent possible, which banks and/or accounts may be involved; and
- c include any additional information available which may facilitate the execution of the request.

4 The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.

5 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that this article applies only to the categories of offences specified in the list contained in the appendix to this Convention.

6 Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

Article 18 — Requests for information on banking transactions

1 On request by another Party, the requested Party shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.

2 The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.

3 In addition to the requirements of Article 37, the requesting Party shall in its request indicate why it considers the requested information relevant for the purpose of the criminal investigation into the offence.

4 The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.

5 Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

Article 19 — Requests for the monitoring of banking transactions

1 Each Party shall ensure that, at the request of another Party, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party.

2 In addition to the requirements of Article 37, the requesting Party shall in its request indicate why it considers the requested information relevant for the purpose of the criminal investigation into the offence.

3 The decision to monitor shall be taken in each individual case by the competent authorities of the requested Party, with due regard for the national law of that Party.

4 The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested Parties.

5 Parties may extend this provision to accounts held in non-bank financial institutions.

Article 20 — Spontaneous information

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on instrumentalities and proceeds, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings or might lead to a request by that Party under this chapter.

Section 3 — Provisional measures

Article 21 — Obligation to take provisional measures

1 At the request of another Party which has instituted criminal proceedings or proceedings for the purpose of confiscation, a Party shall take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.

2 A Party which has received a request for confiscation pursuant to Article 23 shall, if so requested, take the measures mentioned in paragraph 1 of this article in respect of any property which is the subject of the request or which might be such as to satisfy the request.

Article 22 — Execution of provisional measures

1 After the execution of the provisional measures requested in conformity with paragraph 1 of Article 21, the requesting Party shall provide spontaneously and as soon as possible to the requested Party all information which may question or modify the extent of these measures. The requesting Party shall also provide without delays all complementary information requested by the requested Party and which is necessary for the implementation of and the follow up to the provisional measures.

2 Before lifting any provisional measure taken pursuant to this article, the requested Party shall, wherever possible, give the requesting Party an opportunity to present its reasons in favour of continuing the measure.

Section 4 — Confiscation

Article 23 — Obligation to confiscate

1 A Party, which has received a request made by another Party for confiscation concerning instrumentalities or proceeds, situated in its territory, shall:

- a enforce a confiscation order made by a court of a requesting Party in relation to such instrumentalities or proceeds; or
- b submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.

2 For the purposes of applying paragraph 1.b of this article, any Party shall whenever necessary have competence to institute confiscation proceedings under its own law.

3 The provisions of paragraph 1 of this article shall also apply to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property on which the confiscation can be enforced is located in the requested Party. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested Party shall, if payment is not obtained, realise the claim on any property available for that purpose.

4 If a request for confiscation concerns a specific item of property, the Parties may agree that the requested Party may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.

5 The Parties shall co-operate to the widest extent possible under their domestic law with those Parties which request the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention.

Article 24 — Execution of confiscation

1 The procedures for obtaining and enforcing the confiscation under Article 23 shall be governed by the law of the requested Party.

2 The requested Party shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision of the requesting Party or in so far as such conviction or judicial decision is implicitly based on them.

3 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 2 of this article applies only subject to its constitutional principles and the basic concepts of its legal system.

4 If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested Party shall convert the amount thereof into the currency of that Party at the rate of exchange ruling at the time when the decision to enforce the confiscation is taken.

5 In the case of Article 23, paragraph 1.a, the requesting Party alone shall have the right to decide on any application for review of the confiscation order.

Article 25 — Confiscated property

1 Property confiscated by a Party pursuant to Articles 23 and 24 of this Convention, shall be disposed of by that Party in accordance with its domestic law and administrative procedures.

2 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return such property to their legitimate owners.

3 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such property, in accordance with its domestic law or administrative procedures.

Article 26 — Right of enforcement and maximum amount of confiscation

1 A request for confiscation made under Articles 23 and 24 does not affect the right of the requesting Party to enforce itself the confiscation order.

2 Nothing in this Convention shall be so interpreted as to permit the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a Party finds that this might occur, the Parties concerned shall enter into consultations to avoid such an effect.

Article 27 — Imprisonment in default

The requested Party shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 23, if the requesting Party has so specified in the request.

Section 5 — Refusal and postponement of co-operation

Article 28 — Grounds for refusal

1 Co-operation under this chapter may be refused if:

- a the action sought would be contrary to the fundamental principles of the legal system of the requested Party; or
- b the execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of the requested Party; or

- c in the opinion of the requested Party, the importance of the case to which the request relates does not justify the taking of the action sought; or
- d the offence to which the request relates is a fiscal offence, with the exception of the financing of terrorism;
- e the offence to which the request relates is a political offence, with the exception of the financing of terrorism; or
- f the requested Party considers that compliance with the action sought would be contrary to the principle of “*ne bis in idem*”; or
- g the offence to which the request relates would not be an offence under the law of the requested Party if committed within its jurisdiction. However, this ground for refusal applies to co-operation under Section 2 only in so far as the assistance sought involves coercive action. Where dual criminality is required for co-operation under this chapter, that requirement shall be deemed to be satisfied regardless of whether both Parties place the offence within the same category of offences or denominate the offence by the same terminology, provided that both Parties criminalise the conduct underlying the offence.

2. Co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter, may also be refused if the measures sought could not be taken under the domestic law of the requested Party for the purposes of investigations or proceedings, had it been a similar domestic case.

3. Where the law of the requested Party so requires, co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter may also be refused if the measures sought or any other measures having similar effects would not be permitted under the law of the requesting Party, or, as regards the competent authorities of the requesting Party, if the request is not authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

4. Co-operation under Section 4 of this chapter may also be refused if:

- a under the law of the requested Party confiscation is not provided for in respect of the type of offence to which the request relates; or
- b without prejudice to the obligation pursuant to Article 23, paragraph 3, it would be contrary to the principles of the domestic law of the requested Party concerning the limits of confiscation in respect of the relationship between an offence and:
 - i an economic advantage that might be qualified as its proceeds; or
 - ii property that might be qualified as its instrumentalities; or

[No. 7.] *Criminal Justice (Mutual Assistance)* [2008.]
Act 2008.

- c under the law of the requested Party confiscation may no longer be imposed or enforced because of the lapse of time; or
 - d without prejudice to Article 23, paragraph 5, the request does not relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed, on the basis of which the confiscation has been ordered or is sought; or
 - e confiscation is either not enforceable in the requesting Party, or it is still subject to ordinary means of appeal; or
 - f the request relates to a confiscation order resulting from a decision rendered *in absentia* of the person against whom the order was issued and, in the opinion of the requested Party, the proceedings conducted by the requesting Party leading to such decision did not satisfy the minimum rights of defence recognised as due to everyone against whom a criminal charge is made.
5. For the purpose of paragraph 4.f of this article a decision is not considered to have been rendered *in absentia* if:
- a it has been confirmed or pronounced after opposition by the person concerned; or
 - b it has been rendered on appeal, provided that the appeal was lodged by the person concerned.
6. When considering, for the purposes of paragraph 4.f of this article if the minimum rights of defence have been satisfied, the requested Party shall take into account the fact that the person concerned has deliberately sought to evade justice or the fact that that person, having had the possibility of lodging a legal remedy against the decision made *in absentia*, elected not to do so. The same will apply when the person concerned, having been duly served with the summons to appear, elected not to do so nor to ask for adjournment.
7. A Party shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.
8. Without prejudice to the ground for refusal provided for in paragraph 1.a of this article:
- a the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is a legal person shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter;
 - b the fact that the natural person against whom an order of confiscation of proceeds has been issued has died or the fact that a legal person against whom an order of confiscation of proceeds has been issued has subsequently been

dissolved shall not be invoked as an obstacle to render assistance in accordance with Article 23, paragraph 1.a;

- c the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is mentioned in the request both as the author of the underlying criminal offence and of the offence of money laundering, in accordance with Article 9.2.b of this Convention, shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter.

Article 29 — Postponement

The requested Party may postpone action on a request if such action would prejudice investigations or proceedings by its authorities.

Article 30 — Partial or conditional granting of a request

Before refusing or postponing co-operation under this chapter, the requested Party shall, where appropriate after having consulted the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

Section 6 — Notification and protection of third parties' rights

Article 31 — Notification of documents

1 The Parties shall afford each other the widest measure of mutual assistance in the serving of judicial documents to persons affected by provisional measures and confiscation.

2 Nothing in this article is intended to interfere with:

- a the possibility of sending judicial documents, by postal channels, directly to persons abroad;
- b the possibility for judicial officers, officials or other competent authorities of the Party of origin to effect service of judicial documents directly through the consular authorities of that Party or through judicial officers, officials or other competent authorities of the Party of destination,

unless the Party of destination makes a declaration to the contrary to the Secretary General of the Council of Europe at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

3 When serving judicial documents to persons abroad affected by provisional measures or confiscation orders issued in the sending Party, this Party shall indicate what legal remedies are available under its law to such persons.

Article 32 — Recognition of foreign decisions

1 When dealing with a request for co-operation under Sections 3 and 4, the requested Party shall recognise any judicial decision taken in the requesting Party regarding rights claimed by third parties.

2 Recognition may be refused if:

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

- a third parties did not have adequate opportunity to assert their rights; or
- b the decision is incompatible with a decision already taken in the requested Party on the same matter; or
- c it is incompatible with the *ordre public* of the requested Party; or
- d the decision was taken contrary to provisions on exclusive jurisdiction provided for by the law of the requested Party.

Section 7 — Procedural and other general rules

Article 33 — Central authority

1 The Parties shall designate a central authority or, if necessary, authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.

2 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

Article 34 — Direct communication

1 The central authorities shall communicate directly with one another.

2 In the event of urgency, requests or communications under this chapter may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.

3 Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).

4 Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

5 Requests or communications under Section 2 of this chapter, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

6 Draft requests or communications under this chapter may be sent directly by the judicial authorities of the requesting Party to such authorities of the requested Party prior to a formal request to ensure that it can be dealt with efficiently upon receipt and contains sufficient information and supporting documentation for it to meet the requirements of the legislation of the requested Party.

Article 35 — Form of request and languages

1 All requests under this chapter shall be made in writing. They may be transmitted electronically, or by any other means of telecommunication, provided that the requesting Party is prepared, upon request, to produce at any time a written record of such communication and the original. However each Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, indicate the conditions in which it is ready to accept and execute requests received electronically or by any other means of communication.

2 Subject to the provisions of paragraph 3 of this article, translations of the requests or supporting documents shall not be required.

3 At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any State or the European Community may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests made to it and documents supporting such requests be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.

Article 36 — Legalisation

Documents transmitted in application of this chapter shall be exempt from all legalisation formalities.

Article 37 — Content of request

1 Any request for co-operation under this chapter shall specify:

- a the authority making the request and the authority carrying out the investigations or proceedings;
- b the object of and the reason for the request;
- c the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;
- d insofar as the co-operation involves coercive action:
 - i the text of the statutory provisions or, where this is not possible, a statement of the relevant law applicable; and
 - ii an indication that the measure sought or any other measures having similar effects could be taken in the territory of the requesting Party under its own law;
- e where necessary and in so far as possible:
 - i details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and

[No. 7.] *Criminal Justice (Mutual Assistance)* [2008.]
Act 2008.

ii the property in relation to which co-operation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any available information about other persons, interests in the property; and

f any particular procedure the requesting Party wishes to be followed.

2 A request for provisional measures under Section 3 in relation to seizure of property on which a confiscation order consisting in the requirement to pay a sum of money may be realised shall also indicate a maximum amount for which recovery is sought in that property.

3 In addition to the indications mentioned in paragraph 1, any request under Section 4 shall contain:

a in the case of Article 23, paragraph 1.a:

i a certified true copy of the confiscation order made by the court in the requesting Party and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;

ii an attestation by the competent authority of the requesting Party that the confiscation order is enforceable and not subject to ordinary means of appeal;

iii information as to the extent to which the enforcement of the order is requested; and

iv information as to the necessity of taking any provisional measures;

b in the case of Article 23, paragraph 1.b, a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;

c when third parties have had the opportunity to claim rights, documents demonstrating that this has been the case.

Article 38 — Defective requests

1 If a request does not comply with the provisions of this chapter or the information supplied is not sufficient to enable the requested Party to deal with the request, that Party may ask the requesting Party to amend the request or to complete it with additional information.

2 The requested Party may set a time-limit for the receipt of such amendments or information.

3 Pending receipt of the requested amendments or information in relation to a request under Section 4 of this chapter, the requested Party may take any of the measures referred to in Sections 2 or 3 of this chapter.

Article 39 — Plurality of requests

1 Where the requested Party receives more than one request under Sections 3 or 4 of this chapter in respect of the same person or property, the plurality of requests shall not prevent that Party from dealing with the requests involving the taking of provisional measures.

2 In the case of plurality of requests under Section 4 of this chapter, the requested Party shall consider consulting the requesting Parties.

Article 40 — Obligation to give reasons

The requested Party shall give reasons for any decision to refuse, postpone or make conditional any co-operation under this chapter.

Article 41 — Information

1 The requested Party shall promptly inform the requesting Party of:

- a the action initiated on a request under this chapter;
- b the final result of the action carried out on the basis of the request;
- c a decision to refuse, postpone or make conditional, in whole or in part, any co-operation under this chapter;
- d any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly; and
- e in the event of provisional measures taken pursuant to a request under Sections 2 or 3 of this chapter, such provisions of its domestic law as would automatically lead to the lifting of the provisional measure.

2 The requesting Party shall promptly inform the requested Party of:

- a any review, decision or any other fact by reason of which the confiscation order ceases to be wholly or partially enforceable; and
- b any development, factual or legal, by reason of which any action under this chapter is no longer justified.

3 Where a Party, on the basis of the same confiscation order, requests confiscation in more than one Party, it shall inform all Parties which are affected by an enforcement of the order about the request.

Article 42 — Restriction of use

1 The requested Party may make the execution of a request dependent on the condition that the information or evidence obtained will not, without its prior consent, be used or transmitted by the authorities of the requesting Party for investigations or proceedings other than those specified in the request.

2 Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe, declare that, without its prior consent, information or evidence provided by it under this chapter

may not be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.

Article 43 — Confidentiality

1 The requesting Party may require that the requested Party keep confidential the facts and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

2 The requesting Party shall, if not contrary to basic principles of its national law and if so requested, keep confidential any evidence and information provided by the requested Party, except to the extent that its disclosure is necessary for the investigations or proceedings described in the request.

3 Subject to the provisions of its domestic law, a Party which has received spontaneous information under Article 20 shall comply with any requirement of confidentiality as required by the Party which supplies the information. If the other Party cannot comply with such requirement, it shall promptly inform the transmitting Party.

Article 44 — Costs

The ordinary costs of complying with a request shall be borne by the requested Party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the Parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.

Article 45 — Damages

1 When legal action on liability for damages resulting from an act or omission in relation to co-operation under this chapter has been initiated by a person, the Parties concerned shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.

2 A Party which has become subject of a litigation for damages shall endeavour to inform the other Party of such litigation if that Party might have an interest in the case.

SCHEDULE 11

TEXT OF ARTICLES 13, 14, 18, 19 AND 20 OF THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME, DONE AT NEW YORK ON 15 NOVEMBER 2000.

Article 13

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

- (a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
- (b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

- (a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;
- (b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;
- (c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

[No. 7.] *Criminal Justice (Mutual Assistance)* [2008.]
Act 2008.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 14

Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

- (a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;
- (b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Article 18
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information

shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

- (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
- (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

- (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.]
Act 2008.*

- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned; and
- (f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

- (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
- (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 19

Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20

Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

SCHEDULE 12

TEXT OF ARTICLES 46, 49, 50 AND 54 TO 57 OF THE UNITED NATIONS
CONVENTION AGAINST CORRUPTION, DONE AT NEW YORK ON 31
OCTOBER 2003

Article 46

Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.
3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
 - (a) Taking evidence or statements from persons;
 - (b) Effecting service of judicial documents;
 - (c) Executing searches and seizures, and freezing;
 - (d) Examining objects and sites;
 - (e) Providing information, evidentiary items and expert evaluations;
 - (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
 - (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
 - (h) Facilitating the voluntary appearance of persons in the requesting State Party;
 - (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;
 - (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;
 - (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.
4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

- (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
- (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
- (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the

United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned; and
- (f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or

convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

- (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
- (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 49

Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 50

Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

Article 54

Mechanisms for recovery of property through international cooperation in confiscation

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

- (a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;
- (b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and
- (c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

- (a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

- (b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and
- (c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Article 55

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

- (a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
- (b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 46 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

- (a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;
- (b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by

the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

- (c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

Article 56
Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

Article 57
Return and disposal of assets

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its

prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

- (a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;
- (b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;
- (c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

SCHEDULE 13

TEXT OF EU/US AGREEMENT ON MUTUAL LEGAL ASSISTANCE

THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA,

DESIRING further to facilitate cooperation between the European Union Member States and the United States of America,

DESIRING to combat crime in a more effective way as a means of protecting their respective democratic societies and common values,

HAVING DUE REGARD for rights of individuals and the rule of law,

MINDFUL of the guarantees under their respective legal systems which provide an accused person with the right to a fair trial, including the right to adjudication by an impartial tribunal established pursuant to law,

DESIRING to conclude an Agreement relating to mutual legal assistance in criminal matters,

HAVE AGREED AS FOLLOWS:

Article 1

Object and purpose

The Contracting Parties undertake, in accordance with the provisions of this Agreement, to provide for enhancements to cooperation and mutual legal assistance.

Article 2

Definitions

1. 'Contracting Parties' shall mean the European Union and the United States of America.
2. 'Member State' shall mean a Member State of the European Union.

Article 3

Scope of application of this Agreement in relation to bilateral mutual legal assistance treaties with Member States and in the absence thereof

1. The European Union, pursuant to the Treaty on European Union, and the United States of America shall ensure that the provisions of this Agreement are applied in relation to bilateral mutual legal assistance treaties between the Member States and the United States of America, in force at the time of the entry into force of this Agreement, under the following terms:

- (a) Article 4 shall be applied to provide for identification of financial accounts and transactions in addition to any authority already provided under bilateral treaty provisions;

[No. 7.] *Criminal Justice (Mutual Assistance)* [2008.]
Act 2008.

- (b) Article 5 shall be applied to authorise the formation and activities of joint investigative teams in addition to any authority already provided under bilateral treaty provisions;
 - (c) Article 6 shall be applied to authorise the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States in addition to any authority already provided under bilateral treaty provisions;
 - (d) Article 7 shall be applied to provide for the use of expedited means of communication in addition to any authority already provided under bilateral treaty provisions;
 - (e) Article 8 shall be applied to authorise the providing of mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under bilateral treaty provisions;
 - (f) subject to Article 9(4) and (5), Article 9 shall be applied in place of, or in the absence of bilateral treaty provisions governing limitations on use of information or evidence provided to the requesting State, and governing the conditioning or refusal of assistance on data protection grounds;
 - (g) Article 10 shall be applied in the absence of bilateral treaty provisions pertaining to the circumstances under which a requesting State may seek the confidentiality of its request.
2. (a) The European Union, pursuant to the Treaty on European Union, shall ensure that each Member State acknowledges, in a written instrument between such Member State and the United States of America, the application, in the manner set forth in this Article, of its bilateral mutual legal assistance treaty in force with the United States of America.
- (b) The European Union, pursuant to the Treaty on European Union, shall ensure that new Member States acceding to the European Union after the entry into force of this Agreement, and having bilateral mutual legal assistance treaties with the United States of America, take the measures referred to in subparagraph (a).
- (c) The Contracting Parties shall endeavour to complete the process described in subparagraph (b) prior to the scheduled accession of a new Member State, or as soon as possible thereafter. The European Union shall notify the United States of America of the date of accession of new Member States.
3. (a) The European Union, pursuant to the Treaty on European Union, and the United States of America shall also ensure that the provisions of this Agreement are applied in the absence of a bilateral mutual legal assistance treaty in force between a Member State and the United States of America.

(b) The European Union, pursuant to the Treaty on European Union, shall ensure that such Member State acknowledges, in a written instrument between such Member State and the United States of America, the application of the provisions of this Agreement.

(c) The European Union, pursuant to the Treaty on European Union, shall ensure that new Member States acceding to the European Union after the entry into force of this Agreement, which do not have bilateral mutual legal assistance treaties with the United States of America, take the measures referred to in subparagraph (b).

4. If the process described in paragraph 2(b) and 3(c) is not completed by the date of accession, the provisions of this Agreement shall apply in the relations between the United States of America and that new Member State as from the date on which they have notified each other and the European Union of the completion of their internal procedures for that purpose.

5. The Contracting Parties agree that this Agreement is intended solely for mutual legal assistance between the States concerned. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request, nor expand or limit rights otherwise available under domestic law.

Article 4

Identification of bank information

1. (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offence is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offence;

(ii) information in the possession of non-bank financial institutions; or

(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions; and

(b) sufficient information to enable the competent authority of the requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offence and that

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

banks or non-bank financial institutions in the territory of the requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding;

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Requests for assistance under this Article shall be transmitted between:

(a) central authorities responsible for mutual legal assistance in Member States, or national authorities of Member States responsible for investigation or prosecution of criminal offences as designated pursuant to Article 15(2); and

(b) national authorities of the United States responsible for investigation or prosecution of criminal offences, as designated pursuant to Article 15(2).

The Contracting Parties may, following the entry into force of this Agreement, agree by Exchange of Diplomatic Note to modify the channels through which requests under this Article are made.

4. (a) Subject to subparagraph (b), a State may, pursuant to Article 15, limit its obligation to provide assistance under this Article to:

(i) offences punishable under the laws of both the requested and requesting States;

(ii) offences punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State; or

(iii) designated serious offences punishable under the laws of both the requested and requesting States.

(b) A State which limits its obligation pursuant to subparagraph (a)(ii) or (iii) shall, at a minimum, enable identification of accounts associated with terrorist activity and the laundering of proceeds generated from a comprehensive range of serious criminal activities, punishable under the laws of both the requesting and requested States.

5. Assistance may not be refused under this Article on grounds of bank secrecy.

6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article, in accordance with the provisions of the applicable mutual legal assistance treaty in force between the States concerned, or in the absence thereof, in accordance with the requirements of its domestic law.

7. The Contracting Parties shall take measures to avoid the imposition of extraordinary burdens on requested States through application of this Article. Where extraordinary burdens on a requested State nonetheless result, including on banks or by operation of the channels of communications foreseen in this Article, the Contracting Parties shall immediately consult with a view to facilitating the application of this Article, including the taking of such measures as may be required to reduce pending and future burdens.

Article 5

Joint investigative teams

1. The Contracting Parties shall, to the extent they have not already done so, take such measures as may be necessary to enable joint investigative teams to be established and operated in the respective territories of each Member State and the United States of America for the purpose of facilitating criminal investigations or prosecutions involving one or more Member States and the United States of America where deemed appropriate by the Member State concerned and the United States of America.

2. The procedures under which the team is to operate, such as its composition, duration, location, organisation, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offences, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 6

Video conferencing

1. The Contracting Parties shall take such measures as may be necessary to enable the use of video transmission technology between each Member State and the United States of America for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in a requested State, to the extent such assistance is not currently available. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as provided under the applicable mutual legal assistance treaty in force between the States concerned, or the law of the requested State, as applicable.

[No. 7.] *Criminal Justice (Mutual Assistance)* [2008.]
Act 2008.

2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne in accordance with the applicable provisions of the mutual legal assistance treaty in force between the States concerned, or where there is no such treaty, as agreed upon by the requesting and requested States.

3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

6. This Article is without prejudice to application of provisions of bilateral mutual legal assistance agreements between Member States and the United States of America that require or permit the use of video conferencing technology for purposes other than those described in paragraph 1, including for purposes of identification of persons or objects, or taking of investigative statements. Where not already provided for under applicable treaty or law, a State may permit the use of video conferencing technology in such instances.

Article 7

Expedited transmission of requests

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication.

Article 8

Mutual legal assistance to administrative authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. (a) Requests for assistance under this Article shall be transmitted between the central authorities designated pursuant to the bilateral mutual legal assistance treaty in force between the States concerned, or between such other authorities as may be agreed by the central authorities.

- (b) In the absence of a treaty, requests shall be transmitted between the United States Department of Justice and the Ministry of Justice or, pursuant to Article 15(1), comparable Ministry of the Member State concerned responsible for transmission of mutual legal assistance requests, or between such other authorities as may be agreed by the Department of Justice and such Ministry.

3. The Contracting Parties shall take measures to avoid the imposition of extraordinary burdens on requested States through application of this Article. Where extraordinary burdens on a requested State nonetheless result, the Contracting Parties shall immediately consult with a view to facilitating the application of this Article, including the taking of such measures as may be required to reduce pending and future burdens.

Article 9

Limitations on use to protect personal and other data

1. The requesting State may use any evidence or information obtained from the requested State:

- (a) for the purpose of its criminal investigations and proceedings;
- (b) for preventing an immediate and serious threat to its public security;
- (c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
 - (i) set forth in subparagraph (a); or
 - (ii) for which mutual legal assistance was rendered under Article 8;
- (d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
- (e) for any other purpose, only with the prior consent of the requested State.

2. (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information.

- (b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.]
Act 2008.*

consult with the requesting State to determine the extent to which the evidence and information can be protected.

4. A requested State may apply the use limitation provision of the applicable bilateral mutual legal assistance treaty in lieu of this Article, where doing so will result in less restriction on the use of information and evidence than provided for in this Article.

5. Where a bilateral mutual legal assistance treaty in force between a Member State and the United States of America on the date of signature of this Agreement, permits limitation of the obligation to provide assistance with respect to certain tax offences, the Member State concerned may indicate, in its exchange of written instruments with the United States of America described in Article 3(2), that, with respect to such offences, it will continue to apply the use limitation provision of that treaty.

Article 10

Requesting State's request for confidentiality

The requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the requesting State. If the request cannot be executed without breaching the requested confidentiality, the central authority of the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

Article 11

Consultations

The Contracting Parties shall, as appropriate, consult to enable the most effective use to be made of this Agreement, including to facilitate the resolution of any dispute regarding the interpretation or application of this Agreement.

Article 12

Temporal application

1. This Agreement shall apply to offences committed before as well as after it enters into force.

2. This Agreement shall apply to requests for mutual legal assistance made after its entry into force. Nevertheless, Articles 6 and 7 shall apply to requests pending in a requested State at the time this Agreement enters into force.

Article 13

Non-derogation

Subject to Article 4(5) and Article 9(2)(b), this Agreement is without prejudice to the invocation by the requested State of grounds for refusal of assistance available pursuant to a bilateral mutual legal assistance treaty, or, in the absence of a treaty, its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, order public or other essential interests.

Article 14

Future bilateral mutual legal assistance treaties with Member States

This Agreement shall not preclude the conclusion, after its entry into force, of bilateral Agreements between a Member State and the United States of America consistent with this Agreement.

Article 15

Designations and notifications

1. Where a Ministry other than the Ministry of Justice has been designated under Article 8(2)(b), the European Union shall notify the United States of America of such designation prior to the exchange of written instruments described in Article 3(3) between the Member States and the United States of America.

2. The Contracting Parties, on the basis of consultations between them on which national authorities responsible for the investigation and prosecution of offences to designate pursuant to Article 4(3), shall notify each other of the national authorities so designated prior to the exchange of written instruments described in Article 3(2) and (3) between the Member States and the United States of America. The European Union shall, for Member States having no mutual legal assistance treaty with the United States of America, notify the United States of America prior to such exchange of the identity of the central authorities under Article 4(3).

3. The Contracting Parties shall notify each other of any limitations invoked under Article 4(4) prior to the exchange of written instruments described in Article 3(2) and (3) between the Member States and the United States of America.

Article 16

Territorial application

1. This Agreement shall apply:

(a) to the United States of America;

(b) in relation to the European Union, to:

— Member States,

— territories for whose external relations a Member State has responsibility, or countries that are not Member States for whom a Member State has other duties with respect to external relations, where agreed upon by exchange of diplomatic note between the Contracting Parties, duly confirmed by the relevant Member State.

2. The application of this Agreement to any territory or country in respect of which extension has been made in accordance with subparagraph (b) of paragraph 1 may be terminated by either Contracting Party giving six months' written notice to the other Contracting Party through the diplomatic channel, where duly confirmed between the relevant Member State and the United States of America.

Article 17

Review

The Contracting Parties agree to carry out a common review of this Agreement no later than five years after its entry into force. The review shall address in particular the practical implementation of the Agreement and may also include issues such as the consequences of further development of the European Union relating to the subject matter of this Agreement.

Article 18

Entry into force and termination

1. This Agreement shall enter into force on the first day following the third month after the date on which the Contracting Parties have exchanged instruments indicating that they have completed their internal procedures for this purpose. These instruments shall also indicate that the steps specified in Article 3(2) and (3) have been completed.

2. Either Contracting Party may terminate this Agreement at any time by giving written notice to the other Party, and such termination shall be effective six months after the date of such notice.

In witness whereof the undersigned Plenipotentiaries have signed this Agreement.

Done at Washington D.C. on the twenty-fifth day of June in the year two thousand and three in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

Explanatory Note on the Agreement on Mutual Legal Assistance between the European Union and the United States of America

This note reflects understandings regarding the application of certain provisions of the Agreement on Mutual Legal Assistance between the European Union and the United States of America (hereinafter 'the Agreement') agreed between the Contracting Parties.

On Article 8

With respect to the mutual legal assistance to administrative authorities under Article 8(1), the first sentence of Article 8(1) imposes an obligation to afford mutual legal assistance to requesting United States of America federal administrative authorities and to requesting national administrative authorities of Member States. Under the second sentence of that paragraph mutual legal assistance may also be made available to other, that is non-federal or local, administrative authorities. This provision however, is available at the discretion of the requested State.

The Contracting Parties agree that under the first sentence of Article 8(1) mutual legal assistance will be made available to a requesting administrative authority that is, at the time of making the request, conducting investigations or proceedings in contemplation of criminal prosecution or referral of the investigated conduct to the competent prosecuting authorities, within the terms of its statutory mandate, as further described immediately below. The fact that, at the time of making the request referral for criminal prosecution is being

contemplated does not exclude that, other sanctions than criminal ones may be pursued by that authority. Thus, mutual legal assistance obtained under Article 8(1) may lead the requesting administrative authority to the conclusion that pursuance of criminal proceedings or criminal referral would not be appropriate. These possible consequences do not affect the obligation upon the Contracting Parties to provide assistance under this Article.

However, the requesting administrative authority may not use Article 8(1) to request assistance where criminal prosecution or referral is not being contemplated, or for matters in which the conduct under investigation is not subject to criminal sanction or referral under the laws of the requesting State.

The European Union recalls that the subject matter of the Agreement for its part falls under the provisions on police and judicial cooperation in criminal matters set out in Title VI of the Treaty on European Union and that the Agreement has been concluded within the scope of these provisions.

On Article 9

Article 9(2)(b) is meant to ensure that refusal of assistance on data protection grounds may be invoked only in exceptional cases. Such a situation could arise if, upon balancing the important interests involved in the particular case (on the one hand, public interests, including the sound administration of justice and, on the other hand, privacy interests), furnishing the specific data sought by the requesting State would raise difficulties so fundamental as to be considered by the requested State to fall within the essential interests grounds for refusal. A broad, categorical, or systematic application of data protection principles by the requested State to refuse cooperation is therefore precluded. Thus, the fact the requesting and requested States have different systems of protecting the privacy of data (such as that the requesting State does not have the equivalent of a specialised data protection authority) or have different means of protecting personal data (such as that the requesting State uses means other than the process of deletion to protect the privacy or the accuracy of the personal data received by law enforcement authorities), may as such not be imposed as additional conditions under Article 9(2a).

On Article 14

Article 14 provides that the Agreement shall not preclude the conclusion, after its entry into force, of bilateral agreements on mutual legal assistance between a Member State and the United States of America consistent with the Agreement.

Should any measures set forth in the Agreement create an operational difficulty for the United States of America and one or more Member States, such difficulty should in the first place be resolved, if possible, through consultations between the Member State or Member States concerned and the United States of America, or, if appropriate, through the consultation procedures set out in the Agreement. Where it is not possible to address such operational difficulty through consultations alone, it would be consistent with the Agreement for future bilateral agreements between a Member State and the United States of America to provide an operationally feasible alternative mechanism that would satisfy the objectives of the specific provision with respect to which the difficulty has arisen.

SCHEDULE 14

TEXT OF IRELAND/US TREATY OF 18 JANUARY 2001, AS APPLIED BY
INSTRUMENT OF 14 JULY 2005

Instrument as contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003, as to the application of the Treaty between the Government of Ireland and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters signed 18 January 2001

1. As contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter “the U.S.-EU Mutual Legal Assistance Agreement”), the Governments of the United States of America and Ireland acknowledge that, in accordance with the provisions of this Instrument, the U.S.-EU Mutual Legal Assistance Agreement is applied in relation to the bilateral Treaty between the Government of Ireland and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters signed 18 January 2001 (hereafter “the 2001 Mutual Legal Assistance Treaty”) under the following terms:

- (a) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 16 *bis* of the Annex to this Instrument shall govern the identification of financial accounts and transactions, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;
- (b) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 16 *ter* of the Annex to this Instrument shall govern the formation and activities of joint investigative teams, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;
- (c) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Articles 6 and 16 *quater* of the Annex to this Instrument shall govern the taking of testimony of a person located in the requested Party by use of video transmission technology between the Requesting and Requested Parties, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;
- (d) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4(1) of the Annex to this Instrument shall govern the use of expedited means of communication, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;
- (e) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1(1 *bis*) of the Annex to this Instrument shall govern the providing of mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under the 2001 Mutual Legal Assistance Treaty;
- (f) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Instrument shall govern the limitation on use of information

or evidence provided to the Requesting Party, and the conditioning or refusal of assistance on data protection grounds.

2. The Annex reflects the integrated text of the provisions of the 2001 Mutual Legal Assistance Treaty and the U.S.-EU Mutual Legal Assistance Agreement that shall apply upon entry into force of this Instrument.

3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall apply to offences committed before as well as after it enters into force.

4. This Instrument shall not apply to requests made prior to its entry into force; except that, in accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, Articles 4(1), 6 and 16 *quater* of the Annex shall be applicable to requests made prior to such entry into force.

5. (a) This Instrument shall be subject to the completion by the United States of America and Ireland of their respective applicable internal procedures for entry into force. The Governments of the United States of America and Ireland shall thereupon exchange instruments indicating that such measures have been completed. This Instrument shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Instrument shall be terminated and the 2001 Mutual Legal Assistance Treaty shall be applied. The Governments of the United States of America and Ireland nevertheless may agree to continue to apply some or all of the provisions of this Instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Instrument.

DONE at Dublin, in duplicate, this 14th day of July, 2005.

FOR THE GOVERNMENT OF
IRELAND:

FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA:

ANNEX

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF IRELAND ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

TABLE OF CONTENTS

Article 1	Scope of Assistance
Article 2	Central Authorities
Article 3	Limitations on Assistance
Article 4	Form and Contents of Requests
Article 5	Execution of Requests
Article 6	Costs
Article 7	Limitations on Use
Article 8	Testimony or Evidence in the Territory of the Requested Party

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

Article 9	Records of Government Agencies
Article 10	Testimony in the Territory of the Requesting Party
Article 11	Transfer of Persons in Custody
Article 12	Location or Identification of Persons or Items
Article 13	Service of Documents
Article 14	Search and Seizure
Article 15	Return of Items
Article 16	Assistance in Forfeiture Proceedings
Article 16 <i>bis</i>	Identification of bank information
Article 16 <i>ter</i>	Joint investigative teams
Article 16 <i>quater</i>	Video conferencing
Article 17	Compatibility with Other Arrangements
Article 18	Consultation
Article 19	Termination

Article 1

Scope of Assistance

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offences, and in proceedings related to criminal matters.

1 *bis.* (a) Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

(b) Requests for assistance under this paragraph shall be transmitted between the Central Authorities designated pursuant to Article 2 of this Treaty, or between such other authorities as may be agreed by the Central Authorities.

2. Assistance shall include:

- (a) taking the testimony or statements of persons;
- (b) providing documents, records, and articles of evidence;
- (c) locating or identifying persons;
- (d) serving documents;
- (e) transferring persons in custody for testimony or other purposes;
- (f) executing requests for searches and seizures;

- (g) identifying, tracing, freezing, seizing, and forfeiting the proceeds and instrumentalities of crime and assistance in related proceedings;
- (h) such other assistance as may be agreed between Central Authorities.

3. Except when required by the laws of the Requested Party, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the territory of the Requesting Party would constitute an offence under the laws of the Requested Party.

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2

Central Authorities

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. For the Government of the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Government of Ireland, the Central Authority shall be the Minister for Justice, Equality and Law Reform or a person designated by the Minister.
3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

Article 3

Limitations on Assistance

1. The Central Authority of the Requested Party may deny assistance if:
 - (a) the Requested Party is of the opinion that the request, if granted, would impair its sovereignty, security, or other essential interests, or would be contrary to important public policy;
 - (b) the request relates to an offender who, if proceeded against under the law of the Requested Party for the offence for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction;
 - (c) the request relates to an offence that is regarded by the Central Authority of the Requested Party as:
 - (i) an offence of a political character; or
 - (ii) an offence under military law of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party; or
 - (d) the request is not made in conformity with the Treaty.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

Article 4

Form and Contents of Requests

1. (a) Requests for mutual legal assistance and communications related thereto may be made and responded to by expedited means of communications, including fax or e-mail, with formal confirmation of requests to follow where required by the Requested Party.
 - (b) In urgent cases, requests for mutual legal assistance may be made orally but shall be confirmed in writing within ten days.
 - (c) The Requested Party may respond by any such expedited means of communication.
 - (d) The request shall be in an official language of the Requested Party unless otherwise agreed.
2. The request shall include the following:
 - (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
 - (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offences which relate to the matter;
 - (c) a description of the evidence, information, or other assistance sought; and
 - (d) a statement of the purpose for which the evidence, information, or other assistance is sought.
3. To the extent necessary and possible, a request shall also include:
 - (a) information on the identity and location of any person from whom evidence is sought;
 - (b) information on the identity and location of a person be served, that person's relationship to the proceedings, and the manner in which service is to be made;
 - (c) information on the identity and whereabouts of a person to be located;
 - (d) a precise description of the place or person to be searched and of the articles to be seized;
 - (e) a description of the manner in which any testimony or statement is to be taken and recorded;
 - (f) a list of questions to be asked of a witness;

- (g) a description of any particular procedure to be followed in executing the request;
- (h) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled; and
- (i) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.

4. The Requested Party may ask the Requesting Party to provide any further information which appears to the Requested Party to be necessary for the purpose of executing the request.

Article 5

Execution of Requests

1. As empowered by this Treaty or by national law, or in accordance with its national practice, the Central Authority of the Requested Party shall take whatever steps it deems necessary to execute promptly requests received from the Requesting Party. The Courts of the Requested Party shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested Party shall make all necessary arrangements for representation in the territory of the Requested Party of the Requesting Party in any proceedings arising out of a request for assistance.

3. The method of execution specified in the request shall be followed except to the extent that it is incompatible with the laws and practices of the Requested Party.

4. If the Central Authority of the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding under the laws of that Party, or prejudice the safety of any person, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Central Authority of the Requested Party shall, in accordance with its national law and practice, facilitate the presence in the execution of the request of such persons as are specified in the request.

6. The Requested Party shall, upon request, keep confidential any information which might indicate that a request has been made or responded to. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine the extent to which it wishes the request to be executed.

7. The Central Authority of the Requested Party shall respond to reasonable inquiries by the Central Authority of the Requesting Party concerning progress toward execution of the request.

8. The Central Authority of the Requested Party may ask the Central Authority of the Requesting Party to provide information in such

form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

9. The Central Authority of the Requesting Party shall promptly inform the Central Authority of the Requested Party of any circumstances which make it inappropriate to proceed with the execution of the request or which require modification of the action requested.

10. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

11. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party of the reasons for the denial.

Article 6

Costs

1. The Requested Party shall pay all costs relating to the execution of the request, including the costs of representation, except for:

- (a) the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which costs, fees, allowances, and expenses shall be paid by the Requesting Party;
- (b) the costs associated with establishing and servicing a video transmission, to the extent set forth in Article 16 *quater*.

2. If, during the execution of a request, it becomes apparent that complete execution will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7

Limitations on Use

1. The Requesting Party may use any evidence or information obtained from the Requested Party:

- (a) for the purpose of its criminal investigations and proceedings;
- (b) for preventing an immediate and serious threat to its public security;
- (c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
 - (i) set forth in subparagraph (a); or
 - (ii) for which mutual legal assistance was rendered under Article 1 (1 *bis*)(a) of this Treaty;

- (d) for any other purpose, if the evidence or information has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
 - (e) for any other purpose only with the prior consent of the Requested Party.
2. (a) This Article shall not prejudice the ability of the Requested Party in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested Party may require the Requesting Party to give information on the use made of the evidence or information.
- (b) Generic restrictions with respect to the legal standards of the Requesting Party for processing personal data may not be imposed by the Requested Party as a condition under subparagraph (a) to providing evidence or information.
3. Where, following disclosure to the Requesting Party, the Requested Party becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested Party may consult with the Requesting Party to determine the extent to which the evidence and information can be protected.

Article 8

Testimony or Evidence in the Territory of the Requested Party

1. A person in the territory of the Requested Party from whom testimony or evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence.
2. Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.
3. In accordance with its laws and practice, the Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to ask questions directly of the person whose testimony or evidence is being taken or indirectly through a legal representative qualified to appear before the courts of the Requested Party.
4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting Party, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting Party for resolution by the authorities of that Party.
5. Evidence produced in the territory of the Requested Party pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Forms A1 or A2, as applicable, appended to this Treaty. The absence

or nonexistence of such records may, upon request, be certified through the use of Forms B1 or B2, as applicable, appended to this Treaty. Records authenticated by Forms A1 or A2, or Forms B1 or B2 certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting Party. Documentary information produced pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

Article 9

Records of Government Agencies

1. The Requested Party shall provide the Requesting Party with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the Requested Party.

2. The Requested Party may provide copies of any documents, records, or information which are in the possession of a government department or agency of that Party, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested Party may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Records produced pursuant to this Article shall, upon request, be authenticated under the provisions of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, dated October 5, 1961, or by an official competent to do so through the use of Forms C1 or C2, as applicable, appended to this Treaty. The absence or nonexistence of such records may, upon request, be certified through the use of Forms D1 or D2, as applicable, appended to this Treaty. No further authentication shall be necessary. Records authenticated by Forms C1 or C2, or Forms D1 or D2 certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting Party. Documentary information produced pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

Article 10

Testimony in the Territory of the Requesting Party

1. When the Requesting Party requests the appearance of a person in the territory of that Party, the Requested Party shall invite the person to appear voluntarily before the appropriate authority in the territory of the Requesting Party. The Requesting Party shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the response of the person.

2. The Central Authority of the Requesting Party may, in its discretion, determine that a person appearing in the territory of the Requesting Party pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded that person's departure from the territory of the Requested Party.

3. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting Party has notified

the Central Authority of the Requested Party that the person's presence is no longer required, or when the person, having left the territory of the Requesting Party, voluntarily returns. The Central Authority of the Requesting Party may, in its discretion, extend this period for up to fifteen days if it determines that there is good cause to do so.

Article 11

Transfer of Persons in Custody

1. A person in the custody of one Party whose presence in the territory of the other Party is sought for purposes of assistance under this Treaty shall be transferred for those purposes if the person and the Central Authorities of both Parties consent.

2. For purposes of this Article:

- (a) the receiving Party shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the sending Party;
- (b) the receiving Party shall return the person transferred to the custody of the sending Party as soon as circumstances permit and in any event no later than the date upon which the person would have been released from custody in the territory of the sending Party, unless otherwise agreed by both Central Authorities and the person transferred;
- (c) the receiving Party shall not require the sending Party to initiate extradition proceedings for the return of the person transferred; and
- (d) the person transferred shall receive credit for service of the sentence imposed in the sending Party for time served in the custody of the receiving Party.

Article 12

Location or Identification of Persons or Items

The Requested Party shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

Article 13

Service of Documents

1. The Requested Party shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting Party under the provisions of this Treaty.

2. Service of any document by virtue of paragraph (1) of this Article shall not impose any obligation under the law of the Requested Party to comply with it.

3. The Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting Party a reasonable time before the scheduled appearance.

4. The Requested Party shall return a proof of service in the manner specified in the Request.

Article 14

Search and Seizure

1. The Requested Party shall execute a request for the search, seizure, and delivery of any item to the Requesting Party if the request includes the information justifying such action under the laws of the Requested Party and it is carried out in accordance with the laws of that Party.

2. The Requested Party may refuse a request if it relates to conduct in respect of which powers of search and seizure would not be exercisable in the territory of the Requested Party in similar circumstances.

3. Upon request, every official who has custody of a seized item shall certify, through the use of Forms E1 or E2, as applicable, appended to this Treaty, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting Party. Certification under this Article may also be provided in any other form or manner as may be prescribed from time to time by either Central Authority.

4. The Central Authority of the Requested Party may require that the Requesting Party agree to the terms and conditions deemed to be necessary to protect third party interests in the item to be transferred.

Article 15

Return of Items

The Central Authority of the Requesting Party shall return any items, including documents, records, or articles of evidence furnished to it in execution of a request under this Treaty as soon as possible unless the Central Authority of the Requested Party waives their return.

Article 16

Assistance in Forfeiture Proceedings

1. If the Central Authority of one Party becomes aware of proceeds or instrumentalities of offences which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and the Central Authority shall report to the Central Authority of the other Party on the action taken.

2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offences. This may include action to temporarily freeze the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offences shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

Article 16 *bis*:

Identification of bank information

1. (a) Upon request of the Requesting Party, the Requested Party shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offence is the holder of a bank account or accounts. The Requested Party shall promptly communicate the results of its enquiries to the Requesting Party.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offence;

(ii) information in the possession of non-bank financial institutions, or

(iii) financial transactions unrelated to accounts.

2. In addition to the requirements of Article 4(2) of this Treaty, a request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested Party to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offence and that banks or non-bank financial institutions in the territory of the Requested Party may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic note between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) for Ireland, its Central Authority set forth in Article 2(2) of this Treaty, and

- (b) for the United States of America, the attaché responsible for Ireland of the:
- (i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
 - (ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
 - (iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. Ireland shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested Parties, and with respect to other criminal activity punishable under the law of Ireland by a maximum sentence of at least five years imprisonment or more serious penalty and which are punishable under applicable United States laws. The United States of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested Parties.

5. The Requested Party shall respond to a request for production of records concerning the accounts or transactions identified pursuant to this Article in accordance with the other provisions of this Treaty.

Article 16 *ter*:

Joint investigative teams

1. Joint investigative teams may be established and operated in the respective territories of the United States of America and Ireland for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union including Ireland, where deemed appropriate by the United States of America and Ireland.

2. The procedures under which the team is to operate, such as its composition, duration, location, organisation, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offences, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for

obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 16 *quater*:

Video conferencing

1. The use of video transmission technology shall be available between the United States of America and Ireland for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested Party. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as otherwise provided under this Treaty.

2. Unless otherwise agreed by the Requesting and Requested Parties, the Requesting Party shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the Requested Party) shall be borne in accordance with Article 6 of this Treaty.

3. The Requesting and Requested Parties may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the Requesting Party, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested Party in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested Party available under applicable treaty or law.

6. The Requested Party may permit the use of video transmission technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 17

Compatibility with Other Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice which may be applicable.

Article 18

Consultation

The Central Authorities of the Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 19

Termination

Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Treaty.

FORM A1

(for use when Ireland is the Requesting Party, pursuant to Article 8)
CERTIFICATE OF AUTHENTICITY OF BUSINESS
RECORDS

I, _____, attest on penalty of criminal punishment
(Name)

for false statement or false attestation that I am employed by

(Name of Business from which documents are sought)

and that my official title is _____
(Official Title)

I further state that each of the records attached hereto is the original
or a duplicate of the original records in the custody of

(Name of Business from which documents are sought).

I further state that:

- (A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- (B) such records were kept in the course of a regularly conducted business activity;
- (C) the business activity made such records as a regular practice;
- (D) if such record is not the original, such record is a duplicate of the original.

Signature Date

Sworn to or affirmed before me, _____, a
_____ this _____ day of _____, 20_____.
(notary public, judicial officer, etc.)

[No. 7.] *Criminal Justice (Mutual Assistance) Act 2008.* [2008.]

FORM A2

(for use when the United States is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, _____, the undersigned, aged 18 years and older, with the (Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that I am employed by/associated with the _____ in the position of _____ (Name of Business from which documents are sought) (Official Title)

and by reason of my position am authorised and qualified to make this declaration.

I further declare that the documents attached hereto are originals or true copies of records in the custody of _____ (Name of Business from which documents are sought)

which:

- 1. were made at or near the time of the occurrence of the matters set forth therein, by (or from information transmitted by) a person with knowledge of those matters;
- 2. were kept in the course of regularly conducted business activity;
- 3. were made by the said business activity as a regular practice; and
- 4. if not the original records, are duplicates of original records.

All by virtue of the Statutory Declarations Act, 1938.

The originals or duplicates of these records are maintained in the country of _____.

Date of execution: _____

Place of execution: _____

Signature: _____

Declared before me at _____, this _____ day of _____.

Signed _____

Judge of the _____

FORM B1

(for use when Ireland is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF ABSENCE OR NON-EXISTENCE OF BUSINESS RECORDS

I, _____ attest on penalty of criminal punishment for (Name)

false statement or false attestation that I am employed by

_____ and that my official title (Name of Business from which documents are sought)

is _____ (Official Title)

As a result of my employment with the above-named business, I am familiar with the business records it maintains. The business maintains business records that:

- (A) are made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- (B) are kept in the course of a regularly-conducted business activity;
- (C) are made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:

If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

Signature Date

Sworn to or affirmed before me, _____, a (Name)

_____ this _____ day of _____, 20_____. (Notary public, judicial officer, etc.)

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

FORM B2

(for use when the United States is the Requesting Party, pursuant to Article 8)

CERTIFICATE OF ABSENCE OR NON-EXISTENCE OF BUSINESS RECORDS

I, _____, the undersigned, aged 18 years and older, with the (Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that I am employed by/associated with the _____ in the position of _____ (Name of Business from which documents are sought) (Official Title)

and by reason of my position am authorised and qualified to make this declaration.

I further declare that as a result of my employment with the above-named business, I am familiar with the business records it maintains. The business maintains business records that:

- 1. are made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
2. are kept in the course of a regularly-conducted business activity;
3. are made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:_____.

If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

All by virtue of the Statutory Declarations Act, 1938.
Date of execution: _____
Place of execution: _____
Signature: _____
Declared before me at _____, this _____ day of _____.
Signed _____
Judge of the _____

FORM C1

(for use when Ireland is the Requesting Party, pursuant to Article 9)

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC RECORDS

I, _____, attest on penalty of criminal
(Name)

punishment for false statement or attestation that my position with
the Government of

_____ is _____ and that in that
(Country) (Official Title)

position I am duly authorised to attest that the documents attached
and described below are true and accurate copies of original official
records which are recorded or filed in

_____, which is a government office or agency of _____.
(Name of Office or Agency) (Country)

Description of Documents:

(Signature)

(Title)

(Date)

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

FORM C2

(for use when the United States is the Requesting Party, pursuant to Article 9)

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC RECORDS

I, _____, the undersigned, aged 18 years and older, with the (Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that my position with the Government of

_____ is _____

(Country)

(Official Title)

and that by reason of my position I am authorised and qualified to make this declaration.

I further declare that the documents attached and described below are true and accurate copies of original official records which are recorded or filed in _____,

(Name of Office or Agency)

which is a government office or agency of _____.

(Country)

Description of Documents:

All by virtue of the Statutory Declarations Act, 1938.

Date of execution: _____

Place of execution: _____

Signature: _____

Declared before me at _____, this _____ day of _____.

Signed _____

Judge of the _____

FORM D1

(for use when Ireland is the Requesting Party, pursuant to Article 9)

ATTESTATION REGARDING ABSENCE
OR NON-EXISTENCE OF FOREIGN PUBLIC RECORDS

I, _____, attest on penalty of criminal punishment
(Name)

for false statement or attestation that my position with the Govern-
ment of _____
(Country)

is _____, and that in that position I am duly authorised to make
(Official Title)

this attestation.

I do hereby certify that I am the custodian of records of
_____, and that I have made a diligent
(Name of Public Office or Agency)

search of the said records for the
_____, and that
(Description of Records for Which a Search was Done)

no such records are found to exist therein. I further certify that the
records for which a search was conducted set forth matters which are
required by the laws of the Government of _____
(Country)

to be recorded or filed and reported, and such matters regularly are
recorded or filed and reported by _____.
(Name of Public Agency or Office)

Signature _____

Date _____

[No. 7.] *Criminal Justice (Mutual Assistance) [2008.] Act 2008.*

FORM D2

(for use when the United States is the Requesting Party, pursuant to Article 9)

ATTESTATION REGARDING ABSENCE OR NON-EXISTENCE OF FOREIGN PUBLIC RECORDS

I, _____, the undersigned, aged 18 years and older, with the (Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that my position with the Government of

_____ is _____ (Country) (Official Title)

and that by reason of my position I am authorised and qualified to make this declaration.

I further declare that I am the custodian of records of

_____, and that I have made a diligent (Name of Public Office or Agency)

search of the said records for the

_____, and that (Description of Records for Which a Search was Done)

no such records are found to exist therein. I further declare that the records for which a search was conducted set forth matters which are required by the laws of the

Government of _____ to be recorded or filed and reported, and (Country)

such matters regularly are recorded or filed and reported by _____. (Name of Public Agency or Office)

All by virtue of the Statutory Declarations Act, 1938.

Date of execution: _____

Place of execution: _____

Signature: _____

Declared before me at _____, this _____ day of _____.

Signed _____

Judge of the _____

FORM E1

(for use when Ireland is the Requesting Party, pursuant to Article 14)

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____, attest on penalty of criminal punishment for
(Name)

false statements or attestation that my position with the Govern-
ment of _____
(Country)

is _____. I received the articles listed below from
(Official Title)

_____ on _____,
(Name of Person) (Date)

at _____ in the following condition:
(Place)

Description of Article:

Changes in Condition while in my custody:

Official Seal or Stamp

(Signature)

(Title)

(Date)

FORM E2

(for use when the United States is the Requesting Party, pursuant to Article 14)

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____, the undersigned, aged 18 years and older, with the (Name)

understanding that I am subject to criminal penalty under the laws of Ireland for an intentionally false declaration, make this solemn declaration conscientiously believing the statements set forth in this declaration to be true.

I declare that that my position with the Government of

_____ is _____
(Country) (Official Title)

and that by reason of my position am authorised and qualified to make this declaration.

I further declare that I received the articles listed below from

_____ on _____,
(Name of Person) (Date)

at _____ in the following condition:
(Place)

Description of Article:

Changes in Condition while in my custody:

All by virtue of the Statutory Declarations Act, 1938.

Date of execution: _____

Place of execution: _____

Signature: _____ Official Seal or stamp _____

Declared before me at _____, this _____ day of _____.

Signed _____

Judge of the _____



[Click here for Act](#)

**AN tACHT UM CHEARTAS COIRIÚL (CÚNAMH
FRITHPHÁIRTEACH) 2008
CRIMINAL JUSTICE (MUTUAL ASSISTANCE) ACT 2008**

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The purpose of the Act is threefold:

- (a) to give effect to the following international agreements and instruments providing for mutual legal assistance or to the relevant provisions thereof:
- the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union done at Brussels on 29 May 2000 [the 2000 Convention];
 - the Protocol to that Convention done at Luxembourg on 16 October 2001 [the 2001 Protocol];
 - the Agreement between the EU and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 Convention on Mutual Assistance in Criminal Matters and the 2001 Protocol thereto [the Agreement with Iceland and Norway];
 - Articles 49 (excluding paragraph (a) which has been repealed) and 51 of the Convention, signed in Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 [the Schengen Convention];
 - the Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence [the Framework Decision];
 - Title III of the Co-operation Agreement between the European Community and its member states and the Swiss Confederation to combat fraud and any other illegal activity to the detriment of their financial interests, done at Luxembourg on 26 October 2004 [the EC/Swiss Agreement];

- the Council Decision of 20 September 2005 on the exchange of information and co-operation concerning terrorist offences [the Council Decision];
- the Second Additional Protocol of 8 November 2001 to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 [the Second Additional Protocol to the European Convention];
- Chapter IV of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, done at Warsaw on 16 May 2005 [the 2005 Convention];
- Articles 13, 14, 18, 19 and 20 of the United Nations Convention against Transnational Organised Crime, done at New York 15 November 2000;
- Articles 46, 49, 50 and 54 to 57 of the United Nations Convention against Corruption, done at New York on 31 October 2003;
- the 2003 Agreement on Mutual Legal Assistance between the EU and the US and the related bilateral instrument to give effect to the Treaty on Mutual Assistance in Criminal Matters between Ireland and the US.

(b) to provide for certain amendments to the Criminal Justice Act, 1994, and

(c) to transpose the Criminal Justice Act 1994 (Section 46(6)) Regulations, 1996 into primary legislation.

The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union supplements and builds on the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters by developing and modernising existing provisions governing mutual assistance between Member States of the EU.

The Protocol to the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union provides for mutual assistance in relation to requests for information on bank accounts and banking transactions. Provision is also made for monitoring of banking transactions.

The Agreement between the EU and the Republic of Iceland and Kingdom extends the provisions of the 2000 Convention on Mutual Assistance in Criminal Matters and the 2001 Protocol thereto to those states.

The Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence establishes the rules under which a Member State of the EU shall recognise and execute in its territory a freezing order issued by a judicial authority of another Member State in the framework of criminal proceedings.

The Council Decision of 20 September 2005 improves the mechanisms for the exchange of information between Europol, Eurojust and other member states concerning terrorist offences.

The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters improves and supplements the provisions of the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters and its additional Protocol.

The Agreement between the European Union and the United States of America on Extradition and Mutual Legal Assistance in Criminal Matters improves, supplements and facilitates further co-operation between the countries in relation to both mutual legal assistance and extradition.

Overview

Part 1 is introductory and sets out some general matters in relation to the provision of mutual legal assistance.

Part 2 deals with the provision of information and monitoring arrangements in relation to financial transactions. The main purpose of this Part is to set out the procedures for giving effect to the provisions in the 2001 Protocol in relation to financial transactions for criminal investigation purposes.

Part 3 deals with the provision of assistance between member states of the European Union in relation to the interception of telecommunications for criminal investigation purposes. This Part gives effect to Articles 17 to 22 of the 2000 Convention.

Part 4 makes provision for the enforcement of freezing, confiscation and forfeiture of property. This Part gives effect to the Council Framework Decision of 22 July 2003 on the execution in the EU of orders freezing property or evidence and also re-states those provisions of the Criminal Justice Act 1994 which this Act replaces.

Part 5 deals with the provision of evidence. Provision is made for the transfer of prisoners to give evidence to assist in criminal investigations and for evidence to be given by television and telephone link. Obtaining identification evidence for criminal investigations both inside and outside the State is also provided for in this Part.

Part 6 deals with other forms of assistance. These forms of assistance include the service of documents, a legal basis for the restitution of articles obtained by criminal means to their rightful owners and provision for controlled deliveries both in the State and in other states designated for the purposes of this Part.

Part 7 deals with mutual assistance in criminal matters between the State and the United States of America.

A range of miscellaneous matters, including standard provisions, are provided for in Part 8 of the Act.

Provisions of the Act

PART 1: PRELIMINARY AND GENERAL

Section 1: Short title and commencement

Subsection (1) provides for the short title of the Act.

Subsection (2) provides that the Act will come into operation by Ministerial Order and that different provisions of the Act may be brought into effect by different orders on such day or days as the Minister may appoint.

Section 2: Interpretation

This section provides for the definition of certain terms and words used in the Act.

Section 3: General restriction on providing assistance

This section sets out the grounds under which mutual assistance will be refused.

Subsection (1) provides that assistance will be refused where the Minister considers that granting the assistance would be likely to prejudice the sovereignty, security or other interests of the State or would be contrary to public policy. Assistance will also be refused where there are reasonable grounds for believing that the request was made for the purpose of prosecuting or punishing a person on the basis of his sex, race, religion, ethnic origin, nationality, political opinion or sexual orientation or where a person's position may be prejudiced for any of these reasons. If there are reasonable grounds for believing that providing assistance may result in a person being subjected to torture or that it would otherwise contravene the European Convention on Human Rights assistance will be refused. Other grounds for refusal of assistance are where the request is not in accordance with the relevant international instrument or where the provision of assistance would prejudice a criminal investigation or criminal proceedings in the State.

Subsection (2) defines the term "torture" in the context of this section.

Section 4: Designated state

This section provides for the Minister for Foreign Affairs, after consultation with the Minister for Justice, Equality and Law Reform, to designate a state other than a member state (which is defined in section 2) for the purposes of mutual assistance between the State and state designated under this Act or parts of this Act and in accordance with the relevant international instrument.

Section 5: Certain Articles of 2000 Convention and Second Protocol to have force of law

This section provides for certain provisions in the 2000 Convention and the Second Additional Protocol to have force of law in the State.

Subsection (1) provides that Articles 4 and 6 of the 2000 Convention — relating to formalities and procedures in the execution of requests and to the transmission of requests — have the force of law in the State. It also provides that Articles 4 and 8 of the Second Additional Protocol — relating to channels of communication and procedure — have the force of law in the State.

Subsection (2) is a technical provision, clarifying the meaning of the terminology used in the Articles referred to in subsection (1). References to a requested state or requested party or to authorities, judicial authorities or competent authorities of that state or party is to be interpreted as referring, where appropriate, to the Central Authority or a judge or court. References to the Articles in subsection (1) means that any declarations or reservations made in relation to those Articles are applicable.

Section 6: Requests (general)

The main purpose of this section is to set out procedural matters in relation to requests for mutual legal assistance.

Subsection (1) provides that in relation to requests, and subject to the provisions of this Act, the relevant international instrument has effect as to the form of the requests and the information to be provided, the action that may be taken if a request does not meet the requirements of the instrument or the information supplied is not sufficient to enable the request to be met. The relevant international instrument also has effect as to any restrictions those instruments regarding the refusal of requests, requirements relating to the protection, disclosure, use or transmission of information or evidence received under it and procedures and formalities to be applied in dealing with requests for mutual legal assistance, including transmission of requests. *Subsection (2)* provides that the Act will apply only to requests made after the relevant international instrument has entered into force or has been applied between Ireland and the relevant designated State. *Subsection (3)* ensures that requests received but not executed before the date on which they would fall to be dealt with under this Act shall be dealt with as if the Act had not been passed. *Subsection (4)* specifies that a request must be addressed to the Central Authority in the State (unless the relevant international instrument provides otherwise). Requests must also, where appropriate, indicate the relevant international instrument under which the request is being made and be in writing or in a form capable of producing a written record. *Subsections (5) and (6)* provide for the translation, where appropriate, of requests and related or supporting documentation which issues from or is received by the State. *Subsection (7)* provides that the Central Authority may accept requests and any supporting or related documents as evidence of the matters mentioned in them unless it has information to the contrary. The Central Authority may seek additional information from the authority from whom the request is received if this is necessary to enable a decision to be made on the request. *Subsection (8)* specifies that the Minister may postpone action on a request where proceeding with the request might prejudice criminal proceedings or a criminal investigation. In accordance with *subsection (9)*, before deciding to refuse or postpone a request the Minister will consult the authority from whom the request is received for the purpose of considering whether the request may be granted in part or subject to conditions. In accordance with *subsection (10)* reasons must be given for any postponement or refusal of a request. *Subsection (11)* provides that the Minister must inform an authority from whom a request is received if it is not possible to comply with the request or if a significant delay in complying with the request is likely.

Section 7: Transmission of evidence to designated state (general)

This section sets out a number of formalities which will apply to the transmission of evidence to designated states.

Subsection (1) provides that evidence obtained in compliance with a request must be transmitted to the requesting state as directed by the Minister. In accordance with *subsection (2)* the judge, member of the Garda Síochána or officer of the Revenue Commissioners concerned will supply any certificate, affidavit or other verifying document for transmission with the evidence referred to in *subsection (1)*. *Subsection (3)* provides that, where the evidence consists of documentation, either the original or a copy shall be transmitted and where the evidence consists of any other item, the item itself or a description, photograph or representation of it will be transmitted.

Section 8: Central Authority

This section deals with the role of the Central Authority in the context of requests for mutual assistance in criminal matters.

Subsection (1) specifies that the Minister for Justice, Equality and Law Reform is the Central Authority. *Subsection (2)* describes the functions of the Central Authority as receiving, transmitting and dealing with requests received under the terms of the Act, with the exception of requests in relation to the interception of telecommunications messages. The Central Authority is also charged with co-operating, in accordance with the international instrument, with the responsible authorities in designated states in relation to requests received from them. *Subsections (3), (4) and (5)* provide for the possibility of designation by the Minister, and for a subsequent amendment or revocation of that designation, of a person or persons to perform specified functions of the Central Authority. Such persons will be recognised as acting for the Central Authority in performing the functions designated. *Subsection (6)* provides that the Minister will inform the General Secretariat of the Council of the European Union of the names of any persons designated under this section.

Section 9: Spontaneous exchange of information

This Section gives effect to Article 7 of the 2000 Convention, Article 11 of the Second Additional Protocol and Article 20 of the 2005 Convention.

Subsection (1) provides that, without prejudice to the provision in the Act prohibiting disclosure prejudicing a criminal investigation, the Director of Public Prosecutions, the Commissioner of the Garda Síochána or Revenue Commissioners (known as the “providing authority”) may exchange information relating to criminal matters with the competent authority in a designated state. The information may be exchanged without receiving a request to that effect. In accordance with *subsection (2)*, conditions may be imposed by the providing authority on the use of such information. Under *subsection (3)*, conditions may not be applied to the use of the information communicated to a designated state which has made a declaration under Article 11.4 of the Second Additional Protocol unless the designated state knows in advance the nature of the information and has agreed to its being communicated. Competent authority is defined at *subsection (5)* as meaning the authority in the designated state appearing to the providing authority to be the appropriate authority to receive or communicate the information concerned.

Section 10: Repeals

This section provides for the repeal of listed provisions of the Criminal Justice Act, 1994 and amendments thereto.

Section 11: Saving

This is a saving provision which has been included to ensure that assistance which can currently be provided to, or sought from, states under the Criminal Justice Act 1994 continues to be available.

Subsection (1) clarifies that where assistance could be provided under the Criminal Justice Act 1994 between the State and another state, and that other state is not designated under this Act, the assistance will continue to be available under the corresponding provisions of this Act. *Subsection (2)* provides that a reference to Part VII of the 1994 Act includes a reference to the Second Schedule to that Act dealing with the taking of evidence for use outside the State. Under *subsection (3)*, a reference to a state includes references to a country or territory within the meaning of Part VII of the 1994 Act.

PART 2

INFORMATION ABOUT FINANCIAL TRANSACTIONS FOR CRIMINAL INVESTIGATION PURPOSES

This Part gives effect to the 2001 Protocol and the provisions in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism relating to the sharing of information and monitoring of banking transactions for criminal investigation purposes.

Section 12: Interpretation (Part 2)

This section contains definitions of certain terms used within this Part.

Information about financial transactions for use in the State

Sections 13 and 14 make provision for obtaining information on financial transactions for the purpose of a criminal investigation in the State.

Section 13: Account information order and account monitoring order

Subsection (1) provides that a member of An Garda Síochána not below the rank of inspector may apply *ex parte* and otherwise than in public to a judge of the High Court for an account information order and/or an account monitoring order for the purposes of a criminal investigation in the State. *Subsection (2)* sets out the institutions to which such an application may relate. *Subsection (3)* specifies the conditions to be satisfied if the order sought is to be granted. The judge must be satisfied that the Garda Síochána are investigating whether a specified person has committed an offence or possesses or controls assets or proceeds deriving from criminal conduct. The judge must also be satisfied that there are reasonable grounds for believing that the specified financial institution(s) may have information required for the purpose of the investigation and that it is in the public interest that such information be disclosed. *Subsection (4)* provides that sufficient information must be provided to enable the account to be identified by the financial institution concerned. *Subsection (5)* provides that an order made under this section has effect notwithstanding any obligation which may arise with regard to secrecy or restrictions on disclosure imposed by statute or otherwise. *Subsection (6)* permits the variation of orders made under this section by agreement between the financial institution and the applicant for the order. This ensures that an order can be altered so that material which is not relevant to the criminal investigation is not collected. *Subsection (7)* provides an indemnity to financial institution(s) with regard to information provided in compliance with a High Court order under this section. The indemnity will not however apply in relation to proceedings where the financial institution(s) concerned makes a statement which it knows to be false or misleading or recklessly makes a statement which is false or misleading.

Section 14: Request to designated state for information about financial transactions

Subsection (1) provides that the Director of Public Prosecutions may send an account information or account monitoring order which relates to an account or accounts in a financial institution in a designated state to the Central Authority for transmission to the competent authority in the state concerned along with a request for the relevant information to be supplied. *Subsection (2)* provides that,

notwithstanding the provisions in subsection (1), the Director of Public Prosecutions may make a request directly to the competent authority of a designated state requesting information relating to an account information or account monitoring order. A request may be made if the Director has reasonable grounds for believing that the financial institution(s) in the designated state may have information required for the purposes of the investigation and that it is in the public interest that such information be disclosed. *Subsection (3)* sets out the information to be provided by the Director when making such a request. *Subsection (4)* provides that the information obtained will not be used, unless agreed by the competent authority, for any purpose other than permitted by the relevant international instrument. *Subsection (5)* provides for the return of the information provided when it is no longer required unless it has been specified that it is not necessary to return the information.

Information about financial transactions for use in designated state

Section 15: Request from designated state for information about financial transactions

This section deals with requests for information in relation to any account(s) that may be held in the State by a person who is the subject of a criminal investigation in a designated state. *Subsection (2)* sets out the details that must be provided when a designated state requests information relating to an account or accounts held by financial institutions in the State. *Subsection (3)* defines “information” as used in this section.

Section 16: Action on request

This section provides that the Minister may, on receiving a request from a designated state, which complies with the criteria set out in section 15, authorise a member of An Garda Síochána not below the rank of inspector to apply to a judge of the High Court for an account information and/or account monitoring order.

Section 17: Account information order and account monitoring order on foot of request

Subsection (1) provides that, on receipt of authorisation under section 16, a member of An Garda Síochána not below the rank of Inspector may apply to a judge of the High Court for an account information and/or account monitoring order. *Subsection (2)* sets out the financial institutions to which such an application may relate and provides that a copy of the request and supporting documentation must accompany the application. *Subsection (3)* specifies the conditions under which the judge may make the order or orders. The order will be made if the judge is satisfied that an offence under the law of the designated state has been committed, that the person concerned is the subject of an investigation into the offence, that the request is in accordance with the relevant international instrument and that there are reasonable grounds for believing that the specified financial institution(s) may have information required for the purposes of the investigation. *Subsection (4)* provides that an account information or account monitoring order will contain sufficient information to enable it to be identified by the relevant financial institution. *Subsection (5)* provides that an order made under this section has effect notwithstanding any obligation to secrecy or restrictions on disclosure imposed by statute or otherwise. *Subsection (6)* provides an indemnity to financial institutions with regard to information provided in compliance with this section. The indemnity will not however apply in relation to proceedings where the financial institution(s) concerned make(s) a statement which it knows to be

false or misleading or recklessly makes a statement which is false or misleading.

Section 18: Transmission of information obtained to requesting authority

This section provides for the transmission to the requesting authority of any information provided by a financial institution in compliance with an account information or account monitoring order.

Section 19: Requesting authority to be informed of possible further investigations

This section gives effect to Article 5 of the 2001 Protocol. Provision is made for the Commissioner of the Garda Síochána to inform the requesting authority that it may be appropriate to undertake investigations which were not initially foreseen when the request for an account information or an account monitoring order was made.

Supplementary

Section 20: Variation or discharge of account information or account monitoring order

In accordance with *subsection (1)*, a judge of the High Court may amend or terminate an account information or account monitoring order on foot of an application to the court by either a member of An Garda Síochána not below the rank of inspector or by the financial institution affected. Under *subsection (2)*, if the application relates to an order made following a request from a designated state, the judge shall ensure that the state concerned is informed of the application and the grounds for the application, in order that it may submit arguments, and also of the outcome of the application. *Subsection (3)* provides that the application shall not be heard in public.

Section 21: Offences under this Part

This section provides at *subsection (1)* that if a financial institution does not, without good reason, comply with an account information or account monitoring order it is guilty of an offence. A financial institution is also guilty of an offence if, while appearing to comply with the order, it either makes a statement which it knows to be false or misleading in a matter of significance or if it makes such a statement through carelessness. *Subsection (2)* clarifies that an offence under subsection (1) is without prejudice to the law relating to contempt of court. *Subsection (3)* provides that it is an offence for a financial institution, or a director, officer or employee thereof, knowing or suspecting that an application for an order under this Part has been made to disclose any information that prejudices or is likely to prejudice the criminal investigation. *Subsection (4)* provides a defence to the charge under subsection (3) where it is proven that the institution or person did not know or suspect that their disclosure prejudiced or was likely to prejudice the criminal investigation or the institution or person had lawful authority or reasonable excuse for making the disclosure. *Subsection (5)* sets out the penalties for a person found guilty of an offence under subsection (3) and *subsection (6)* sets out the penalties for a financial institution found guilty of an offence under this section.

PART 3

INTERCEPTION OF TELECOMMUNICATIONS MESSAGES

This Part gives effect to Title III of the 2000 Convention which applies to requests for mutual assistance between member states of the European Union for the interception of telecommunications.

Introductory

Section 22: Interpretation (Part 3)

This section contains definitions of certain terms used in this Part.

Requests for interception where technical assistance required

Section 23: Request to member state for interception

Subsection (1) sets out the circumstances in which a request may be made to another member state for the interception of telecommunications. An application may be made where the Minister has given an authorisation for an interception to be made under section 2 of the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993; the person specified in the authorisation is present in the State or in a member state and technical assistance is needed from a member state to perform the interception. In accordance with *subsection (2)*, the Minister may cause an application to be made to the relevant authority in a member state for the interception and immediate transmission to An Garda Síochána of telecommunications messages to or from a particular telecommunications address or for the interception and recording of the messages and the transmission of the recording to An Garda Síochána. *Subsection (3)* specifies the information to be provided when a request is being made to a member state for interception. This provision gives effect to Articles 18.3 and 18.4 of the 2000 Convention. *Subsection (4)* provides that if the request relates to a person who is present in the territory of a third member state, that state must be notified of the authorisation of the interception. *Subsection (5)* provides that any information received is subject to the Official Secrets Act, 1963. *Subsection (6)* clarifies that an authorisation under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993 may be made where the person whose messages are to be intercepted is present in a member state.

Section 24: Request to State for interception

This section deals with requests to Ireland from other Member States. In accordance with *subsection (1)*, a request may be made to the State for interception where a criminal investigation is underway in a member state; a lawful interception order or warrant has been issued in the member state; a request is made to the Minister for the interception and immediate transmission of telecommunications messages to or from the telecommunications address concerned or for the interception and recording of the messages and the transmission of the recording to the relevant authority and the specified person is present in any member state and the State's assistance to intercept is required or the person is present in the State and interception can take place within the State. *Subsections (2)* and *(3)* set out information that must be included when a request is made to the State for an interception. The information is that specified in Articles 18.3 and 18.4 of the 2000 Convention.

Section 25: Action on request

Subsection (1) provides that where the state receives a request for the interception and immediate transmission of specified telecommunications messages, the Minister may authorise the interception if the terms of section 24 are complied with. *Subsection (2)* provides that the Minister may authorise interception if section 24 is complied with and the request is for the interception and recording of specific telecommunications messages and immediate transmission of the interception is not possible. *Subsection (3)* provides that, in relation to cases falling within the terms of subsections (1) and (2) and the person whose communications are to be intercepted is present in the State, the Minister may only authorise interception where the conduct under investigation would, if occurring in the State, constitute a serious offence and would justify the making of an interception authorisation. *Subsection (4)* gives effect to Articles 18.6 and 18.7 of the 2000 Convention. The State may make a declaration under Article 18.7 of the 2000 Convention at the time of entry into force of the Convention to the effect that immediate transmission of interceptions is not possible. In those circumstances the State will comply with requests for the interception, recording and subsequent transmission of telecommunications on being provided with the information set out in Articles 18.3 and 18.4 of the 2000 Convention and if such requests would be granted under section 2 of the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993. *Subsection (5)* provides that the Minister may make the authorisation for the interception where the person is present in the State, subject to conditions that would be applied under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993. *Subsection (6)* provides for the Commissioner of the Garda Síochána to transmit the telecommunications messages or to arrange for the recording and subsequent transmission of the messages following the granting of an interception request. Under *subsection (7)* a request for a transcript of a recording may be made. The granting of any such request may be subject to any of the conditions which would apply to the authorisation of an interception. *Subsection (8)* provides that any authorisation made under these provisions has effect as if it were an authorisation under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993 and the Postal and Telecommunications Services Act 1983.

Notifications of other interceptions

Section 26: Notification to member state of interception

Subsection (1) provides that where the Minister has authorised an interception and the telecommunications address of the person concerned is being used in a member state and technical assistance of that state is not required to intercept, the member state will be notified by the Minister, as soon as the State becomes aware of the fact that the person concerned is in that territory. *Subsection (2)* sets out the information to be provided when a notification under *subsection (1)* is being made. *Subsection (3)* requires the Minister to comply with any condition, requirement or request in relation to an interception made under Article 20.4 of the 2000 Convention. *Subsection (4)* provides that, while the authority of the member state is considering whether to consent to the interception, any interception already made may be continued. However, any material already intercepted may not be used unless agreed with the other member state or for the purpose of taking urgent measures to prevent an immediate and serious threat to public security. *Subsection (5)* defines “serious offence” as used in subsection (4). *Subsection (6)* provides that a summary of the case and any further relevant information must be

provided to the member state by the Minister, if requested, to enable a decision to be made concerning the interception. In accordance with *subsection (7)*, the information provided under *subsection (6)* is without prejudice to the provisions of *subsection (4)*. *Subsection (8)* provides that where the information to be provided under *subsection (2)* is of a particularly sensitive nature, the information may be transmitted through a specific person or body. *Subsection (9)* provides that this section does not apply where a member state has declared that it does not require information on interceptions, in line with the provisions in Article 20 of the 2000 Convention.

Section 27: Notification by member state of interception

Subsection (1) provides that this section applies when interception has been authorised in a member state, the telecommunications address of the person concerned is being used in this State, technical assistance from the State is not required in order to intercept and the competent authority of the member state notifies the Minister to this effect in accordance with Article 20 of the 2000 Convention. *Subsection (2)* provides that the Minister shall make a decision on the grant or disallowance, continuation or termination of interception within the time frames specified in *subsection (7)*. A decision will also be necessary in relation to the use of information already intercepted. Under *subsection (3)*, the request for an authorisation shall be granted or the authorisation shall be continued if it would be given domestically under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993. *Subsection (4)* provides that the Minister will require that an interception will not be carried out or that it will be terminated if such a request would not be granted in a domestic context; a general restriction on providing assistance applies or the offence in question is a political or revenue offence. The reasons for such a request will be provided in writing. Under *subsection (5)*, where a request is refused or terminated, any material already intercepted may not be used, or if it is to be used this may only be done, in specified conditions. The justification for any such conditions will be communicated by the Minister in writing. *Subsection (6)* provides that the Minister may ask the requesting state to provide a summary of the facts of the case and any further information he considers necessary to decide whether an interception would be granted in a similar domestic context. *Subsection (7)* sets out the time limits to apply to requests which fall within the terms of *subsections (3), (4) and (5)*. In accordance with *subsection (8)*, the Minister must notify the relevant member state as to the reasons an extension of the periods specified in *subsection (7) paragraph (a)* are required. *Subsection (9)* provides that the Official Secrets Act applies to any information provided under this section.

Miscellaneous

Section 28: Indirect interception of telecommunications messages

Subsection (1) defines “authorised undertaking”. *Subsection (2)* provides that where a person is present in the State, authorisation for the interception has been given but the messages cannot be directly intercepted in the State and the authorised undertaking is obliged to facilitate interception and can in this instance facilitate interception by accessing equipment in a member state, the authorised undertaking shall facilitate the interception. *Subsection (3)* provides that where the person concerned is present in a Member State, a lawful warrant or order for interception has been made for the purposes of a criminal investigation but the messages cannot be directly intercepted in the member state and an authorised undertaking in this State is obliged to facilitate interception and can in this instance

directly intercept and has equipment that can enable a telecommunications provider in the member state to intercept, then the authorised undertaking shall facilitate the interception of the messages.

Section 29: Application of Act of 1993 in relation to this Part.

This section, *inter alia*, brings the relevant provisions of this Act relating to authorisations for interception within the scope of review by a judge of the High Court as provided for in the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993.

Section 30: Amendment of section 110 of Act of 1983

This section amends the Postal and Telecommunications Services Act, 1983 by the insertion of a provision for fines for non-compliance. Authorised undertakings who are obliged to comply with requests to facilitate interception and who do not do so, without reasonable excuse, will be subject to a fine of €5,000 on summary conviction and an unlimited fine if convicted on indictment. Proceedings for such offences shall be held in camera.

PART 4

FREEZING, CONFISCATION AND FORFEITURE OF PROPERTY

The purpose of Part 4 of the Act includes giving effect to the Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence. It also contains provisions dealing with freezing and confiscation co-operation orders previously contained in the Criminal Justice Act 1994 (Section 46(6)) Regulations 1996 as well as provisions relating to forfeiture orders.

Chapter 1

Interpretation

Section 31: Interpretation (Part 4)

This section provides definitions of certain terms used in this Part.

Chapter 2

Freezing of Property

Section 32: Freezing order relating to evidence

Subsection (1) provides that the section applies where a criminal investigation or criminal proceedings are underway in the State. *Subsection (2)* allows for an application to be made, by the Director of Public Prosecutions or a member of An Garda Síochána not below the rank of Inspector, to the High Court *ex parte* and in private for a freezing order preventing, *inter alia*, the destruction, disposal or transfer of property that could be evidence. *Subsection (3)* lays down the conditions under which the judge may make the order. *Subsection (4)* provides that an order under this section does not apply in relation to documents subject to legal privilege. *Subsection (5)* provides for the High Court to amend or terminate a freezing order on application by a member of An Garda Síochána not below the rank of inspector or by any person affected by the order. *Subsection (6)* provides that, where an order requiring enforcement in a designated state is amended or terminated, the High Court shall

so inform the Central Authority who shall notify the designated state concerned.

Section 33: Transmission of freezing order for enforcement outside the State

The purpose of this section includes giving effect to Articles 4, 5 and 9 of the Framework Decision in the context of freezing orders to be enforced outside the State.

This section provides at *subsection (1)* that where a freezing order is made concerning property in a member state, a certificate may be completed by the court on application. *Subsection (2)* provides that the certificate must be signed on behalf of the court and include a statement regarding the accuracy of the information therein. *Subsection (3)* provides that where the order relates to the protection of evidence, the member state concerned may be informed of any procedures or formalities to be adhered to in order to ensure that the evidence is admissible in criminal proceedings. *Subsection (4)* provides that the freezing order and certificate must be sent by the court to the applicant who shall send them to the Central Authority who, in turn, will transmit them to the relevant authority in the member state concerned for the purpose of enforcement. *Subsection (5)* provides that where a freezing order relates to property in a designated state (other than a member state) a duly authenticated copy of the order and such other information as required by the relevant international instrument may be sent by the Director of Public Prosecutions to the Central Authority for transmission to the appropriate authority in the designated state.

Section 34: Transmission of external freezing orders to State for enforcement

The purpose of this Section includes giving effect to Articles 4 and 9 of the Framework Decision in the context of freezing orders to be enforced in the State.

This section provides at *subsection (1)* that a freezing order from a member state and a completed certificate, certified as accurate, together with a request and any instruction regarding the treatment of the evidence or property concerned, shall be transmitted to the Central Authority for enforcement. In accordance with Article 4.2 of the Framework Decision, Ireland may modify or withdraw any declaration made to the General Secretariat of the Council in relation to transmission via its Central Authority. *Subsection (2)* provides that requests from designated states (other than a member state) shall be accompanied by a duly certified copy of the order, a statement of the grounds for making the order and believing that the evidence or property concerned will be subject to an order for confiscation and such other information as may be required by the relevant international instrument. *Subsections (3)* and *(4)* provide that the documents referred to in *subsections (1)* and *(2)* must be transmitted in a format capable of producing a written record and allowing for their authentication, including by facsimile. *Subsection (5)* provides for the original documents or a true copy to be transmitted in an agreed manner should the Central Authority or the court not be satisfied with a facsimile copy. *Subsection (6)* provides for the Minister to make regulations regarding procedures to be followed and the features to be present in equipment being used to transmit documents for the purposes of ensuring accuracy of documents.

Section 35: Recognition and enforcement of external freezing orders

Subsection (1) provides for the Central Authority, on receipt of an external freezing order and related documents, to cause an application to be made to the High Court for a freezing co-operation order. Such an order would recognise the external freezing order and provide for a prohibition on any person dealing with the property specified in the order. *Subsection (2)* provides for the application to be made *ex parte* and in private and for it to be accompanied by the documents mentioned in subsection (1). In the case of a designated state (other than a member state), the application shall be made with the consent of the Minister. *Subsection (3)* provides that an application from a member state will be dealt with as soon as possible and where practicable within 24 hours of receipt of the freezing order and certificate. *Subsection (4)* provides for the making of a freezing co-operation order. *Subsection (5)* provides that an order may be refused if any of the grounds in section 3 (which sets out when assistance may be refused) or section 46 (which deals with the circumstances in which such orders may be refused) apply. In accordance with *subsection (6)*, a freezing order from a member state may not be refused solely on the basis that the offences encompassed by Article 3.2 of the Framework Decision are not offences under Irish law. *Subsection (7)* provides for formalities and procedures to be laid down in freezing orders for the protection of evidence to ensure the preservation and admissibility of such evidence. This will be done where indicated by the issuing authority, unless to do so would be contrary to the fundamental principle of the law of the State. *Subsection (8)* provides for notice to be given to any person who appears to be affected by the freezing order unless the court is satisfied that it cannot ascertain the person's whereabouts.

Section 36: Application, etc., of freezing co-operation orders

Subsection (1) provides that a freezing co-operation order may apply to particular property where it is specified in the external freezing order. A co-operation order may also apply to realisable property held by a particular person, including property not described in the original external order as well as to any property which may be transferred to the person after the order was made. *Subsection (2)* provides that the order may make any necessary provision for the living and legal expenses of the person possessing the property subject to a freezing order. Under *subsection (3)*, the court may appoint a receiver to take possession of the property and manage it in accordance with the court's directions. *Subsection (4)* provides that the Garda Síochána or officer of customs and excise may seize property subject to a freezing order to prevent its removal from the State and under *subsection (5)* any property so seized will be dealt with in accordance with the directions of the Court.

Section 37: Registration of freezing co-operation orders

This section concerns the registration of freezing co-operation orders, where appropriate, by the Property Registration Authority or Registrar of Companies.

Subsection (1) requires the High Court, where it has made a freezing co-operation order in relation to land or an order altering or terminating a previous order relating to land, to send notice of the order, with a copy, to the Property Registration Authority. *Subsection (2)* provides that the Property Registration Authority on receipt of these documents will, if the order relates to registered land, make an entry in the land register, prohibiting any dealing with land until the order has been discharged. Any variation or discharge of the order will be so recorded by the Authority in the register. *Subsection (3)* provides that where the land concerned is not registered, a notice

of the order, including any variation or termination, shall be placed in the register of deeds maintained under section 35 of the Registration of Deeds and Title Act 2006. *Subsection (4)* concerns a freezing co-operation order relating to an interest in a company or its property and requires the High Court to send notice of such an order, including a copy of the order, to the Registrar of Companies. Notice of any subsequent order varying or discharging such an order shall also be sent to the Registrar of Companies. *Subsection (5)* requires the Registrar, on receipt of the notice and copy of the order, to enter the notice into the Register of Companies and if the company is an existing company send copy of the notice to each director and secretary of the company. In any other case, a copy of the notice must be sent to the person resident in the State and authorised to accept on behalf of the company service of notices. *Subsection (6)* defines terms used in this section.

Section 38: Exercise of powers under this Chapter by High Court or receiver

Subsection (1) provides that the High Court or an appointed receiver shall use their powers under section 36 in relation to freezing co-operation orders to make any property available for recovery which may become liable for recovery under a confiscation co-operation order. *Subsection (2)* ensures that these powers shall be exercised in order to allow a third person to retain or recover the value of the property, other than the defendant or the recipient of a gift. *Subsection (3)* provides that where a gift involving realisable property has been made by the defendant to another person, the exercise of the powers under section 36 are limited to realising no more than the value of the gift. *Subsection (4)* requires that no account shall be taken of any obligations on the part of the defendant or a recipient of any gift that would conflict with a confiscation co-operation order which may be made.

Section 39: Receivers: supplementary provisions

This section provides that a receiver who takes action in relation to non-realizable property which he or she would be entitled to take were it realizable property and who takes the action believing he or she is entitled to do so is not liable in respect of any consequent loss or damage, unless the loss or damage is the result of negligence on the part of the receiver.

Section 40: Bankruptcy of defendant, etc.

Subsection (1) excludes from the property of a bankrupt, for the purposes of the Bankruptcy Act 1988, any property which is subject to a freezing co-operation order made before the bankruptcy adjudication and any proceeds of property realised under section 36 of this Act and in the hands of a receiver. *Subsection (2)* prevents the use of the powers of the High Court or a receiver under section 36 in respect of property of a person adjudicated bankrupt. *Subsection (3)* provides that where a gift has been made, no decision under the Bankruptcy Act of 1988 as to whether that gift is void shall be made at a time when the property concerned is subject to a freezing co-operation order, and after the discharge of the freezing co-operation order, any such decision shall take into account any realisation under this Act. *Subsection (4)* provides that in any case where there is a petition for or judgement in bankruptcy before January 1989, any reference to the Bankruptcy Act shall be considered to refer to the law relating to bankruptcy as it existed at the time.

Section 41: Property subject to freezing co-operation order dealt with by Official Assignee

Subsection (1) provides that where an official assignee or trustee appointed under the 1988 Bankruptcy Act seizes or disposes of property which is subject to a freezing co-operation order and thus outside his or her powers, but where he or she has grounds to believe that he or she is entitled to seize or dispose of the property, he or she shall not be liable for any loss or damage arising from the seizure or disposal except insofar as it is caused by his or her negligence. Expenses incurred in connection with the proceedings and remuneration may, however, be deducted. *Subsection (2)* provides that where expenses are incurred in relation to a property over which the official assignee's powers are not exercisable, but where he or she does not know and has no reason to believe that the property is subject to a freezing co-operation order, he or she is also entitled to payment of those expenses.

Section 42: Application of proceeds of realisation

Subsection (1) provides that money paid or recovered on foot of a freezing co-operation order may be used to meet expenses incurred in exercising any powers under the Act, or to pay any person employed for that purpose. *Subsection (2)* provides that, after expenses and remuneration have been paid, any monies remaining shall be used to satisfy the order and shall, subject to any provision in the relevant international instrument, be paid into the Exchequer unless the Court provides otherwise on request by the designated state concerned.

Section 43: Winding up of company holding realisable property

Subsection (1) provides that where realisable property is held by a company and either an order for the company's winding up has been made or it is being voluntarily wound up, a liquidator's functions may not be exercised in relation to any property subject to a freezing co-operation order made before the relevant time or any realised proceeds which are in the hands of a receiver. *Subsection (2)* provides that in such a case, any power of the High Court or a receiver appointed under section 36 shall not be exercised (a) to prevent a liquidator from using his or her powers in order to distribute property to the company's creditors or (b) to prevent payment, including remuneration of the liquidator, of any expenses incurred in the winding up of the company. *Subsection (3)* defines "company" and "relevant time" for the purpose of this Section.

Section 44: Duration of freezing co-operation order

This section sets out the circumstances in which the freezing co-operation order remains in force. In accordance with *subparagraph (a)* the order will remain in force until the relevant evidence is obtained and transferred or until such a request is refused. *Subparagraph (b)* provides the order will remain in force, where it is related to confiscation, until a confiscation co-operation order has been made or refused and the refusal upheld on appeal. Under *subparagraph (c)* the order also remains in force until it has been varied or discharged in accordance with section 45.

Section 45: Variation or discharge of freezing co-operation order

Subsection (1) allows the High Court to amend or terminate a freezing co-operation order. Termination will arise where proceedings for the offence are not instituted or an application to transfer the evidence or a confiscation order is not made within what the courts considers a reasonable time. The order will also be terminated if the court considers it would not be in the interests of justice to

continue it. *Subsection (2)* requires the applicant for the variation or discharge of the order to notify the Central Authority, who shall inform the issuing authority. *Subsection (3)* provides that an application under this section will not have suspensive effect. Under *subsection (4)*, only a judicial authority in the issuing state can review the substantive grounds for the making of the external freezing order. *Subsection (5)* provides that the court must inform the issuing judicial authority of the outcome of the application.

Section 46: Refusal to make freezing co-operation order

The purpose of this section includes giving effect to Article 7 of the Framework Decision.

The grounds on which the High Court may refuse to make a freezing co-operation order are set out in *subsection (1)*. They are: where the offence named in the freezing order is not an offence to which the relevant international instrument relates; where, the external order was made in a member state, there is no certificate or the certificate is incomplete or does not correspond to the freezing order; where immunity or privilege makes it impossible to make the order; where it is clear that compliance with the order would infringe the *ne bis in idem* principle and where the external order is from a designated state (other than a member state), there is not a reasonable belief of sufficient grounds for the making of the order or that the property will become subject to a confiscation order. *Subsection (2)* provides that where a certificate is absent, incomplete or clearly does not correspond to the freezing order, the court may specify a deadline for a completed or corrected version to be submitted, or, at its discretion, accept an alternative or choose not to require a certificate. *Subsection (3)* provides that where the freezing co-operation order is refused by the High Court or it is not possible to make the order because the evidence or property has disappeared or been destroyed or cannot be located, the Central Authority will inform the issuing judicial authority accordingly, on instruction from the Court and by means of a written record.

Section 47: Postponement of freezing co-operation order

The purpose of this section includes giving effect to Article 8 of the Framework Decision.

Subsection (1) provides for grounds on which the making of a freezing co-operation order may be postponed by the High Court. They are: where its making might prejudice an ongoing criminal investigation; where the property or evidence is already subject to a freezing order in the State or where the property which is the subject of a external freezing order, with a view to its confiscation at a later stage, is already subject to an order in relation to other proceedings in the State. In accordance with *subsection (2)*, postponement may only apply under subsection (1)(c) where the order made has priority over a subsequent freezing order in criminal proceedings. *Subsection (3)* provides that where the ground for postponement no longer applies, the freezing cooperation order will be made by the Court. *Subsection (4)* provides for the High Court to direct the Central Authority to inform the issuing authority of any postponement and the details of that postponement, of the making of a freezing co-operation order under subsection (3) and of any other measure which may apply to the property concerned.

Section 48: Subsequent treatment of frozen property

This provision includes giving effect to Article 10 of the Framework Decision.

Subsection (1) provides that a request to transfer evidence subject to a freezing co-operation order to the issuing state will be dealt with in the same manner as a request for particular evidence for use outside the State in accordance with Section 75. *Subsection (2)* specifies that a request to make property subject to confiscation co-operation order under subsection (1) will be dealt with under Part 5 of the Act. *Subsection (3)* provides that, notwithstanding the provisions in subsection (1), a request from a member state for the transfer of evidence cannot be refused on the basis of the absence of dual criminality if the request is in relation to one of the listed offences in Article 3(2) of the Framework Decision and is punishable in the issuing member state by a prison sentence of at least three years.

Chapter 3

Confiscation of Property

Section 49: Request for confiscation of property in designated state

Subsection (1) provides that where a confiscation order is made relating to property in a designated state, the court shall on request provide the Director of Public Prosecutions with an authenticated copy of the order and a certificate detailing whether the timeframe for lodging an appeal has expired or the date on which it will expire. *Subsection (2)* provides that the Director of Public Prosecutions may send the documents referred to in subsection (1) to the Central Authority for transmission to the relevant state along with a statement signed by or on behalf of the Director that the order is in force and has not been satisfied, that the defendant was represented or appeared or if not the date of the proceedings and the date the defendant received notice of the proceedings. A brief description of the conduct leading to the making of the order is also required as is a request that the confiscation order be applied. *Subsection (3)* provides that if property is realised on foot of a request under this section and the amount received is less than or equal to the amount ordered to be paid under the confiscation order, then this amount is subtracted from the total due, or the order is considered to be discharged, if appropriate. *Subsection (4)* provides that a certificate from the relevant authority in the designated state stating that realisation has taken place; the date of realisation and the proceeds of realisation is admissible as evidence without further proof. *Subsection (5)* provides for an exchange rate to be applied at the euro equivalent to proceeds of realisation if they are stated other than in euro in the certificate provided for under subsection (4). The rate applicable will be that prevailing on the date of realisation of the order.

Section 50: Transmission to State of external confiscation order

Subsection (1) provides that an external confiscation order may be transmitted to the Central Authority in the State for enforcement by or on behalf of the court that made it. *Subsection (2)* sets out what must accompany the order that is: a duly certified copy of the order; a statement made by or on behalf of the court to the effect that the order is in force and not subject to appeal and that if the person did not appear in the proceedings he or she received notice of them in sufficient time to enable his or her defence and a brief description of the conduct which constituted the offence resulting in the order

and any necessary translations. Any further information required by the relevant international instrument should also be included.

Section 51: Confiscation co-operation order

Subsection (1) provides that the Central Authority in the State may cause an application to be made to the High Court, on receipt of an external confiscation order, for a confiscation co-operation order in order to effect the confiscation of property in the State. In accordance with *subsection (2)*, the application must be accompanied by the request and any related documentation. *Subsection (3)* provides for the Court to make a confiscation co-operation order on receipt of an application. *Subsection (4)* provides that the confiscation co-operation order may not be made unless the court is satisfied (i) that the application is made with the Minister's consent, (ii) with the statements provided by the issuing state in accordance with section 50(2)(b), (iii) that the conduct leading to the order constitutes criminal conduct, (iv) the making of the order is in accordance with the relevant international instrument and (v) that any person claiming to own or have an interest in the property concerned has been given an opportunity to make representations as to why the order should not be made. *Subsection (5)(a)* provides that the Court may vary or discharge a confiscation co-operation order if such an application is received either from the person claiming to have an interest in the property or from anyone affected by the order. The Court from whom the external confiscation order was received may be consulted in relation to such an application. In accordance with *subsection (5)(b)*, the Court will vary the order in line with any similar variation made to the external confiscation order. The Court will discharge an order if it satisfied that the external confiscation order has been revoked or has been discharged in accordance with the law of the state from which it was received.

Section 52: Enforcement, etc., of confiscation co-operation orders

Subsection (1) provides that where the High Court makes a confiscation co-operation order, the order may, without prejudice to the powers of a receiver appointed under this Act, be enforced by the Director of Public Prosecutions for the purpose of payment to the State of the sum specified in the order or of any lesser sum due under the order. *Subsection (2)* clarifies that subsection (1) cannot result in the imprisonment of a person. *Subsection (3)* provides that in the event of the sum covered by a confiscation co-operation order remaining unpaid, the Court may, on being notified by the Director of Public Prosecutions, order imprisonment of the defendant for a period not exceeding the limits set out in the table under this section. Under *subsection (4)*, an order for imprisonment will not be made unless the defendant has had the opportunity to make representations to the court and the court has taken such representations into account along with any representations made by the Director of Public Prosecutions. *Subsection (5)* provides that a defendant will not be imprisoned for non-compliance with an order where the request accompanying an external confiscation order so specifies and the relevant international instrument so provides. *Subsection (6)* provides that any term of imprisonment set out under subsection (3) will be reduced in proportion to any sums paid or recovered.

Section 53: Realisation of property subject to confiscation co-operation order

Subsection (1) provides that where a confiscation co-operation order has not been satisfied, or the order is for confiscation of property other than a set sum, the Court may, on application by the Director of Public Prosecutions, appoint a receiver. *Subsection (2)* provides that the Court may empower the receiver to take possession

of any realisable property subject to such conditions as the Court may specify. Under *subsection (3)*, the Court may order any person to give possession of realisable property to the receiver. *Subsection (4)* provides that the Court may empower the receiver to realise any realisable property. *Subsection (5)* provides that the Court may order any person holding a realisable asset or the recipient of any gift caught by this Act to make payment to the receiver in respect of their interest. The Court may also, on payment being made, transfer, grant or extinguish any interest in the property. *Subsection (6)* clarifies that the Court will not exercise its powers under this section unless a reasonable opportunity has been granted to persons holding interest in a property to make representations to the Court.

Section 54: Interest on sums unpaid under confiscation co-operation orders

Subsection (1) provides that subject to *subsection (2)*, in the event of delays in payment of sums due under confiscation co-operation orders, the person will be liable to pay interest on the outstanding sum. *Subsection (2)* provides that interest will be disregarded when calculating terms of imprisonment under section 52. *Subsection (3)* provides that the rate of interest is that applying in regard to High Court civil judgement debts.

Section 55: Payments under confiscation co-operation orders to be expressed in euro

Subsection (1) provides that, where appropriate, money due under an external confiscation order shall be converted to a euro equivalent amount, calculated at the baseline rate of exchange on the date of the making of the confiscation co-operation order. *Subsection (2)* provides that, for the purposes of *subsection (1)*, a certificate signed by an officer of a financial institution in the State stating the exchange rate prevailing on the relevant date is admissible, without further proof, as evidence of the rate so prevailing.

Section 56: Exercise of powers under this Chapter by High Court or receiver

Subsection (1) provides that the powers under section 53 of the High Court or receiver shall be exercised with a view to recovering property that is liable to be recovered. *Subsection (2)* provides that these powers shall be exercised so as to allow any person, other than the defendant or recipient of a gift, to retain or recover the value of any property held by that person. *Subsection (3)* provides that where a person has been the recipient of a gift, the powers will be exercised so as to realise no more than the value of the gift. *Subsection (4)* provides that no account will be taken of obligations of the defendant or the recipient of the gift that conflict with the obligation to satisfy the confiscation co-operation order.

Section 57: Application to confiscation co-operation orders of certain provisions relating to freezing co-operation orders

This section provides that the provisions of sections 39, 40, 41, 42 and 43 (relating to receivers, bankruptcy of defendants, role of official assignees, application of proceeds and winding up of company) apply in regard to confiscation co-operation orders as they apply in regard to freezing co-operation orders.

Chapter 4

Forfeiture of Property

Section 58: Transmission of external forfeiture order to designated state for enforcement

Subsection (1) provides that if an order relates to the forfeiture of property in a designated state, the Court shall on request supply the Director of Public Prosecutions with an authenticated copy of the order and a certificate stating whether the timeframe for lodging an appeal has expired or the date on which it will expire. *Subsection (2)* provides that the Director of Public Prosecutions may send the documents referred to in subsection (1) to the Central Authority for transmission to the relevant state along with a statement signed by or on behalf of the Director that the order is in force and has not been satisfied, that the defendant was represented or appeared or, if not, the date of the proceedings and the date the defendant received notice of the proceedings. A brief description of the conduct leading to the making of the order is also required as is a request for the forfeiture and disposal of the property concerned. Any other information required by the relevant international instrument should also be transmitted.

Section 59: Transmission of external forfeiture order to State for enforcement

Subsection (1) provides that a forfeiture order made by another state may be transmitted to the Central Authority for enforcement. *Subsection (2)* specifies that the order must be accompanied by a duly certified copy of the order; a statement by or on behalf of the court that made the order to the effect that it is in force and not subject to appeal and that if the person concerned did not appear in the proceedings, that he or she received notice of the proceedings in sufficient time to defend them and a brief description of the conduct which made up the offence resulting in the making of the order. Any further information required by the relevant international instrument should also be included.

Section 60: Forfeiture co-operation order

Subsection (1) provides that on receipt of an external forfeiture order and supporting documents, the Central Authority may cause an application to be made to the High Court for a forfeiture co-operation order to be made in order to enable the forfeiture of the relevant property to take place. In accordance with *subsection (2)*, the application must be accompanied by the external forfeiture order and any supporting documentation. *Subsection (3)* provides for the making of a forfeiture co-operation order on receipt of an application, subject to the conditions in subsection (4) being satisfied. *Subsection (4)* provides that the order may not be made unless the court is satisfied: (i) that the application is made with the consent of the Minister, (ii) with the information provided by the issuing state (as set out in section 59(2)(b)), (iii) that the conduct resulting in the order constitutes criminal conduct, (iv) that the making of the order is in accordance with the relevant international instrument and (v) that any person claiming to own or have interest in the property which is subject to the order has been given an opportunity to make representations as to why the order should not be made. *Subsection (5)* provides that a forfeiture co-operation order deprives the subject of the proceedings of any right or interest in the property concerned and vests the property in the Commissioner of An Garda Síochána. *Subsection (6)* provides for the disposal of the property for the benefit of the Exchequer unless on request by or on behalf of the requesting state, and in accordance with the relevant international

instrument, the Court provides otherwise. *Subsection (7)* provides for the amendment or termination of the forfeiture co-operation order if such an application is made by any person claiming to own or have an interest in the property. *Subsections (8), (9) and (10)* provide that the Police Property Act 1897 does not apply to property under this section, that this section does apply to property in possession of An Garda Síochána under section 61(4) of the Criminal Justice Act 1994 and that this section does not affect any enactment where property is forfeited as the result of a conviction.

PART 5

PROVISION OF EVIDENCE

Chapter 1

Interpretation

Section 61: Interpretation (Part 5)

This section contains definitions of certain terms used in this Part.

Chapter 2

Taking of Evidence

Section 62: Evidence from person in designated state

This section provides a procedure for obtaining evidence abroad for the purpose of criminal proceedings or a criminal investigation in the State. It is based on provisions contained in section 52 of the Criminal Justice Act 1994.

Subsection (1) provides that, where it appears to a judge of any court that a criminal investigation or criminal proceedings are underway, a letter of request may be issued seeking assistance in having specified evidence taken in a designated state for use in the proceedings or investigation. *Subsection (2)* provides that either the Director of Public Prosecutions or a person charged in criminal proceedings may apply for a letter of request. *Subsection (3)* provides that the letter of request will be sent to the Central Authority for transmission to the appropriate authority. *Subsection (4)* provides that, notwithstanding the provisions in subsections (1) to (3), the Director of Public Prosecutions may transmit a letter of request directly. *Subsection (5)* sets out what must be included in such a request. The request shall include a statement that the evidence is needed in criminal proceedings or a criminal investigation, a description of the conduct concerned, and any other available information that may assist in complying with the request. *Subsection (6)* provides that evidence obtained under this section must only be used for the purpose specified in the request or that permitted by the relevant international instrument unless the relevant authority consents otherwise. *Subsection (7)* provides for the return of the evidence when it is no longer required, unless the contrary is specified. *Subsection (8)* ensures the admissibility of evidence of a witness taken in accordance with a request and certified on behalf of the appropriate authority. *Subsection (9)* relates to the general discretion of criminal courts to exclude evidence which is otherwise admissible. It provides that in considering whether to exclude evidence obtained on foot of a letter of request, a Court must examine whether the law of the other country allowed the person to be legally represented and cross-examined when the evidence was being taken and also other factors which may differ in relation to the taking of such evidence from

those which would apply in this country in similar proceedings. *Subsection (10)* makes provision for the Director of Public Prosecutions to issue a letter of request to obtain evidence for criminal proceedings or a criminal investigation where such evidence will be given by a witness in the proceedings or any proceedings instituted after the relevant investigation has taken place. *Subsection (11)* defines the term “appropriate authority” as used in this section.

Section 63: Evidence for use in designated state

This section, which is based on section 51 of the Criminal Justice Act 1994, provides for the taking of evidence in the State for use in criminal proceedings or a criminal investigation in another country.

Subsection (1) provides that this section applies, subject to section 64, to the taking of evidence in the State from a witness on foot of a request for assistance from a designated state for the purpose of a criminal investigation or criminal proceedings. *Subsection (2)* provides that on receipt of a request for assistance the Minister may request the President of the District Court to nominate a judge of that Court to receive the evidence. The Minister will send the nominated judge a copy of the request and any related documents. Under *subsection (3)* an assurance must be received from the requesting authority that any evidence supplied will only be used for the purpose permitted by the relevant international instrument or specified in the request unless the nominated judge or the witness agrees otherwise. *Subsection (4)* provides that the nominated judge has the power of the District Court in criminal proceedings and that he or she may direct that the evidence not be heard in public in order to protect either a person or information. The judge is obliged to inform the witness of his or her rights in relation to privilege as set out in section 64. *Subsection (5)* provides for the giving of evidence by means of a television link. *Subsection (6)* provides for penalties for the non-compliance of a person summonsed to give evidence. The penalty is €2,500 or imprisonment for a period not exceeding 6 months or both on summary conviction if a reasonable excuse cannot be made. *Subsection (7)* clarifies that the Bankers’ Books Evidence Act 1879 applies to proceedings in this section and *subsection (8)* prohibits any order for costs in proceedings under this section.

Section 64: Privilege of witnesses

Subsection (1) provides that a person cannot be compelled to give any evidence in proceedings under section 63 which he or she could not be compelled to give in criminal proceedings in this State or in the state seeking the evidence. *Subsection (2)* provides that the privilege of not being compelled to give evidence in criminal proceedings in another country does not apply unless the requesting authority accepts the claim of the person to be exempt in that country. *Subsection (3)* provides that should the claim for privilege not be conceded, the person may be required to give evidence, but if a court in the state concerned upholds the claim, the evidence cannot be sent to the requesting authority. *Subsection (4)* provides that, without prejudice to the provisions in subsection (1), a person cannot be compelled to give evidence under this section in his or her capacity as a civil or public servant or if to do so might prejudice national security. *Subsection (5)* provides that a certificate signed by or on behalf of the Minister stating that the giving of evidence would be prejudicial to the security of the State is admissible as proof of that fact. *Subsection (6)* clarifies the meaning of references to giving evidence as used in this section.

Evidence of prisoners

Section 65: Transfer of prisoner to give evidence or assist criminal investigation in State

The provisions in this section are based on section 54 of the Criminal Justice Act, 1994. They have been amended to take account of the provision in Article 9 of the 2000 Convention (which deals with the temporary transfer of persons held in custody for the purposes of an investigation) and Article 13 of the Second Additional Protocol (dealing with the temporary transfer of detained persons to the requested party).

Subsection (1) defines the term prisoner as used in this section. *Subsection (2)* empowers the Minister, at the request of the Director of Public Prosecutions or a person charged in proceedings encompassed by this subsection, to issue a warrant for a prisoner to be transferred to the State. Such a warrant may be issued where a witness order or summons has been issued in criminal proceedings in respect of a prisoner or where it appears to the Minister desirable that the prisoner assist by his or her presence or be identified in the proceedings. *Subsection (3)* provides that no warrant shall be issued unless the prisoner consents in writing to be transferred. Under *subsection (4)*, the warrant will be transmitted by the Central Authority to the relevant authority in the designated state with the request for the transfer of the prisoner. *Subsection (5)* provides that the warrant will constitute the necessary authority for the transfer, reception, detention and return of the prisoner. *Subsections (6) and (7)* provide that a prisoner is deemed to be in lawful custody while in the State and that he or she may be arrested without warrant should he or she escape from custody. *Subsection (8)* allows for a person other than a member of An Garda Síochána to have custody of a prisoner under this section and to be deemed a member for the purposes of this section. *Subsection (9)* provides that certain legal provisions relating to non-nationals within the State do not apply to a prisoner under this section unless the warrant ceases to have effect while the prisoner is in the State. *Subsection (10)* provides that a prisoner who is transferred to the State under this section may not be prosecuted or otherwise restricted in respect of his or her personal freedom in respect of any offence which was committed before his or her arrival in the State.

Section 66: Transfer of prisoner to give evidence or assist investigation outside State

Broadly similar provisions feature in section 53 of the Criminal Justice Act, 1994. Amendments have been made to take account of Article 9 of the 2000 Convention and Article 13 of the Second Additional Protocol.

Subsections (1) and (2) provide that, on receipt of a request, the Minister may issue a warrant for a prisoner to be transferred to another country to give evidence, assist in or be identified in a criminal investigation or criminal proceedings in that state, provided that the prisoner gives written consent to being transferred. *Subsection (3)* provides that where in the Minister's view it is inappropriate for the prisoner to act for himself or herself, consent must be given by an appropriate person on the prisoner's behalf. *Subsection (4)* provides that the warrant will constitute the necessary authority for the handing over, detention and return of the prisoner in due course to continue serving his or her sentence. *Subsection (5)* provides that a warrant will not be issued under this section unless the requesting

state is in a position to give an assurance that if the prisoner is transferred he or she will not be prosecuted, sentenced, detained or otherwise restricted in his or her personal freedom for any offence against the law of that state committed before the prisoner's departure from the State. *Subsection (6)* provides that a period spent in custody under the warrant forms part of the overall period of detention or imprisonment served by the prisoner. *Subsections (7) and (8)* provide that a prisoner is deemed to be in lawful custody while being taken to or from a prison under the warrant and that he or she may be arrested without warrant should he or she escape. *Subsection (9)* allows for a person other than a member of An Garda Síochána to have custody of a prisoner under this section and to be deemed a member for the purposes of a warrant under this section.

Evidence through television link

Section 67: Evidence through television link for use in State

The purpose of this provision is to give effect to Article 10 of the 2000 Convention (hearing by videoconference) and similar provisions in Article 9 of the Second Additional Protocol.

Subsection (1) provides that this section applies where criminal proceedings have been instigated in the State against a person, a witness is in a designated state and it is not desirable or possible for the witness to give evidence in person. Under *subsection (2)* the Director of Public Prosecutions or the accused may apply to a judge at a sitting of the court of trial to issue a letter of request for television link facilities to be provided in the other state in order that evidence may be provided via a television link. *Subsection (3)* provides that the application may be granted if the judge is satisfied that it is not desirable or possible for the person to give evidence in person. *Subsection (4)* sets out the information to be provided in the document which issues with the letter of request. *Subsection (5)* provides for transmission of the request by the Central Authority to a court, tribunal or other appropriate authority. Under *subsection (6)*, the name of the judge conducting the hearing shall be communicated by the Central Authority as soon as it becomes available, if it is not known at the time of the issue of the letter of request to provide television link facilities. *Subsection (7)* allows for the accused to examine the witness at the hearing. *Subsections (8) and (9)* provide that evidence given through a live television link must be video-recorded and that the video-recording or an edited version of it is admissible at the trial of the offence, unless the trial judge considers that its admissibility would be prejudicial to the interests of justice. Under *subsection (10)*, the provisions of the relevant international instruments concerning hearings via live television link but which are not incorporated in this section have effect in the State in relation to a hearing under this section. *Subsection (11)* makes provision for penalties to apply in the event that a person giving evidence knowingly makes a false statement which is material to the proceedings. A fine not exceeding €2,500 or imprisonment for a period of not in excess of six months or both will apply on summary conviction. A fine not exceeding €10,000 or imprisonment for a period of not more than five years or both will apply on conviction on indictment. Under *subsection (12)*, proceedings for an offence encompassed by *subsection (11)* will be treated as having been committed in the State. *Subsection (13)* defines "video-recording" as used in this section.

Section 68: Request for evidence through television link for use outside State

Subsection (1) provides that this section applies when a request is received for a person present in the State to give evidence through

a television link in criminal proceedings in a designated state. *Subsection (2)* sets out the information to be included when such a request is made.

Section 69: Action on request

This section provides that if the Minister is of the view that it is not desirable or possible for the witness to give evidence in person and that the request is in accordance with section 68, he or she may request the President of the District Court to nominate a District Court judge who will summon the witness to attend to give evidence via television link.

Section 70: Taking of the evidence

Subsection (1) provides that the District Court judge nominated under section 69 shall summon the witness to give evidence through a television link within the district to which the judge is assigned. *Subsection (2)* provides that the judge has the powers which apply in the District Court in relation to criminal proceedings for the purpose of complying with the request. *Subsection (3)* provides that the evidence must be given in accordance with the laws and procedures of the requesting state insofar as they are compatible with the fundamental principles of the law of this country. *Subsection (4)* ensures that the witness may not be compelled to give evidence which he or she could not be compelled to give in criminal proceedings in the State or in the state seeking the evidence. *Subsection (5)* provides for the evidence to be taken in private if this is deemed necessary for the protection of witnesses and the state requesting the evidence agrees. *Subsection (6)* provides for, subject to subsection (7), the proceedings to be conducted by or under the direction of the judge of the requesting state in line with the laws of that state. In accordance with *subsection (7)*, the nominated judge is obliged, where necessary, to take action to ensure that the evidence is taken in accordance with the law of the State. *Subsection (8)* provides for interpretation where required. *Subsection (9)* provides for a record of the evidence taken to be sent to the Minister for transmission to the requesting state and sets out what must be included in that record. *Subsection (10)* provides for penalties in the event a witness fails to testify when under an obligation to do so or where a witness knowingly makes a false statement material to the proceedings.

Evidence by telephone link for use outside State

Section 71: Request for evidence by telephone link

Both this section and section 72 give effect to Article 11 of the 2000 Convention and Article 10 of the Second Additional Protocol.

Subsection (1) provides for a request to be made for a witness present in the State to give evidence by telephone in criminal proceedings in a designated state. *Subsection (2)* sets out the information to be included in such a request.

Section 72: Taking of evidence

This section provides at *subsection (1)* that, if of the view that the witness is willing to give evidence by telephone link, the Minister may request that a judge of the District Court be nominated by the President of that Court to summon the witness to attend to give such evidence. *Subsection (2)* allows for the witness to confirm that he or she is willing to give evidence by telephone link. *Subsection (3)* states that the provisions set out in section 70 — taking of evidence through television link — apply in relation to the taking of evidence under this section.

Search for evidence

Section 73: Search for evidence at place in designated state

The provisions in this section are based on those contained in section 52 of the Criminal Justice Act 1994.

Under *subsection (1)*, a judge, at a sitting of any court, may issue a letter to another state requesting assistance in obtaining evidence where it appears to him or her that criminal proceedings have commenced or a criminal investigation is underway and where pertinent evidence may be obtained in that state. *Subsection (2)* provides that the Director of Public Prosecutions or a person charged in the proceedings referred to in subsection (1) may apply for a letter of request. *Subsections (3) and (4)* provide for the transmission of the letter of request to the relevant authority and for the Director of Public Prosecutions to issue the letter of request directly in certain specified circumstances. *Subsection (5)* specifies the information to be included in the letter of request. *Subsection (6)* provides that any evidence obtained by virtue of this section will not be used other than for a purpose permitted by the relevant international instrument or for the purpose specified in the request unless the consent of the relevant authority is obtained. In accordance with *subsection (7)*, any evidence no longer required must be returned to the appropriate authority from which it was obtained, unless the authority indicates otherwise. *Subsection (8)* ensures the admissibility of properly certified evidence (documentary or otherwise) obtained under this section. *Subsection (9)* defines “appropriate authority” as used in this section.

Section 74: Search for evidence for use outside State (general)

Subsection (1) provides that this section applies to a request from a designated state for assistance in obtaining evidence for the purposes of a criminal investigation or criminal proceedings in that state where a search power exists domestically in relation to the conduct given rise to the offence. *Subsection (2)* limits the application of the section to (a) cases where the offence is punishable under both the law of the State and that of a member state by imprisonment for at least six months, or (b) cases where the offence is punishable under Irish law by at least six months’ imprisonment and where it is being prosecuted in the member state by administrative authorities, whose decision may give rise to criminal proceedings. *Subsection (3)* provides that the section does not apply to a request from a designated state (other than a member state) unless dual criminality applies. Under *subsection (4)*, the Minister may send the request and any related documents to the Commissioner of An Garda Síochána to arrange for the request to be complied with. *Subsection (5)* provides that the Minister may not send the request to the Commissioner of An Garda Síochána for execution unless the requesting authority gives an assurance that any evidence supplied will not be used, without the Minister’s consent, for a purpose other than that permitted by the relevant international instrument or specified in the request and that the evidence will be returned when no longer required unless the Minister indicates otherwise. *Subsection (6)* confirms that either the consent of the occupier or a warrant is required for a member of An Garda Síochána to enter a place in furtherance of a request. *Subsection (7)* provides that unless the evidence sought is already in the possession of An Garda Síochána, a search warrant must be applied for by a member of An Garda Síochána of at least the rank of inspector. *Subsection (8)* sets out the requirements to be met in order for a judge to issue a search warrant namely that this section applies to the request and that entry to a place is necessary

to execute the request. *Subsection (9)* lists the provisions of a warrant. The warrant will authorise a named member of An Garda Síochána accompanied by other Gardaí or persons the member considers necessary to enter a named place at any time within one week of the warrant's issue; reasonable force may be used; the place and any person there may be searched; material found on the premises or in the possession of any person present on the premises at the time of the search may be examined, taken away and retained, if the member believes it may be evidence or relate to the offence concerned or be assets or proceeds deriving from criminal conduct; any document may be copied and taken away and any appropriate steps to prevent interference with any material may be taken. *Subsection (10)* provides that any material required that is in a non-legible form must be produced in legible format. *Subsection (11)* clarifies that documents subject to legal privilege are exempt from the provisions of the warrant but that other obligations with respect to secrecy under law do not affect a warrant issued under this section. *Subsection (12)* provides that a member of An Garda Síochána acting under a warrant issued under this section may require the name and address of any person present and arrest any person who obstructs or attempts to obstruct the search, or who fails to give his name or address, or who gives a name or address which the member reasonably believes to be false. *Subsection (13)* provides for penalties for (i) obstructing the effecting of the warrant, (ii) refusal to supply name and address or (iii) giving a false or misleading name or address. *Subsection (14)* provides that where material has been supplied by another state and an undertaking was given that the material would be used for a particular purpose, the material may not be used for any other purpose without the consent of that state. *Subsection (15)* clarifies that the power to issue a search warrant under this section does not affect any other power under law to issue a search warrant. *Subsection (16)* defines "evidence" and "member state" as used in this section.

Section 75: Search for particular evidence for use outside State

Subsection (1) provides that this section applies to a request from a designated state for help in obtaining specified evidence for the purpose of a criminal investigation or proceedings, where a search power exists domestically in relation to the conduct giving rise to the offence. *Subsection (2)* limits the application of the section to (a) cases where the offence is punishable under both the law of the State and that of a member state by imprisonment for at least six months, or (b) cases where the offence is punishable under Irish law by at least six months' imprisonment and where it is being prosecuted in the member state by administrative authorities, whose decision may give rise to criminal proceedings. *Subsection (3)* provides that the section does not apply to a request from a designated state (other than a member state) unless dual criminality applies. *Subsection (4)* specifies that this section also applies to a request from a member state made under Part 4 of this Act, relating to the freezing of evidence, where a penalty of not less than three months applies in the member state concerned. Under *subsections (5)* and *(6)*, the Minister may send a request to which this section applies along with any related documents to the Commissioner of An Garda Síochána for compliance, provided that an assurance has been given by the requesting authority that any material furnished will not, without prior consent, be used for any purpose other than that permitted by the relevant international instrument or specified in the request and that the material will be returned when no longer required unless the Minister indicates otherwise. *Subsection (7)* provides that either the consent of the occupier or a legal authorisation is required for a member of An Garda Síochána to enter a place in furtherance of a request. *Subsection (8)* provides that unless the material sought is

already in the possession of An Garda Síochána, a member of An Garda Síochána of at least the rank of inspector must apply to a judge of the District Court for the district where the evidence is situated for a production order. *Subsection (9)* sets out the requirements to be met in order for such an order to be issued, namely that this section is applicable and that the person named possesses the required material. *Subsection (10)* provides that an order will require any person in possession of the evidence to produce it to the Garda Síochána so that they may take it away or to give the member access to it. An order may require a person who appears to the judge to be entitled to grant entry to the place to allow a member of the Garda Síochána to enter the place to obtain access to the material. This subsection also provides that where a person entitled to grant a Garda entry does not do so, that the Garda can enter and search the place; access, examine and take away evidence found there and to take such steps as may be necessary for preserving the evidence and preventing interference with it. *Subsection (11)* provides that where evidence consists of information on a computer the order has effect as to require the material to be produced in a form which is legible and comprehensible and which can be taken away. *Subsection (12)* provides that an order authorises a member to remove or copy any documentary evidence, notwithstanding any obligation on secrecy or restriction imposed by statute or otherwise, except for documents subject to legal privilege. *Subsection (13)* provides that evidential material will be dealt with in accordance with the request. *Subsection (14)* provides for a judge to amend or terminate such an order. *Subsection (15)* provides that a member of the Garda Síochána acting under a warrant issued under this section may require the name and address of any person present at a place where a search is being carried out. Any person who obstructs or attempts to obstruct the search, or who fails to give his name or address, or who gives a name or address which the member reasonably believes to be false may be arrested. *Subsection (16)* provides for penalties for (i) obstructing the effecting of the warrant, (ii) failure to comply with a requirement in an order under this section or (iii) giving a false or misleading name or address. The penalty is a fine not exceeding €2,500 or imprisonment for a term of not more than 6 months or both. *Subsection (17)* provides for the privilege of material supplied by or on behalf of the government of another state to a Government Department or other State agency where an undertaking was given that the material would only be used for a specified purpose, unless that government consents. *Subsection (18)* clarifies that this section is without prejudice to the provisions of section 74 dealing with search for evidence for use outside the State. *Subsection (19)* is a technical provision defining “evidential material” and “member state” as used in this section.

Chapter 3

Identification evidence

Section 76: Definitions (Chapter 3)

This section provides definitions of certain terms used in this Chapter.

Section 77: Identification evidence for use in State

Subsection (1) provides that a judge may issue a letter of request for assistance where it appears to him or her that criminal proceedings or a criminal investigation is underway and identification evidence for the purposes of the proceedings or investigation may be obtained from a designated state. Under *subsection (2)*, the Director of Public Prosecutions or a person charged in the proceedings may apply for a letter of request. *Subsections (3)* and *(4)* provide that the

letter of request may be transmitted to the appropriate authority and that in certain specified circumstances the Director of Public Prosecutions may issue and transmit a letter of request directly. *Subsection (5)* sets out what must be included in the letter of request. A statement is necessary that the evidence is required for a criminal investigation or for criminal proceedings and that it will be returned to the appropriate authority when no longer required for this purpose unless that authority indicates otherwise. A brief description of the conduct concerned must be provided and any other available information which will help to comply with the request. *Subsection (6)* provides that any evidence so obtained must only be used for the purpose specified in the request. *Subsection (7)* provides that the evidence provided will be returned when it is no longer required for the purposes for which it was supplied, unless the authority indicates otherwise. *Subsection (8)* provides that a report of the taking of the evidence signed by an appropriate person or a certified record of the evidence kept by the appropriate authority is admissible as evidence without further proof. *Subsection (9)* defines “appropriate authority” as used in this section.

Section 78: Identification evidence for use outside State

This section sets out what must be included in a request from a designated state to obtain identification evidence. A statement is necessary that the evidence is required in connection with criminal proceedings or a criminal investigation and a description of the conduct concerned is also required.

Section 79: Action on request

Subsection (1) provides that the Minister may send a request which complies with the provisions set out in section 78 to the Commissioner of An Garda Síochána for action. The Minister must be satisfied that any evidence furnished in response to the request will not be used for a purpose other than that specified in the request without the Minister’s consent and that the evidence will be returned or destroyed once no longer required. *Subsection (2)* provides that if the evidence is not in the possession of An Garda Síochána, a member of An Garda Síochána shall inform the person from whom the evidence is required of the nature of the evidence, that it has been requested in connection with criminal proceedings or a criminal investigation in another state, of his or her right to refuse to provide the evidence and that if consent is not given, this fact may be used in proceedings in the designated state. *Subsection (3)* provides for the taking of the evidence following consent. *Subsection (4)* provides for the giving of identification evidence by a person in prison. Such evidence may only be taken if it relates to an offence other than that for which the person is in prison. *Subsection (5)* provides that intimate bodily samples may only be taken by a doctor or a nurse and dental impressions by a doctor or dentist. *Subsection (6)* provides for forensic testing of certain specified samples. *Subsection (7)* lays out provisions for the taking of hair samples. *Subsection (8)* outlines the particulars that must be recorded when identification evidence is taken. *Subsection (9)* provides for the transmission of identification evidence to the requesting authority. *Subsections (10)* and *(11)* provide for the destruction of the evidence and any records of any analysis of such evidence and for the possible extension of time limits in relation to destruction. *Subsection (12)* defines certain terms as used in this section.

PART 6

OTHER FORMS OF ASSISTANCE

Chapter 1

Service of documents

Sections 80, 81 and 82 are based on sections 49 and 50 of the Criminal Justice Act, 1994. They have been amended in light of operational experience and for the purpose of giving effect to Article 5 of the 2000 Convention and Article 16 of the Second Additional Protocol.

Section 80: Documents for service outside State

Subsection (1) provides that a court in this country may issue a document to be served on a person present in another state in the context of criminal proceedings. *Subsections (2) and (3)* provide, where required, for the translation of the document into a language understood by the person on whom it is to be served. *Subsection (4)* provides that if the document requires the recipient to appear in proceedings, a penalty for non-appearance will not be referred to in the document, and this subsection also sets out what information must accompany the document. *Subsections (5) and (6)* provide that non-compliance with a requirement specified in the document does not constitute contempt of court and the person may not be compelled to attend the relevant proceedings unless the document is subsequently served on the person in the State. *Subsections (7) and (8)* provide that a person who is in the State as a defendant or witness in compliance with a requirement of the document may not be acted against in respect of an offence committed before arriving in the State other than, in the case of a defendant, an offence specified in the document. *Subsection (9)* makes provision for the cessation of the immunity specified in subsections (7) and (8).

Section 81: Mode of service

Subsection (1) provides that a document referred to in section 80 may be served in a designated state by post. *Subsection (2)* provides that it may be transmitted to a designated state with a request for it to be served by a method other than by post in accordance with the relevant international instrument. *Subsection (3)* relates to service in a member state and lays out the conditions under which service by a method other than post may be requested. *Subsection (4)* provides that such a document may be served in a state other than a designated state by arrangement by the Minister.

Section 82: Service of documents in State

Subsection (1) provides that this section applies to a request for service of a document requiring a person to appear as a defendant or witness in criminal proceedings in a designated state and to any other document issued by a court or authority in that state in relation to criminal proceedings. *Subsection (2)* provides for the document to be served by post, unless the request specifies that personal service is required. *Subsections (3) and (4)* provide for personal service of the document if requested and for translation of the document if required. *Subsection (5)* sets out the conditions under which personal service can be undertaken. *Subsection (6)* provides that the Commissioner of the Garda Síochána shall cause the document and the notice provided for in subsection (11) to be served and send proof of service to the Minister for transmission to the requesting authority. If service is not possible the Minister shall be informed indicating the reason for non-service. *Subsection (7)* provides that a person served with a document under this section is under no obligation under the

law of the State to comply with it. *Subsections (8) and (9)* provide that a document requiring a person to appear as a defendant or witness in criminal proceedings in a state may not be served until an assurance is given that the person will not be acted against, should he or she appear, in respect of any conduct taking place prior to his or her departure from the State (other than, in the case of a defendant, that already specified in the document). Conditions for the cessation of the immunity provided in subsections (8) and (9) are set out at *subsection (10)*. *Subsection (11)* provides that a notice must accompany a document served under this section and that the notice shall state that there is no obligation on the person to comply, the provisions of either subsection 8 or 9 as appropriate, and the provisions in subsection (10). The notice will also indicate that the person served may wish to seek legal advice as to the possible consequences of failing to comply with the document served. It should further state that under the law of the designated state the person may not have the same rights and privileges as apply in the State in relation to criminal proceedings. *Subsection (12)* provides for the translation, if required, of that notice.

Chapter 2

Examining objects and sites

Section 83: Examining objects and sites

This section gives effect to provisions in the United Nations Convention against Corruption and the United Nations Convention against Transnational Organised Crime which provide for mutual assistance to be afforded for the purpose of examining objects and sites.

Subsection (1) provides that the Central Authority, on request from the Director of Public Prosecutions, may transmit a request to a designated state for the examination of an object or site in that state. The Director of Public Prosecutions may transmit the request directly to the appropriate authority in the designated state. Under *subsection (2)*, a request from a designated state for the examination of a site or object will be sent by the Minister to the Commissioner of the Garda Síochána for execution. *Subsection (3)* requires requests under this section to include a description of the site or object to ensure it can be identified. *Subsection (4)* provides that the provisions of section 74 of this Act relating to searches for evidence for use outside the State will apply to requests for the examination of a site or object, with the necessary modifications relating to the issue of warrants under subsection (8) of section 74. *Subsection (5)* confirms that subsection (4) is without prejudice to the provisions of section 97 relating to the presence of representatives of a requesting state at the execution of a request in the State.

Chapter 3

Restitution

The purpose of Chapter 3 is to give effect to the provisions in Article 8 of the 2000 Convention and Article 12 of the Second Additional Protocol.

Section 84: Restitution of stolen property from designated state

Subsections (1) and (2) provide that an order for restitution may be made under the Criminal Justice (Theft and Fraud Offences) Act 2001 with regard to property in a designated state, without prejudice to the rights of any valid third parties in relation to the property

concerned. *Subsection (3)* provides that, on receipt of an application from a person entitled to recover the property, a copy of the order shall be sent by the Central Authority to the appropriate authority in the designated state. *Subsection (4)* sets out the information that must accompany the request.

Section 85: Request to State for restitution of stolen property

This section provides at *subsection (1)* for a request to be made for property in the State obtained by criminal means to be placed at the disposal of the requesting authority in order for it to be returned to its owner. *Subsection (2)* provides that the request must be in writing and sets out the information that must accompany such a request.

Section 86: Action on request

This section provides at *subsection (1)* that on receipt of a request which meets the criteria set out at section 85, the Minister may cause an application to be made to the District Court for a restitution order for the property concerned. *Subsection (2)* provides for notice of the application to be given to any person affected or appearing to be affected by such an order unless that person's whereabouts cannot reasonably be ascertained.

Section 87: Order for restitution

This section provides at *subsection (1)* that on receipt of an application, the District Court, if satisfied that sections 85 and 86(2) have been complied with and that the property is in the possession of the person specified, may order that the property be delivered to the member in charge of the Garda Síochána station specified in the application. *Subsection (2)* provides for delivery of the property to the requesting authority. *Subsection (3)* provides that an order may also be made for the delivery of property in the custody of An Garda Síochána. *Subsection (4)* sets out the circumstances in which a restitution order may not be made. An order will not be made where the property is required as evidence in criminal or civil proceedings or if the person claiming to own the property has not been given an opportunity to make representations as to why the order should not be made. *Subsection (5)* creates an offence of failure to comply with an order under this section and sets down consequent penalties on conviction. *Subsection (6)* clarifies that a judge of the District Court in a district where either some or all of the property is located may make an order under this section.

Chapter 4

Controlled Deliveries

The purpose of this Chapter is to give effect to Article 12 of the 2000 Convention and Article 18 of the Second Additional Protocol.

Section 88: Interpretation (Chapter 4)

This section provides definitions of terms used in this Chapter. *Subsection (2)* clarifies that references in this Chapter to the competent authority in the State are to be construed as references to the Minister.

Section 89: Controlled delivery in designated state

Subsection (1) provides that a request may be made to a designated state to allow a delivery to be made in that state by specified persons or persons of a specified description including members of An Garda Síochána and customs and excise officers. *Subsection (2)*

provides that any such request must include details of the offence to which the controlled delivery relates.

Section 90: Controlled delivery in the State

This section provides at *subsection (1)* for a request to be made by a designated state for a controlled delivery to be made in the State. Specified persons or persons of a specified description from that designated state may be permitted to participate in the operation. *Subsection (2)* provides that details of the offence to which the controlled delivery relates must be included in the request. *Subsection (3)* outlines the conditions to be met for the request to be granted. The competent authority must be satisfied that the controlled delivery is being made for the purposes of an investigation into an offence and that there are reasonable grounds for believing that a controlled delivery is in the public interest. *Subsection (4)* provides that if the controlled delivery is concerned with the importation of illegal drugs, the delivery will be regulated in accordance with the agreed procedures specified which apply between customs and excise authorities, An Garda Síochána and the Naval Service. *Subsection (5)* provides that if the controlled delivery is concerned with a revenue offence, customs and excise officers shall control the delivery. Under *subsection (6)*, deliveries relating to other offences shall be under the control of An Garda Síochána. *Subsection (7)* provides that certain actions requested by a person from the designated state may be taken if such actions are possible. *Subsection (8)* states that the Memorandum of Understanding and the Operational Protocol referred to at *subsection (4)* have been placed in the Oireachtas Library.

Section 91: Amendment of Garda Síochána Act 2005

This section amends section 51 of the Garda Síochána Act 2005. The amendment to that Act enables members of An Garda Síochána to serve outside the State as members of a joint investigation team, in the making of a controlled delivery or on secondment to an international organisation where the Minister has consented.

Section 92: Application of Criminal Justice (Joint Investigation Teams) Act 2004 in relation to controlled deliveries

This section provides for provisions of the Criminal Justice (Joint Investigations Teams) Act 2004 to apply to a person participating in a controlled delivery. The relevant provisions relate to criminal and civil liability and the use of information.

PART 7

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

The purpose of this Part is to enable effect to be given in Irish law to the Ireland-US Bilateral Treaty on Mutual Legal Assistance, signed in 2001, as amended by the EU-US Agreement on Mutual Legal Assistance, signed in 2003.

Section 93: Definitions (Part 7)

This section provides definitions of certain terms used within this Part.

Section 94: Application in State of Ireland-US Treaty

This section provides at *subsections (1)* and *(2)* for the Ireland-US Treaty to have the force of law in the State and for judicial notice to be taken of it. *Subsection (3)* provides for the mutual assistance

provisions of this Act, including the making, variation and discharge of orders, to have effect between the State and the USA. *Subsection (4)* provides that section 7 of the Joint Investigation Teams Act, 2004 applies to a joint investigation team established under the Ireland-US Treaty. *Subsections (5) and (6)* provide for data protection and specify that Article 7 of the Treaty dealing with the use of personal data does not override the relevant provision of the Data Protection Act, 1988. *Subsection (7)* provides that a court may take into account the Explanatory Note and the EU-US Agreement, as appropriate, when interpreting provisions of the EU-US Agreement or of the Ireland-US Treaty.

PART 8

MISCELLANEOUS

Section 95: Exchange of information concerning terrorist offences between Europol, Eurojust and member states

This section gives effect to aspects of the 2005 Council Decision on the exchange of information and co-operation concerning terrorist offences. Article 2(1) of the Council Decision requires member states to designate a specialised service within its police force or other law enforcement authority which shall have access to and collect all relevant information concerning criminal investigations with respect to terrorist offences and to send such information to Europol. This provision of the Council Decision is given effect to by *subsection (1)* of this section which designates as the specialized service the national unit designated under the Europol Act 1997. *Subsection (2)* provides for Article 2(2) of the Council Decision. Under this subsection, the Minister may designate an authority or authorities as Eurojust national correspondent under Article 2(2).

Section 96: Application and amendment of Criminal Justice (Joint Investigation Teams) Act 2004

Subsection (1) provides that the Criminal Justice (Joint Investigation Teams) Act 2004 will apply to designated states as well as to member states. *Subsection (2)* amends section 9 of the Criminal Justice (Joint Investigations Teams) Act 2004 by including provision for officers of an authority of a state designated by the Minister under section 4 of this Act to participate in joint investigation teams. The purpose of the amendment is to allow participants in joint investigation teams from countries which are designated for mutual assistance purposes.

Section 97: Presence of representatives of requesting state at execution of request

Subsection (1) provides that the Minister may, at the request of a designated state, authorise a representative of that state to be present at the execution of its request in this State. Under *subsection (2)*, such authorisation may be subject to such conditions as the Minister decides and *subsection (3)* clarifies that the consent of the person affected by the request to the presence of the representative of a requesting state is not required. *Subsection (4)* provides that the representative is subject to the direction of the Gardaí and will have access to the same places and objects and may be authorised to propose questions and suggest measures of investigation. *Subsection (5)* imposes a requirement of confidentiality on the representative so present.

Section 98: Presence of members of Garda Síochána at execution of request in designated state

This section provides that a member of the Garda Síochána present at the execution of a request in a designated state is bound by confidentiality in regard to information obtained from his or her presence in the state and any such information is not admissible in proceedings until a decision on the transmission of the documents relating to the execution of the request has been adjudicated in the designated state.

Section 99: Use of information or evidence obtained in response to request in designated state

This section provides that information or evidence obtained in response to a request by a court or the Director of Public Prosecutions may not be used for any purpose other than those for which the request was made unless such use is in accordance with the relevant international instrument.

Section 100: Disclosure prejudicing investigation

This provision is based on section 58 of the Criminal Justice Act 1994. *Subsection (1)* provides that where a request is made relating to a criminal investigation, any person who knows or suspects that such an investigation is underway and discloses any information likely to prejudice the investigation is guilty of an offence. *Subsection (2)* specifies the penalties to apply to a person found guilty in this regard. *Subsection (3)* provides that it is a defence if a person can prove that he or she did not know or suspect that the information disclosed could prejudice the investigation or if he or she had reasonable excuse to disclose the information or had lawful authority in this regard.

Section 101: Liability of officers of body corporate

This section is based on section 59 of the Criminal Justice Act 1994. *Subsection (1)* provides that where an offence under this Act is committed by a corporate body and it is proved that a director, manager, secretary or other officer, or anybody acting as such, consented to, assisted in or allowed the offence to occur, then that person is guilty of an offence and may be proceeded against. *Subsection (2)* provides that subsection (1) also applies to members of a body corporate. *Subsection (3)* extends the provisions of this section to apply to unincorporated bodies.

Section 102: Evidence in proceedings (general)

This section provides at *subsection (1)* that, in any proceedings, a request or supporting document, an order or warrant, a record of such an order or warrant or a record of the service of a document in a designated state, which is signed on behalf of the authority making the request, is admissible, without further proof, as evidence of the matters mentioned therein. *Subsection (2)* provides for the admissibility as evidence, without further proof, of a document relating to the identity of an item required as evidence, the continuity of its custody or the integrity of its condition and signed by a person appearing to have custody of the item. *Subsection (3)* provides that a certified document purporting to be a translation of a document listed in subsection (1) or (2) or of a statement or document mentioned in section 62(8) [evidence from a person], 73(8) [evidence arising from a search] or 77(8) [identification evidence] is admissible, without further proof, as evidence of the translation. *Subsection (4)* ensures that a document purporting to be a copy of a document listed in subsection (1) or (2) of this section, certified as a copy and bearing a seal of the authority concerned, is to be considered a true copy.

Subsection (5) allows the admissibility, without further proof, as evidence of a certificate or seal, a document purporting to be a certificate given by a court, tribunal or authority in a designated state and bearing the required seal. *Subsection (6)* provides that a document purporting to be the text of a reservation or declaration under an international instrument and signed by an officer of the Department of Foreign Affairs is admissible as proof of the reservation or declaration.

Section 103: Provisional measures

Subsection (1) provides that where criminal proceedings or a criminal investigation are underway in a designated state and a competent authority of that state requests the Minister to take provisional measures within the meaning of the relevant international instrument, an application may be made to the High Court for the requested measures to be granted. Such provisional measures could relate to the preservation of evidence, maintaining an existing situation or protecting endangered legal interests. *Subsection (2)* provides that the High Court may grant such provisional measures as it has power to grant. *Subsection (3)* provides that the court may specify the period for which the provisional measures shall last and any conditions or limitations to apply. *Subsection (4)* allows the High Court to refuse to grant the measures sought if jurisdictional considerations make it inexpedient to do so.

Section 104: Recognition of third party rights

This section gives effect to Article 32 of the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

Subsection (1) provides that a court may, when having regard to the right of third parties, recognise any decision relating to those rights made in the designated state. *Subsection (2)* provides that such recognition may be refused if the third parties did not have the opportunity to assert their rights or the decision in the designated state is incompatible with a court decision in this State or recognition would be contrary to public policy.

Section 105: Amendment of Criminal Justice Act 1994

This section amends certain provisions of the Criminal Justice Act, 1994. The principal amendments are the substitution of “freezing” for “restraint” in the relevant sections; the extension of the making of confiscation orders to indictable offences irrespective of whether the person concerned has been convicted of the offence on indictment; the conversion to euro of a table relating the amount outstanding under a confiscation order to the period of imprisonment applying and clarification that revenue offences include offences relating to taxes, duties, customs and exchange regulation under the meaning of the 1994 Act. Section 63 of the 1994 Act is amended by the addition of a provision permitting members of An Garda Síochána to take away or be given access to documents and to make and take away copies of such documents which may be retained as evidence.

Section 106: Amendment of section 8(7) of Criminal Assets Bureau Act 1996

This section amends the Criminal Assets Bureau Act 1996 by clarifying that the provisions of section 8 of that Act relating to the appointment of Bureau Officers and their functions is subject to the provisions of section 5 relating to the functions of the Bureau, operating through its officers.

Section 107: Personal data protection

This section provides at *subsection (1)* that the provisions of the relevant instrument apply in relation to personal data obtained under the terms of the instrument. *Subsection (2)* clarifies that this is without prejudice to the Data Protection Act 1988. *Subsection (3)* provides that the Data Protection Acts 1998 and 2003 apply to the data concerned.

Section 108: Exercise of powers by judge of District Court outside district court district

This section clarifies that section 32A of the Courts (Supplemental Provisions) Act 1961 (as inserted by section 180 of the Criminal Justice Act 2006) relating to the exercise of powers by a judge of the District Court, while outside his or her district, also applies to the exercise of powers under specific sections of this Act relating to searches for evidence and restitution orders. Section 32A of the 1961 Act will also apply to the exercise by a District Court judge of powers relating to production orders under section 63 of the Criminal Justice Act 1994 (as substituted by section 105(g) of this Act).

Section 109: Regulations

This is a standard provision. It enables regulations to be made by the Minister to give effect to this Act or any of the international instruments covered by this Act.

Section 110: Expenses

This is a standard provision providing for the payment of any expenses incurred in the operation of this Act out of moneys provided by the Oireachtas.

Section 111: Laying of order or regulations before each House of the Oireachtas

This is a standard technical provision dealing with the laying of orders or regulations made under the Act before both Houses of the Oireachtas.

Schedules

The English text of the mutual legal assistance instruments, or provisions thereof, being given effect to in this Act are appended in the Schedules. The Schedules also include for ease of reference the text of the 1959 European Convention on Mutual Assistance in Criminal Matters and the first Additional Protocol thereto.

Financial Implications

As the mutual legal assistance provisions laid out in the Act are intended to make mutual legal assistance arrangements more efficient (many of which are already in place), it is not envisaged that there will be significant costs arising. Some additional costs may arise in relation to the new forms of mutual assistance which come under the terms of the Act. It is not, however, possible to quantify the extent of such expenditure until the Act becomes operational. The costs will be met from the Office of the Minister for Justice Vote, the Courts Vote, the Garda Síochána Vote or the Office of the Revenue Commissioners Vote as appropriate.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí
Aibréan 2008.*