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**INTERNATIONAL
AND EUROPEAN
COOPERATION IN
CRIMINAL MATTERS**

**Legal Sources
Fall 2025**

	ECHR Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 15, Rome 4 November 1959 (ETS 5)
	ECHR – AP 6 Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, Strasbourg, 28 April 1983 (ETS 114)
	ECHR – AP 7 Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Strasbourg, 22. November 1984 (ETS 117)
	ECHR – AP 13 Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, Vilnius, 3 May 2002 (ETS 187)
	ECExtr European Convention on Extradition, Paris 13 December 1957 (ETS 24)
	ECExtr – AP Additional Protocol to the European Convention on Extradition, Strasbourg 15 October 1975 (ETS 86)
	ECExtr – AP 2 Second Additional Protocol to the European Convention on Extradition, Strasbourg 17 March 1978 (ETS 98)
	ECExtr – AP 3 Third Additional Protocol to the European Convention on Extradition, Strasbourg 10 November 2010 (ETS 209)
	ECExtr – AP 4 Fourth Additional Protocol to the European Convention on Extradition, Vienna, 20 September 2012 (ETS 212)
	ECMAC European Convention on Mutual Assistance in Criminal Matters. Strasbourg 20 April 1959 (ETS 30)
	ECMAC – AP 2 Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg 8 November 2001 (ETS 182)
	CTSP Convention on the Transfer of Sentenced Persons, Strasbourg 21 March 1983 (ETS 112)
	CTSP – AP Additional Protocol to the Convention on the Transfer of Sentenced Persons, Strasbourg 18 December 1997 (ETS 167)
	CISA (articles 48-69) Convention implementing the Schengen Agreement of 14 June 1985, OJ 22.9.2000, 19
	EAW Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), OJ 18.7.2002, L 190
	EIO Directive 214/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ 1.4.2014, L130
196.1	FIAA Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act) of 18 December 2015
351.1	IMAC Federal Act on International Mutual Assistance in Criminal Matters (Mutual Assistance Act) of 20 March 1981

**Convention for the Protection of Human Rights and Fundamental Freedoms
as amended by Protocol No. 15^{*}
as from its entry into force on 1 August 2021**

Rome, 4.XI.1950

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention,¹

Have agreed as follows:

Article 1 – Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

¹ Text amended in accordance with the provisions of Protocol No. 15 (CETS No. 213) as from its entry into force on 1 August 2021.

Section I – Rights and freedoms

Article 2 – Right to life

- 1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- 2 Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a in defence of any person from unlawful violence;
 - b in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 – Prohibition of torture

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

Article 4 – Prohibition of slavery and forced labour

- 1 No one shall be held in slavery or servitude.
- 2 No one shall be required to perform forced or compulsory labour.
- 3 For the purpose of this article the term "forced or compulsory labour" shall not include:
 - a any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - b any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - c any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - d any work or service which forms part of normal civic obligations.

Article 5 – Right to liberty and security

- 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a the lawful detention of a person after conviction by a competent court;
 - b the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - c the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - d the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

- e the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - f the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- 2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
 - 3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
 - 4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
 - 5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6 – Right to a fair trial

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3 Everyone charged with a criminal offence has the following minimum rights:
 - a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - b to have adequate time and facilities for the preparation of his defence;
 - c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 – No punishment without law

- 1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

- 2 This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8 – Right to respect for private and family life

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9 – Freedom of thought, conscience and religion

- 1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 – Freedom of expression

- 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 – Freedom of assembly and association

- 1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
- 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12 – Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13 – Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15 – Derogation in time of emergency

- 1 In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
- 2 No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
- 3 Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 16 – Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17 – Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18 – Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Section II – European Court of Human Rights

Article 19 – Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

Article 20 – Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21 – Criteria for office ¹

- 1 The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
- 2 Candidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly, further to Article 22.
- 3 The judges shall sit on the Court in their individual capacity.
- 4 During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22 – Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

Article 23 – Terms of office and dismissal ¹

- 1 The judges shall be elected for a period of nine years. They may not be re-elected.
- 2 The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.
- 3 No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

Article 24 – Registry and rapporteurs

- 1 The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court.
- 2 When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's registry.

Article 25 – Plenary Court

- 1 The plenary Court shall
 - a elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
 - b set up Chambers, constituted for a fixed period of time;
 - c elect the Presidents of the Chambers of the Court; they may be re-elected;
 - d adopt the rules of the Court;
 - e elect the Registrar and one or more Deputy Registrars;
 - f make any request under Article 26, paragraph 2.

¹ Text amended in accordance with the provisions of Protocol No. 15 (CETS No. 213) as from its entry into force on 1 August 2021.

Article 26 – Single-judge formation, committees, Chambers and Grand Chamber

- 1 To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
- 2 At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.
- 3 When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.
- 4 There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.
- 5 The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

Article 27 – Competence of single judges

- 1 A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.
- 2 The decision shall be final.
- 3 If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

Article 28 – Competence of committees

- 1 In respect of an application submitted under Article 34, a committee may, by a unanimous vote,
 - a declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or
 - b declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.
- 2 Decisions and judgments under paragraph 1 shall be final.
- 3 If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.b.

Article 29 – Decisions by Chambers on admissibility and merits

- 1 If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.

- 2 A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30 – Relinquishment of jurisdiction to the Grand Chamber ¹

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber.

Article 31 – Powers of the Grand Chamber

The Grand Chamber shall:

- a determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;
- b decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and
- c consider requests for advisory opinions submitted under Article 47.

Article 32 – Jurisdiction of the Court

- 1 The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.
- 2 In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33 – Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34 – Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35 – Admissibility criteria

- 1 The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken. ¹
- 2 The Court shall not deal with any application submitted under Article 34 that
 - a is anonymous; or

¹ Text amended in accordance with the provisions of Protocol No. 15 (CETS No. 213) as from its entry into force on 1 August 2021.

- b is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
- 3 The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
 - a the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or
 - b the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits.¹
- 4 The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36 – Third party intervention

- 1 In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
- 2 The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.
- 3 In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

Article 37 – Striking out applications

- 1 The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that:
 - a the applicant does not intend to pursue his application; or
 - b the matter has been resolved; or
 - c for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

- 2 The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38 – Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

¹ Text amended in accordance with the provisions of Protocol No. 15 (CETS No. 213) as from its entry into force on 1 August 2021.

Article 39 – Friendly settlements

- 1 At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.
- 2 Proceedings conducted under paragraph 1 shall be confidential.
- 3 If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.
- 4 This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

Article 40 – Public hearings and access to documents

- 1 Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
- 2 Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41 – Just satisfaction

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42 – Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

Article 43 – Referral to the Grand Chamber

- 1 Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
- 2 A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
- 3 If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44 – Final judgments

- 1 The judgment of the Grand Chamber shall be final.
- 2 The judgment of a Chamber shall become final:
 - a when the parties declare that they will not request that the case be referred to the Grand Chamber; or
 - b three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
 - c when the panel of the Grand Chamber rejects the request to refer under Article 43.
- 3 The final judgment shall be published.

Article 45 – Reasons for judgments and decisions

- 1 Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
- 2 If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46 – Binding force and execution of judgments

- 1 The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
- 2 The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
- 3 If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
- 4 If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
- 5 If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

Article 47 – Advisory opinions

- 1 The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
- 2 Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
- 3 Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48 – Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

Article 49 – Reasons for advisory opinions

- 1 Reasons shall be given for advisory opinions of the Court.
- 2 If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
- 3 Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50 – Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

Article 51 – Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

Section III – Miscellaneous provisions

Article 52 – Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Article 53 – Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

Article 54 – Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Article 55 – Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

Article 56 – Territorial application

- 1 Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
- 2 The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
- 3 The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
- 4 Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

Article 57 – Reservations

- 1 Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
- 2 Any reservation made under this article shall contain a brief statement of the law concerned.

Article 58 – Denunciation

- 1 A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
- 2 Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
- 3 Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
- 4 The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

Article 59 – Signature and ratification

- 1 This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
- 2 The European Union may accede to this Convention.
- 3 The present Convention shall come into force after the deposit of ten instruments of ratification.
- 4 As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
- 5 The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

(*) This page contains the text of the Convention as amended by its Protocol No. 15 (CETS No. 213) as from the date of its entry into force on 1 August 2021.

The text of the Convention had been previously amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971, of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, of Protocol No. 11 (ETS No. 155) which entered into force on 1 November 1998 and of Protocol No. 14 (CETS No. 194), which entered into force on 1 June 2010, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970.

As of the entry into force of Protocol No. 11 (ETS No. 155), on 1 November 1998, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS no. 146) had lost its purpose.



Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty^{*}

Strasbourg, 28.IV.1983

The member States of the Council of Europe, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty,

Have agreed as follows:

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.

Article 2 – Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 4 – Prohibition of reservations⁽¹⁾

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 5 – Territorial application

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

(*) Headings of articles added and text amended according to the provisions of Protocol No. 11 (ETS No. 155) as from its entry into force on 1 November 1998.

(1) Text amended according to the provisions of Protocol No. 11 (ETS No. 155).

- 2 Any State may at any later date, by a 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 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 date of receipt of such notification by the Secretary General.

Article 6 – Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 7 – Signature and ratification

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 8 – Entry into force

- 1 This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.
- 2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

Article 9 – Depositary functions

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Protocol in accordance with Articles 5 and 8;
- d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 28th day of April 1983, 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.



Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms^{*}

Strasbourg, 22.XI.1984

The member States of the Council of Europe signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1 – Procedural safeguards relating to expulsion of aliens

- 1 An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
 - a to submit reasons against his expulsion,
 - b to have his case reviewed, and
 - c to be represented for these purposes before the competent authority or a person or persons designated by that authority.
- 2 An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

Article 2 – Right of appeal in criminal matters

- 1 Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.
- 2 This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

(*) Headings of articles added and text amended according to the provisions of Protocol No. 11 (ETS No. 155) as from its entry into force on 1 November 1998.

Article 3 – Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 4 – Right not to be tried or punished twice

- 1 No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
- 2 The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
- 3 No derogation from this article shall be made under Article 15 of the Convention.

Article 5 – Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This article shall not prevent States from taking such measures as are necessary in the interests of the children.

Article 6 – Territorial application

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and state the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.
- 2 Any State may at any later date, by a 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 two months after the date of receipt by the Secretary General of such declaration.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.
- 4 A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention. ⁽¹⁾

(1) Text amended according to the provisions of Protocol No. 11 (ETS No. 155).

- 5 The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.
- 6 Any State which has made a declaration in accordance with paragraph 1 or 2 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol. ⁽¹⁾

Article 7 – Relationship to the Convention ⁽²⁾

As between the States Parties, the provisions of Articles 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 8 – Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 9 – Entry into force

- 1 This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.
- 2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 10 – Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Protocol in accordance with Articles 6 and 9;
- d any other act, notification or declaration relating to this Protocol.

(1) Text added according to the provisions of Protocol No. 11 (ETS No. 155).

(2) Text amended according to the provisions of Protocol No. 11 (ETS No. 155).

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 22nd day of November 1984, in English and 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.



Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances

Vilnius, 3.V.2002

The member States of the Council of Europe signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 3 – Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 4 – Territorial application

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

- 2 Any State may at any later date, by a 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 or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 5 – Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 6 – Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 7 – Entry into force

- 1 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.
- 2 In respect of any member State which subsequently expresses its consent to be bound by it, 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 ratification, acceptance or approval.

Article 8 – Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Protocol in accordance with Articles 4 and 7;
- d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Vilnius, this 3rd day of May 2002, 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.



European Convention on Extradition

Paris, 13.XII.1957

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that this purpose can be attained by the conclusion of agreements and by common action in legal matters;

Considering that the acceptance of uniform rules with regard to extradition is likely to assist this work of unification,

Have agreed as follows:

Article 1 – Obligation to extradite

The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.

Article 2 – Extraditable offences

- 1 Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.
- 2 If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.
- 3 Any Contracting Party whose law does not allow extradition for certain of the offences referred to in paragraph 1 of this article may, in so far as it is concerned, exclude such offences from the application of this Convention.

- 4 Any Contracting Party which wishes to avail itself of the right provided for in paragraph 3 of this article shall, at the time of deposit of its instrument of ratification or accession, transmit to the Secretary General of the Council of Europe either a list of the offences for which extradition is allowed or a list of those for which it is excluded and shall at the same time indicate the legal provisions which allow or exclude extradition. The Secretary General of the Council shall forward these lists to the other signatories.
- 5 If extradition is subsequently excluded in respect of other offences by the law of a Contracting Party, that Party shall notify the Secretary General. The Secretary General shall inform the other signatories. Such notification shall not take effect until three months from the date of its receipt by the Secretary General.
- 6 Any Party which avails itself of the right provided for in paragraphs 4 or 5 of this article may at any time apply this Convention to offences which have been excluded from it. It shall inform the Secretary General of the Council of such changes, and the Secretary General shall inform the other signatories.
- 7 Any Party may apply reciprocity in respect of any offences excluded from the application of the Convention under this article.

Article 3 – Political offences

- 1 Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.
- 2 The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.
- 3 The taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention.
- 4 This article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international convention of a multilateral character.

Article 4 – Military offences

Extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of this Convention.

Article 5 – Fiscal offences

Extradition shall be granted, in accordance with the provisions of this Convention, for offences in connection with taxes, duties, customs and exchange only if the Contracting Parties have so decided in respect of any such offence or category of offences.

Article 6 – Extradition of nationals

- 1 a A Contracting Party shall have the right to refuse extradition of its nationals.

- b Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term "nationals" within the meaning of this Convention.
 - c Nationality shall be determined as at the time of the decision concerning extradition. If, however, the person claimed is first recognised as a national of the requested Party during the period between the time of the decision and the time contemplated for the surrender, the requested Party may avail itself of the provision contained in subparagraph a of this article.
- 2 If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request.

Article 7 – Place of commission

- 1 The requested Party may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory.
- 2 When the offence for which extradition is requested has been committed outside the territory of the requesting Party, extradition may only be refused if the law of the requested Party does not allow prosecution for the same category of offence when committed outside the latter Party's territory or does not allow extradition for the offence concerned.

Article 8 – Pending proceedings for the same offences

The requested Party may refuse to extradite the person claimed if the competent authorities of such Party are proceeding against him in respect of the offence or offences for which extradition is requested.

Article 9 – *Non bis in idem*

Extradition shall not be granted if final judgment has been passed by the competent authorities of the requested Party upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences.

Article 10 – Lapse of time

Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested Party, become immune by reason of lapse of time from prosecution or punishment.

Article 11 – Capital punishment

If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death-penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death-penalty will not be carried out.

Article 12 – The request and supporting documents

- 1 The request shall be in writing and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between two or more Parties.
- 2 The request shall be supported by:
 - a the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;
 - b a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and
 - c a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

Article 13 – Supplementary information

If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Convention, the latter Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof.

Article 14 – Rule of speciality

- 1 A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:
 - a when the Party which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention;
 - b when that person, having had an opportunity to leave the territory of the Party to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.
- 2 The requesting Party may, however, take any measures necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.
- 3 When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 15 – Re-extradition to a third state

Except as provided for in Article 14, paragraph 1.b, the requesting Party shall not, without the consent of the requested Party, surrender to another Party or to a third State a person surrendered to the requesting Party and sought by the said other Party or third State in respect of offences committed before his surrender. The requested Party may request the production of the documents mentioned in Article 12, paragraph 2.

Article 16 – Provisional arrest

- 1 In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.
- 2 The request for provisional arrest shall state that one of the documents mentioned in Article 12, paragraph 2.a, exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.
- 3 A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request.
- 4 Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.
- 5 Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

Article 17 – Conflicting requests

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

Article 18 – Surrender of the person to be extradited

- 1 The requested Party shall inform the requesting Party by the means mentioned in Article 12, paragraph 1, of its decision with regard to the extradition.
- 2 Reasons shall be given for any complete or partial rejection.
- 3 If the request is agreed to, the requesting Party shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
- 4 Subject to the provisions of paragraph 5 of this article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The requested Party may refuse to extradite him for the same offence.

- 5 If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party. The two Parties shall agree a new date for surrender and the provisions of paragraph 4 of this article shall apply.

Article 19 – Postponed or conditional surrender

- 1 The requested Party may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that Party or, if he has already been convicted, in order that he may serve his sentence in the territory of that Party for an offence other than that for which extradition is requested.
- 2 The requested Party may, instead of postponing surrender, temporarily surrender the person claimed to the requesting Party in accordance with conditions to be determined by mutual agreement between the Parties.

Article 20 – Handing over of property

- 1 The requested Party shall, in so far as its law permits and at the request of the requesting Party, seize and hand over property:
 - a which may be required as evidence, or
 - b which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.
- 2 The property mentioned in paragraph 1 of this article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.
- 3 When the said property is liable to seizure or confiscation in the territory of the requested Party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.
- 4 Any rights which the requested Party or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the requested Party as soon as possible after the trial.

Article 21 – Transit

- 1 Transit through the territory of one of the Contracting Parties shall be granted on submission of a request by the means mentioned in Article 12, paragraph 1, provided that the offence concerned is not considered by the Party requested to grant transit as an offence of a political or purely military character having regard to Articles 3 and 4 of this Convention.
- 2 Transit of a national, within the meaning of Article 6, of a country requested to grant transit may be refused.
- 3 Subject to the provisions of paragraph 4 of this article, it shall be necessary to produce the documents mentioned in Article 12, paragraph 2.
- 4 If air transport is used, the following provisions shall apply:

- a when it is not intended to land, the requesting Party shall notify the Party over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 12, paragraph 2.a exists. In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 16, and the requesting Party shall submit a formal request for transit;
 - b when it is intended to land, the requesting Party shall submit a formal request for transit.
- 5 A Party may, however, at the time of signature or of the deposit of its instrument of ratification of, or accession to, this Convention, declare that it will only grant transit of a person on some or all of the conditions on which it grants extradition. In that event, reciprocity may be applied.
- 6 The transit of the extradited person shall not be carried out through any territory where there is reason to believe that his life or his freedom may be threatened by reason of his race, religion, nationality or political opinion.

Article 22 – Procedure

Except where this Convention otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested Party.

Article 23 – Language to be used

The documents to be produced shall be in the language of the requesting or requested Party. The requested Party may require a translation into one of the official languages of the Council of Europe to be chosen by it.

Article 24 – Expenses

- 1 Expenses incurred in the territory of the requested Party by reason of extradition shall be borne by that Party.
- 2 Expenses incurred by reason of transit through the territory of a Party requested to grant transit shall be borne by the requesting Party.
- 3 In the event of extradition from a non-metropolitan territory of the requested Party, the expenses occasioned by travel between that territory and the metropolitan territory of the requesting Party shall be borne by the latter. The same rule shall apply to expenses occasioned by travel between the non-metropolitan territory of the requested Party and its metropolitan territory.

Article 25 – Definition of "detention order"

For the purposes of this Convention, the expression "detention order" means any order involving deprivation of liberty which has been made by a criminal court in addition to or instead of a prison sentence.

Article 26 – Reservations

- 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 27 – Territorial application

- 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 the United Kingdom of Great Britain and Northern Ireland, to the Channel Islands and to the Isle of Man.
- 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, who shall notify the other Parties of such declaration.
- 4 By direct arrangement between two or more Contracting Parties, the application of this Convention may be extended, subject to the conditions laid down in the arrangement, to any territory of such Parties, other than the territories mentioned in paragraphs 1, 2 and 3 of this article, for whose international relations any such Party is responsible.

Article 28 – Relations between this Convention and bilateral Agreements

- 1 This Convention shall, in respect of those countries to which it applies, supersede the provisions of any bilateral treaties, conventions or agreements governing extradition between any two Contracting Parties.
- 2 The Contracting Parties may conclude between themselves bilateral or multilateral agreements only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.
- 3 Where, as between two or more Contracting Parties, extradition takes place on the basis of a uniform law, the Parties shall be free to regulate their mutual relations in respect of extradition exclusively in accordance with such a system notwithstanding the provisions of this Convention. The same principle shall apply as between two or more Contracting Parties each of which has in force a law providing for the execution in its territory of warrants of arrest issued in the territory of the other Party or Parties. Contracting Parties which exclude or may in the future exclude the application of this Convention as between themselves in accordance with this paragraph shall notify the Secretary General of the Council of Europe accordingly. The Secretary General shall inform the other Contracting Parties of any notification received in accordance with this paragraph.

Article 29 – Signature, ratification and entry into force

- 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 30 – Accession

- 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 receives 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 31 – Denunciation

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 32 – Notifications

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 deposit of any instrument of ratification or accession;
- b the date of entry into force of this Convention;
- c any declaration made in accordance with the provisions of Article 6, paragraph 1, and of Article 21, paragraph 5;
- d any reservation made in accordance with Article 26, paragraph 1;
- e the withdrawal of any reservation in accordance with Article 26, paragraph 2;
- f any notification of denunciation received in accordance with the provisions of Article 31 and by the date on which such denunciation will take effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Paris, this 13th day of December 1957, in English and French, both texts being equally authentic, 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 governments.



Additional Protocol to the European Convention on Extradition

Strasbourg, 15.X.1975

The member States of the Council of Europe, signatory to this Protocol,

Having regard to the provisions of the European Convention on Extradition opened for signature in Paris on 13 December 1957 (hereinafter referred to as "the Convention") and in particular Articles 3 and 9 thereof;

Considering that it is desirable to supplement these Articles with a view to strengthening the protection of humanity and of individuals,

Have agreed as follows:

Chapter I

Article 1

For the application of Article 3 of the Convention, political offences shall not be considered to include the following:

- a the crimes against humanity specified in the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 by the General Assembly of the United Nations;
- b the violations specified in Article 50 of the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Article 51 of the 1949 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of Armed Forces at Sea, Article 130 of the 1949 Geneva Convention relative to the Treatment of Prisoners of War and Article 147 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War;
- c any comparable violations of the laws of war having effect at the time when this Protocol enters into force and of customs of war existing at that time, which are not already provided for in the above-mentioned provisions of the Geneva Conventions.

Chapter II

Article 2

Article 9 of the Convention shall be supplemented by the following text, the original Article 9 of the Convention becoming paragraph 1 and the under-mentioned provisions becoming paragraphs 2, 3 and 4:

- “2 The extradition of a person against whom a final judgment has been rendered in a third State, Contracting Party to the Convention, for the offence or offences in respect of which the claim was made, shall not be granted:
- a if the afore-mentioned judgment resulted in his acquittal;
 - b if the term of imprisonment or other measure to which he was sentenced:
 - i has been completely enforced;
 - ii has been wholly, or with respect to the part not enforced, the subject of a pardon or an amnesty;
 - c if the court convicted the offender without imposing a sanction.
- 3 However, in the cases referred to in paragraph 2, extradition may be granted:
- a if the offence in respect of which judgment has been rendered was committed against a person, an institution or any thing having public status in the requesting State;
 - b if the person on whom judgment was passed had himself a public status in the requesting State;
 - c if the offence in respect of which judgment was passed was committed completely or partly in the territory of the requesting State or in a place treated as its territory.
- 4 The provisions of paragraphs 2 and 3 shall not prevent the application of wider domestic provisions relating to the effect of *ne bis in idem* attached to foreign criminal judgments.”

Chapter III

Article 3

- 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 4

- 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 5

- 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 preceeding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 8 of this Protocol.

Article 6

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it does not accept one or the other of Chapters I or II.
- 2 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.
- 3 No reservation may be made to the provisions of this Protocol.

Article 7

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 8

- 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 9

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;
- 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 Article 3 thereof;

- d any declaration received in pursuance of the provisions of Article 5 and any withdrawal of such a declaration;
- e any declaration made in pursuance of the provisions of Article 6, paragraph 1;
- f the withdrawal of any declaration carried out in pursuance of the provisions of Article 6, paragraph 2;
- g any notification received in pursuance of the provisions of Article 8 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 15th day of October 1975, 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 each of the signatory and acceding States.



Second Additional Protocol to the European Convention on Extradition

Strasbourg, 17.III.1978

The member States of the Council of Europe, signatory to this Protocol,

Desirous of facilitating the application of the European Convention on Extradition opened for signature in Paris on 13 December 1957 (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

Paragraph 2 of Article 2 of the Convention shall be supplemented by the following provision:

"This right shall also apply to offences which are subject only to pecuniary sanctions."

Chapter II

Article 2

Article 5 of the Convention shall be replaced by the following provisions:

"Fiscal offences"

- 1 For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.
- 2 Extradition 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, custom or exchange regulation of the same kind as the law of the requesting Party."

Chapter III

Article 3

The Convention shall be supplemented by the following provisions:

"Judgments *in absentia*"

- 1 When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him *in absentia*, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognised as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence. This decision will authorise the requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.
- 2 When the requested Party informs the person whose extradition has been requested of the judgment rendered against him *in absentia*, the requesting Party shall not regard this communication as a formal notification for the purposes of the criminal procedure in that State".

Chapter IV

Article 4

The Convention shall be supplemented by the following provisions:

"Amnesty

Extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law."

Chapter V

Article 5

Paragraph 1 of Article 12 of the Convention shall be replaced by the following provisions:

"The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party; however, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more Parties."

Chapter VI

Article 6

- 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 7

- 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 8

- 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 9

- 1 Reservations made by a State to a provision of the Convention shall be applicable also to this Protocol, unless that State otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.
- 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;
 - b not to accept Chapter II, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article 2;
 - c not to accept Chapter III, or to accept only paragraph 1 of Article 3;
 - d not to accept Chapter IV;
 - e not to accept Chapter V.
- 3 Any Contracting Party may withdraw a reservation it has made in accordance with the foregoing paragraph by means of 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 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 6 and 7;
- d any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 8;
- e any declaration received in pursuance of the provisions of paragraph 1 of Article 9;
- f any reservation made in pursuance of the provisions of paragraph 2 of Article 9;
- g the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 9;
- 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.



Third Additional Protocol to the European Convention on Extradition

Strasbourg, 10.XI.2010

The member States of the Council of Europe, signatory to this Protocol,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Desirous of strengthening their individual and collective ability to respond to crime;

Having regard to the provisions of the European Convention on Extradition (ETS No. 24) opened for signature in Paris on 13 December 1957 (hereinafter referred to as "the Convention"), as well as the two Additional Protocols thereto (ETS Nos. 86 and 98), done at Strasbourg on 15 October 1975 and on 17 March 1978, respectively;

Considering it desirable to supplement the Convention in certain respects in order to simplify and accelerate the extradition procedure when the person sought consents to extradition,

Have agreed as follows:

Article 1 – Obligation to extradite under the simplified procedure

Contracting Parties undertake to extradite to each other under the simplified procedure as provided for by this Protocol persons sought in accordance with Article 1 of the Convention, subject to the consent of such persons and the agreement of the requested Party.

Article 2 – Initiation of the procedure

- 1 When the person sought is the subject of a request for provisional arrest in accordance with Article 16 of the Convention, the extradition referred to in Article 1 of this Protocol shall not be subject to the submission of a request for extradition and supporting documents in accordance with Article 12 of the Convention. The following information provided by the requesting Party shall be regarded as adequate by the requested Party for the purpose of applying Articles 3 to 5 of this Protocol and for taking its final decision on extradition under the simplified procedure:
 - a the identity of the person sought, including his or her nationality or nationalities when available;
 - b the authority requesting the arrest;
 - c the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment, as well as a confirmation that the person is sought in accordance with Article 1 of the Convention;

- d the nature and legal description of the offence, including the maximum penalty or the penalty imposed in the final judgment, including whether any part of the judgment has already been enforced;
 - e information concerning lapse of time and its interruption;
 - f a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought;
 - g in so far as possible, the consequences of the offence;
 - h in cases where extradition is requested for the enforcement of a final judgment, whether the judgment was rendered in absentia.
- 2 Notwithstanding paragraph 1, supplementary information may be requested if the information provided for in the said paragraph is insufficient to allow the requested Party to decide on extradition.
- 3 In cases where the requested Party has received a request for extradition in accordance with Article 12 of the Convention, this Protocol shall apply *mutatis mutandis*.

Article 3 – Obligation to inform the person

Where a person sought for the purpose of extradition is arrested in accordance with Article 16 of the Convention, the competent authority of the requested Party shall inform that person, in accordance with its law and without undue delay, of the request relating to him or her and of the possibility of applying the simplified extradition procedure in accordance with this Protocol.

Article 4 – Consent to extradition

- 1 The consent of the person sought and, if appropriate, his or her express renunciation of entitlement to the rule of speciality shall be given before the competent judicial authority of the requested Party in accordance with the law of that Party.
- 2 Each Party shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the legal consequences. To that end, the person sought shall have the right to legal counsel. If necessary, the requested Party shall ensure that the person sought has the assistance of an interpreter.
- 3 Consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be recorded in accordance with the law of the requested Party.
- 4 Subject to paragraph 5, consent and, where appropriate, renunciation, as referred to in paragraph 1, shall not be revoked.
- 5 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, declare that consent and, where appropriate, renunciation of entitlement to the rule of speciality, may be revoked. The consent may be revoked until the requested Party takes its final decision on extradition under the simplified procedure. In this case, the period between the notification of consent and that of its revocation shall not be taken into consideration in establishing the periods provided for in Article 16, paragraph 4, of the Convention. Renunciation of entitlement to the rule of speciality may be revoked until the surrender of the person concerned. Any revocation of the consent to extradition or the renunciation of entitlement to the rule of speciality shall be recorded in

accordance with the law of the requested Party and notified to the requesting Party immediately.

Article 5 – Renunciation of entitlement to the rule of speciality

Each State may declare, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, that the rules laid down in Article 14 of the Convention do not apply where the person extradited by this State, in accordance with Article 4 of this Protocol:

- a consents to extradition; or
- b consents to extradition and expressly renounces his or her entitlement to the rule of speciality.

Article 6 – Notifications in case of provisional arrest

- 1 So that the requesting Party may submit, where applicable, a request for extradition in accordance with Article 12 of the Convention, the requested Party shall notify it, as soon as possible and no later than ten days after the date of provisional arrest, whether or not the person sought has given his or her consent to extradition.
- 2 In exceptional cases where the requested Party decides not to apply the simplified procedure in spite of the consent of the person sought, it shall notify this to the requesting Party sufficiently in advance so as to allow the latter to submit a request for extradition before the period of forty days established under Article 16 of the Convention expires.

Article 7 – Notification of the decision

Where the person sought has given his or her consent to extradition, the requested Party shall notify the requesting Party of its decision with regard to the extradition under the simplified procedure within twenty days of the date on which the person consented.

Article 8 – Means of communication

For the purpose of this Protocol, communications may be forwarded through electronic or any other means affording evidence in writing, under conditions which allow the Parties to ascertain their authenticity, as well as through the International Criminal Police Organisation (Interpol). In any case, the Party concerned shall, upon request and at any time, submit the originals or authenticated copies of documents.

Article 9 – Surrender of the person to be extradited

Surrender shall take place as soon as possible, and preferably within ten days from the date of notification of the extradition decision.

Article 10 – Consent given after expiry of the deadline laid down in Article 6

Where the person sought has given his or her consent after expiry of the deadline of ten days laid down in Article 6, paragraph 1, of this Protocol, the requested Party shall apply the simplified procedure as provided for in this Protocol if it has not yet received a request for extradition within the meaning of Article 12 of the Convention.

Article 11 – Transit

In the event of transit under the conditions laid down in Article 21 of the Convention, where a person is to be extradited under a simplified procedure to the requesting Party, the following provisions shall apply:

- a the request for transit shall contain the information required in Article 2, paragraph 1, of this Protocol;
- b the Party requested to grant transit may request supplementary information if the information provided for in sub-paragraph a is insufficient for the said Party to decide on transit.

Article 12 – Relationship with the Convention and other international instruments

- 1 The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention. As regards the Parties to this Protocol, the provisions of the Convention shall apply, *mutatis mutandis*, to the extent that they are compatible with the provisions of this Protocol.
- 2 The provisions of this Protocol are without prejudice to the application of Article 28, paragraphs 2 and 3, of the Convention concerning the relations between the Convention and bilateral or multilateral agreements.

Article 13 – Friendly settlement

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 necessary to facilitate a friendly settlement of any difficulty which may arise out of its interpretation and application.

Article 14 – 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 ratified, accepted or approved the Convention, or does so simultaneously. 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, this 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 15 – 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 an instrument of accession with the Secretary General of the Council of Europe.

- 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 16 – 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 time, 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 of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 17 – Declarations and reservations

- 1 Reservations made by a State to any provision of the Convention or the two Additional Protocols thereto shall also be applicable to this Protocol, unless that State 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 the two Additional Protocols thereto.
- 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 Article 2, paragraph 1, of this Protocol. No other reservation may be made.
- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, make the declarations provided for in Article 4, paragraph 5, and in Article 5 of this Protocol.
- 4 Any State may wholly or partially withdraw a reservation or declaration it has made in accordance with this Protocol, 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.
- 5 Any Party which has made a reservation to Article 2, paragraph 1, of this Protocol, in accordance with paragraph 2 of this article may not claim the application of that paragraph by another Party. It may, however, if its reservation is partial or conditional, claim the application of that paragraph in so far as it has itself accepted it.

Article 18 – 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 six months after the date of receipt of the notification by the Secretary General of the Council of Europe.
- 3 Denunciation of the Convention automatically entails denunciation of this Protocol.

Article 19 – 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 14 and 15;
- d any declaration made in accordance with Article 4, paragraph 5, Article 5, Article 16 and Article 17, paragraph 1, and any withdrawal of such a declaration;
- e any reservation made in accordance with Article 17, paragraph 2, and any withdrawal of such a reservation;
- f any notification received in pursuance of the provisions of Article 18 and the date on which denunciation takes effect;
- g 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 10th day of November 2010, 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.



Fourth Additional Protocol to the European Convention on Extradition

Vienna, 20.IX.2012

The member States of the Council of Europe, signatory to this Protocol,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Desirous of strengthening their individual and collective ability to respond to crime;

Having regard to the provisions of the European Convention on Extradition (ETS No. 24) opened for signature in Paris on 13 December 1957 (hereinafter referred to as "the Convention"), as well as the three Additional Protocols thereto (ETS Nos. 86 and 98, CETS No. 209), done at Strasbourg on 15 October 1975, on 17 March 1978 and on 10 November 2010, respectively;

Considering it desirable to modernise a number of provisions of the Convention and supplement it in certain respects, taking into account the evolution of international co-operation in criminal matters since the entry into force of the Convention and the Additional Protocols thereto;

Have agreed as follows:

Article 1 – Lapse of time

Article 10 of the Convention shall be replaced by the following provisions:

“Lapse of time

- 1 Extradition shall not be granted when the prosecution or punishment of the person claimed has become statute-barred according to the law of the requesting Party.
- 2 Extradition shall not be refused on the ground that the prosecution or punishment of the person claimed would be statute-barred according to the law of the requested Party.
- 3 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 not to apply paragraph 2:
 - a when the request for extradition is based on offences for which that State has jurisdiction under its own criminal law; and/or
 - b if its domestic legislation explicitly prohibits extradition when the prosecution or punishment of the person claimed would be statute-barred according to its law.

- 4 When determining whether prosecution or punishment of the person sought would be statute-barred according to its law, any Party having made a reservation pursuant to paragraph 3 of this article shall take into consideration, in accordance with its law, any acts or events that have occurred in the requesting Party, in so far as acts or events of the same nature have the effect of interrupting or suspending time-limitation in the requested Party.”

Article 2 – The request and supporting documents

- 1 Article 12 of the Convention shall be replaced by the following provisions:

“The request and supporting documents

- 1 The request shall be in writing. It shall be submitted by the Ministry of Justice or other competent authority of the requesting Party to the Ministry of Justice or other competent authority of the requested Party. A State wishing to designate another competent authority than the Ministry of Justice shall notify the Secretary General of the Council of Europe of its competent authority at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, as well as of any subsequent changes relating to its competent authority.
- 2 The request shall be supported by:
 - a a copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;
 - b a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions, including provisions relating to lapse of time, shall be set out as accurately as possible; and
 - c a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his or her identity, nationality and location.”
- 2 Article 5 of the Second Additional Protocol to the Convention shall not apply as between Parties to the present Protocol.

Article 3 – Rule of speciality

Article 14 of the Convention shall be replaced by the following provisions:

“Rule of speciality

- 1 A person who has been extradited shall not be arrested, prosecuted, tried, sentenced or detained with a view to the carrying out of a sentence or detention order, nor shall he or she be for any other reason restricted in his or her personal freedom for any offence committed prior to his or her surrender other than that for which he or she was extradited, except in the following cases:

- a when the Party which surrendered him or her consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention. The decision shall be taken as soon as possible and no later than 90 days after receipt of the request for consent. Where it is not possible for the requested Party to comply with the period provided for in this paragraph, it shall inform the requesting Party, providing the reasons for the delay and the estimated time needed for the decision to be taken;
 - b when that person, having had an opportunity to leave the territory of the Party to which he or she has been surrendered, has not done so within 30 days of his or her final discharge, or has returned to that territory after leaving it.
- 2 The requesting Party may, however:
- a carry out pre-trial investigations, except for measures restricting the personal freedom of the person concerned;
 - b take any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time;
 - c take any measures necessary to remove the person from its territory.
- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession or at any later time, declare that, by derogation from paragraph 1, a requesting Party which has made the same declaration may, when a request for consent is submitted pursuant to paragraph 1.a, restrict the personal freedom of the extradited person, provided that:
- a the requesting Party notifies, either at the same time as the request for consent pursuant to paragraph 1.a, or later, the date on which it intends to apply such restriction; and
 - b the competent authority of the requested Party explicitly acknowledges receipt of this notification.
- The requested Party may express its opposition to that restriction at any time, which shall entail the obligation for the requesting Party to end the restriction immediately, including, where applicable, by releasing the extradited person.
- 4 When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.”

Article 4 – Re-extradition to a third State

The text of Article 15 of the Convention shall become paragraph 1 of that article and shall be supplemented by the following second paragraph:

- “2 The requested Party shall take its decision on the consent referred to in paragraph 1 as soon as possible and no later than 90 days after receipt of the request for consent, and, where applicable, of the documents mentioned in Article 12, paragraph 2. Where it is not possible for the requested Party to comply with the period provided for in this paragraph, it shall inform the requesting Party, providing the reasons for the delay and the estimated time needed for the decision to be taken.”

Article 5 – Transit

Article 21 of the Convention shall be replaced by the following provisions:

“Transit

- 1 Transit through the territory of one of the Contracting Parties shall be granted on submission of a request for transit, provided that the offence concerned is not considered by the Party requested to grant transit as an offence of a political or purely military character having regard to Articles 3 and 4 of this Convention.
- 2 The request for transit shall contain the following information:
 - a the identity of the person to be extradited, including his or her nationality or nationalities when available;
 - b the authority requesting the transit;
 - c the existence of an arrest warrant or other order having the same legal effect or of an enforceable judgment, as well as a confirmation that the person is to be extradited;
 - d the nature and legal description of the offence, including the maximum penalty or the penalty imposed in the final judgment;
 - e a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought.
- 3 In the event of an unscheduled landing, the requesting Party shall immediately certify that one of the documents mentioned in Article 12, paragraph 2.a exists. This notification shall have the effect of a request for provisional arrest as provided for in Article 16, and the requesting Party shall submit a request for transit to the Party on whose territory this landing has occurred.
- 4 Transit of a national, within the meaning of Article 6, of a country requested to grant transit may be refused.
- 5 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 to grant transit of a person only on some or all of the conditions on which it grants extradition.
- 6 The transit of the extradited person shall not be carried out through any territory where there is reason to believe that his or her life or freedom may be threatened by reason of his or her race, religion, nationality or political opinion.”

Article 6 – Channels and means of communication

The Convention shall be supplemented by the following provisions:

“Channels and means of communication

- 1 For the purpose of the Convention, communications may be forwarded by using electronic or any other means affording evidence in writing, under conditions which allow the Parties to ascertain their authenticity. In any case, the Party concerned shall, upon request and at any time, submit the originals or authenticated copies of documents.
- 2 The use of the International Criminal Police Organization (Interpol) or of diplomatic channels is not excluded.
- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that, for the purpose of Article 12 and Article 14, paragraph 1.a, of the Convention, it reserves the right to require the original or authenticated copy of the request and supporting documents.”

Article 7 – Relationship with the Convention and other international instruments

- 1 The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention. As regards the Parties to this Protocol, the provisions of the Convention shall apply, *mutatis mutandis*, to the extent that they are compatible with the provisions of this Protocol.
- 2 The provisions of this Protocol are without prejudice to the application of Article 28, paragraphs 2 and 3, of the Convention concerning the relations between the Convention and bilateral or multilateral agreements.

Article 8 – Friendly settlement

The Convention shall be supplemented by the following provisions:

“Friendly settlement

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of the Convention and the Additional Protocols thereto and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of their interpretation and application.”

Article 9 – Signature and entry into force

- 1 This Protocol shall be open for signature by the member States of the Council of Europe which are Parties 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 ratified, accepted or approved the Convention, or does so simultaneously. 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, this 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 10 – 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 an instrument of accession with the Secretary General of the Council of Europe.
- 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 11 – Temporal scope

This Protocol shall apply to requests received after the entry into force of the Protocol between the Parties concerned.

Article 12 – 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 time, 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 of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 13 – Declarations and reservations

- 1 Reservations made by a State to the provisions of the Convention and the Additional Protocols thereto which are not amended by this Protocol shall also be applicable to this Protocol, unless that State 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 and the Additional Protocols thereto.
- 2 Reservations and declarations made by a State to any provision of the Convention which is amended by this Protocol shall not be applicable as between the Parties to this Protocol.
- 3 No reservation may be made in respect of the provisions of this Protocol, with the exception of the reservations provided for in Article 10, paragraph 3, and Article 21, paragraph 5, of the Convention as amended by this Protocol, and in Article 6, paragraph 3, of this Protocol. Reciprocity may be applied to any reservation made.

- 4 Any State may wholly or partially withdraw a reservation or declaration it has made in accordance with this Protocol, by means of a notification addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

Article 14 – 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 six months after the date of receipt of the notification by the Secretary General of the Council of Europe.
- 3 Denunciation of the Convention automatically entails denunciation of this Protocol.

Article 15 – 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 9 and 10;
- d any reservation made in accordance with Article 10, paragraph 3, and Article 21, paragraph 5, of the Convention as amended by this Protocol, as well as Article 6, paragraph 3, of this Protocol, and any withdrawal of such a reservation;
- e any declaration made in accordance with Article 12, paragraph 1, and Article 14, paragraph 3, of the Convention as amended by this Protocol, as well as Article 12 of this Protocol, and any withdrawal of such a declaration;
- f any notification received in pursuance of the provisions of Article 14 and the date on which denunciation takes effect;
- g 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 Vienna, this 20th day of September 2012, 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.



European Convention on Mutual Assistance in Criminal Matters

Strasbourg, 20.IV.1959

Preamble

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity among its members;

Believing that the adoption of common rules in the field of mutual assistance in criminal matters will contribute to the attainment of this aim;

Considering that such mutual assistance is related to the question of extradition, which has already formed the subject of a Convention signed on 13th December 1957,

Have agreed as follows:

Chapter I – General provisions

Article 1

- 1 The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.
- 2 This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

Article 2

Assistance may be refused:

- a if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;
- b if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of its country.

Chapter II – Letters rogatory

Article 3

- 1 The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.
- 2 If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.
- 3 The requested Party may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in which case the requested Party shall make every effort to comply with the request.

Article 4

On the express request of the requesting Party the requested Party shall state the date and place of execution of the letters rogatory. Officials and interested persons may be present if the requested Party consents.

Article 5

- 1 Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, reserve the right to make the execution of letters rogatory for search or seizure of property dependent on one or more of the following conditions:
 - a that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party;
 - b that the offence motivating the letters rogatory is an extraditable offence in the requested country;
 - c that execution of the letters rogatory is consistent with the law of the requested Party.
- 2 Where a Contracting Party makes a declaration in accordance with paragraph 1 of this article, any other Party may apply reciprocity.

Article 6

- 1 The requested Party may delay the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings.
- 2 Any property, as well as original records or documents, handed over in execution of letters rogatory shall be returned by the requesting Party to the requested Party as soon as possible unless the latter Party waives the return thereof.

Chapter III – Service of writs and records of judicial verdicts – Appearance of witnesses, experts and prosecuted persons

Article 7

- 1 The requested Party shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting Party.

Service may be effected by simple transmission of the writ or record to the person to be served. If the requesting Party expressly so requests, service shall be effected by the requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

- 2 Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested Party that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the requesting Party. The requested Party shall, if the requesting Party so requests, state whether service has been effected in accordance with the law of the requested Party. If service cannot be effected, the reasons shall be communicated immediately by the requested Party to the requesting Party.

- 3 Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, request that service of a summons on an accused person who is in its territory be transmitted to its authorities by a certain time before the date set for appearance. This time shall be specified in the aforesaid declaration and shall not exceed 50 days.

This time shall be taken into account when the date of appearance is being fixed and when the summons is being transmitted.

Article 8

A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting Party and is there again duly summoned.

Article 9

The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by the requesting Party shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place.

Article 10

- 1 If the requesting Party considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the requested Party shall invite the witness or expert to appear.

The requested Party shall inform the requesting Party of the reply of the witness or expert.

- 2 In the case provided for under paragraph 1 of this article the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.

- 3 If a specific request is made, the requested Party may grant the witness or expert an advance. The amount of the advance shall be endorsed on the summons and shall be refunded by the requesting Party.

Article 11

- 1 A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting Party shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 in so far as these are applicable.

Transfer may be refused:

- a if the person in custody does not consent;
 - b if his presence is necessary at criminal proceedings pending in the territory of the requested Party;
 - c if transfer is liable to prolong his detention, or
 - d if there are other overriding grounds for not transferring him to the territory of the requesting Party.
- 2 Subject to the provisions of Article 2, in a case coming within the immediately preceding paragraph, transit of the person in custody through the territory of a third State, Party to this Convention, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested.

A Contracting Party may refuse to grant transit to its own nationals.

- 3 The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his release.

Article 12

- 1 A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.
- 2 A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.
- 3 The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

Chapter IV – Judicial records

Article 13

- 1 A requested Party shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a Contracting Party and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case.
- 2 In any case other than that provided for in paragraph 1 of this article the request shall be complied with in accordance with the conditions provided for by the law, regulations or practice of the requested Party.

Chapter V – Procedure

Article 14

- 1 Requests for mutual assistance shall indicate as follows:
 - a the authority making the request,
 - b the object of and the reason for the request,
 - c where possible, the identity and the nationality of the person concerned, and
 - d where necessary, the name and address of the person to be served.
- 2 Letters rogatory referred to in Articles 3, 4 and 5 shall, in addition, state the offence and contain a summary of the facts.

Article 15

- 1 Letters rogatory referred to in Articles 3, 4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.
- 2 In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this article.
- 3 Requests provided for in paragraph 1 of Article 13 may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.
- 4 Requests for mutual assistance, other than those provided for in paragraphs 1 and 3 of this article and, in particular, requests for investigation preliminary to prosecution, may be communicated directly between the judicial authorities.
- 5 In cases where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).

- 6 A Contracting Party may, when signing this Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, give notice that some or all requests for assistance shall be sent to it through channels other than those provided for in this article, or require that, in a case provided for in paragraph 2 of this article, a copy of the letters rogatory shall be transmitted at the same time to its Ministry of Justice.
- 7 The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Contracting Parties which provide for the direct transmission of requests for assistance between their respective authorities.

Article 16

- 1 Subject to paragraph 2 of this article, translations of requests and annexed documents shall not be required.
- 2 Each Contracting Party may, when signing or depositing its instrument of ratification or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, reserve the right to stipulate that requests and annexed documents shall be addressed to it accompanied by a translation into its own language or into either of the official languages of the Council of Europe or into one of the latter languages, specified by it. The other Contracting Parties may apply reciprocity.
- 3 This article is without prejudice to the provisions concerning the translation of requests or annexed documents contained in the agreements or arrangements in force or to be made between two or more Contracting Parties.

Article 17

Evidence or documents transmitted pursuant to this Convention shall not require any form of authentication.

Article 18

Where the authority which receives a request for mutual assistance has no jurisdiction to comply therewith, it shall, *ex officio*, transmit the request to the competent authority of its country and shall so inform the requesting Party through the direct channels, if the request has been addressed through such channels.

Article 19

Reasons shall be given for any refusal of mutual assistance.

Article 20

Subject to the provisions of Article 10, paragraph 3, execution of requests for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested Party or the transfer of a person in custody carried out under Article 11.

Chapter VI – Laying of information in connection with proceedings

Article 21

- 1 Information laid by one Contracting Party with a view to proceedings in the courts of another Party shall be transmitted between the Ministries of Justice concerned unless a Contracting Party avails itself of the option provided for in paragraph 6 of Article 15.
- 2 The requested Party shall notify the requesting Party of any action taken on such information and shall forward a copy of the record of any verdict pronounced.
- 3 The provisions of Article 16 shall apply to information laid under paragraph 1 of this article.

Chapter VII – Exchange of information from judicial records

Article 22

Each Contracting Party shall inform any other Party of all criminal convictions and subsequent measures in respect of nationals of the latter Party, entered in the judicial records. Ministries of Justice shall communicate such information to one another at least once a year. Where the person concerned is considered a national of two or more other Contracting Parties, the information shall be given to each of these Parties, unless the person is a national of the Party in the territory of which he was convicted.

Chapter VIII – Final provisions

Article 23

- 1 Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.
- 2 Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary General of the Council of Europe.
- 3 A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

Article 24

A Contracting Party may, when signing the Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities.

Article 25

- 1 This Convention shall apply to the metropolitan territories of the Contracting Parties.
- 2 In respect of France, it shall also apply to Algeria and to the overseas Departments, and, in respect of Italy, it shall also apply to the territory of Somaliland under Italian administration.
- 3 The Federal Republic of Germany may extend the application of this Convention to the Land of Berlin by notice addressed to the Secretary General of the Council of Europe.

- 4 In respect of the Kingdom of the Netherlands, the Convention shall apply to its European territory. The Netherlands may extend the application of this Convention to the Netherlands Antilles, Surinam and Netherlands New Guinea by notice addressed to the Secretary General of the Council of Europe.
- 5 By direct arrangement between two or more Contracting Parties and subject to the conditions laid down in the arrangement, the application of this Convention may be extended to any territory, other than the territories mentioned in paragraphs 1, 2, 3 and 4 of this article, of one of these Parties, for the international relations of which any such Party is responsible.

Article 26

- 1 Subject to the provisions of Article 15, paragraph 7, and Article 16, paragraph 3, this Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties.
- 2 This Convention shall not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given field.
- 3 The Contracting Parties may conclude between themselves bilateral or multilateral agreements on mutual assistance in criminal matters only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.
- 4 Where, as between two or more Contracting Parties, mutual assistance in criminal matters is practised on the basis of uniform legislation or of a special system providing for the reciprocal application in their respective territories of measures of mutual assistance, these Parties shall, notwithstanding the provisions of this Convention, be free to regulate their mutual relations in this field exclusively in accordance with such legislation or system. Contracting Parties which, in accordance with this paragraph, exclude as between themselves the application of this Convention shall notify the Secretary General of the Council of Europe accordingly.

Article 27

- 1 This Convention shall be open to signature by the members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary General of the Council.
- 2 The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.
- 3 As regards any signatory ratifying subsequently the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

Article 28

- 1 The Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, provided that the resolution containing such invitation obtains the unanimous agreement of the members of the Council who have ratified the Convention.
- 2 Accession shall be by deposit with the Secretary General of the Council of an instrument of accession which shall take effect 90 days after the date of its deposit.

Article 29

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice to the Secretary General of the Council of Europe. Denunciation shall take effect six months after the date when the Secretary General of the Council received such notification.

Article 30

The Secretary General of the Council of Europe shall notify the members of the Council and the government of any State which has acceded to this Convention of:

- a the names of the signatories and the deposit of any instrument of ratification or accession;
- b the date of entry into force of this Convention;
- c any notification received in accordance with the provisions of Article 5 – paragraph 1, Article 7 – paragraph 3, Article 15 – paragraph 6, Article 16 – paragraph 2, Article 24, Article 25 – paragraphs 3 and 4, Article 26 – paragraph 4;
- d any reservation made in accordance with Article 23, paragraph 1;
- e the withdrawal of any reservation in accordance with Article 23, paragraph 2;
- f any notification of denunciation received in accordance with the provisions of Article 29 and the date on which such denunciation will take effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 20th day of April 1959, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to the signatory and acceding governments.



Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

Strasbourg, 8.XI.2001

The member States of the Council of Europe, signatory to this Protocol,

Having regard to their undertakings under the Statute of the Council of Europe;

Desirous of further contributing to safeguard human rights, uphold the rule of law and support the democratic fabric of society;

Considering it desirable to that effect to strengthen their individual and collective ability to respond to crime;

Decided to improve on and supplement in certain aspects the European Convention on Mutual Assistance in Criminal Matters done at Strasbourg on 20 April 1959 (hereinafter referred to as "the Convention"), as well as the Additional Protocol thereto, done at Strasbourg on 17 March 1978;

Taking into consideration the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981,

Have agreed as follows:

Chapter I

Article 1 – Scope

Article 1 of the Convention shall be replaced by the following provisions:

- "1 The Parties undertake promptly to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.
- 2 This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.
- 3 Mutual assistance may also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Party by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

- 4 Mutual assistance shall not be refused solely on the grounds that it relates to acts for which a legal person may be held liable in the requesting Party."

Article 2 – Presence of officials of the requesting Party

Article 4 of the Convention shall be supplemented by the following text, the original Article 4 of the Convention becoming paragraph 1 and the provisions below becoming paragraph 2:

- "2 Requests for the presence of such officials or interested persons should not be refused where that presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting Party and, therefore, likely to avoid the need for supplementary requests for assistance."

Article 3 – Temporary transfer of detained persons to the territory of the requesting Party

Article 11 of the Convention shall be replaced by the following provisions:

- "1 A person in custody whose personal appearance for evidentiary purposes other than for standing trial is applied for by the requesting Party shall be temporarily transferred to its territory, provided that he or she shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 of this Convention, in so far as these are applicable.

Transfer may be refused if:

- a the person in custody does not consent;
 - b his or her presence is necessary at criminal proceedings pending in the territory of the requested Party;
 - c transfer is liable to prolong his or her detention, or
 - d there are other overriding grounds for not transferring him or her to the territory of the requesting Party.
- 2 Subject to the provisions of Article 2 of this Convention, in a case coming within paragraph 1, transit of the person in custody through the territory of a third Party, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested. A Party may refuse to grant transit to its own nationals.
- 3 The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his or her release."

Article 4 – Channels of communication

Article 15 of the Convention shall be replaced by the following provisions:

- "1 Requests for mutual assistance, as well as spontaneous information, shall be addressed in writing by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels. However, they may be forwarded directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party and returned through the same channels.

- 2 Applications as referred to in Article 11 of this Convention and Article 13 of the Second Additional Protocol to this Convention shall in all cases be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.
- 3 Requests for mutual assistance concerning proceedings as mentioned in paragraph 3 of Article 1 of this Convention may also be forwarded directly by the administrative or judicial authorities of the requesting Party to the administrative or judicial authorities of the requested Party, as the case may be, and returned through the same channels.
- 4 Requests for mutual assistance made under Articles 18 and 19 of the Second Additional Protocol to this Convention may also be forwarded directly by the competent authorities of the requesting Party to the competent authorities of the requested Party.
- 5 Requests provided for in paragraph 1 of Article 13 of this Convention may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 of this Convention shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.
- 6 Requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the Convention may be made directly to the competent authorities. Any Contracting State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of this paragraph, deem competent authorities.
- 7 In urgent cases, where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).
- 8 Any Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to make the execution of requests, or specified requests, for mutual assistance dependent on one or more of the following conditions:
 - a that a copy of the request be forwarded to the central authority designated in that declaration;
 - b that requests, except urgent requests, be forwarded to the central authority designated in that declaration;
 - c that, in case of direct transmission for reasons of urgency, a copy shall be transmitted at the same time to its Ministry of Justice;
 - d that some or all requests for assistance shall be sent to it through channels other than those provided for in this article.
- 9 Requests for mutual assistance and any other communications under this Convention or its Protocols may be forwarded through any electronic or other means of telecommunication provided that the requesting Party is prepared, upon request, to produce at any time a written record of it and the original. However, any Contracting State, may by a declaration addressed at any time to the Secretary General of the Council of Europe, establish the conditions under which it shall be willing to accept and execute requests received by electronic or other means of telecommunication.
- 10 The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Parties which provide for the direct transmission of requests for assistance between their respective authorities."

Article 5 – Costs

Article 20 of the Convention shall be replaced by the following provisions:

- "1 Parties shall not claim from each other the refund of any costs resulting from the application of this Convention or its Protocols, except:
- a costs incurred by the attendance of experts in the territory of the requested Party;
 - b costs incurred by the transfer of a person in custody carried out under Articles 13 or 14 of the Second Additional Protocol to this Convention, or Article 11 of this Convention;
 - c costs of a substantial or extraordinary nature.
- 2 However, the cost of establishing a video or telephone link, costs related to the servicing of a video or telephone link in the requested Party, the remuneration of interpreters provided by it and allowances to witnesses and their travelling expenses in the requested Party shall be refunded by the requesting Party to the requested Party, unless the Parties agree otherwise.
- 3 Parties shall consult with each other with a view to making arrangements for the payment of costs claimable under paragraph 1.c above.
- 4 The provisions of this article shall apply without prejudice to the provisions of Article 10, paragraph 3, of this Convention."

Article 6 – Judicial authorities

Article 24 of the Convention shall be replaced by the following provisions:

"Any State shall at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities. It subsequently may, at any time and in the same manner, change the terms of its declaration."

Chapter II

Article 7 – Postponed execution of requests

- 1 The requested Party may postpone action on a request if such action would prejudice investigations, prosecutions or related proceedings by its authorities.
- 2 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.
- 3 If the request is postponed, reasons shall be given for the postponement. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

Article 8 – Procedure

Notwithstanding the provisions of Article 3 of the Convention, where requests specify formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to fundamental principles of its law, unless otherwise provided for in this Protocol.

Article 9 – Hearing by video conference

- 1 If a person is in one Party's territory and has to be heard as a witness or expert by the judicial authorities of another Party, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs 2 to 7.
- 2 The requested Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting Party by mutual agreement.
- 3 Requests for a hearing by video conference shall contain, in addition to the information referred to in Article 14 of the Convention, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.
- 4 The judicial authority of the requested Party shall summon the person concerned to appear in accordance with the forms laid down by its law.
- 5 With reference to hearing by video conference, the following rules shall apply:
 - a a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
 - b measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;
 - c the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party in accordance with its own laws;
 - d at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;
 - e the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Party.

- 6 Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Party to the competent authority of the requesting Party.
- 7 Each Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.
- 8 Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Parties concerned, in accordance with their national law and relevant international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.
- 9 Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to hearings by video conference involving the accused person or the suspect.

Article 10 – Hearing by telephone conference

- 1 If a person is in one Party's territory and has to be heard as a witness or expert by judicial authorities of another Party, the latter may, where its national law so provides, request the assistance of the former Party to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 6.
- 2 A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.
- 3 The requested Party shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.
- 4 A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the Convention, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.
- 5 The practical arrangements regarding the hearing shall be agreed between the Parties concerned. When agreeing such arrangements, the requested Party shall undertake to:
 - a notify the witness or expert concerned of the time and the venue of the hearing;
 - b ensure the identification of the witness or expert;
 - c verify that the witness or expert agrees to the hearing by telephone conference.
- 6 The requested Party may make its agreement subject, fully or in part, to the relevant provisions of Article 9, paragraphs 5 and 7.

Article 11 – Spontaneous information

- 1 Without prejudice to their own investigations or proceedings, the competent authorities of a Party may, without prior request, forward to the competent authorities of another Party information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under the Convention or its Protocols.
- 2 The providing Party may, pursuant to its national law, impose conditions on the use of such information by the receiving Party.
- 3 The receiving Party shall be bound by those conditions.
- 4 However, any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to be bound by the conditions imposed by the providing Party under paragraph 2 above, unless it receives prior notice of the nature of the information to be provided and agrees to its transmission.

Article 12 – Restitution

- 1 At the request of the requesting Party and without prejudice to the rights of bona fide third parties, the requested Party may place articles obtained by criminal means at the disposal of the requesting Party with a view to their return to their rightful owners.
- 2 In applying Articles 3 and 6 of the Convention, the requested Party may waive the return of articles either before or after handing them over to the requesting Party if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of bona fide third parties shall not be affected.
- 3 In the event of a waiver before handing over the articles to the requesting Party, the requested Party shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles.
- 4 A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Party to collect taxes or duties from the rightful owner.

Article 13 – Temporary transfer of detained persons to the requested Party

- 1 Where there is agreement between the competent authorities of the Parties concerned, a Party which has requested an investigation for which the presence of a person held in custody on its own territory is required may temporarily transfer that person to the territory of the Party in which the investigation is to take place.
- 2 The agreement shall cover the arrangements for the temporary transfer of the person and the date by which the person must be returned to the territory of the requesting Party.
- 3 Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Party.
- 4 The transferred person shall remain in custody in the territory of the requested Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from which the person was transferred applies for his or her release.
- 5 The period of custody in the territory of the requested Party shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Party.

- 6 The provisions of Article 11, paragraph 2, and Article 12 of the Convention shall apply *mutatis mutandis*.
- 7 Any Contracting State may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that before an agreement is reached under paragraph 1 of this article, the consent referred to in paragraph 3 of this article will be required, or will be required under certain conditions indicated in the declaration.

Article 14 – Personal appearance of transferred sentenced persons

The provisions of Articles 11 and 12 of the Convention shall apply *mutatis mutandis* also to persons who are in custody in the requested Party, pursuant to having been transferred in order to serve a sentence passed in the requesting Party, where their personal appearance for purposes of review of the judgement is applied for by the requesting Party.

Article 15 – Language of procedural documents and judicial decisions to be served

- 1 The provisions of this article shall apply to any request for service under Article 7 of the Convention or Article 3 of the Additional Protocol thereto.
- 2 Procedural documents and judicial decisions shall in all cases be transmitted in the language, or the languages, in which they were issued.
- 3 Notwithstanding the provisions of Article 16 of the Convention, if the authority that issued the papers knows or has reasons to believe that the addressee understands only some other language, the papers, or at least the most important passages thereof, shall be accompanied by a translation into that other language.
- 4 Notwithstanding the provisions of Article 16 of the Convention, procedural documents and judicial decisions shall, for the benefit of the authorities of the requested Party, be accompanied by a short summary of their contents translated into the language, or one of the languages, of that Party.

Article 16 – Service by post

- 1 The competent judicial authorities of any Party may directly address, by post, procedural documents and judicial decisions, to persons who are in the territory of any other Party.
- 2 Procedural documents and judicial decisions shall be accompanied by a report stating that the addressee may obtain information from the authority identified in the report, regarding his or her rights and obligations concerning the service of the papers. The provisions of paragraph 3 of Article 15 above shall apply to that report.
- 3 The provisions of Articles 8, 9 and 12 of the Convention shall apply *mutatis mutandis* to service by post.
- 4 The provisions of paragraphs 1, 2 and 3 of Article 15 above shall also apply to service by post.

Article 17 – Cross-border observations

- 1 Police officers of one of the Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, shall be authorised to continue their observation in the territory of another Party where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

On request, the observation will be entrusted to officers of the Party in whose territory it is carried out.

The request for assistance referred to in the first sub-paragraph must be sent to an authority designated by each Party and having jurisdiction to grant or to forward the requested authorisation.

- 2 Where, for particularly urgent reasons, prior authorisation of the other Party cannot be requested, the officers conducting the observation within the framework of a criminal investigation shall be authorised to continue beyond the border the observation of a person presumed to have committed offences listed in paragraph 6, provided that the following conditions are met:
 - a the authorities of the Party designated under paragraph 4, in whose territory the observation is to be continued, must be notified immediately, during the observation, that the border has been crossed;
 - b a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay.

Observation shall cease as soon as the Party in whose territory it is taking place so requests, following the notification referred to in a. or the request referred to in b. or where authorisation has not been obtained within five hours of the border being crossed.

- 3 The observation referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:
 - a The officers conducting the observation must comply with the provisions of this article and with the law of the Party in whose territory they are operating; they must obey the instructions of the local responsible authorities.
 - b Except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorisation has been granted.
 - c The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity.
 - d The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by the requested Party; their use shall be prohibited save in cases of legitimate self-defence.
 - e Entry into private homes and places not accessible to the public shall be prohibited.
 - f The officers conducting the observation may neither stop and question, nor arrest, the person under observation.

- g All operations shall be the subject of a report to the authorities of the Party in whose territory they took place; the officers conducting the observation may be required to appear in person.
 - h The authorities of the Party from which the observing officers have come shall, when requested by the authorities of the Party in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.
- 4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate both the officers and authorities that they designate for the purposes of paragraphs 1 and 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.
- 5 The Parties may, at bilateral level, extend the scope of this article and adopt additional measures in implementation thereof.
- 6 The observation referred to in paragraph 2 may take place only for one of the following criminal offences:
- assassination;
 - murder;
 - rape;
 - arson;
 - counterfeiting;
 - armed robbery and receiving of stolen goods;
 - extortion;
 - kidnapping and hostage taking;
 - traffic in human beings;
 - illicit traffic in narcotic drugs and psychotropic substances;
 - breach of the laws on arms and explosives;
 - use of explosives;
 - illicit carriage of toxic and dangerous waste;
 - smuggling of aliens;
 - sexual abuse of children.

Article 18 – Controlled delivery

- 1 Each Party undertakes to ensure that, at the request of another Party, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.
- 2 The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Party, with due regard to the national law of that Party.
- 3 Controlled deliveries shall take place in accordance with the procedures of the requested Party. Competence to act, direct and control operations shall lie with the competent authorities of that Party.
- 4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Article 19 – Covert investigations

- 1 The requesting and the requested Parties may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).
- 2 The decision on the request is taken in each individual case by the competent authorities of the requested Party with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Parties with due regard to their national law and procedures.
- 3 Covert investigations shall take place in accordance with the national law and procedures of the Party on the territory of which the covert investigation takes place. The Parties involved shall co-operate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.
- 4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of paragraph 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Article 20 – Joint investigation teams

- 1 By mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

- a a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties;
- b a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved.

A request for the setting up of a joint investigation team may be made by any of the Parties concerned. The team shall be set up in one of the Parties in which the investigations are expected to be carried out.

- 2 In addition to the information referred to in the relevant provisions of Article 14 of the Convention, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.
- 3 A joint investigation team shall operate in the territory of the Parties setting up the team under the following general conditions:
 - a the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
 - b the team shall carry out its operations in accordance with the law of the Party in which it operates. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in sub-paragraph a, taking into account the conditions set by their own authorities in the agreement on setting up the team;

- c the Party in which the team operates shall make the necessary organisational arrangements for it to do so.
- 4 In this article, members of the joint investigation team from the Party in which the team operates are referred to as "members", while members from Parties other than the Party in which the team operates are referred to as "seconded members".
- 5 Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Party where the team operates, decide otherwise.
- 6 Seconded members of the joint investigation team may, in accordance with the law of the Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Party of operation and the seconding Party.
- 7 Where the joint investigation team needs investigative measures to be taken in one of the Parties setting up the team, members seconded to the team by that Party may request their own competent authorities to take those measures. Those measures shall be considered in that Party under the conditions which would apply if they were requested in a national investigation.
- 8 Where the joint investigation team needs assistance from a Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.
- 9 A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.
- 10 Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Parties concerned may be used for the following purposes:
 - a for the purposes for which the team has been set up;
 - b subject to the prior consent of the Party where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Party concerned or in respect of which that Party could refuse mutual assistance;
 - c for preventing an immediate and serious threat to public security, and without prejudice to sub-paragraph b. if subsequently a criminal investigation is opened;
 - d for other purposes to the extent that this is agreed between Parties setting up the team.
- 11 This article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

- 12 To the extent that the laws of the Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members or seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise.

Article 21 – Criminal liability regarding officials

During the operations referred to in Articles 17, 18, 19 or 20, unless otherwise agreed upon by the Parties concerned, officials from a Party other than the Party of operation shall be regarded as officials of the Party of operation with respect to offences committed against them or by them.

Article 22 – Civil liability regarding officials

- 1 Where, in accordance with Articles 17, 18, 19 or 20, officials of a Party are operating in another Party, the first Party shall be liable for any damage caused by them during their operations, in accordance with the law of the Party in whose territory they are operating.
- 2 The Party in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.
- 3 The Party whose officials have caused damage to any person in the territory of another Party shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.
- 4 Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Party shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Party.
- 5 The provisions of this article shall apply subject to the proviso that the Parties did not agree otherwise.

Article 23 – Protection of witnesses

Where a Party requests assistance under the Convention or one of its Protocols in respect of a witness at risk of intimidation or in need of protection, the competent authorities of the requesting and requested Parties shall endeavour to agree on measures for the protection of the person concerned, in accordance with their national law.

Article 24 – Provisional measures

- 1 At the request of the requesting Party, the requested Party, in accordance with its national law, may take provisional measures for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests.
- 2 The requested Party may grant the request partially or subject to conditions, in particular time limitation.

Article 25 – Confidentiality

The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

Article 26 – Data protection

- 1 Personal data transferred from one Party to another as a result of the execution of a request made under the Convention or any of its Protocols, may be used by the Party to which such data have been transferred, only:
 - a for the purpose of proceedings to which the Convention or any of its Protocols apply;
 - b for other judicial and administrative proceedings directly related to the proceedings mentioned under (a);
 - c for preventing an immediate and serious threat to public security.
- 2 Such data may however be used for any other purpose if prior consent to that effect is given by either the Party from which the data had been transferred, or the data subject.
- 3 Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols where
 - such data is protected under its national legislation, and
 - the Party to which the data should be transferred is not bound by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, unless the latter Party undertakes to afford such protection to the data as is required by the former Party.
- 4 Any Party that transfers personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols may require the Party to which the data have been transferred to give information on the use made with such data.
- 5 Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, require that, within the framework of procedures for which it could have refused or limited the transmission or the use of personal data in accordance with the provisions of the Convention or one of its Protocols, personal data transmitted to another Party not be used by the latter for the purposes of paragraph 1 unless with its previous consent.

Article 27 – Administrative authorities

Parties may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities they will deem administrative authorities for the purposes of Article 1, paragraph 3, of the Convention.

Article 28 – Relations with other treaties

The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Parties in application of Article 26, paragraph 3, of the Convention.

Article 29 – Friendly settlement

The European Committee on Crime Problems shall be kept informed regarding the interpretation and application of the Convention and its Protocols, and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of their application.

Chapter III

Article 30 – Signature and entry into force

- 1 This Protocol shall be open for signature by the member States of the Council of Europe which are a Party to or have signed the Convention. It shall be subject to ratification, acceptance or approval. A signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.
- 3 In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit.

Article 31 – Accession

- 1 Any non-member State, which has acceded to the Convention, may accede to this Protocol after it has entered into force.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession.
- 3 In respect of any acceding State, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession.

Article 32 – Territorial application

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
- 2 Any State may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of 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.



Convention on the Transfer of Sentenced Persons

Strasbourg, 21.III.1983

The member States of the Council of Europe and the other States, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Desirous of further developing international co-operation in the field of criminal law;

Considering that such co-operation should further the ends of justice and the social rehabilitation of sentenced persons;

Considering that these objectives require that foreigners who are deprived of their liberty as a result of their commission of a criminal offence should be given the opportunity to serve their sentences within their own society; and

Considering that this aim can best be achieved by having them transferred to their own countries,

Have agreed as follows:

Article 1 – Definitions

For the purposes of this Convention:

- a "sentence" means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence;
- b "judgment" means a decision or order of a court imposing a sentence;
- c "sentencing State" means the State in which the sentence was imposed on the person who may be, or has been, transferred;
- d "administering State" means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence.

Article 2 – General principles

- 1 The Parties undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Convention.

- 2 A person sentenced in the territory of a Party may be transferred to the territory of another Party, in accordance with the provisions of this Convention, in order to serve the sentence imposed on him. To that end, he may express his interest to the sentencing State or to the administering State in being transferred under this Convention.
- 3 Transfer may be requested by either the sentencing State or the administering State.

Article 3 – Conditions for transfer

- 1 A sentenced person may be transferred under this Convention only on the following conditions:
 - a if that person is a national of the administering State;
 - b if the judgment is final;
 - c if, at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or if the sentence is indeterminate;
 - d if the transfer is consented to by the sentenced person or, where in view of his age or his physical or mental condition one of the two States considers it necessary, by the sentenced person's legal representative;
 - e if the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory; and
 - f if the sentencing and administering States agree to the transfer.
- 2 In exceptional cases, Parties may agree to a transfer even if the time to be served by the sentenced person is less than that specified in paragraph 1.c.
- 3 Any State 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, indicate that it intends to exclude the application of one of the procedures provided in Article 9.1.a and b in its relations with other Parties.
- 4 Any State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define, as far as it is concerned, the term "national" for the purposes of this Convention.

Article 4 – Obligation to furnish information

- 1 Any sentenced person to whom this Convention may apply shall be informed by the sentencing State of the substance of this Convention.
- 2 If the sentenced person has expressed an interest to the sentencing State in being transferred under this Convention, that State shall so inform the administering State as soon as practicable after the judgment becomes final.
- 3 The information shall include:
 - a the name, date and place of birth of the sentenced person;
 - b his address, if any, in the administering State;

- c a statement of the facts upon which the sentence was based;
 - d the nature, duration and date of commencement of the sentence.
- 4 If the sentenced person has expressed his interest to the administering State, the sentencing State shall, on request, communicate to the State the information referred to in paragraph 3 above.
- 5 The sentenced person shall be informed, in writing, of any action taken by the sentencing State or by the administering State under the preceding paragraphs, as well as of any decision taken by either State on a request for transfer.

Article 5 – Requests and replies

- 1 Requests for transfer and replies shall be made in writing.
- 2 Requests shall be addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State. Replies shall be communicated through the same channels.
- 3 Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, indicate that it will use other channels of communication.
- 4 The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

Article 6 – Supporting documents

- 1 The administering State, if requested by the sentencing State, shall furnish it with:
- a a document or statement indicating that the sentenced person is a national of that State;
 - b a copy of the relevant law of the administering State which provides that the acts or omissions on account of which the sentence has been imposed in the sentencing State constitute a criminal offence according to the law of the administering State, or would constitute a criminal offence if committed on its territory;
 - c a statement containing the information mentioned in Article 9.2.
- 2 If a transfer is requested, the sentencing State shall provide the following documents to the administering State, unless either State has already indicated that it will not agree to the transfer:
- a a certified copy of the judgment and the law on which it is based;
 - b a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, and any other factor relevant to the enforcement of the sentence;
 - c a declaration containing the consent to the transfer as referred to in Article 3.1.d; and
 - d whenever appropriate, any medical or social reports on the sentenced person, information about his treatment in the sentencing State, and any recommendation for his further treatment in the administering State.

- 3 Either State may ask to be provided with any of the documents or statements referred to in paragraphs 1 or 2 above before making a request for transfer or taking a decision on whether or not to agree to the transfer.

Article 7 – Consent and its verification

- 1 The sentencing State shall ensure that the person required to give consent to the transfer in accordance with Article 3.1.d does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the sentencing State.
- 2 The sentencing State shall afford an opportunity to the administering State to verify through a consul or other official agreed upon with the administering State, that the consent is given in accordance with the conditions set out in paragraph 1 above.

Article 8 – Effect of transfer for sentencing State

- 1 The taking into charge of the sentenced person by the authorities of the administering State shall have the effect of suspending the enforcement of the sentence in the sentencing State.
- 2 The sentencing State may no longer enforce the sentence if the administering State considers enforcement of the sentence to have been completed.

Article 9 – Effect of transfer for administering State

- 1 The competent authorities of the administering State shall:
 - a continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in Article 10, or
 - b convert the sentence, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for the same offence, under the conditions set out in Article 11.
- 2 The administering State, if requested, shall inform the sentencing State before the transfer of the sentenced person as to which of these procedures it will follow.
- 3 The enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate decisions.
- 4 Any State which, according to its national law, cannot avail itself of one of the procedures referred to in paragraph 1 to enforce measures imposed in the territory of another Party on persons who for reasons of mental condition have been held not criminally responsible for the commission of the offence, and which is prepared to receive such persons for further treatment may, by way of a declaration addressed to the Secretary General of the Council of Europe, indicate the procedures it will follow in such cases.

Article 10 – Continued enforcement

- 1 In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.

- 2 If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State.

Article 11 – Conversion of sentence

- 1 In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority:
 - a shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State;
 - b may not convert a sanction involving deprivation of liberty to a pecuniary sanction;
 - c shall deduct the full period of deprivation of liberty served by the sentenced person; and
 - d shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.
- 2 If the conversion procedure takes place after the transfer of the sentenced person, the administering State shall keep that person in custody or otherwise ensure his presence in the administering State pending the outcome of that procedure.

Article 12 – Pardon, amnesty, commutation

Each Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

Article 13 – Review of judgment

The sentencing State alone shall have the right to decide on any application for review of the judgment.

Article 14 – Termination of enforcement

The administering State shall terminate enforcement of the sentence as soon as it is informed by the sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 15 – Information on enforcement

The administering State shall provide information to the sentencing State concerning the enforcement of the sentence:

- a when it considers enforcement of the sentence to have been completed;
- b if the sentenced person has escaped from custody before enforcement of the sentence has been completed; or
- c if the sentencing State requests a special report.

Article 16 – Transit

- 1 A Party shall, in accordance with its law, grant a request for transit of a sentenced person through its territory if such a request is made by another Party and that State has agreed with another Party or with a third State to the transfer of that person to or from its territory.
- 2 A Party may refuse to grant transit:
 - a if the sentenced person is one of its nationals, or
 - b if the offence for which the sentence was imposed is not an offence under its own law.
- 3 Requests for transit and replies shall be communicated through the channels referred to in the provisions of Article 5.2 and 3.
- 4 A Party may grant a request for transit of a sentenced person through its territory made by a third State if that State has agreed with another Party to the transfer to or from its territory.
- 5 The Party requested to grant transit may hold the sentenced person in custody only for such time as transit through its territory requires.
- 6 The Party requested to grant transit may be asked to give an assurance that the sentenced person will not be prosecuted, or, except as provided in the preceding paragraph, detained, or otherwise subjected to any restriction on his liberty in the territory of the transit State for any offence committed or sentence imposed prior to his departure from the territory of the sentencing State.
- 7 No request for transit shall be required if transport is by air over the territory of a Party and no landing there is scheduled. However, each State may, by a declaration addressed to the Secretary General of the Council of Europe at the time of signature or of deposit of its instrument of ratification, acceptance, approval or accession, require that it be notified of any such transit over its territory.

Article 17 – Language and costs

- 1 Information under Article 4, paragraphs 2 to 4, shall be furnished in the language of the Party to which it is addressed or in one of the official languages of the Council of Europe.
- 2 Subject to paragraph 3 below, no translation of requests for transfer or of supporting documents shall be required.
- 3 Any State 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, require that requests for transfer and supporting documents 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 in addition to the official language or languages of the Council of Europe.

Except as provided in Article 6.2.a, documents transmitted in application of this Convention need not be certified.

- 5 Any costs incurred in the application of this Convention shall be borne by the administering State, except costs incurred exclusively in the territory of the sentencing State.

Article 18 – Signature and entry into force

- 1 This Convention shall be open for signature by the member States of the Council of Europe and non-member States which have participated in its elaboration. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
- 3 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 19 – Accession by non-member States

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States, may invite any State not a member of the Council and not mentioned in Article 18.1 to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
- 2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 20 – 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 Convention shall apply.
- 2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 21 – Temporal application

This Convention shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

Article 22 – Relationship to other Conventions and Agreements

- 1 This Convention does not affect the rights and undertakings derived from extradition treaties and other treaties on international co-operation in criminal matters providing for the transfer of detained persons for purposes of confrontation or testimony.
- 2 If two or more Parties have already concluded an agreement or treaty on the transfer of sentenced persons or otherwise have established their relations in this matter, or should they in future do so, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention.
- 3 The present Convention does not affect the right of States party to the European Convention on the International Validity of Criminal Judgments to conclude bilateral or multilateral agreements with one another on matters dealt with in that Convention in order to supplement its provisions or facilitate the application of the principles embodied in it.
- 4 If a request for transfer falls within the scope of both the present Convention and the European Convention on the International Validity of Criminal Judgments or another agreement or treaty on the transfer of sentenced persons, the requesting State shall, when making the request, indicate on the basis of which instrument it is made.

Article 23 – Friendly settlement

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of its application.

Article 24 – Denunciation

- 1 Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.
- 3 The present Convention shall, however, continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of the Convention before the date on which such a denunciation takes effect.

Article 25 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in the elaboration of this Convention and any State which has acceded to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 18.2 and 3, 19.2 and 20.2 and 3;
- d any other act, declaration, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 21st day of March 1983, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.



Additional Protocol to the Convention on the Transfer of Sentenced Persons

Strasbourg, 18.XII.1997

Preamble

The member States of the Council of Europe, and the other States signatory to this Protocol,

Desirous of facilitating the application of the Convention on the Transfer of Sentenced Persons opened for signature at Strasbourg on 21 March 1983 (hereinafter referred to as "the Convention") and, in particular, pursuing its acknowledged aims of furthering the ends of justice and the social rehabilitation of sentenced persons;

Aware that many States cannot extradite their own nationals;

Considering it desirable to supplement the Convention in certain respects,

Have agreed as follows:

Article 1 – General provisions

- 1 The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention.
- 2 The provisions of the Convention shall apply to the extent that they are compatible with the provisions of this Protocol.

Article 2 – Persons having fled from the sentencing State

- 1 Where a national of a Party who is the subject of a sentence imposed in the territory of another Party as a part of a final judgment, seeks to avoid the execution or further execution of the sentence in the sentencing State by fleeing to the territory of the former Party before having served the sentence, the sentencing State may request the other Party to take over the execution of the sentence.
- 2 At the request of the sentencing State, the administering State may, prior to the arrival of the documents supporting the request, or prior to the decision on that request, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory, pending a decision on the request. Requests for provisional measures shall include the information mentioned in paragraph 3 of Article 4 of the Convention. The penal position of the sentenced person shall not be aggravated as a result of any period spent in custody by reason of this paragraph.
- 3 The consent of the sentenced person shall not be required to the transfer of the execution of the sentence.

Article 3 – Sentenced persons subject to an expulsion or deportation order

- 1 Upon being requested by the sentencing State, the administering State may, subject to the provisions of this article, agree to the transfer of a sentenced person without the consent of that person, where the sentence passed on the latter, or an administrative decision consequential to that sentence, includes an expulsion or deportation order or any other measure as the result of which that person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison.
- 2 The administering State shall not give its agreement for the purposes of paragraph 1 before having taken into consideration the opinion of the sentenced person.
- 3 For the purposes of the application of this article, the sentencing State shall furnish the administering State with:
 - a a declaration containing the opinion of the sentenced person as to his or her proposed transfer, and
 - b a copy of the expulsion or deportation order or any other order having the effect that the sentenced person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison.
- 4 Any person transferred under the provisions of this article shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order, for any offence committed prior to his or her transfer other than that for which the sentence to be enforced was imposed, nor shall he or she for any other reason be restricted in his or her personal freedom, except in the following cases:
 - a when the sentencing State so authorises: a request for authorisation shall be submitted, accompanied by all relevant documents and a legal record of any statement made by the convicted person; authorisation shall be given when the offence for which it is requested would itself be subject to extradition under the law of the sentencing State or when extradition would be excluded only by reason of the amount of punishment;
 - b when the sentenced person, having had an opportunity to leave the territory of the administering State, has not done so within 45 days of his or her final discharge, or if he or she has returned to that territory after leaving it.
- 5 Notwithstanding the provisions of paragraph 4, the administering State may take any measures necessary under its law, including proceedings *in absentia*, to prevent any legal effects of lapse of time.
- 6 Any contracting State may, by way of a declaration addressed to the Secretary General of the Council of Europe, indicate that it will not take over the execution of sentences under the circumstances described in this article.

Article 4 – Signature and entry into force

- 1 This Protocol shall be open for signature by the member States of the Council of Europe and the other States signatory to 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 5 – Accession

- 1 Any non-member State which has acceded to the Convention may accede to this Protocol after it has entered into force.
- 2 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 6 – 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 Contracting 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 of receipt of such notification by the Secretary General.

Article 7 – Temporal application

This Protocol shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

Article 8 – Denunciation

- 1 Any Contracting State may at any time 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 This Protocol shall, however, continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of both the Convention and this Protocol before the date on which such denunciation takes effect.
- 4 Denunciation of the Convention automatically entails denunciation of this Protocol.

Article 9 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any Signatory, any Party and any other State which has been invited to accede to the Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 4 or 5;
- 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 eighteenth day of December 1997, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the other States signatory to the Convention and to any State invited to accede to the Convention.

CONVENTION
IMPLEMENTING THE SCHENGEN AGREEMENT

of 14 June 1985

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

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

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

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

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

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

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

HAVE AGREED AS FOLLOWS:

TITLE I

DEFINITIONS

Article 1

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

For the purposes of this Convention:

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

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

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

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

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

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

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

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

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

CHAPTER 2

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Article 48

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

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

Article 49

Mutual assistance shall also be afforded:

- (a) in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of one of the two Contracting Parties, or of both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
- (b) in proceedings for claims for damages arising from wrongful prosecution or conviction;
- (c) in clemency proceedings;
- (d) in civil actions joined to criminal proceedings, as long as the criminal court has not yet taken a final decision in the criminal proceedings;
- (e) in the service of judicial documents relating to the enforcement of a sentence or a preventive measure, the imposition of a fine or the payment of costs for proceedings;

- (f) in respect of measures relating to the deferral of delivery or suspension of enforcement of a sentence or a preventive measure, to conditional release or to a stay or interruption of enforcement of a sentence or a preventive measure.

Article 50

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

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

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

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

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

Article 51

The Contracting Parties may not make the admissibility of letters rogatory for search or seizure dependent on conditions other than the following:

- (a) the act giving rise to the letters rogatory is punishable under the law of both Contracting Parties by a penalty involving deprivation of liberty or a detention order of a

maximum period of at least six months, or is punishable under the law of one of the two Contracting Parties by an equivalent penalty and under the law of the other Contracting Party by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

- (b) execution of the letters rogatory is consistent with the law of the requested Contracting Party.

Article 52

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

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

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

4. If the act on which the request for assistance is based is punishable under the law of both Contracting Parties by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters, the procedure outlined in paragraph 1 must in principle be used for the forwarding of procedural documents.

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

Article 53

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

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

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

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

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

CHAPTER 3

APPLICATION OF THE NE BIS IN IDEM PRINCIPLE

Article 54

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

Article 55

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

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

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

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

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

Article 56

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

Article 57

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

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

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

Article 58

The above provisions shall not preclude the application of broader national provisions on the *ne bis in idem* principle with regard to judicial decisions taken abroad.

CHAPTER 4

EXTRADITION

Article 59

1. The provisions of this chapter are intended to supplement the European Convention on Extradition of 13 September 1957 as well as, in relations between the Contracting Parties which are members of the Benelux Economic Union, Chapter I of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974, and to facilitate the implementation of those agreements.

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

Article 60

In relations between two Contracting Parties, one of which is not a Party to the European Convention on Extradition of 13 September 1957, the provisions of the said Convention shall apply, subject to the reservations and declarations made at the time of ratifying that Convention or, for Contracting Parties which are not Parties to the Convention, at the time of ratifying, approving or accepting this Convention.

Article 61

The French Republic undertakes to extradite, at the request of one of the Contracting Parties, persons against whom proceedings are being brought for acts punishable under French law by a penalty involving deprivation of liberty or a detention order of a maximum period of at least two years and under the law of the requesting Contracting Party by a penalty involving deprivation of liberty or a detention order of a maximum period of at least one year.

Article 62

1. As regards interruption of limitation of actions, only the provisions of the requesting Contracting Party shall apply.
2. An amnesty granted by the requested Contracting Party shall not prevent extradition unless the offence falls within the jurisdiction of that Contracting Party.
3. The absence of a charge or an official notice authorising proceedings, necessary only under the law of the requested Contracting Party, shall not affect the obligation to extradite.

Article 63

The Contracting Parties undertake, in accordance with the Convention and the Treaty referred to in Article 59, to extradite between themselves persons being prosecuted by the judicial authorities of the requesting Contracting Party for one of the offences referred to in Article 50(1), or sought by the requesting Contracting Party for the purposes of enforcing a sentence or preventive measure imposed in respect of such an offence.

Article 64

An alert entered into the Schengen Information System in accordance with Article 95 shall have the same force as a request for provisional arrest under Article 16 of the European Convention on Extradition of 13 September 1957 or Article 15 of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974.

Article 65

1. Without prejudice to the option of using the diplomatic channel, requests for extradition and transit shall be sent by the relevant Ministry of the requesting Contracting Party to the competent Ministry of the requested Contracting Party.
2. The competent Ministries shall be:
 - as regards the Kingdom of Belgium: the Ministry of Justice,
 - as regards the Federal Republic of Germany: the Federal Ministry of Justice and the Justice Ministers or Senators in the Federal States (*Länder*),
 - as regards the French Republic: the Ministry of Foreign Affairs,

- as regards the Grand Duchy of Luxembourg: the Ministry of Justice,
- as regards the Kingdom of the Netherlands: the Ministry of Justice.

Article 66

1. If the extradition of a wanted person is not clearly prohibited under the laws of the requested Contracting Party, that Contracting Party may authorise extradition without formal extradition proceedings, provided that the wanted person agrees thereto in a statement made before a member of the judiciary after being heard by the latter and informed of the right to formal extradition proceedings. The wanted person may be assisted by a lawyer during the hearing.
2. In cases of extradition under paragraph 1, wanted persons who explicitly state that they will relinquish the protection offered by the principle of speciality may not revoke that statement.

CHAPTER 5

TRANSFER OF THE ENFORCEMENT OF CRIMINAL JUDGMENTS*Article 67*

The following provisions shall apply between the Contracting Parties which are Parties to the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983, for the purposes of supplementing that Convention.

Article 68

1. The Contracting Party in whose territory a penalty involving deprivation of liberty or a detention order has been imposed by a judgment which has obtained the force of *res judicata* in respect of a national of another Contracting Party who, by escaping to the national's own country, has avoided the enforcement of that penalty or detention order may request the latter Contracting Party, if the escaped person is within its territory, to take over the enforcement of the penalty or detention order.
2. The requested Contracting Party may, at the request of the requesting Contracting Party, prior to the arrival of the documents supporting the request that the enforcement of the penalty or detention order or part thereof remaining to be served be taken over, and prior to the decision on that request, take the sentenced person into police custody or take other measures to ensure that the person remains within the territory of the requested Contracting Party.

Article 69

The transfer of enforcement under Article 68 shall not require the consent of the person on whom the penalty or the detention order has been imposed. The other provisions of the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983 shall apply *mutatis mutandis*.

CHAPTER 6

NARCOTIC DRUGS

Article 70

1. The Contracting Parties shall set up a permanent working party to examine common problems relating to combating crime involving narcotic drugs and to draw up proposals, where necessary, to improve the practical and technical aspects of cooperation between the Contracting Parties. The working party shall submit its proposals to the Executive Committee.

2. The working party referred to in paragraph 1, whose members shall be nominated by the competent national authorities, shall include representatives of the police and customs authorities.

Article 71

1. The Contracting Parties undertake as regards the direct or indirect sale of narcotic drugs and psychotropic substances of whatever type, including cannabis, and the possession of such products and substances for sale or export, to adopt in accordance with the existing United Nations Conventions^(*), all necessary measures to prevent and punish the illicit trafficking in narcotic drugs and psychotropic substances.

2. The Contracting Parties undertake to prevent and punish by administrative and penal measures the illegal export of narcotic drugs and psychotropic substances, including cannabis, as well as the sale, supply and handing over of such products and substances, without prejudice to the relevant provisions of Articles 74, 75 and 76.

(*) Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol amending the 1961 Single Convention on Narcotic Drugs; the 1971 Convention on Psychotropic Substances; the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.

3. To combat the illegal import of narcotic drugs and psychotropic substances, including cannabis, the Contracting Parties shall step up their checks on the movement of persons, goods and means of transport at their external borders. Such measures shall be drawn up by the working party provided for in Article 70. This working party shall consider, *inter alia*, transferring some of the police and customs staff released from internal border duty and the use of modern drug-detection methods and sniffer dogs.

4. To ensure compliance with this Article, the Contracting Parties shall specifically carry out surveillance of places known to be used for drug trafficking.

5. The Contracting Parties shall do their utmost to prevent and combat the negative effects arising from the illicit demand for narcotic drugs and psychotropic substances of whatever type, including cannabis. Each Contracting Party shall be responsible for the measures adopted to this end.

Article 72

The Contracting Parties shall, in accordance with their constitutions and their national legal systems, ensure that legislation is enacted to enable the seizure and confiscation of the proceeds of the illicit trafficking in narcotic drugs and psychotropic substances.

Article 73

1. The Contracting Parties undertake, in accordance with their constitutions and their national legal systems, to adopt measures to allow controlled deliveries to be made in the context of the illicit trafficking in narcotic drugs and psychotropic substances.

2. In each individual case, a decision to allow controlled deliveries will be taken on the basis of prior authorisation from each Contracting Party concerned.

3. Each Contracting Party shall retain responsibility for and control over any operation carried out in its own territory and shall be entitled to intervene.

Article 74

As regards the legal trade in narcotic drugs and psychotropic substances, the Contracting Parties agree that the checks arising from obligations under the United Nations Conventions listed in Article 71 and which are carried out at internal borders shall, wherever possible, be transferred to within the country.

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

COUNCIL FRAMEWORK DECISION

of 13 June 2002

on the European arrest warrant and the surrender procedures between Member States

(2002/584/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

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

Whereas:

(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

(2) The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000 ⁽³⁾, addresses the matter of mutual enforcement of arrest warrants.

(3) All or some Member States are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.

(4) In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among Member States and form part of the Union *acquis*: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders ⁽⁴⁾ (regarding relations between the Member States which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union ⁽⁵⁾ and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union ⁽⁶⁾.

(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the 'cornerstone' of judicial cooperation.

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and

⁽¹⁾ OJ C 332 E, 27.11.2001, p. 305.

⁽²⁾ Opinion delivered on 9 January 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 12 E, 15.1.2001, p. 10.

⁽⁴⁾ OJ L 239, 22.9.2000, p. 19.

⁽⁵⁾ OJ C 78, 30.3.1995, p. 2.

⁽⁶⁾ OJ C 313, 13.10.1996, p. 12.

can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

- (8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.
- (9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.
- (10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.
- (11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.
- (12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union⁽¹⁾, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to

due process, freedom of association, freedom of the press and freedom of expression in other media.

- (13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.
- (14) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Framework Decision should be protected in accordance with the principles of the said Convention,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1

GENERAL PRINCIPLES

Article 1

Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.
3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2

Scope of the European arrest warrant

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

⁽¹⁾ OJ C 364, 18.12.2000, p. 1.

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

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

- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

3. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union (TEU), to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 34(3), whether the list should be extended or amended.

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3

Grounds for mandatory non-execution of the European arrest warrant

The judicial authority of the Member State of execution (hereinafter 'executing judicial authority') shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;
2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 4

Grounds for optional non-execution of the European arrest warrant

The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;
2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;
3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;
4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;
5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;
7. where the European arrest warrant relates to offences which:
 - (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
 - (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

Article 5

Guarantees to be given by the issuing Member State in particular cases

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered *in absentia* and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia*, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment;
2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;
3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

Article 6

Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

Article 7

Recourse to the central authority

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

Article 8

Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

- (a) the identity and nationality of the requested person;
- (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
- (c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;
- (d) the nature and legal classification of the offence, particularly in respect of Article 2;
- (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
- (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;
- (g) if possible, other consequences of the offence.

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

CHAPTER 2

SURRENDER PROCEDURE

Article 9

Transmission of a European arrest warrant

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.

2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10

Detailed procedures for transmitting a European arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network⁽¹⁾, in order to obtain that information from the executing Member State.

2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.

⁽¹⁾ Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.

4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.

5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.

6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

Article 11

Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.

2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Article 12

Keeping the person in detention

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

Article 13

Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express

renunciation of entitlement to the 'speciality rule', referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 14

Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

Article 15

Surrender decision

1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

Article 16

Decision in the event of multiple requests

1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2. The executing judicial authority may seek the advice of Eurojust ⁽¹⁾ when making the choice referred to in paragraph 1.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.

Article 17

Time limits and procedures for the decision to execute the European arrest warrant

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in

paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

6. Reasons must be given for any refusal to execute a European arrest warrant.

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

Article 18

Situation pending the decision

1. Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

(a) either agree that the requested person should be heard according to Article 19;

(b) or agree to the temporary transfer of the requested person.

2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him or her as part of the surrender procedure.

Article 19

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.

⁽¹⁾ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 20

Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

2. Where power to waive the privilege or immunity lies with an authority of the executing Member State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 21

Competing international obligations

This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 22

Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

Article 23

Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 24

Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.

2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested

person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

Article 25

Transit

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:

- (a) the identity and nationality of the person subject to the European arrest warrant;
- (b) the existence of a European arrest warrant;
- (c) the nature and legal classification of the offence;
- (d) the description of the circumstances of the offence, including the date and place.

Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the Member State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit Member State to serve the custodial sentence or detention order passed against him in the issuing Member State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.

3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.

4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply *mutatis mutandis*. In particular the expression 'European arrest warrant' shall be deemed to be replaced by 'extradition request'.

CHAPTER 3

EFFECTS OF THE SURRENDER

Article 26

Deduction of the period of detention served in the executing Member State

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

Article 27

Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) the offence is not punishable by a custodial sentence or detention order;

- (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
 - (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;
 - (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;
 - (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
 - (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.
- may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:
- (a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;
 - (b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;
 - (c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

Article 28

Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

- (a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);
- (b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;
- (c) the decision shall be taken no later than 30 days after receipt of the request;
- (d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

*Article 29***Handing over of property**

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:

- (a) may be required as evidence, or
- (b) has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.

4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

*Article 30***Expenses**

1. Expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant shall be borne by that Member State.

2. All other expenses shall be borne by the issuing Member State.

CHAPTER 4

GENERAL AND FINAL PROVISIONS*Article 31***Relation to other legal instruments**

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

- (a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its

second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

- (b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;
- (c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;
- (d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union;
- (e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Members States.

Article 32

Transitional provision

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the *Official Journal of the European Communities*. It may be withdrawn at any time.

Article 33

Provisions concerning Austria and Gibraltar

1. As long as Austria has not modified Article 12(1) of the 'Auslieferungs- und Rechtshilfegesetz' and, at the latest, until 31 December 2008, it may allow its executing judicial authorities to refuse the enforcement of a European arrest warrant if the requested person is an Austrian citizen and if the act for which the European arrest warrant has been issued is not punishable under Austrian law.

2. This Framework Decision shall apply to Gibraltar.

Article 34

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2003.

2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. When doing so, each Member State may indicate that it will apply immediately this Framework Decision in its relations with those Member States which have given the same notification.

The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to Article 7(2), Article 8(2), Article 13(4) and Article 25(2). It shall also have the information published in the *Official Journal of the European Communities*.

3. On the basis of the information communicated by the General Secretariat of the Council, the Commission shall, by 31 December 2004 at the latest, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.

4. The Council shall in the second half of 2003 conduct a review, in particular of the practical application, of the provisions of this Framework Decision by the Member States as well as the functioning of the Schengen Information System.

Article 35

Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Done at Luxembourg, 13 June 2002.

For the Council

The President

M. RAJOY BREY

ANNEX

EUROPEAN ARREST WARRANT ⁽¹⁾

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

⁽¹⁾ This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.

(a) Information regarding the identity of the requested person:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address:

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

.....

Distinctive marks/description of the requested person:

.....

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:

Type:

2. Enforceable judgement:

.....

Reference:

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):

.....
.....

2. Length of the custodial sentence or detention order imposed:

.....

Remaining sentence to be served:

.....
.....

(d) Decision rendered in absentia and:

— the person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia,

or

— the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia but has the following legal guarantees after surrender (such guarantees can be given in advance)

Specify the legal guarantees

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

(e) Offences:

This warrant relates to in total: offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

.....

I. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

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

II. Full descriptions of offence(s) not covered by section I above:

.....

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

(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

.....

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):

.....

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

— the legal system of the issuing Member State allows for a review of the penalty or measure imposed — on request or at least after 20 years — aiming at a non-execution of such penalty or measure,

and/or

— the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:

Official name:

Name of its representative ⁽¹⁾:

.....

Post held (title/grade):

.....

File reference:

Address:

.....

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

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

E-mail:

Contact details of the person to contact to make necessary practical arrangements for the surrender:

.....

⁽¹⁾ In the different language versions a reference to the 'holder' of the judicial authority will be included.

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants:

Name of the central authority:

.....

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

.....

Address:

.....

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

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

E-mail:

Signature of the issuing judicial authority and/or its representative:

.....

Name:

Post held (title/grade):

Date:

Official stamp (if available)

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2014/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 3 April 2014
regarding the European Investigation Order in criminal matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82 (1)(a) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia and the Kingdom of Sweden,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) Pursuant to Article 82(1) of the Treaty on the Functioning of the European Union (TFEU), judicial cooperation in criminal matters in the Union is to be based on the principle of mutual recognition of judgments and judicial decisions, which is, since the Tampere European Council of 15 and 16 October 1999, commonly referred to as a cornerstone of judicial cooperation in criminal matters within the Union.
- (3) Council Framework Decision 2003/577/JHA ⁽²⁾ addressed the need for immediate mutual recognition of orders to prevent the destruction, transformation, moving, transfer or disposal of evidence. However, since that instrument is restricted to the freezing phase, a freezing order needs to be accompanied by a separate request for the transfer of the evidence to the State issuing the order ('the issuing State') in accordance with the rules applicable to mutual assistance in criminal matters. This results in a two-step procedure detrimental to its efficiency. Moreover, this regime coexists with the traditional instruments of cooperation and is therefore seldom used in practice by the competent authorities.
- (4) Council Framework Decision 2008/978/JHA ⁽³⁾ concerning the European evidence warrant (EEW) was adopted to apply the principle of mutual recognition for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters. However, the EEW is only applicable to evidence which already exists and covers therefore a limited spectrum of judicial cooperation in criminal matters with respect to evidence. Because of its limited scope, competent authorities have been free to use the new regime or to use mutual legal assistance procedures which, in any case, remain applicable to evidence falling outside of the scope of the EEW.

⁽¹⁾ Position of the European Parliament of 27 February 2014 (not yet published in the Official Journal) and decision of the Council of 14 March 2014.

⁽²⁾ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45).

⁽³⁾ Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters (OJ L 350, 30.12.2008, p. 72).

- (5) Since the adoption of Framework Decisions 2003/577/JHA and 2008/978/JHA, it has become clear that the existing framework for the gathering of evidence is too fragmented and complicated. A new approach is therefore necessary.
- (6) In the Stockholm Programme adopted by the European Council of 10-11 December 2009, the European Council considered that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, should be further pursued. The European Council indicated that the existing instruments in this area constituted a fragmentary regime and that a new approach was needed, based on the principle of mutual recognition, but also taking into account the flexibility of the traditional system of mutual legal assistance. The European Council therefore called for a comprehensive system to replace all the existing instruments in this area, including Framework Decision 2008/978/JHA, covering as far as possible all types of evidence, containing time-limits for enforcement and limiting as far as possible the grounds for refusal.
- (7) This new approach is based on a single instrument called the European Investigation Order (EIO). An EIO is to be issued for the purpose of having one or several specific investigative measure(s) carried out in the State executing the EIO ('the executing State') with a view to gathering evidence. This includes the obtaining of evidence that is already in the possession of the executing authority.
- (8) The EIO should have a horizontal scope and therefore should apply to all investigative measures aimed at gathering evidence. However, the setting up of a joint investigation team and the gathering of evidence within such a team require specific rules which are better dealt with separately. Without prejudice to the application of this Directive, existing instruments should therefore continue to apply to this type of investigative measure.
- (9) This Directive should not apply to cross-border surveillance as referred to in the Convention implementing the Schengen Agreement ⁽¹⁾.
- (10) The EIO should focus on the investigative measure to be carried out. The issuing authority is best placed to decide, on the basis of its knowledge of the details of the investigation concerned, which investigative measure is to be used. However, the executing authority should, wherever possible, use another type of investigative measure if the indicated measure does not exist under its national law or would not be available in a similar domestic case. Availability should refer to occasions where the indicated investigative measure exists under the law of the executing State but is only lawfully available in certain situations, for example where the investigative measure can only be carried out for offences of a certain degree of seriousness, against persons for whom there is already a certain level of suspicion or with the consent of the person concerned. The executing authority may also have recourse to another type of investigative measure where it would achieve the same result as the investigative measure indicated in the EIO by means implying less interference with the fundamental rights of the person concerned.
- (11) The EIO should be chosen where the execution of an investigative measure seems proportionate, adequate and applicable to the case in hand. The issuing authority should therefore ascertain whether the evidence sought is necessary and proportionate for the purpose of the proceedings, whether the investigative measure chosen is necessary and proportionate for the gathering of the evidence concerned, and whether, by means of issuing the EIO, another Member State should be involved in the gathering of that evidence. The same assessment should be carried out in the validation procedure, where the validation of an EIO is required under this Directive. The execution of an EIO should not be refused on grounds other than those stated in this Directive. However the executing authority should be entitled to opt for a less intrusive investigative measure than the one indicated in an EIO if it makes it possible to achieve similar results.
- (12) When issuing an EIO the issuing authority should pay particular attention to ensuring full respect for the rights as enshrined in Article 48 of the Charter of Fundamental Rights of the European Union (the Charter). The presumption of innocence and the rights of defence in criminal proceedings are a cornerstone of the fundamental rights recognised in the Charter within the area of criminal justice. Any limitation of such rights by an investigative measure ordered in accordance with this Directive should fully conform to the requirements established in Article 52 of the Charter with regard to the necessity, proportionality and objectives that it should pursue, in particular the protection of the rights and freedoms of others.

⁽¹⁾ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).

- (13) With a view to ensuring the transmission of the EIO to the competent authority of the executing State, the issuing authority may make use of any possible or relevant means of transmission, for example the secure telecommunications system of the European Judicial Network, Eurojust, or other channels used by judicial or law enforcement authorities.
- (14) When making a declaration concerning the language regime, Member States are encouraged to include at least one language which is commonly used in the Union other than their official language(s).
- (15) This Directive should be implemented taking into account Directives 2010/64/EU ⁽¹⁾, 2012/13/EU ⁽²⁾, and 2013/48/EU ⁽³⁾ of the European Parliament and of the Council, which concern procedural rights in criminal proceedings.
- (16) Non-coercive measures could be, for example, such measures that do not infringe the right to privacy or the right to property, depending on national law.
- (17) The principle of *ne bis in idem* is a fundamental principle of law in the Union, as recognised by the Charter and developed by the case-law of the Court of Justice of the European Union. Therefore the executing authority should be entitled to refuse the execution of an EIO if its execution would be contrary to that principle. Given the preliminary nature of the proceedings underlying an EIO, its execution should not be subject to refusal where it is aimed to establish whether a possible conflict with the *ne bis in idem* principle exists, or where the issuing authority has provided assurances that the evidence transferred as a result of the execution of the EIO would not be used to prosecute or impose a sanction on a person whose case has been finally disposed of in another Member State for the same facts.
- (18) As in other mutual recognition instruments, this Directive does not have the effect of modifying the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union (TEU) and the Charter. In order to make this clear, a specific provision is inserted in the text.
- (19) The creation of an area of freedom, security and justice within the Union is based on mutual confidence and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights. However, that presumption is rebuttable. Consequently, if there are substantial grounds for believing that the execution of an investigative measure indicated in the EIO would result in a breach of a fundamental right of the person concerned and that the executing State would disregard its obligations concerning the protection of fundamental rights recognised in the Charter, the execution of the EIO should be refused.
- (20) It should be possible to refuse an EIO where its recognition or execution in the executing State would involve a breach of an immunity or privilege in that State. There is no common definition of what constitutes an immunity or privilege in Union law; the precise definition of these terms is therefore left to national law, which may include protections which apply to medical and legal professions, but should not be interpreted in a way to counter the obligation to abolish certain grounds for refusal as set out in the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union ⁽⁴⁾. This may also include, even though they are not necessarily considered as privilege or immunity, rules relating to freedom of the press and freedom of expression in other media.
- (21) Time limits are necessary to ensure quick, effective and consistent cooperation between the Member States in criminal matters. The decision on the recognition or execution, as well as the actual execution of the investigative measure, should be carried out with the same celerity and priority as for a similar domestic case. Time limits should be provided to ensure a decision or execution within reasonable time or to meet procedural constraints in the issuing State.

⁽¹⁾ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁽²⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁽³⁾ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

⁽⁴⁾ Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 326, 21.11.2001, p. 2).

- (22) Legal remedies available against an EIO should be at least equal to those available in a domestic case against the investigative measure concerned. In accordance with their national law Member States should ensure the applicability of such legal remedies, including by informing in due time any interested party about the possibilities and modalities for seeking those legal remedies. In cases where objections against the EIO are submitted by an interested party in the executing State in respect of the substantive reasons for issuing the EIO, it is advisable that information about such challenge be transmitted to the issuing authority and that the interested party be informed accordingly.
- (23) The expenses incurred in the territory of the executing State for the execution of an EIO should be borne exclusively by that State. This arrangement complies with the general principle of mutual recognition. However, the execution of an EIO may incur exceptionally high costs on the executing State. Such exceptionally high costs may, for example, be complex experts' opinions or extensive police operations or surveillance activities over a long period of time. This should not impede the execution of the EIO and the issuing and executing authorities should seek to establish which costs are to be considered as exceptionally high. The issue of costs might become subject to consultations between the issuing State and the executing State and they are recommended to resolve this issue during the consultations stage. As a last resort, the issuing authority may decide to withdraw the EIO or to maintain it, and the part of the costs which are estimated exceptionally high by the executing State and absolutely necessary in the course of the proceedings, should be covered by the issuing State. The given mechanism should not constitute an additional ground for refusal, and in any event should not be abused in a way to delay or impede the execution of the EIO.
- (24) The EIO establishes a single regime for obtaining evidence. Additional rules are however necessary for certain types of investigative measures which should be indicated in the EIO, such as the temporary transfer of persons held in custody, hearing by video or telephone conference, obtaining of information related to bank accounts or banking transactions, controlled deliveries or covert investigations. Investigative measures implying a gathering of evidence in real time, continuously and over a certain period of time should be covered by the EIO, but, where necessary, practical arrangements should be agreed between the issuing State and the executing State in order to accommodate the differences existing in the national laws of those States.
- (25) This Directive sets out rules on carrying out, at all stages of criminal proceedings, including the trial phase, of an investigative measure, if needed with the participation of the person concerned with a view to collecting evidence. For example an EIO may be issued for the temporary transfer of that person to the issuing State or for the carrying out of a hearing by videoconference. However, where that person is to be transferred to another Member State for the purposes of prosecution, including bringing that person before a court for the purpose of the standing trial, a European Arrest Warrant (EAW) should be issued in accordance with Council Framework Decision 2002/584/JHA ⁽¹⁾.
- (26) With a view to the proportionate use of an EAW, the issuing authority should consider whether an EIO would be an effective and proportionate means of pursuing criminal proceedings. The issuing authority should consider, in particular, whether issuing an EIO for the hearing of a suspected or accused person by videoconference could serve as an effective alternative.
- (27) An EIO may be issued in order to obtain evidence concerning the accounts, of whatever nature, held in any bank or any non-banking financial institution by a person subject to criminal proceedings. This possibility is to be understood broadly as comprising not only suspected or accused persons but also any other person in respect of whom such information is found necessary by the competent authorities in the course of criminal proceedings.
- (28) Where in this Directive a reference is made to financial institutions, this term should be understood according to the relevant definition of Article 3 of Directive 2005/60/EC of the European Parliament and the Council ⁽²⁾.
- (29) When an EIO is issued to obtain 'details' of a specified account, 'details' should be understood to include at least the name and address of the account holder, details of any powers of attorney held over the account, and any other details or documents provided by the account holder when the account was opened and that are still held by the bank.

⁽¹⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

⁽²⁾ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

- (30) Possibilities to cooperate under this Directive on the interception of telecommunications should not be limited to the content of the telecommunications, but could also cover collection of traffic and location data associated with such telecommunications, allowing competent authorities to issue an EIO for the purpose of obtaining less intrusive data on telecommunications. An EIO issued to obtain historical traffic and location data related to telecommunications should be dealt with under the general regime related to the execution of the EIO and may be considered, depending on the national law of the executing State, as a coercive investigative measure.
- (31) Where several Member States are in a position to provide the necessary technical assistance, an EIO should be sent only to one of them and priority should be given to the Member State where the person concerned is located. Member States where the subject of the interception is located and from which no technical assistance is needed to carry out the interception should be notified thereof in accordance with this Directive. However, where the technical assistance may not be received from merely one Member State, an EIO may be transmitted to more than one executing State.
- (32) In an EIO containing the request for interception of telecommunications the issuing authority should provide the executing authority with sufficient information, such as details of the criminal conduct under investigation, in order to allow the executing authority to assess whether that investigative measure, would be authorised in a similar domestic case.
- (33) Member States should have regard to the importance of ensuring that technical assistance can be provided by a service provider operating publicly available telecommunications networks and services in the territory of the Member State concerned, in order to facilitate cooperation under this instrument in relation to the lawful interception of telecommunications.
- (34) This Directive, by virtue of its scope, deals with provisional measures only with a view to gathering evidence. In this respect, it should be underlined that any item, including financial assets, may be subject to various provisional measures in the course of criminal proceedings, not only with a view to gathering evidence but also with a view to confiscation. The distinction between the two objectives of provisional measures is not always obvious and the objective of the provisional measure may change in the course of the proceedings. For this reason, it is crucial to maintain a smooth relationship between the various instruments applicable in this field. Furthermore, for the same reason, the assessment of whether the item is to be used as evidence and therefore be the object of an EIO should be left to the issuing authority.
- (35) Where reference is made to mutual assistance in relevant international instruments, such as in conventions concluded within the Council of Europe, it should be understood that between the Member States bound by this Directive it takes precedence over those conventions.
- (36) The categories of offences listed in Annex D should be interpreted consistently with their interpretation under existing legal instruments on mutual recognition.
- (37) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽¹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the European Parliament and the Council consider the transmission of such documents to be justified.
- (38) Since the objective of this Directive, namely the mutual recognition of decisions taken to obtain evidence, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (39) This Directive respects the fundamental rights and observes the principles recognised by Article 6 of the TEU and in the Charter, notably Title VI thereof, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions in their respective fields of application. Nothing in

⁽¹⁾ OJ C 369, 17.12.2011, p. 14.

this Directive may be interpreted as prohibiting refusal to execute an EIO when there are reasons to believe, on the basis of objective elements, that the EIO has been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons.

- (40) The protection of natural persons in relation to the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them.
- (41) Member States should, in the application of this Directive, provide for transparent policies with regard to the processing of personal data and for the exercise of the rights of data subjects to legal remedies for the protection of their personal data.
- (42) Personal data obtained under this Directive should only be processed when necessary and should be proportionate to the purposes compatible with the prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. Only authorised persons should have access to information containing personal data which may be obtained through authentication processes.
- (43) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the TEU and the TFEU, the United Kingdom has notified its wish to take part in the adoption and application of this Directive.
- (44) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the TEU and the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (45) In accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark annexed to the TEU and the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (46) The European Data Protection Supervisor delivered an opinion on 5 October 2010 ⁽¹⁾, based on Article 41(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

THE EUROPEAN INVESTIGATION ORDER

Article 1

The European Investigation Order and obligation to execute it

1. A European Investigation Order (EIO) is a judicial decision which has been issued or validated by a judicial authority of a Member State ('the issuing State') to have one or several specific investigative measure(s) carried out in another Member State ('the executing State') to obtain evidence in accordance with this Directive.

The EIO may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State.

⁽¹⁾ OJ C 355, 29.12.2010, p. 1.

⁽²⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

2. Member States shall execute an EIO on the basis of the principle of mutual recognition and in accordance with this Directive.
3. The issuing of an EIO may be requested by a suspected or accused person, or by a lawyer on his behalf, within the framework of applicable defence rights in conformity with national criminal procedure.
4. This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.

Article 2

Definitions

For the purposes of this Directive the following definitions apply:

- (a) 'issuing State' means the Member State in which the EIO is issued;
- (b) 'executing State' means the Member State executing the EIO, in which the investigative measure is to be carried out;
- (c) 'issuing authority' means:
 - (i) a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or
 - (ii) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. In addition, before it is transmitted to the executing authority the EIO shall be validated, after examination of its conformity with the conditions for issuing an EIO under this Directive, in particular the conditions set out in Article 6.1, by a judge, court, investigating judge or a public prosecutor in the issuing State. Where the EIO has been validated by a judicial authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the EIO;
- (d) 'executing authority' means an authority having competence to recognise an EIO and ensure its execution in accordance with this Directive and the procedures applicable in a similar domestic case. Such procedures may require a court authorisation in the executing State where provided by its national law.

Article 3

Scope of the EIO

The EIO shall cover any investigative measure with the exception of the setting up of a joint investigation team and the gathering of evidence within such a team as provided in Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union ⁽¹⁾ ('the Convention') and in Council Framework Decision 2002/465/JHA ⁽²⁾, other than for the purposes of applying, respectively, Article 13(8) of the Convention and Article 1(8) of the Framework Decision.

Article 4

Types of proceedings for which the EIO can be issued

An EIO may be issued:

- (a) with respect to criminal proceedings that are brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State;
- (b) in proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters;

⁽¹⁾ Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 3).

⁽²⁾ Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

- (c) in proceedings brought by judicial authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters; and
- (d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

Article 5

Content and form of the EIO

1. The EIO in the form set out in Annex A shall be completed, signed, and its content certified as accurate and correct by the issuing authority.

The EIO shall, in particular, contain the following information:

- (a) data about the issuing authority and, where applicable, the validating authority;
- (b) the object of and reasons for the EIO;
- (c) the necessary information available on the person(s) concerned;
- (d) a description of the criminal act, which is the subject of the investigation or proceedings, and the applicable provisions of the criminal law of the issuing State;
- (e) a description of the investigative measures(s) requested and the evidence to be obtained.

2. Each Member State shall indicate the language(s) which, among the official languages of the institutions of the Union and in addition to the official language(s) of the Member State concerned, may be used for completing or translating the EIO when the Member State concerned is the executing State.

3. The competent authority of the issuing State shall translate the EIO set out in Annex A into an official language of the executing State or any other language indicated by the executing State in accordance with paragraph 2 of this Article.

CHAPTER II

PROCEDURES AND SAFEGUARDS FOR THE ISSUING STATE

Article 6

Conditions for issuing and transmitting an EIO

- 1. The issuing authority may only issue an EIO where the following conditions have been met:
 - (a) the issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in Article 4 taking into account the rights of the suspected or accused person; and
 - (b) the investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case.
- 2. The conditions referred to in paragraph 1 shall be assessed by the issuing authority in each case.
- 3. Where the executing authority has reason to believe that the conditions referred to in paragraph 1 have not been met, it may consult the issuing authority on the importance of executing the EIO. After that consultation the issuing authority may decide to withdraw the EIO.

*Article 7***Transmission of the EIO**

1. The EIO completed in accordance with Article 5 shall be transmitted from the issuing authority to the executing authority by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.
2. Any further official communication shall be made directly between the issuing authority and the executing authority.
3. Without prejudice to Article 2(d), each Member State may designate a central authority or, where its legal system so provides, more than one central authority, to assist the competent authorities. A Member State may, if necessary due to the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and receipt of EIOs, as well as for other official correspondence relating to EIOs.
4. The issuing authority may transmit EIOs via the telecommunications system of the European Judicial Network (EJN), as set up by Council Joint Action. 98/428/JHA ⁽¹⁾.
5. If the identity of the executing authority is unknown, the issuing authority shall make all necessary inquiries, including via the EJN contact points, in order to obtain the information from the executing State.
6. Where the authority in the executing State which receives the EIO has no competence to recognise the EIO or to take the necessary measures for its execution, it shall, *ex officio*, transmit the EIO to the executing authority and so inform the issuing authority.
7. All difficulties concerning the transmission or authenticity of any document needed for the execution of the EIO shall be dealt with by direct contacts between the issuing authority and the executing authority involved or, where appropriate, with the involvement of the central authorities of the Member States.

*Article 8***EIO related to an earlier EIO**

1. Where an issuing authority issues an EIO which supplements an earlier EIO, it shall indicate this fact in the EIO in Section D of the form set out in Annex A.
2. If the issuing authority assists in the execution of the EIO in the executing State, in accordance with Article 9(4), it may, without prejudice to notifications made under Article 33(1)(c), address an EIO which supplements an earlier EIO directly to the executing authority, while present in that State.
3. The EIO which supplements an earlier EIO shall be certified in accordance with the first subparagraph of Article 5(1), and, where applicable, be validated in accordance with Article 2(c).

CHAPTER III

PROCEDURES AND SAFEGUARDS FOR THE EXECUTING STATE*Article 9***Recognition and execution**

1. The executing authority shall recognise an EIO, transmitted in accordance with this Directive, without any further formality being required, and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement provided for in this Directive.

⁽¹⁾ Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

2. The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in this Directive and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State.
3. Where an executing authority receives an EIO which has not been issued by an issuing authority as specified in Article 2(c), the executing authority shall return the EIO to the issuing State.
4. The issuing authority may request that one or more authorities of the issuing State assist in the execution of the EIO in support to the competent authorities of the executing State to the extent that the designated authorities of the issuing State would be able to assist in the execution of the investigative measures indicated in the EIO in a similar domestic case. The executing authority shall comply with this request provided that such assistance is not contrary to the fundamental principles of law of the executing State or does not harm its essential national security interests.
5. The authorities of the issuing State present in the executing State shall be bound by the law of the executing State during the execution of the EIO. They shall not have any law enforcement powers in the territory of the executing State, unless the execution of such powers in the territory of the executing State is in accordance with the law of the executing State and to the extent agreed between the issuing authority and the executing authority.
6. The issuing authority and executing authority may consult each other, by any appropriate means, with a view to facilitating the efficient application of this Article.

Article 10

Recourse to a different type of investigative measure

1. The executing authority shall have, wherever possible, recourse to an investigative measure other than that provided for in the EIO where:
 - (a) the investigative measure indicated in the EIO does not exist under the law of the executing State; or
 - (b) the investigative measure indicated in the EIO would not be available in a similar domestic case.
2. Without prejudice to Article 11, paragraph (1) does not apply to the following investigative measures, which always have to be available under the law of the executing State:
 - (a) the obtaining of information or evidence which is already in the possession of the executing authority and the information or evidence could have been obtained, in accordance with the law of the executing State, in the framework of criminal proceedings or for the purposes of the EIO;
 - (b) the obtaining of information contained in databases held by police or judicial authorities and directly accessible by the executing authority in the framework of criminal proceedings;
 - (c) the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the executing State;
 - (d) any non-coercive investigative measure as defined under the law of the executing State;
 - (e) the identification of persons holding a subscription of a specified phone number or IP address.
3. The executing authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO.
4. When the executing authority decides to avail itself of the possibility referred to in paragraphs 1 and 3, it shall first inform the issuing authority, which may decide to withdraw or supplement the EIO.
5. Where, in accordance with paragraph 1, the investigative measure indicated in the EIO does not exist under the law of the executing State or it would not be available in a similar domestic case and where there is no other investigative measure which would have the same result as the investigative measure requested, the executing authority shall notify the issuing authority that it has not been possible to provide the assistance requested.

Article 11

Grounds for non-recognition or non-execution

1. Without prejudice to Article 1(4), recognition or execution of an EIO may be refused in the executing State where:
 - (a) there is an immunity or a privilege under the law of the executing State which makes it impossible to execute the EIO or there are rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which make it impossible to execute the EIO;
 - (b) in a specific case the execution of the EIO would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;
 - (c) the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the investigative measure would not be authorised under the law of the executing State in a similar domestic case;
 - (d) the execution of the EIO would be contrary to the principle of *ne bis in idem*;
 - (e) the EIO relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the EIO is issued is not an offence in the executing State;
 - (f) there are substantial grounds to believe that the execution of the investigative measure indicated in the EIO would be incompatible with the executing State's obligations in accordance with Article 6 TEU and the Charter;
 - (g) the conduct for which the EIO has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex D, as indicated by the issuing authority in the EIO, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years; or
 - (h) the use of the investigative measure indicated in the EIO is restricted under the law of the executing State to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the EIO.
2. Paragraphs 1(g) and 1(h) do not apply to investigative measures referred to in Article 10(2).
3. Where the EIO concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.
4. In the cases referred to in points (a), (b), (d), (e) and (f) of paragraph 1 before deciding not to recognise or not to execute an EIO, either in whole or in part the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.
5. In the case referred to in paragraph 1(a) and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.

Article 12

Time limits for recognition or execution

1. The decision on the recognition or execution shall be taken and the investigative measure shall be carried out with the same celerity and priority as for a similar domestic case and, in any case, within the time limits provided in this Article.
2. Where the issuing authority has indicated in the EIO that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline than those provided in this Article is necessary, or if the issuing authority has indicated in the EIO that the investigative measure must be carried out on a specific date, the executing authority shall take as full account as possible of this requirement.

3. The executing authority shall take the decision on the recognition or execution of the EIO as soon as possible and, without prejudice to paragraph 5, no later than 30 days after the receipt of the EIO by the competent executing authority.
4. Unless grounds for postponement under Article 15 exist or evidence mentioned in the investigative measure covered by the EIO is already in the possession of the executing State, the executing authority shall carry out the investigative measure without delay and without prejudice to paragraph 5, not later than 90 days following the taking of the decision referred to in paragraph 3.
5. If it is not practicable in a specific case for the competent executing authority to meet the time limit set out in paragraph 3 or the specific date set out in paragraph 2, it shall, without delay, inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time necessary for the decision to be taken. In such a case, the time limit laid down in paragraph 3 may be extended by a maximum of 30 days.
6. If it is not practicable in a specific case for the competent executing authority to meet the time limit set out in paragraph 4, it shall, without delay, inform the competent authority of the issuing State by any means, giving the reasons for the delay and it shall consult with the issuing authority on the appropriate timing to carry out the investigative measure.

Article 13

Transfer of evidence

1. The executing authority shall, without undue delay, transfer the evidence obtained or already in the possession of the competent authorities of the executing State as a result of the execution of the EIO to the issuing State.

Where requested in the EIO and if possible under the law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO in accordance with Article 9(4).

2. The transfer of the evidence may be suspended, pending a decision regarding a legal remedy, unless sufficient reasons are indicated in the EIO that an immediate transfer is essential for the proper conduct of its investigations or for the preservation of individual rights. However, the transfer of evidence shall be suspended if it would cause serious and irreversible damage to the person concerned.
3. When transferring the evidence obtained, the executing authority shall indicate whether it requires the evidence to be returned to the executing State as soon as it is no longer required in the issuing State.
4. Where the objects, documents, or data concerned are already relevant for other proceedings, the executing authority may, at the explicit request of and after consultations with the issuing authority, temporarily transfer the evidence on the condition that it be returned to the executing State as soon as it is no longer required in the issuing State or at any other time or occasion agreed between the competent authorities.

Article 14

Legal remedies

1. Member States shall ensure that legal remedies equivalent to those available in a similar domestic case, are applicable to the investigative measures indicated in the EIO.
2. The substantive reasons for issuing the EIO may be challenged only in an action brought in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.
3. Where it would not undermine the need to ensure confidentiality of an investigation under Article 19(1), the issuing authority and the executing authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking the legal remedies when these become applicable and in due time to ensure that they can be exercised effectively.

4. Member States shall ensure that the time-limits for seeking a legal remedy shall be the same as those that are provided for in similar domestic cases and are applied in a way that guarantees the possibility of the effective exercise of these legal remedies for the parties concerned.
5. The issuing authority and the executing authority shall inform each other about the legal remedies sought against the issuing, the recognition or the execution of an EIO.
6. A legal challenge shall not suspend the execution of the investigative measure, unless it is provided in similar domestic cases.
7. The issuing State shall take into account a successful challenge against the recognition or execution of an EIO in accordance with its own national law. Without prejudice to national procedural rules Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the EIO

Article 15

Grounds for postponement of recognition or execution

1. The recognition or execution of the EIO may be postponed in the executing State where:
 - (a) its execution might prejudice an on-going criminal investigation or prosecution, until such time as the executing State deems reasonable;
 - (b) the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose.
2. As soon as the ground for postponement has ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority by any means capable of producing a written record.

Article 16

Obligation to inform

1. The competent authority in the executing State which receives the EIO shall, without delay, and in any case within a week of the reception of an EIO, acknowledge reception of the EIO by completing and sending the form set out in Annex B.

Where a central authority has been designated in accordance with Article 7(3), this obligation is applicable both to the central authority and to the executing authority which receives the EIO from the central authority.

In the cases referred to in Article 7(6), this obligation applies both to the competent authority which initially received the EIO and to the executing authority to which the EIO is finally transmitted.

2. Without prejudice to Article 10(4) and (5) the executing authority shall inform the issuing authority immediately by any means:
 - (a) if it is impossible for the executing authority to take a decision on the recognition or execution due to the fact that the form provided for in Annex A is incomplete or manifestly incorrect;
 - (b) if the executing authority, in the course of the execution of the EIO, considers without further enquiries that it may be appropriate to carry out investigative measures not initially foreseen, or which could not be specified when the EIO was issued, in order to enable the issuing authority to take further action in the specific case; or
 - (c) if the executing authority establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority in accordance with Article 9.

Upon request by the issuing authority, the information shall be confirmed without delay by any means capable of producing a written record.

3. Without prejudice to Article 10(4) and (5) the executing authority shall inform the issuing authority without delay by any means capable of producing a written record:
 - (a) of any decision taken pursuant to Articles 10 or 11;
 - (b) of any decision to postpone the execution or recognition of the EIO, the reasons for the postponement and, if possible, the expected duration of the postponement.

Article 17

Criminal liability regarding officials

When present in the territory of the executing State in the framework of the application of this Directive, officials from the issuing State shall be regarded as officials of the executing State with respect to offences committed against them or by them.

Article 18

Civil liability regarding officials

1. Where, in the framework of the application of this Directive, officials of a Member State are present in the territory of another Member State, the former Member State shall be liable for any damage caused by its officials during their operations, in accordance with the law of the Member State in whose territory they are operating.
2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.
3. The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse in full any sums the latter Member State has paid to the victims or persons entitled on their behalf.
4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain in cases referred to in paragraph 1 from requesting reimbursement of damages it has sustained from another Member State.

Article 19

Confidentiality

1. Each Member State shall take the necessary measures to ensure that in the execution of an EIO the issuing authority and the executing authority take due account of the confidentiality of the investigation.
2. The executing authority shall, in accordance with its national law, guarantee the confidentiality of the facts and the substance of the EIO, except to the extent necessary to execute the investigative measure. If the executing authority cannot comply with the requirement of confidentiality, it shall notify the issuing authority without delay.
3. The issuing authority shall, in accordance with its national law and unless otherwise indicated by the executing authority, not disclose any evidence or information provided by the executing authority, except to the extent that its disclosure is necessary for the investigations or proceedings described in the EIO.
4. Each Member State shall take the necessary measures to ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been transmitted to the issuing State in accordance with Articles 26 and 27 or that an investigation is being carried out.

*Article 20***Protection of personal data**

When implementing this Directive, Member States shall ensure that personal data are protected and may only be processed in accordance with Council Framework Decision 2008/977/JHA ⁽¹⁾ and the principles of the Council of Europe Convention for the protection of Individuals with regard to the Automatic Processing of Personal Data of 28 January 1981 and its Additional Protocol.

Access to such data shall be restricted, without prejudice to the rights of the data subject. Only authorised persons may have access to such data.

*Article 21***Costs**

1. Unless otherwise provided in this Directive, the executing State shall bear all costs undertaken on the territory of the executing State which are related to the execution of an EIO.

2. Where the executing authority considers that the costs for the execution of the EIO may be deemed exceptionally high, it may consult with the issuing authority on whether and how the costs could be shared or the EIO modified.

The executing authority shall inform the issuing authority in advance of the detailed specifications of the part of the costs deemed exceptionally high.

3. In exceptional situations where no agreement can be reached with regard to the costs referred to in paragraph 2, the issuing authority may decide to:

- (a) withdraw the EIO in whole or in part; or
- (b) keep the EIO, and bear the part of the costs deemed exceptionally high.

CHAPTER IV

SPECIFIC PROVISIONS FOR CERTAIN INVESTIGATIVE MEASURES*Article 22***Temporary transfer to the issuing State of persons held in custody for the purpose of carrying out an investigative measure**

1. An EIO may be issued for the temporary transfer of a person in custody in the executing State for the purpose of carrying out an investigative measure with a view to gathering evidence for which the presence of that person on the territory of the issuing State is required, provided that he shall be sent back within the period stipulated by the executing State.

2. In addition to the grounds for non-recognition or non-execution referred to in Article 11 the execution of the EIO may also be refused if:

- (a) the person in custody does not consent; or
- (b) the transfer is liable to prolong the detention of the person in custody.

3. Without prejudice to paragraph 2(a), where the executing State considers it necessary in view of the person's age or physical or mental condition, the opportunity to state the opinion on the temporary transfer shall be given to the legal representative of the person in custody.

⁽¹⁾ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

4. In cases referred to in paragraph 1, transit of the person in custody through the territory of a third Member State ('the Member State of transit') shall be granted on application, accompanied by all necessary documents.
5. The practical arrangements regarding the temporary transfer of the person including the details of his custody conditions in the issuing State, and the dates by which he must be transferred from and returned to the territory of the executing State shall be agreed between the issuing State and the executing State, ensuring that the physical and mental condition of the person concerned, as well as the level of security required in the issuing State, are taken into account.
6. The transferred person shall remain in custody in the territory of the issuing State and, where applicable, in the territory of the Member State of transit, for the acts or convictions for which he has been kept in custody in the executing State, unless the executing State applies for his release.
7. The period of custody in the territory of the issuing State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the executing State.
8. Without prejudice to paragraph 6, a transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the issuing State for acts committed or convictions handed down before his departure from the territory of the executing State and which are not specified in the EIO.
9. The immunity referred to in paragraph 8 shall cease to exist if the transferred person, having had an opportunity to leave for a period of 15 consecutive days from the date when his presence is no longer required by the issuing authorities, has either:
 - (a) nevertheless remained in the territory; or
 - (b) having left it, has returned.
10. Costs resulting from the application of this Article shall be borne in accordance with Article 21, except for the costs arising from the transfer of the person to and from the issuing State which shall be borne by that State.

Article 23

Temporary transfer to the executing State of persons held in custody for the purpose of carrying out an investigative measure

1. An EIO may be issued for the temporary transfer of a person held in custody in the issuing State for the purpose of carrying out an investigative measure with a view to gathering evidence for which his presence on the territory of the executing State is required.
2. Paragraph 2(a) and paragraphs 3 to 9 of Article 22 are applicable *mutatis mutandis* to the temporary transfer under this Article.
3. Costs resulting from the application of this Article shall be borne in accordance with Article 21, except for the costs arising from the transfer of the person concerned to and from the executing State which shall be borne by the issuing State.

Article 24

Hearing by videoconference or other audiovisual transmission

1. Where a person is in the territory of the executing State and has to be heard as a witness or expert by the competent authorities of the issuing State, the issuing authority may issue an EIO in order to hear the witness or expert by videoconference or other audiovisual transmission in accordance with paragraphs 5 to 7.

The issuing authority may also issue an EIO for the purpose of hearing a suspected or accused person by videoconference or other audiovisual transmission.

2. In addition to the grounds for non-recognition or non-execution referred to in Article 11, execution of an EIO may be refused if either:

- (a) the suspected or accused person does not consent; or
- (b) the execution of such an investigative measure in a particular case would be contrary to the fundamental principles of the law of the executing State.

3. The issuing authority and the executing authority shall agree the practical arrangements. When agreeing such arrangements, the executing authority shall undertake to:

- (a) summon the witness or expert concerned, indicating the time and the venue of the hearing;
- (b) summon the suspected or accused persons to appear for the hearing in accordance with the detailed rules laid down in the law of the executing State and inform such persons about their rights under the law of the issuing State, in such a time as to allow them to exercise their rights of defence effectively;
- (c) ensure the identity of the person to be heard.

4. If in circumstances of a particular case the executing authority has no access to technical means for a hearing held by videoconference, such means may be made available to it by the issuing State by mutual agreement.

5. Where a hearing is held by videoconference or other audiovisual transmission, the following rules shall apply:

- (a) the competent authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identity of the person to be heard and respect for the fundamental principles of the law of the executing State.

If the executing authority is of the view that during the hearing the fundamental principles of the law of the executing State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;

- (b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the issuing State and the executing State;
- (c) the hearing shall be conducted directly by, or under the direction of, the competent authority of the issuing State in accordance with its own laws;
- (d) at the request of the issuing State or the person to be heard, the executing State shall ensure that the person to be heard is assisted by an interpreter, if necessary;
- (e) suspected or accused persons shall be informed in advance of the hearing of the procedural rights which would accrue to them, including the right not to testify, under the law of the executing State and the issuing State. Witnesses and experts may claim the right not to testify which would accrue to them under the law of either the executing or the issuing State and shall be informed about this right in advance of the hearing.

6. Without prejudice to any measures agreed for the protection of persons, on the conclusion of the hearing, the executing authority shall draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the executing State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the executing authority to the issuing authority.

7. Each Member State shall take the necessary measures to ensure that, where the person is being heard within its territory in accordance with this Article and refuses to testify when under an obligation to testify or does not testify the truth, its national law applies in the same way as if the hearing took place in a national procedure.

Article 25

Hearing by telephone conference

1. If a person is in the territory of one Member State and has to be heard as a witness or expert by competent authorities of another Member State, the issuing authority of the latter Member State may, where it is not appropriate or possible for the person to be heard to appear in its territory in person, and after having examined other suitable means, issue an EIO in order to hear a witness or expert by telephone conference as provided for in paragraph 2.
2. Unless otherwise agreed, Article 24(3), (5), (6) and (7) shall apply *mutatis mutandis* to hearings by telephone conference.

Article 26

Information on bank and other financial accounts

1. An EIO may be issued in order to determine whether any natural or legal person subject to the criminal proceedings concerned holds or controls one or more accounts, of whatever nature, in any bank located in the territory of the executing State, and if so, to obtain all the details of the identified accounts.
2. Each Member State shall take the measures necessary to enable it to provide the information referred to in paragraph 1 in accordance with the conditions under this Article.
3. The information referred to in paragraph 1 shall also, if requested in the EIO, include accounts for which the person subject to the criminal proceedings concerned has powers of attorney.
4. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank keeping the account.
5. In the EIO the issuing authority shall indicate the reasons why it considers that the requested information is likely to be of substantial value for the purpose of the criminal proceedings concerned and on what grounds it presumes that banks in the executing State hold the account and, to the extent available, which banks may be involved. It shall also include in the EIO any information available which may facilitate its execution.
6. An EIO may also be issued to determine whether any natural or legal person subject to the criminal proceedings concerned holds one or more accounts, in any non-bank financial institution located on the territory of the executing State. Paragraphs 3 to 5 shall apply *mutatis mutandis*. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 11, the execution of the EIO may also be refused if the execution of the investigative measure would not be authorised in a similar domestic case.

Article 27

Information on banking and other financial operations

1. An EIO may be issued in order to obtain the details of specified bank accounts and of banking operations which have been carried out during a defined period through one or more accounts specified therein, including the details of any sending or recipient account.
2. Each Member State shall take the measures necessary to enable it to provide the information referred to in paragraph 1 in accordance with the conditions under this Article.
3. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank in which the account is held.

4. In the EIO the issuing authority shall indicate the reasons why it considers the requested information relevant for the purpose of the criminal proceedings concerned.

5. An EIO may also be issued with regard to the information provided for in paragraph 1 with reference to the financial operations conducted by non-banking financial institutions. Paragraphs 3 to 4 shall apply *mutatis mutandis*. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 11, the execution of the EIO may also be refused where the execution of the investigative measure would not be authorised in a similar domestic case.

Article 28

Investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time

1. When the EIO is issued for the purpose of executing an investigative measure requiring the gathering of evidence in real time, continuously and over a certain period of time, such as:

- (a) the monitoring of banking or other financial operations that are being carried out through one or more specified accounts;
- (b) the controlled deliveries on the territory of the executing State;

its execution may be refused, in addition to the grounds for non-recognition and non-execution referred to in Article 11, if the execution of the investigative measure concerned would not be authorised in a similar domestic case.

2. The practical arrangements regarding the investigative measure referred to in paragraph 1(b) and wherever else necessary shall be agreed between the issuing State and the executing State.

3. The issuing authority shall indicate in the EIO why it considers the information requested relevant for the purpose of the criminal proceedings concerned.

4. The right to act, to direct and to control operations related to the execution of an EIO referred to in paragraph 1 shall lie with the competent authorities of the executing State.

Article 29

Covert investigations

1. An EIO may be issued for the purpose of requesting the executing State to assist the issuing State in the conduct of investigations into crime by officers acting under covert or false identity ('covert investigations').

2. The issuing authority shall indicate in the EIO why it considers that the covert investigation is likely to be relevant for the purpose of the criminal proceedings. The decision on the recognition and execution of an EIO issued under this Article shall be taken in each individual case by the competent authorities of the executing State with due regard to its national law and procedures.

3. In addition to the grounds for non-recognition and non-execution referred to in Article 11, the executing authority may refuse to execute an EIO referred to in paragraph 1, where:

- (a) the execution of the covert investigation would not be authorised in a similar domestic case; or
- (b) it was not possible to reach an agreement on the arrangements for the covert investigations under paragraph 4.

4. Covert investigations shall take place in accordance with the national law and procedures of the Member State on the territory of which the covert investigation takes place. The right to act, to direct and to control the operation related to the covert investigation shall lie solely with the competent authorities of the executing State. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the issuing State and the executing State with due regard to their national laws and procedures.

CHAPTER V

INTERCEPTION OF TELECOMMUNICATIONS*Article 30***Interception of telecommunications with technical assistance of another Member State**

1. An EIO may be issued for the interception of telecommunications in the Member State from which technical assistance is needed.
 2. Where more than one Member State is in a position to provide the complete necessary technical assistance for the same interception of telecommunications, the EIO shall be sent only to one of them. Priority shall always be given to the Member State where the subject of the interception is or will be located.
 3. An EIO referred to in paragraph 1 shall also contain the following information:
 - (a) information for the purpose of identifying the subject of the interception;
 - (b) the desired duration of the interception; and
 - (c) sufficient technical data, in particular the target identifier, to ensure that the EIO can be executed.
 4. The issuing authority shall indicate in the EIO the reasons why it considers the indicated investigative measure relevant for the purpose of the criminal proceedings concerned.
 5. In addition to the grounds for non-recognition or non-execution referred to in Article 11, the execution of an EIO referred to in paragraph 1 may also be refused where the investigative measure would not have been authorised in a similar domestic case. The executing State may make its consent subject to any conditions which would be observed in a similar domestic case.
 6. An EIO referred to in paragraph 1 may be executed by:
 - (a) transmitting telecommunications immediately to the issuing State; or
 - (b) intercepting, recording and subsequently transmitting the outcome of interception of telecommunications to the issuing State.
- The issuing authority and the executing authority shall consult each other with a view to agreeing on whether the interception is carried out in accordance with point (a) or (b).
7. When issuing an EIO referred to in paragraph 1 or during the interception, the issuing authority may, where it has a particular reason to do so, also request a transcription, decoding or decrypting of the recording subject to the agreement of the executing authority.
 8. Costs resulting from the application of this Article shall be borne in accordance with Article 21, except for the costs arising from the transcription, decoding and decrypting of the intercepted communications which shall be borne by the issuing State.

*Article 31***Notification of the Member State where the subject of the interception is located from which no technical assistance is needed**

1. Where, for the purpose of carrying out an investigative measure, the interception of telecommunications is authorised by the competent authority of one Member State (the 'intercepting Member State') and the communication address of the subject of the interception specified in the interception order is being used on the territory of another Member State (the 'notified Member State') from which no technical assistance is needed to carry out the interception, the intercepting Member State shall notify the competent authority of the notified Member State of the interception:
 - (a) prior to the interception in cases where the competent authority of the intercepting Member State knows at the time of ordering the interception that the subject of the interception is or will be on the territory of the notified Member State;
 - (b) during the interception or after the interception has been carried out, immediately after it becomes aware that the subject of the interception is or has been during the interception, on the territory of the notified Member State.

2. The notification referred to in paragraph 1 shall be made by using the form set out in Annex C.
3. The competent authority of the notified Member States may, in case where the interception would not be authorised in a similar domestic case, notify, without delay and at the latest within 96 hours after the receipt of the notification referred to in paragraph 1, the competent authority of the intercepting Member State:
 - (a) that the interception may not be carried out or shall be terminated; and
 - (b) where necessary, that any material already intercepted while the subject of the interception was on its territory may not be used, or may only be used under conditions which it shall specify. The competent authority of the notified Member State shall inform the competent authority of the intercepting Member State of reasons justifying those conditions.
4. Article 5(2) shall be applicable *mutatis mutandis* for the notification referred to in paragraph 2.

CHAPTER VI

PROVISIONAL MEASURES

Article 32

Provisional measures

1. The issuing authority may issue an EIO in order to take any measure with a view to provisionally preventing the destruction, transformation, removal, transfer or disposal of an item that may be used as evidence.
2. The executing authority shall decide and communicate the decision on the provisional measure as soon as possible and, wherever practicable, within 24 hours of receipt of the EIO.
3. Where a provisional measure referred to in paragraph 1 is requested the issuing authority shall indicate in the EIO whether the evidence is to be transferred to the issuing State or is to remain in the executing State. The executing authority shall recognise and execute the EIO and transfer the evidence in accordance with the procedures laid down in this Directive.
4. Where, in accordance with paragraph 3, an EIO is accompanied by an instruction that the evidence shall remain in the executing State, the issuing authority shall indicate the date of lifting the provisional measure referred to in paragraph 1, or the estimated date for the submission of the request for the evidence to be transferred to the issuing State.
5. After consulting the issuing authority, the executing authority may, in accordance with its national law and practice, lay down appropriate conditions in light of the circumstances of the case to limit the period for which the provisional measure referred to in paragraph 1 is to be maintained. If, in accordance with those conditions, it envisages lifting the provisional measure, the executing authority shall inform the issuing authority, which shall be given the opportunity to submit its comments. The issuing authority shall forthwith notify the executing authority that the provisional measure referred to in paragraph 1 has been lifted.

CHAPTER VII

FINAL PROVISIONS

Article 33

Notifications

1. By 22 May 2017 each Member State shall notify the Commission of the following:
 - (a) the authority or authorities which, in accordance with its national law, are competent according to Article 2(c) and (d) when this Member State is the issuing State or the executing State;
 - (b) the languages accepted for an EIO, as referred to in Article 5(2);
 - (c) the information regarding the designated central authority or authorities if the Member State wishes to make use of the possibility under Article 7(3). This information shall be binding upon the authorities of the issuing State.

2. Each Member State may also provide the Commission the list of necessary documents it would require under Article 22(4).
3. Member States shall inform the Commission of any subsequent changes to the information referred to in paragraphs 1 and 2.
4. The Commission shall make the information received under this Article available to all the Member States and to the EJN. The EJN shall make the information available on the website referred to in Article 9 of the Council Decision 2008/976/JHA ⁽¹⁾.

Article 34

Relations to other legal instruments, agreements and arrangements

1. Without prejudice to their application between Member States and third States and their temporary application by virtue of Article 35, this Directive replaces, as from 22 May 2017, the corresponding provisions of the following conventions applicable between the Member States bound by this Directive:
 - (a) European Convention on Mutual Assistance in Criminal Matters of the Council of Europe of 20 April 1959, as well as its two additional protocols, and the bilateral agreements concluded pursuant to Article 26 thereof;
 - (b) Convention implementing the Schengen Agreement;
 - (c) Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its protocol.
2. Framework Decision 2008/978/JHA is hereby replaced for the Member States bound by this Directive. Provisions of Framework Decision 2003/577/JHA are replaced for Member States bound by this Directive as regards freezing of evidence.

For the Member States bound by this Directive, references to Framework Decision 2008/978/JHA and, as regards freezing of evidence, to Framework Decision 2003/577/JHA, shall be construed as references to this Directive.

3. In addition to this Directive, Member States may conclude or continue to apply bilateral or multilateral agreements or arrangements with other Member States after 22 May 2017 only insofar as these make it possible to further strengthen the aims of this Directive and contribute to simplifying or further facilitating the procedures for gathering evidence and provided that the level of safeguards set out in this Directive is respected.
4. Member States shall notify to the Commission by 22 May 2017 the existing agreements and arrangements referred to in paragraph 3 which they wish to continue to apply. Member States shall also notify the Commission within three months of the signing of any new agreement or arrangement referred to in paragraph 3.

Article 35

Transitional provisions

1. Mutual assistance requests received before 22 May 2017 shall continue to be governed by existing instruments relating to mutual assistance in criminal matters. Decisions to freeze evidence by virtue of Framework Decision 2003/577/JHA and received before 22 May 2017 shall also be governed by that Framework Decision.
2. Article 8(1) is applicable *mutatis mutandis* to the EIO following a decision of freezing taken under Framework Decision 2003/577/JHA.

⁽¹⁾ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

*Article 36***Transposition**

1. Member States shall take the necessary measures to comply with this Directive by 22 May 2017.
2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
3. By 22 May 2017, Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.

*Article 37***Report on the application**

No later than five years after 21 May 2014, the Commission shall present to the European Parliament and the Council a report on the application of this Directive, on the basis of both qualitative and quantitative information, including in particular, the evaluation of its impact on the cooperation in criminal matters and the protection of individuals, as well as the execution of the provisions on the interception of telecommunications in light of technical developments. The report shall be accompanied, if necessary, by proposals for amendments to this Directive.

*Article 38***Entry into force**

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

*Article 39***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 3 April 2014.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
D. KOURKOULAS

ANNEX A

EUROPEAN INVESTIGATION ORDER (EIO)

This EIO has been issued by a competent authority. The issuing authority certifies that the issuing of this EIO is necessary and proportionate for the purpose of the proceedings specified within it taking into account the rights of the suspected or accused person and that the investigative measures requested could have been ordered under the same conditions in a similar domestic case. I request that the investigative measure or measures specified below be carried out taking due account of the confidentiality of the investigation and that the evidence obtained as a result of the execution of the EIO be transferred.

SECTION A

Issuing State:

Executing State:

SECTION B: **Urgency**

Please indicate if there is any urgency due to

☐ Evidence being concealed or destroyed

☐ Imminent trial date

☐ Any other reason

Please specify below:

Time limits for execution of the EIO are laid down in Directive 2014/41/EU. However, if a shorter or specific time limit is necessary, please provide the date and explain the reason for this:

.....

SECTION C: Investigative measure(s) to be carried out

1. Describe the assistance/investigative measure(s) required AND indicate, if applicable, if it is one of the following investigative measures:

.....

☐ Obtaining information or evidence which is already in the possession of the executing authority

☐ Obtaining information contained in databases held by police or judicial authorities

☐ Hearing

☐ witness

☐ expert

☐ suspected or accused person

☐ victim

☐ third party

☐ Identification of persons holding a subscription of a specified phone number or IP address

☐ Temporary transfer of a person held in custody to the issuing State

☐ Temporary transfer of a person held in custody to the executing State

- ☐ Hearing by videoconference or other audiovisual transmission
- ☐ witness
 - ☐ expert
 - ☐ suspected or accused person
- ☐ Hearing by telephone conference
- ☐ witness
 - ☐ expert
- ☐ Information on bank and other financial accounts
- ☐ Information on banking and other financial operations
- ☐ Investigative measure implying the gathering of evidence in real time, continuously and over a certain period of time
- ☐ monitoring of banking or other financial operations
 - ☐ controlled deliveries
 - ☐ other
- ☐ Covert investigation
- ☐ Interception of telecommunications
- ☐ Provisional measure(s) to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence

SECTION D: Relation to an earlier EIO

Indicate whether this EIO supplements an earlier EIO. If applicable, provide information relevant to identify the previous EIO (the date of issue of the EIO, the authority to which it was transmitted and, if available, the date of transmission of the EIO, and reference numbers given by the issuing and executing authorities):

.....

.....

If relevant please indicate if an EIO has already been addressed to another Member State in the same case:

.....

SECTION E: Identity of the person concerned

1. State all information, as far as known, regarding the identity of the (i) natural or (ii) legal person(s) concerned by the investigative measure (if more than one person is concerned, please provide the information for each person):

(i) In the case of natural person(s)

Name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number:

Type and number of the identity document(s) (ID card, passport), if available:

.....

Date of birth:

Place of birth:

Residence and/or known address; if address not known, state the last known address:

.....

Language(s) which the person understands:

.....

(ii) In the case of legal person(s)

Name:

Form of legal person:

Shortened name, commonly used name or trading name, if applicable:

.....

Registered seat:

Registration number:

Address of the legal person:

Name of the legal person's representative:

Please describe the position the concerned person currently holds in the proceedings:

☐ suspected or accused person☐ victim☐ witness☐ expert☐ third party☐ other (please specify)

2. If different from the address above, please give the location where investigative measure is to be carried out:

.....

.....

3. Provide any other information that will assist with the execution of the EIO:

.....

.....

SECTION F: Type of proceedings for which the EIO is issued:

☐ (a) with respect to criminal proceedings brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State; or☐ (b) proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters; or☐ (c) proceedings brought by judicial authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;☐ (d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

SECTION G: Grounds for issuing the EIO

1. Summary of the facts

Set out the reasons why the EIO is issued, including a summary of the underlying facts, a description of offences charged or under investigation, the stage the investigation has reached, the reasons for any risk factors and any other relevant information.

.....

.....

.....

2. Nature and legal classification of the offence(s) for which the EIO is issued and the applicable statutory provision/code:

.....

.....

.....

3. Is the offence for which the EIO is issued punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years as defined by the law of the issuing State and included in the list of offences set out below? (please tick the relevant box)

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

SECTION H: Additional requirements for certain measures

Fill out the sections relevant to the investigative measure(s) requested:

SECTION H1: Transfer of a person held in custody

(1) If a temporary transfer to the issuing State of a person held in custody for the purpose of the investigation is requested, please indicate whether the person consented to this measure:

☐ Yes ☐ No ☐ I request that the person's consent is sought

(2) If a temporary transfer to the executing State of a person held in custody for the purpose of investigation is requested, please indicate whether the person consented to this measure:

☐ Yes ☐ No

SECTION H2: Video or telephone conference or other audiovisual transmission

If hearing by videoconference or telephone conference or other audiovisual transmission is requested:

Please indicate the name of the authority that will conduct the hearing (contact details/language):

.....

Please indicate reasons for requesting this measure:

.....

☐ (a) hearing by videoconference or other audiovisual transmission:

☐ the suspected or accused person has given his/her consent

☐ (b) hearing by telephone conference

SECTION H3: Provisional measures

If a provisional measure to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence, is requested, please indicate whether:

☐ the item is to be transferred to the issuing State

☐ the item is to remain in the executing State; please indicate an estimated date:

for lifting of provisional measure:

for the submission of a subsequent request concerning the item:

SECTION H4: Information on bank and other financial accounts

(1) If information on bank accounts or other financial accounts that the person holds or controls is requested, please indicate, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings and on what grounds you presume that banks in the executing State hold the account:

☐ information on bank accounts that the person holds or in respect of which he or she has the power of attorney

☐ information on other financial accounts that the person holds or in respect of which he or she has the power of attorney

.....

.....

.....

.....

(2) If information on banking operations or other financial operations is requested, please indicate, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings:

- ☐ information on banking operations
☐ information on other financial operations

.....

Indicate the relevant period of time and the related accounts:

.....

SECTION H5: Investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time

If such investigative measure is requested please indicate the reasons why you consider the requested information relevant for the purpose of the criminal proceedings:

.....

SECTION H6: Covert investigations

If covert investigation is requested please indicate the reasons why you consider the investigative measure likely to be relevant for the purpose of the criminal proceedings:

.....

SECTION H7: Interception of telecommunications

(1) If interception of telecommunications is requested please indicate the reasons why you consider the investigative measure relevant for the purpose of the criminal proceedings:

.....

(2) Please provide following information:

(a) information for the purpose of identifying the subject of the interception:

.....

(b) the desired duration of the interception:

.....

(c) technical data (in particular the target identifier — such as mobile telephone, landline telephone, email address, internet connection), to ensure that the EIO can be executed:

.....

(3) Please indicate your preference concerning the method of execution:

- ☐ immediate transmission
☐ recording and subsequent transmission

Please indicate if you also require transcription, decoding or decrypting of the intercepted material (*):

.....

(*) Please be aware that the costs of any transcription, decoding or decrypting must be met by the issuing State.

SECTION I: Formalities and procedures requested for the execution

1. Tick and complete, if applicable

☐ It is requested that the executing authority comply with the following formalities and procedures (...):.....
.....

2. Tick and complete, if applicable

☐ It is requested that one or several officials of the issuing State assist in the execution of the EIO in support of the competent authorities of the executing State.

Contact details of the officials:

.....
.....

Languages that may be used for communication:

.....

SECTION J: Legal remedies

1. Please indicate if a legal remedy has already been sought against the issuing of an EIO, and if so please provide further details (description of the legal remedy, including necessary steps to take and deadlines):

.....
.....

2. Authority in the issuing State which can supply further information on procedures for seeking legal remedies in the issuing State and on whether legal assistance and interpretation and translation is available:

Name:

Contact person (if applicable):

Address:

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

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

E-mail:

SECTION K: Details of the authority which issued the EIO

Tick the type of authority which issued the EIO:

☐ judicial authority☐ (*) any other competent authority as defined by the law of the issuing State

(*) Please also complete section (L)

Name of authority:

.....

Name of representative/contact point:

.....

File No:

Address:

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

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

E-mail:

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

.....

If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the transfer of evidence:

Name/Title/Organisation:

Address:

E-mail/Contact Phone No:

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

Name:

Post held (title/grade):

Date:

Official stamp (if available):

SECTION L Details of the judicial authority which validated the EIO

Please indicate the type of judicial authority which has validated this EIO:

- ☐ (a) judge or court
☐ (b) investigating judge
☐ (c) public prosecutor

Official name of the validating authority:

.....

Name of its representative:

.....

Post held (title/grade):

.....

File no:

Address:

.....

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

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

E-mail:

Languages in which it is possible to communicate with the validating authority:

.....

Please indicate if the main contact point for the executing authority should be the:

- ☐ issuing authority
☐ validating authority

Signature and details of the validating authority

Name:

Post held (title/grade):

Date:

Official stamp (if available):

ANNEX B

CONFIRMATION OF THE RECEIPT OF AN EIO

This form has to be completed by the authority of the executing State which received the EIO referred to below.

(A) THE EIO CONCERNED

Authority which issued the EIO:

.....

File reference:.....

Date of issuing:.....

Date of receipt:

(B) THE AUTHORITY WHICH RECEIVED THE EIO ⁽¹⁾

Official name of the competent authority:

.....

Name of its representative:

.....

Post held (title/grade):

.....

Address:

.....

.....

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

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

E-mail:.....

File reference:.....

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

.....

(C) (WHERE APPLICABLE) THE COMPETENT AUTHORITY TO WHOM THE EIO IS TRANSMITTED BY THE AUTHORITY UNDER (B)

Official name of the authority:

.....

Name of its representative:

.....

Post held (title/grade):

.....

Address:

.....

.....

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

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

E-mail:.....

Date of transmission:

File reference:.....

Language(s) that may be used for communication:

.....

⁽¹⁾ This section is to be completed by each authority which received the EIO. This obligation falls upon the authority competent to recognise and execute the EIO and, where applicable, upon the central authority or the authority which transmitted the EIO to the competent authority.

(D) ANY OTHER INFORMATION WHICH MAY BE RELEVANT FOR THE ISSUING AUTHORITY:

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

(E) SIGNATURE AND DATE

Signature:

Date:

Official stamp (if available):

ANNEX C

NOTIFICATION

This form is used in order to notify a Member State about the interception of telecommunication that will be, is or has been carried out on its territory without its technical assistance. I hereby inform (notified Member State) of the interception.

(A) ⁽¹⁾ THE COMPETENT AUTHORITY

Official name of the competent authority of intercepting Member State:

.....

Name of its representative:

.....

Post held (title/grade):

.....

Address:

.....

.....

.....

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

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

E-mail:

File reference:

Date of issuing:

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

.....

(B) INFORMATION CONCERNING THE INTERCEPTION

(I) Information about state of play: This notification takes place (please tick)

☐ prior to the interception

☐ during the interception

☐ after the interception

(II) The (anticipated) duration of the interception (as known to the issuing authority):

....., starting from

(III) Target of the interception: (telephone number, IP number or e-mail)

.....

(IV) Identity of the persons concerned

State all information, as far as they are known, regarding the identity of the (i) natural or (ii) legal person(s) against whom the proceedings are/may be/is taking place:

(i) In the case of natural person(s)

Name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number:

⁽¹⁾ The authority which is referred to here is the one which should be contacted in further correspondence with the issuing State.

Date of birth:

Place of birth:

Residence and/or known address; if address not known, state the last known address:

.....

Language(s) which the person understands:

.....

(ii) In the case of legal person(s)

Name:

Form of legal person:

Shortened name, commonly used name or trading name, if applicable:

.....

Registered seat:

Registration number:

Address of the legal person:

Name and contact details of the representative of the legal person:

(V) Information regarding the purpose of this interception:

State all information necessary, including a description of the case, legal classification of the offence(s) and the applicable statutory provision/code, in order to enable the notified authority to assess the following:

- ☐ whether the interception would be authorised in a similar domestic case; and whether the material obtained can be used in legal proceedings
- ☐ where the interception has already occurred, whether that material can be used in legal proceedings

.....

.....

.....

.....

.....

.....

Please note that any objection to the interception or the use of already intercepted material must be made no later than 96 hours after the reception of this notification.

(C) SIGNATURE AND DATE

Signature:

Date:

Official stamp (if available):

ANNEX D

THE CATEGORIES OF OFFENCES REFERRED TO IN ARTICLE 11

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

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

**Federal Act
on the Freezing and the Restitution of Illicit Assets
held by Foreign Politically Exposed Persons
(Foreign Illicit Assets Act, FIAA)**

of 18 December 2015 (Status as of 1 July 2016)

*The Federal Assembly of the Swiss Confederation,
based on Article 54 paragraph 1 of the Federal Constitution¹,
and having regard to the Federal Council Dispatch of 21 May 2014²,
decrees:*

Section 1 General Provisions

Art. 1 Purpose

This Act governs the freezing, confiscation and restitution of assets held by foreign politically exposed persons or their close associates, where there is reason to assume that those assets were acquired through acts of corruption, criminal mismanagement or by other felonies.

Art. 2 Definitions

Within the meaning of the present Act:

- a. *foreign politically exposed persons* means individuals who are or have been entrusted with prominent public functions by a foreign country, for example heads of State or of government, senior politicians at the national level, senior government, judicial or military officials at the national level, important political party officials at the national level and senior executives of State-owned corporations of national importance;
- b. *close associates* means natural persons who are known to be in close association with the persons defined in subparagraph (a) by reason of a family, personal or business relationship;
- c. *assets* means property of any kind, whether tangible or intangible, movable or immovable.

AS 2016 1803

¹ SR 101

² BBl 2014 5265

Section 2 Freezing of Assets

Art. 3 Freeze for purposes of mutual legal assistance

¹ In order to support future cooperation within the framework of mutual legal assistance proceedings with the country of origin, the Federal Council may order the freezing of assets in Switzerland:

- a. over which foreign politically exposed persons or their close associates have power of disposal;
- b. of which foreign politically exposed persons or their close associates are the beneficial owners; or
- c. which belong to a legal entity:
 1. through which foreign politically exposed persons or their close associates hold direct or indirect power of disposal over those assets, or
 2. of which foreign politically exposed persons or their close associates are the beneficial owners.

² An asset freeze shall be admissible if the following conditions are met:

- a. the government or certain members of the government of the country of origin have lost power, or a change in power appears inexorable;
- b. the level of corruption in the country of origin is notoriously high;
- c. it appears likely that the assets were acquired through acts of corruption, criminal mismanagement or other felonies;
- d. the safeguarding of Switzerland's interests requires the freezing of the assets.

³ Prior to ordering an asset freeze, and barring exigent circumstances, the Federal Council shall inquire into the position of Switzerland's main partner countries, and of international organisations, with regard to freezing orders. As a rule, it shall coordinate the timing and substance of the measures it orders with measures taken by those countries and organisations.

Art. 4 Freeze for purposes of confiscation in the event mutual legal assistance proceedings fail

¹ The Federal Council may order an asset freeze in Switzerland in anticipation of initiating proceedings for the confiscation of assets:

- a. over which foreign politically exposed persons or their close associates have power of disposal;
- b. of which foreign politically exposed persons or their close associates are the beneficial owners; or
- c. which belong to a legal entity:
 1. through which foreign politically exposed persons or their close associates hold direct or indirect power of disposal over those assets, or

2. of which foreign politically exposed persons or their close associates are the beneficial owners.

² An asset freeze shall be admissible if the following conditions are met:

- a. the assets have been made subject to a provisional seizure order within the framework of international legal assistance proceedings in criminal matters instigated at the request of the country of origin;
- b. the country of origin is unable to satisfy the requirements for mutual legal assistance owing to the total or substantial collapse, or the impairment, of its judicial system (failure of state structures);
- c. the safeguarding of Switzerland's interests requires the freezing of the assets.

³ An asset freeze shall also be admissible where, following receipt of a request for mutual legal assistance, cooperation with the country of origin proves to be impossible because there are reasons to believe that proceedings in the country of origin do not satisfy the essential principles of procedure foreseen in Article 2 letter a of the Mutual Assistance Act of 20 March 1981³ and where the safeguarding of Switzerland's interests so requires.

Art. 5 Amendment and publication of list entries

¹ Where the asset freeze ordered pursuant to Article 3 of this Act takes the form of an administrative ordinance (asset freeze ordinance), the Federal Department of Foreign Affairs (FDFA) may amend the list of persons named in the asset freeze, as appended to that ordinance. Following consultation with the other departments concerned, the FDFA may add or remove the names of foreign politically exposed persons or their close associates where international coordination with the main partner countries and international organisations or the safeguarding of Switzerland's interests so requires.

² The FDFA shall immediately remove from that list the names of those persons against whom the freeze is found to be groundless.

³ The list of the names of persons appended to the asset freeze ordinance shall be published in the Official Compilation of Federal Legislation. It may include personal and sensitive data concerning, in particular, current or past membership of a political party or the existence of pending criminal or administrative proceedings or sanctions.

Art. 6 Duration of freeze

¹ A freeze ordered pursuant to Article 3 shall be limited to a maximum duration of four years. The Federal Council may extend the freeze for an additional year, renewable annually, where the country of origin has expressed its willingness to cooperate within the framework of mutual legal assistance proceedings. The maximum duration of the asset freeze is ten years.

³ SR 351.1

² Assets frozen pursuant to Article 4 shall remain frozen until such time as the decision concerning their confiscation becomes enforceable. Where no proceedings for confiscation of the assets have been instigated within a period of 10 years from the date the freezing order issued pursuant to Article 4 becomes enforceable, the freeze on the assets shall be lifted.

Art. 7 Duty to report and to provide information

¹ Persons or institutions who hold or manage in Switzerland assets of persons affected by an asset freeze within the meaning of Article 3 must immediately report these assets to the Money Laundering Reporting Office Switzerland (MROS).

² Persons or institutions that neither hold nor manage such assets in Switzerland, but who have knowledge thereof by virtue of the functions they perform, must report the assets immediately to MROS.

³ Based on reports received pursuant to paragraph 2, MROS may request information from any person or institution that may hold or manage assets covered by a freeze ordered under the provisions of the present Act.

⁴ Persons or institutions subject to the terms of paragraphs 1 to 3 have the further duty to produce, at the request of MROS, all information and documents relating to the reported assets as may be required for the enforcement of the present Act, to the extent that they possess any such information.

⁵ Lawyers and notaries are not subject to the duty to report and inform where they are constrained by the duty of professional confidentiality within the meaning of Article 321 of the Swiss Criminal Code⁴,

⁶ MROS shall transmit the information received pursuant to the provisions of paragraphs 1 to 3 to the FDFA and the Federal Office of Justice (FOJ). The Federal Council shall determine the procedures for cooperation in the framework of this Act between the FDFA, the FOJ and the MROS.

Art. 8 Administration of frozen assets

¹ Persons and institutions who hold or manage in Switzerland assets that have been made subject to a freezing order pursuant to the terms of this Act shall continue to administer them once the order has been issued. They shall inform the FDFA immediately where the value of the assets is at risk of declining rapidly or the cost of maintaining the assets is excessive.

² Persons and institutions who administer frozen assets pursuant to paragraph 1 shall provide the FDFA, on its request, with all information and documents relating to the freezing and management of the assets in question.

³ The principles that govern the investment of seized assets apply *mutatis mutandis* to the administration of assets frozen under the provisions of this Act.

⁴ The FDFA may order the measures necessary to avoid the risk of a rapid decline in the value of the assets or excessive maintenance costs, including the immediate

⁴ SR 311.0

liquidation of the assets pursuant to the provisions of the Federal Act of 11 April 1889⁵ on Debt Enforcement and Bankruptcy. The terms of paragraph 1 also apply to the liquidation proceeds.

⁵ Where a freeze on the assets has also been imposed within the framework of criminal proceedings or of mutual legal assistance proceedings, management of the assets is the responsibility solely of the authority overseeing the criminal proceedings or the mutual legal assistance proceedings. That authority shall inform the FDFA before ordering the freeze to be lifted.

Art. 9 Release of frozen assets

In exceptional cases, in particular in cases of hardship or where the safeguarding of important Swiss interests so requires, the FDFA may authorise the release of a portion of the frozen assets.

Art. 10 Amicable settlement

¹ Throughout the period in which the asset freeze is in force, the Federal Council may instruct the FDFA to seek an amicable settlement so as to permit the full or partial restitution of the frozen assets. Articles 17 through 19 apply *mutatis mutandis* to this restitution.

² Any amicable settlement is subject to the approval of the Federal Council.

³ If the Federal Council approves the amicable settlement, it shall lift the freeze on the assets.

Section 3 Support Measures

Art. 11 General principle

The Confederation may provide the country of origin with assistance in its efforts to obtain restitution of the frozen assets.

Art. 12 Technical assistance

¹ The FDFA and the FOJ may, after consulting one another, provide the country of origin with technical assistance.

² They may, in particular:

- a. assist in the training of the competent authorities and provide them with legal advice;
- b. organise bilateral or multilateral conferences or meetings;
- c. second experts to the country of origin.

⁵ SR 281.1

³ The FDFA shall coordinate these measures with the other departments concerned and may cooperate with qualified domestic and international institutions for their implementation.

Art. 13 Transmission of information to the country of origin

¹ MROS may transmit to its counterpart abroad in the country of origin any information, including bank information, that it has obtained under the provisions of this Act in order to permit that country to prepare a request for mutual legal assistance from Switzerland or to complete an insufficiently substantiated request.

² The transmission of information obtained by MROS under the provisions of this Act shall proceed subject to the terms set out in Article 30, Article 31 letter b and c and Article 32 paragraph 3 of the Anti-Money Laundering Act of 10 October 1997⁶. Article 30 paragraph 4 letter a number 1 of that Act does not apply.

³ The information obtained under the provisions of this Act shall not be transmitted abroad if:

- a. the country of origin is experiencing a failure of state structures; or if
- b. the life or physical well-being of the persons concerned would be threatened as a result.

⁴ The information obtained under the provisions of this Act shall be transmitted in the form of a report. If required by the circumstances, the transmission of information to the country of origin may take place in stages or be subject to conditions. In defining the conditions, MROS shall take particular account of the need to respect the right to a fair trial in the country of origin.

⁵ Before transmitting information obtained under the provisions of the present Act, the MROS shall consult with both the FOJ and the FDFA.

Section 4 Confiscation of assets

Art. 14 Conditions and procedure

¹ The Federal Council may instruct the Federal Department of Finance (FDF) to take legal action before the Federal Administrative Court for the confiscation of frozen assets.

² The Federal Administrative Court shall order the confiscation of assets:

- a. that are subject to the power of disposal of a foreign politically exposed person or a close associate of that individual, or of which those individuals are the beneficial owners;
- b. that are of illicit origin; and which
- c. have been frozen by order of the Federal Council in anticipation of their confiscation, pursuant to Article 4.

⁶ SR 955.0

³ No statute of limitations in respect of criminal prosecution or penalties may be applied.

⁴ Should mutual legal assistance proceedings in criminal matters resume, confiscation proceedings shall be suspended until such time as a final decision has been reached in those proceedings.

Art. 15 Presumption of illicit origin

¹ There shall be a presumption that assets are of illicit origin where the following conditions are fulfilled:

- a. the wealth of the individual who has the power of disposal over the assets or who is the beneficial owner thereof increased inordinately, facilitated by the exercise of a public function by a foreign politically exposed person;
- b. the level of corruption in the country of origin or surrounding the foreign politically exposed person in question was notoriously high during his or her term of office.

² An increase shall be considered inordinate where there is a significant disproportion, inconsistent with ordinary experience and the prevailing circumstances in the country, between the income legitimately earned by the person with the power of disposal over the assets and the growth in that person's wealth.

³ This presumption shall be reversed where it has been demonstrated with overwhelming probability that the assets in question were acquired legitimately.

Art. 16 Rights of third parties

Assets may not be confiscated in the following cases:

- a. rights thereto are asserted by a Swiss authority;
- b. a person who is not a close associate of the foreign politically exposed person in question has acquired, in good faith, rights in rem on those assets:
 1. in Switzerland, or
 2. in another country, provided that those rights have been affirmed in a judicial decision which can be recognised in Switzerland.

Section 5 Restitution of Assets

Art. 17 General principle

The restitution of assets is made in pursuit of the following objectives:

- a. to improve the living conditions of the inhabitants of the country of origin; or
- b. to strengthen the rule of law in the country of origin and thus to contribute to the fight against impunity.

Art. 18 Procedure

¹ The restitution of confiscated assets is made through the financing of programmes of public interest.

² The Federal Council may conclude agreements governing the restitution of assets.

³ Such agreements may cover, in particular:

- a. the type of programmes of public interest to be funded by the returned assets;
- b. the way in which the returned assets are to be used;
- c. the parties to be included in the restitution process;
- d. control and monitoring of the use made of the returned assets.

⁴ In the absence of an agreement with the country of origin, the Federal Council shall determine the process of restitution. It may, in particular, return confiscated assets via international or national organisations, and provide for the supervision of the FDFA.

⁵ To the extent possible, it shall include non-governmental organisations in the restitution process.

Art. 19 Procedural costs

¹ A lump-sum amount not exceeding 2.5% of the value of the confiscated assets may be deducted by the Confederation or to the cantons to cover costs incurred in proceedings for the freezing, confiscation and restitution of the assets, and in implementation of support measures.

² The Federal Council shall determine on a case-by-case basis the amount to be deducted and the details of any sharing arrangements between the Confederation and the cantons concerned, in consultation with the latter.

Section 6 Legal Remedies

Art. 20 Request for removal

¹ Natural persons and legal entities whose names have been included in the appendix to an asset freeze ordinance may submit to the FDFA a substantiated request for the removal of their names from the list.

² The FDFA shall rule on the request.

Art. 21 Appeal

¹ In accordance with the general provisions on the administration of federal justice, decisions issued pursuant to this Act shall be subject to appeal.

² The appeal does not have suspensive effect. Article 55 paragraph 2 of the Administrative Procedure Act of 20 December 1968⁷ does not apply.

³ Freeze ordinances shall not be subject to appeal.

Section 7 Administrative Assistance between Swiss Authorities, Data Processing and Reporting

Art. 22 Administrative assistance between Swiss authorities

¹ Federal and cantonal authorities shall transmit to the FDFA and the FDF, on their own initiative or on request, the information and personal data necessary for this Act to be enforced.

² The FDFA shall transmit to the federal supervisory authorities and to federal and cantonal authorities responsible in matters of mutual legal assistance and criminal prosecution, at their request, the information and personal data they require to carry out their legal tasks.

³ The FOJ or the authority entrusted with the execution of a request for mutual legal assistance in criminal matters shall inform the FDFA where:

- a. a request for international mutual legal assistance in criminal matters concerning assets frozen in Switzerland held by foreign politically exposed persons or their close associates will not be granted owing to a failure of state structures in the requesting country;
- b. there is reason to believe that no mutual legal assistance proceedings in criminal matters can be conducted based on the provisions of Article 2 letter a of the Mutual Assistance Act of 20 March 1981⁸; or where
- c. it will be necessary to reject an already pending request for mutual legal assistance based on the provisions of Article 2 letter a of the Mutual Assistance Act.

Art. 23 Data processing

The competent federal authorities may process personal data where the enforcement of this Act and of asset freeze ordinances so requires. They may process sensitive personal data where this is indispensable in the handling of specific individual cases.

Art. 24 Reporting

The FDFA, after consulting the other departments concerned, shall submit annually, to the competent parliamentary committees, a report on the measures taken in application of the present Act.

⁷ SR 172.021

⁸ SR 351.1

Section 8 Criminal Provisions

Art. 25 Violation of an asset freeze order

¹ Any person who wilfully and without authorisation from the FDFA executes payments or transfers from frozen accounts or releases frozen assets shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

² Where the act is committed through negligence, the penalty shall be a fine not exceeding CHF 250,000.

Art. 26 Violation of the duty to report and to provide information

¹ Any person who wilfully violates the duty to report and to provide information as set out in Article 7 shall be liable to a fine not exceeding CHF 250,000.

² Where the act is committed through negligence, the penalty shall be a fine not exceeding CHF 100,000.

Art. 27 Offences in business operations

Ascertaining the criminal liability of persons may be dispensed with and instead the business operations may be ordered to pay the fine where the following conditions are met:

- a. identifying the persons who committed the offences requires investigative measures that are disproportionate to the penalty incurred; and
- b. a fine of a maximum of CHF 50,000 is under consideration for the violations of the criminal provisions of this Act.

Art. 28 Jurisdiction

¹ The Federal Act of 22 March 1974 on Administrative Criminal Law⁹ applies to violations of this Act. The FDF shall be the authority responsible for prosecution and judgment.

² Where a court judgment has been requested, or where the FDF considers that the requisite conditions for a custodial sentence or other custodial measures are satisfied, the federal courts have jurisdiction. In such cases, the FDF shall refer the case file to the Office of the Attorney General of Switzerland for proceedings before the Federal Criminal Court. This referral shall constitute the formal bringing of charges. Articles 73 to 82 of the Federal Act on Administrative Criminal Law apply *mutatis mutandis*.

Art. 29 Consolidation of proceedings

¹ Where a criminal case is subject to the jurisdiction of the FDF and the jurisdiction of the federal or cantonal authorities, the FDF may order that the proceedings be

⁹ SR 313.0

consolidated under the prosecuting authority already handling the case, provided that the following conditions are met:

- a. there is a close factual connection;
- b. the case is not yet pending before the competent court; and
- c. consolidation will not unreasonably delay the proceedings.

² The Appeals Chamber of the Federal Criminal Court shall decide on any disputes between the FDF and the Office of the Attorney General or the cantonal authorities.

Section 9 Final Provisions

Art. 30 Implementation

The Federal Council shall enact the implementing provisions.

Art. 31 Repeal and amendment of current legislation

¹ The Federal Act of 1 October 2010¹⁰ on the Restitution of Illicit Assets is repealed.

² The federal acts listed below shall be amended as follows:

...¹¹

Art. 32 Transitional provisions

¹ Assets already frozen when this Act enters into force under an order by the Federal Council based on Article 2 of the Federal Act of 1 October 2010¹² on the Restitution of Illicit Assets (RIAA) or on Article 184 paragraph 3 of the Federal Constitution shall remain frozen. Such asset freezes shall be considered a freeze ordered pursuant to Article 4.

² This Act applies to legal actions for the confiscation of assets brought before the Federal Administrative Court under the provisions of the RIAA and which are still pending when the present Act enters into force.

Art. 33 Referendum and commencement

¹ This Act is subject to an optional referendum.

² The Federal Council shall determine the commencement date.

Commencement date: 1 July 2016¹³

¹⁰ [AS 2011 275]

¹¹ The amendments may be consulted under AS 2016 1803.

¹² AS 2011 275

¹³ FCD of 25 May 2016.

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

Federal Act on International Mutual Assistance in Criminal Matters (Mutual Assistance Act, IMAC)

of 20 March 1981 (Status as of 1 January 2024)

*The Federal Assembly of the Swiss Confederation,
based on Articles 54 paragraph 1, 123 paragraph 1 and 173 paragraph 2 of the Federal
Constitution^{1,2}
and having considered the Dispatch of the Federal Council of 8 March 1976³,
decrees:*

Part One General Provisions

Chapter 1 Scope of Application

Section 1 Subject and Limits of Cooperation

Art. 1 Subject matter

¹ Unless other federal acts or international agreements provide otherwise, this Act shall govern all procedures of international cooperation in criminal matters, and in particular:⁴

- a. the extradition of persons who are the subject of criminal prosecution or have been convicted (Part Two);
- b. assistance aimed at supporting criminal proceedings abroad (Part Three);
- c. the transfer of proceedings and punishment of offences (Part Four);
- d. the execution of foreign criminal judgments (Part Five).

² ...⁵

³ This Act applies only to criminal matters in which recourse to the courts is permitted under the law of the requesting State.

^{3bis} Unless other legislation or international agreements provide otherwise, this Act applies by analogy to proceedings for cooperation in criminal matters with international courts or other inter- or supranational bodies with criminal justice functions if the proceedings relate to:

AS 1982 846

¹ SR 101

² Amended by No I of the FA of 18 Dec. 2020, in force since 1 June 2021 (AS 2021 233; BBl 2019 7413).

³ BBl 1976 II 444

⁴ Amended by Art. 59 No 1 of the FA of 22 June 2001 on Cooperation with the International Criminal Court, in force since 1 July 2002 (AS 2002 1493; BBl 2001 391).

⁵ Repealed by No I of the FA of 4 Oct. 1996, with effect from 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

- a. offences under the Twelfth Title^{bis}, Twelfth Title^{ter} or Twelfth Title^{quater} of the Swiss Criminal Code⁶; or
- b. offences under other provisions of the criminal law and the court or the body concerned is established by a resolution of the United Nations that is binding on or supported by Switzerland.⁷

^{3ter} The Federal Council may also stipulate in an ordinance that this Act applies by analogy to procedures for cooperation on criminal matters with other international courts or other inter- or supranational bodies with criminal justice functions if:

- a. the court or body is established on the basis of legal provisions that clearly define the powers of court or body in terms of criminal law and criminal procedure;
- b. the procedure before the court or body guarantees compliance with the principles of the rule of law; and
- c. cooperation serves to safeguard Switzerland's interests.⁸

⁴ This Act confers no right to cooperation in criminal matters.⁹

Art. 1a¹⁰ Limitation of cooperation

In the application of this Act, Swiss sovereignty, security, public order or similar essential interests must be taken into account.

Section 2 Inadmissibility of Requests

Art. 2 Foreign proceedings¹¹

A request for cooperation in criminal matters shall not be granted if there are reasons to believe that the foreign proceedings:

- a.¹² do not meet the procedural requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950¹³, or the International Covenant on Civil and Political Rights of 16 December 1966¹⁴;
- b.¹⁵ are being conducted so as to prosecute or punish a person on account of his political opinions, his belonging to a certain social group, his race, religion, or nationality;
- c. could result in aggravating the situation of the defendant for any of the reasons mentioned under letter b; or
- d. have other serious defects.

⁶ SR 311.0

⁷ Inserted by No I of the FA of 18 Dec. 2020, in force since 1 June 2021 (AS 2021 233; BBl 2019 7413).

⁸ Inserted by No I of the FA of 18 Dec. 2020, in force since 1 June 2021 (AS 2021 233; BBl 2019 7413).

⁹ Amended by No I of the FA of 18 Dec. 2020, in force since 1 June 2021 (AS 2021 233; BBl 2019 7413).

¹⁰ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹¹ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹² Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹³ SR 0.101

¹⁴ SR 0.103.2

¹⁵ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

Art. 3 Nature of the offence

¹ A request shall not be granted if the subject of the proceedings is an act which, in the Swiss view, is of a predominantly political nature, constitutes a violation of the obligation to perform military or similar service, or appears to be directed against the national security or military defence of the requesting State.

² The plea that an act is of a political nature shall not be taken into account under any circumstances:

- a. in cases of genocide;
- b. in cases of crimes against humanity;
- c. in cases of war crimes; or
- d. if the act appears particularly reprehensible because the offender, for the purpose of extortion or duress, has endangered or threatened to endanger the life or limb of persons, especially by hijacking aircraft, using means of mass extermination, causing a catastrophe or taking hostages.¹⁶

³ A request shall not be granted if the subject of the proceedings is an offence which appears to be aimed at reducing fiscal duties or taxes or which violates regulations on currency, trade or economic measures. However, a request may be granted:

- a. for mutual assistance under Part Three of this Act if duty or tax fraud is the subject of the proceedings;
- b. under any part of this Act if aggravated duty or tax fraud as defined in Article 14 paragraph 4 of the Federal Act of 22 March 1974¹⁷ on Administrative Criminal Law is the subject of the proceedings.¹⁸

Art. 4 Minor cases¹⁹

A request shall be rejected if the importance of the offence does not justify conducting proceedings.

Art. 5 Extinction of the right to prosecute

¹ A request shall not be granted if:²⁰

- a.²¹ in Switzerland or in the State where the offence was committed, the court
 - 1. has acquitted the defendant or abandoned the proceedings for material reasons, or
 - 2. has permanently or provisionally dispensed with imposing a sentence;
- b.²² the sentence was executed or cannot be executed under the laws of the State where sentence was passed;

¹⁶ Amended by No 14 of the FA of 18 June 2010 on the Amendment of the Federal Legislation in Implementation of the Rome Statute of the International Criminal Court, in force since 1 Jan. 2011 (AS **2010** 4963; BBl **2008** 3863).

¹⁷ SR **313.0**. Presently «art. 14 para. 3».

¹⁸ Second paragraph amended by No 13 of the FA of 3 Oct. 2008 on the Implementation of the Revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS **2009** 361 367; BBl **2007** 6269).

¹⁹ Amended by No 1 of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

²⁰ Amended by No 1 of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

²¹ Amended by No 1 of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

²² Amended by No 1 of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

c.²³ its execution requires compulsory measures and the prosecution or execution of the sentence was absolutely time barred under Swiss law.

² Paragraph 1 letters a and b do not apply if the requesting State claims that there are grounds for a review of the final sentence within the meaning of Article 410 of the Criminal Procedure Code of 5 October 2007²⁴ (CrimPC).²⁵

Art. 6 Concurrence of inadmissibility and admissibility of cooperation

¹ If the act of which the defendant is accused constitutes an offence under two or more provisions of Swiss criminal law, the request may be granted only in respect of those offences for which there are no reasons for inadmissibility and if there is a guarantee that the requesting State will respect the conditions imposed.

² Cooperation shall not be permitted if the proceedings concern an act that constitutes an offence under two or more provisions of Swiss or foreign criminal law and if, with regard to one of these offences, which covers the act in all its aspects, a request may not be granted.

Section 3 Special Provisions**Art. 7** Swiss nationals

¹ No Swiss national may, without his written consent, be extradited or surrendered to a foreign State for prosecution or for the execution of a sentence. Consent may be withdrawn up to the time when the surrender is ordered.

² Paragraph 1 does not apply to transit or return of a Swiss national who is temporarily surrendered by a third State to the Swiss authorities.

Art. 8 Reciprocity

¹ As a rule, a request shall be granted only if the requesting State guarantees reciprocity. The Federal Office of Justice (FOJ)²⁶ shall obtain a guarantee of reciprocity if this is considered necessary.

² Reciprocity is in particular not required for the service of documents or if the execution of a request:

- a. seems advisable due to the type of offence or to the necessity of combating certain offences;
- b.²⁷ is likely to improve the situation of the defendant or the prospects of his social rehabilitation; or
- c. serves to clarify an offence against a Swiss national.

³ The Federal Council may, within the scope of this Act, provide other States with a guarantee of reciprocity.

²³ The amendment in accordance with Art. 97 ff. of the Swiss Criminal Code (SR **311.0**) contains a new system of time limits (AS **2006** 3459; BBl **1999** 1979).

²⁴ SR **312.0**

²⁵ Amended by Annex 1 No 11 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

²⁶ Name in accordance with Annex 1 No 11 of the FA of 17 June 2022, in force since 1 Jan. 2024.

(AS **2023** 468; BBl **2019** 6697). This amendment has been made in the provisions specified in the AS.

²⁷ Amended by No 1 of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

Art. 8a²⁸ Bilateral treaties

The Federal Council may conclude bilateral agreements with foreign States regarding the transfer of sentenced persons provided those agreements respect the principles of the European Convention of 21 March 1983²⁹ on the Transfer of Sentenced Persons.

Art. 9 Protection of privacy

In the execution of requests, protection of privacy shall be governed by the provisions on the right of witnesses to refuse to testify. Articles 246–248 CrimPC³⁰ apply by analogy to the search and to the placing under seal of documents.³¹

Art. 10³²**Art. 11** Legal definitions

¹ A defendant under this Act is any person under suspicion, subject to criminal proceedings or on whom a sentence has been imposed.³³

² A sentence is any penalty or other measure.

Chapter 1a³⁴ Personal Data, File and Process Management System**Art. 11a**

¹ The FOJ shall run a personal data, file and process management system that may contain sensitive personal data obtained through forms of cooperation governed by this Act. This data may be processed in order to:

- a. identify whether data on a particular person is being processed;
- b. process data on processes;
- c. organise work procedures rationally and efficiently;
- d. conduct a process check;
- e. compile statistics.

² In order to comply with the processing purposes mentioned in paragraph 1, the system shall contain:

- a. personal details of persons on whom data is being processed;
- b. data necessary for the localisation and proper administration of the dossier;
- c. documents on electronically stored processes and entries.

²⁸ Inserted by No I of the FA of 21 June 2002, in force since 1 Nov. 2002 (AS **2002** 3333; BBl **2001** 4687)

²⁹ SR **0.343**

³⁰ SR **312.0**

³¹ Second sentence Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

³² Repealed by No I of the FA of 4 Oct. 1996, with effect from 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

³³ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

³⁴ Inserted by Annex 1 No 7 of the FA of 13 June 2008 on the Federal Police Information Systems, in force since 5 Dec. 2008 (AS **2008** 4989; BBl **2006** 5061).

³ The Federal Office of Police and the State Secretariat for Migration³⁵ and the units of the Federal Intelligence Service responsible for the implementation of the Federal Act of 21 March 1997³⁶ on Measures to Safeguard Internal Security shall have online access to the data defined in paragraph 2 letter a.³⁷ If the Federal Office of Police carries out the tasks of the FOJ under this Act, it shall also have online access to the data defined in paragraph 2 letter b.

⁴ The Federal Council shall specify the details, and in particular:

- a. in the case of the recording of data in accordance with paragraph 2 letters a and b, data on the judicial authorities involved in the mutual assistance proceedings and data on the offences giving rise to the request for mutual assistance;
- b. the period of time that the data is kept and the archiving of the data;
- c. the agencies of the FOJ that are authorised to process the data directly in the system and the data that in individual cases may be disclosed to other authorities.

Chapter 1b³⁸ Protection of Personal Data**Art. 11b** Right to information in pending proceedings

¹ Where mutual assistance proceedings are pending, the person who is the object of a request for international cooperation in criminal matters shall be allowed access to the personal data related to them and the following information:

- a. the purpose of and legal basis for the data processing;
- b. the period that the personal data will be retained or, if this is not possible, the criteria for determining this period;
- c. the recipients or the categories of recipients;
- d. the available information on the origin of the personal data;
- e. the information that they require to be able to assert their rights.

² The competent authority may refuse to provide the information, limit the information provided or defer provision of the information if there are grounds for doing so under Article 80b paragraph 2 or if:

- a. it is necessary because of overriding interests of third parties;
- b. it is necessary because of overriding public interests, in particular relating to the internal or external security of Switzerland; or
- c. an enquiry, an investigation, court proceedings or international cooperation proceedings in criminal matters may be prejudiced by providing the person concerned with information.

³⁵ The name of this administrative unit was amended by Art. 16 para. 2 of the Publications O of 17 Nov. 2004 (AS **2004** 4937), in force since 1 Jan. 2015.

³⁶ SR **120**

³⁷ Amended by No I 4 of the O of 4 Dec. 2009 on the Amendment of Legislation due to the Establishment of the Federal Intelligence Service, in force since 1 Jan. 2010 (AS **2009** 6921).

³⁸ Inserted by No II 4 of the FA of 28 Sept. 2018 on the Implementation of Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, in force since 1 March 2019 (AS **2019** 625; BBl **2017** 6941).

Art. 11c Restriction of the right to information in relation to requests for arrest for the purpose of extradition

¹ Any person may request information on whether Switzerland has received a request from a foreign state to make an arrest for the purpose of extradition. This right may be asserted at the FOJ. If the request is made to a different authority, that authority shall forward the request immediately to the FOJ.

² If a person requests information on whether the FOJ has received a request to make an arrest for the purpose of extradition, the FOJ shall notify the person that no data about them has been unlawfully processed and that the person can request the Federal Data Protection and Information Commissioner (the FDPIC) to enquire as to whether any data on them has been lawfully processed.³⁹

³ The FDPIC shall conduct the enquiries; he shall notify the person concerned either that no data about them has been unlawfully processed or that he has opened an investigation under Article 49 of the Data Protection Act of 25 September 2020⁴⁰ in the case of errors in the processing of personal data.⁴¹

⁴ If the FDPIC identifies errors in the data processing, he shall order the FOJ to rectify the same.⁴²

⁵ The notifications under paragraphs 2 and 3 shall always be worded in the same way and shall not mention the grounds.

⁶ The notification under paragraph 3 may not be contested.

⁷ In derogation from paragraph 2, the FOJ is entitled to provide the person concerned with the requested information if the requesting state gives its advance consent.

Art. 11d Right to have personal data corrected or deleted

¹ The person who is the object of a request for international cooperation in criminal matters may request that the competent authority correct or delete the personal data relating to them that is being processed in contravention of this Act.

² Instead of deleting the personal data, the competent authority shall restrict the processing if:

- a. the data subject disputes the accuracy of the personal data but it cannot be established whether the data is correct or incorrect;
- b. overriding interests, in particular those set out in Article 80b paragraph 2, so require; or
- c. deletion may prejudice proceedings on international cooperation in criminal matters or foreign proceedings giving rise to the request for cooperation in criminal matters.

³ The competent authority shall immediately notify the authority that has transmitted, made available or disclosed the personal data about the measures taken in accordance with paragraph 1 or 2.

⁴ The relevant foreign authority is responsible for checking the accuracy of personal data that has been obtained as evidence or personal data relating to criminal offences giving rise to the request for international cooperation in criminal matters.

³⁹ Amended by Annex 1 No II 29 of the Data Protection Act of 25 Sept. 2020, in force since 1 Sept. 2023 (AS 2022 491; BBl 2017 6941).
SR 235.1

⁴⁰ Amended by Annex 1 No II 29 of the Data Protection Act of 25 Sept. 2020, in force since 1 Sept. 2023 (AS 2022 491; BBl 2017 6941).

⁴¹ Amended by Annex 1 No II 29 of the Data Protection Act of 25 Sept. 2020, in force since 1 Sept. 2023 (AS 2022 491; BBl 2017 6941).

⁴² Amended by Annex 1 No II 29 of the Data Protection Act of 25 Sept. 2020, in force since 1 Sept. 2023 (AS 2022 491; BBl 2017 6941).

Art. 11e Equal treatment

¹ The data protection rules that apply to the disclosure of personal data to the competent authorities of States that are linked with Switzerland through one of the Schengen association agreements (the Schengen States) must not be stricter than the rules that apply to the disclosure of personal data to Swiss law enforcement authorities.

² Specific legislation that provides for stricter data protection rules for the disclosure of personal data to the competent foreign authorities does not apply to disclosure to the competent authorities of the Schengen States.

Art. 11f Disclosure of personal data to a third country or an international body

¹ Personal data may not be disclosed to the competent authority of a State that is not linked with Switzerland through one of the Schengen association agreements (a third country) or to an international body if, as a result, the privacy of the data subject would be seriously jeopardised, in particular because of the lack of adequate protection.

² Adequate protection is guaranteed by:

- a. the legislation of the third country, provided the European Union has confirmed this in a decision;
- b. an international agreement;
- c. specific guarantees.

³ In derogation from paragraph 1, personal data may be disclosed to the competent authority of a third country or to an international body if disclosure is necessary in the case in question:

- a. to protect the life or physical integrity of the data subject or a third party;
- b. to prevent an imminent and serious threat to the public security of a Schengen State or of a third country;
- c. to prevent, detect or prosecute a criminal offence or to execute a criminal judgment, unless overriding legitimate interests of the data subject preclude disclosure;
- d. to exercise or enforce legal rights against an authority competent to prevent, detect or prosecute a criminal offence or to execute a criminal judgment, unless overriding legitimate interests of the data subject preclude disclosure.

Art. 11g Disclosure of personal data by a Schengen State to a third country or an international body

¹ Personal data that are transmitted or made available by a Schengen State may be disclosed to the competent authority of a third country or to an international body if:

- a. disclosure is required to prevent, detect or prosecute a criminal offence or to execute a criminal judgment;
- b. the Schengen State that transmitted or made available the personal data has given prior consent to disclosure; and
- c. the requirements of Article 11f are met.

² In derogation from paragraph 1 letter b, personal data may be disclosed in an individual case if:

- a. the prior consent of the Schengen State cannot be obtained in time; and

- b. disclosure is necessary to prevent an imminent and serious threat to the public security of a Schengen State or of a third country or to protect the essential interests of a Schengen State.

³ The Schengen State shall be notified immediately of any disclosure under paragraph 2.

Art. 11h Procedure for the disclosure of personal data

¹ The competent authority shall notify the recipient about the reliability of the personal data disclosed and of the extent to which they are up to date.

² It shall also disclose any additional information to the recipient that may as far as possible be used to distinguish:

- a. between the various categories of data subjects;
- b. between personal data based on facts and personal data based on personal assessments.

³ The obligation to notify the recipient does not apply if the information mentioned in paragraphs 1 and 2 is evident from the personal data themselves or from the circumstances.

Chapter 2 Applicable Law

Art. 12 General

¹ Unless this Act specifies otherwise, the federal administrative authorities shall apply, by analogy, the Federal Act of 20 December 1968⁴³ on Administrative Procedure, and the cantonal authorities their own procedural rules. Procedural acts are governed by the procedural law in criminal matters.

² The cantonal and federal provisions on the suspension of time limits do not apply.⁴⁴

Art. 13 Suspension of limitation periods⁴⁵. Filing a criminal complaint

¹ In proceedings under this Act, the following shall be considered to have effect in Switzerland:

- a. the suspension of a limitation period under the law of the requesting State;
- b. the filing of a criminal complaint with a foreign authority within the time limit provided for if this is so required under Swiss law.

² If a criminal complaint is required only under Swiss law, no sentence may be imposed or executed in Switzerland if the victim makes objections.

Art. 14 Taking account of the period in detention

Article 69 of the Swiss Criminal Code⁴⁶ applies when taking account of the period spent on remand or in detention abroad due to proceedings under this Act.

⁴³ SR 172.021

⁴⁴ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁴⁵ The suspension of the effects of the time limitation provisions has been abolished by Art. 97 ff. of the Swiss Criminal Code (SR 311.0) and time limits for execution have been replaced by an extension of the regular time limit (AS 2006 3459; BBl 1999 1979).

⁴⁶ SR 311.0. See now art. 51.

Art. 15 Compensation

¹ Articles 429 and 431 CrimPC⁴⁷ apply by analogy in proceedings that have been conducted against the defendant under this Act in Switzerland or at the instigation of a Swiss authority abroad.⁴⁸

² The Confederation shall pay the compensation if a federal authority makes or executes a request. It may require reimbursement from the canton that caused the request to be made.

³ The compensation may be reduced or refused if the defendant has provoked the investigation or the detention through his fault, or has, without reason, obstructed or delayed the proceedings.⁴⁹

⁴ Compensation for detention pending extradition served in Switzerland may also be reduced or refused if the requesting State:

- a. withdraws the request for search and arrest with a view to extradition; or
- b. does not present the request for extradition with the necessary enclosures within the deadline set.⁵⁰

⁵ The likelihood of the injured party being able to obtain damages in the foreign State must be taken into account when the decision is made to reduce or refuse the compensation.⁵¹

Chapter 3 Domestic Procedure

Section 1 Authorities and Powers

Art. 16 Cantonal authorities

¹ The cantons shall participate in the conduct of extradition proceedings. Unless federal law provides otherwise, they are required to execute the requests for other forms of mutual assistance and the transfer of proceedings and to execute criminal judgments. The cantons shall be subject to the supervision of the Confederation provided this Act applies.

² ...⁵²

Art. 17 Federal authorities

¹ The Federal Department of Justice and Police (the Department) shall decide on cases under Article 1 letter a.⁵³ The decision of the Department may be requested within 30 days of receiving written notification of the final ruling.⁵⁴

² The FOJ shall receive the requests from abroad and file Swiss requests. It shall handle extradition requests and arrange for requests for other assistance, transfer of proceedings and execution of criminal judgments to be examined by the appropriate cantonal or federal authorities if their execution is not obviously inadmissible.

³ It shall decide:

⁴⁷ SR 312.0

⁴⁸ Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

⁴⁹ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁵⁰ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁵¹ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁵² Repealed by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, with effect from 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

⁵³ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁵⁴ Sentence inserted by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, in force since 1 Jan. 2007 (AS 2006 2197; BBl 2001 4202).

- a. whether to require a guarantee of reciprocity (Art. 8 para. 1);
- b. on the appropriate procedure (Art. 19);
- c. on the admissibility of Swiss requests (Art. 30, para. 1).

⁴ It may transfer the conduct of proceedings wholly or partly to the federal authority which would be competent to prosecute the offence if it had been committed in Switzerland.

⁵ It may also decide on the admissibility of assistance and allow its execution in accordance with Article 79 letter *a*.⁵⁵

Art. 17^{a56} Obligation of promptness

¹ The competent authority shall execute requests promptly. It shall decide without delay.

² It shall on request provide the FOJ with information on the status of the proceedings, the reasons for any delay and the measures being considered. If the delay is not justified, the FOJ may take the matter up with the appropriate supervisory authority.

³ When the competent authority, without reason, refuses to or delays in issuing a ruling, its conduct shall be regarded as equivalent to a negative decision subject to appeal.

Art. 18⁵⁷ Provisional measures

¹ At the express request of another State, provisional measures may be taken by the competent authority to preserve the existing situation, to safeguard threatened legal interests or to protect jeopardised evidence unless the proceedings under this Act clearly appear to be inadmissible or inappropriate.

² If any delay would jeopardise the proceedings and if there is sufficient information to determine whether all the conditions are met, the FOJ may likewise order provisional measures as soon as a request is announced. Such measures shall be revoked if the foreign State does not make the request within the deadline set.

³ Appeals filed against rulings based on this Article do not have suspensive effect.

Art. 18^{a58} Surveillance of postal and telecommunications traffic

¹ In extradition cases, the FOJ may, at the express request of another State order the surveillance of postal and telecommunications traffic in order to establish the whereabouts of the defendant.

² In other mutual assistance cases, the following authorities may order the surveillance of postal and telecommunications traffic:

- a. the Office of the Attorney General of Switzerland or of the Cantonal Public Prosecutor;
- b. the FOJ, if it is executing the request for mutual assistance itself.

³ The surveillance order must be submitted to the following authorities for approval:

- a. by the federal authorities: the federal compulsory measures court;
- b. by the cantonal authorities: the cantonal compulsory measures court.

⁵⁵ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

⁵⁶ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

⁵⁷ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

⁵⁸ Inserted by Annex No 4 of the FA of 6 Oct. 2000 on the Surveillance of Mail and Telecommunication Services (AS **2001** 3096; BBl **1998** 4241). Amended by Annex I No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

⁴ The requirements for surveillance and the procedure shall otherwise be governed by Articles 269–279 CrimPC⁵⁹ and the Federal Act of 6 October 2000⁶⁰ on the Surveillance of Postal and Telecommunications Traffic.

Art. 18^{b61} Electronic communications traffic data

¹ The federal or cantonal authority dealing with a request for mutual assistance may order the transmission of electronic communications traffic data to another State before conclusion of the mutual assistance proceedings if:

- a. provisional measures indicate that the communication that is the subject of the request originated abroad; or
- b. the data was acquired by the executing authority based on an order for authorised real-time surveillance (Art. 269–281 CrimPC⁶²).

² The data may not be used in evidence before the ruling on granting and the extent of mutual assistance is legally binding.

³ Notice of the ruling under paragraph 1 and any order or authorisation for surveillance must be given to the FOJ immediately.

Art. 19 Choice of procedure

If the defendant is abroad and if, according to the laws of the State to which the request is to be made, there is a choice between different procedures, preference shall be given to the procedure which appears to ensure the better social rehabilitation.

Art. 20 Suspension of criminal proceedings or of the execution of a penalty

¹ At the request of the FOJ, the competent authority may temporarily suspend criminal proceedings or the execution of a sentence against a defendant abroad for another offence if:

- a. the sentence imposed in Switzerland is not of great importance in comparison to the one likely to be imposed abroad; or
- b. execution of the sentence in Switzerland does not seem appropriate.

² On conclusion of the criminal proceedings abroad, the Swiss authority shall decide whether or not to resume the suspended proceedings or the execution of the penalty.

Art. 20^{a63} Transit

¹ In the interest of proceedings carried out in another State and permitted under this Act, the FOJ may permit transit through Swiss territory and approve the measures required therefor on submission of a request by the State concerned or a third State without hearing the person concerned. There is no right of appeal against the decision and ancillary measures. They shall be notified only to the requesting State.

⁵⁹ SR **312.0**

⁶⁰ [AS **2001** 3096; **2003** 2133 annex No 18, 3043 No I 2; **2004** 2149, 3693; **2006** 2197 annex No 84, 5437 Art. 2 No 3; **2007** 921 annex No 3, 5437 annex No II 7; **2010** 1881 annex 1 No II 26, 3267 annex II 14; **2012** 3745 annex No 7; **2017** 4095 annex No II 12. AS **2018** 117]. See now the FA of 18 March 2016 (SR **780.1**).

⁶¹ Inserted by Art. 2 No 2 of the FD of 18 March 2011 (Council of Europe Convention on Cybercrime), in force since 1 Jan. 2012 (AS **2011** 6293; BBl **2010** 4697).

⁶² SR **312.0**

⁶³ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

² No approval shall be required if the detained person is to be transported by aircraft over Swiss territory without a stopover landing. In the event of an unscheduled stopover landing, the detained person may be kept in custody only if:

- a. the requirements for his arrest under Article 44 are met; or
- b. the State arranging for the transport to be made has previously informed the FOJ by indicating the reason for surrender and the offence which is the basis for it.

³ Only the FOJ may interrupt the transit to prosecute an offence or to execute a criminal judgment in Switzerland.

Section 2 Protection of Rights

Art. 21 Common provisions

¹ The defendant may appoint a legal adviser. If he chooses not to do so or is not in a position to do so, a legal adviser shall be officially appointed if required to safeguard the interests of the defendant.

² Other persons who are affected by the mutual assistance measures or who, as injured parties, are present at enquiries, may, if the safeguarding of their interests so requires, be assisted by a legal adviser while mutual assistance measures are being carried out and, provided the object of the investigation is not prejudiced, be represented by him.

³ Persons who are the subject of foreign criminal proceedings may challenge rulings only if they are personally and directly affected by a mutual assistance measure and if they have an interest worthy of legal protection in the measure being revoked or changed.⁶⁴

⁴ Appeals filed against a decision made in application of this Act shall not have a suspensive effect. This rule does not apply to appeals directed against a decision:

- a. granting extradition; or
- b. authorising the transmission abroad of classified information or the handing over of objects or assets.⁶⁵

Art. 22⁶⁶ Notice regarding appellate remedies

Rulings and decisions issued by federal and cantonal authorities must give notice of the possible appellate remedies, the appellate authority and the deadline for filing an appeal.

Art. 23⁶⁷

Art. 24⁶⁸

Art. 25 Appeal⁶⁹

⁶⁴ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁶⁵ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁶⁶ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁶⁷ Repealed by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, with effect from 1 Jan. 2007 (AS 2006 2197; BBl 2001 4202).

⁶⁸ Repealed by No I of the FA of 4 Oct. 1996, with effect from 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁶⁹ Amended by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, in force since 1 Jan. 2007 (AS 2006 2197; BBl 2001 4202).

¹ First instance rulings by cantonal and federal authorities are subject to an appeal directly to the Appeals Chamber of the Federal Criminal Court unless this Act stipulates otherwise.⁷⁰

² An appeal against a Swiss request to another State is only admissible if that State is requested to assume responsibility for the criminal proceedings or the execution of a criminal judgment. In this case, only defendants who are habitually resident in Switzerland are entitled to appeal.⁷¹

^{2bis} An appeal against a Swiss request for transferring responsibility for the execution of a criminal judgment in connection with a transfer under Article 101 paragraph 2 is admissible.⁷²

³ The FOJ may appeal against rulings by cantonal authorities as well as against decisions by the Federal Criminal Court. The cantonal authority is entitled to appeal against the decision of the FOJ not to make a request.⁷³

⁴ An appeal may also be filed against the inadmissible or obviously improper application of foreign law.

⁵ ...⁷⁴

⁶ The Appeals Chamber of the Federal Criminal Court is not bound by the applications made by the parties.⁷⁵

Art. 26⁷⁶ Administrative appeal

Rulings made by the Department under Article 17 paragraph 1 shall be subject to appeal to the Federal Council. ...⁷⁷

Chapter 4 International Procedure

Art. 27 General rules for requests

¹ Articles 27 to 31 apply to all procedures under this Act subject to the special rules of procedure provided for in the other parts of this Act.⁷⁸

² Foreign requests shall be addressed directly to the FOJ.

³ Requests which are addressed to an inappropriate authority shall be forwarded ex officio. The requesting authority shall be duly notified.

⁴ Requests in connection with an arrest shall be dealt with without delay.

⁵ The non-acceptance or refusal of a request must be substantiated.

⁷⁰ Amended by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, in force since 1 Jan. 2007 (AS 2006 2197; BBl 2001 4202).

⁷¹ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁷² Inserted by Art. 2 of the FD of 19 Dec. 2003, in force since 1 Oct. 2004 (AS 2004 4161 4162; BBl 2002 4340).

⁷³ Amended by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, in force since 1 Jan. 2007 (AS 2006 2197; BBl 2001 4202).

⁷⁴ Repealed by No I of the FA of 4 Oct. 1996, with effect from 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁷⁵ Amended by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, in force since 1 Jan. 2007 (AS 2006 2197; BBl 2001 4202).

⁷⁶ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁷⁷ Sentence repealed by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, with effect from 1 Jan. 2007 (AS 2006 2197; BBl 2001 4202).

⁷⁸ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

Art. 28 Form and content of requests

¹ Requests shall be made in writing.

² The following information must be provided in a request:

- a. the office issuing the request and, if applicable, the authority having criminal jurisdiction;
- b. the subject matter of and the reason for the request;
- c. the legal term for the offence;
- d. details that are as exact and complete as possible on the person who is the subject of the criminal proceedings.

³ To permit the legal assessment of the offence, the following shall be added:

- a. a summary of the relevant allegations, except in the case of requests for service;
- b.⁷⁹ the wording of the regulations applicable at the place where the offence was committed, except for requests for assistance in accordance with Part Three of this Act.

⁴ Foreign official records need not be legalised.

⁵ Foreign requests and their enclosures shall be submitted in German, French or Italian or be accompanied by a translation into one of these languages. Translations must be officially certified.

⁶ If a request does not meet the formal requirements, its correction or completion may be demanded; the ordering of provisional measures is not affected thereby.

Art. 29 Transmission

¹ The FOJ may receive requests directly from the ministry of justice of the requesting State.

² When provisional measures must be taken or in urgent cases, the intervention of the International Criminal Police organisation (ICPO Interpol) may be enlisted or a copy of the written request may be sent directly to the authority competent for its execution.

Art. 30 Swiss requests

¹ Swiss authorities may not address to another State requests which they themselves could not grant under this Act.

² The FOJ is competent for requests for extradition, transfer of proceedings or execution of criminal judgments; it shall take action at the request of the requesting Swiss authority.⁸⁰

³ Conditions which the requested State attaches to the execution of the request must be observed by the Swiss authorities.

⁴ The FOJ may decline to make a request if the importance of the offence does not justify the proceedings.

⁵ The FOJ shall inform the requesting Swiss authority immediately if the requested State requires a court order for a requested mutual assistance measure.⁸¹

⁷⁹ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁸⁰ Amended by Annex 1 No 11 of the FA of 17 June 2022, in force since 1 Jan. 2024 (AS 2023 468; BBl 2019 6697).

⁸¹ Inserted by Annex 1 No 11 of the FA of 17 June 2022, in force since 1 Jan. 2024 (AS 2023 468; BBl 2019 6697).

Art. 31 Costs

¹ As a rule, foreign requests shall be executed free of charge.

² The Federal Council shall determine the conditions under which the requesting State may be charged full or partial costs.

³ The costs of a Swiss request that are reimbursed to another State shall be charged to the proceedings that caused the request to be made.

⁴ The Federal Council shall regulate the sharing of costs between the Confederation and the cantons.

Part Two Extradition**Chapter 1 Conditions****Art. 32** Foreign nationals

Foreign nationals may be surrendered to another State for prosecution or enforcement of a sentence involving deprivation of liberty for acts which come under its criminal jurisdiction if that State requests extradition or if it accepts the Swiss request to prosecute the offence or enforce the judgment.

Art. 33 Persons under 20 years of age

¹ Children and juveniles as defined in the Swiss Criminal Code⁸² whose extradition is requested shall, if possible, be repatriated by the juvenile authorities. The same applies to persons between the ages of 18 and 20 if extradition could endanger their mental development or social rehabilitation.

² Repatriation shall have the effects of an extradition.

Art. 34⁸³**Art. 35** Extraditable offences

¹ Extradition is permitted if, according to the documents supporting the request, the offence:

- a. is punishable by deprivation of liberty for a maximum period of at least one year or a more severe sentence both under the law of Switzerland and under the law of the requesting State and
- b. is not subject to Swiss jurisdiction.

² In determining whether an act is an offence under Swiss law, the following are not considered:

- a. its specific degrees of guilt and conditions for criminal liability;

⁸² SR 311.0

⁸³ Repealed by No I of the FA of 4 Oct. 1996, with effect from 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

- b. the conditions relating to the personal and time-related application of the Swiss Criminal Code⁸⁴ and the Swiss Military Criminal Code of 13 June 1927⁸⁵ with regard to the criminal provisions on genocide, crimes against humanity and war crimes.⁸⁶

Art. 36 Special cases

¹ As an exception, the defendant may be extradited for an offence which comes under Swiss jurisdiction if special circumstances, especially the possibility of better social rehabilitation, justify it.

² If one of two or more offences is extraditable (Art. 35 para. 1), extradition may be granted for all offences.

Art. 37 Denial

¹ Extradition may be denied if Switzerland can assume responsibility for the prosecution of the offence or the execution of the foreign criminal judgment and if this appears to be appropriate with regard to the social rehabilitation of the defendant.

² Extradition shall be denied if the request is based on a verdict issued in the absence of the defendant and if the minimum rights of the defence to which a defendant is recognised to be entitled were not respected in the proceedings preceding the verdict; this rule does not apply if the requesting State gives sufficient assurances to guarantee the defendant the right to new court proceedings where the rights of the defence are respected.⁸⁷

³ Extradition shall also be denied if the requesting State fails to guarantee that the defendant will not be sentenced to death, that an already pronounced death penalty will not be carried out, or that he will not be subjected to treatment that will impair his physical integrity.⁸⁸

Art. 38 Conditions

¹ The defendant may be extradited only on condition that the requesting State:

- a. neither prosecutes nor sentences nor re-extradites him to a third State for any offence committed prior to his extradition and for which extradition was not granted;
- b.⁸⁹ does not deprive him of his liberty on any other ground that existed before his extradition;
- c.⁹⁰ does not bring him before an extraordinary court; and moreover
- d. sends the Swiss authorities, at their request, an officially certified copy of the decision which concludes the criminal proceedings.

² The conditions of paragraph 1 letters a and b no longer apply if:

- a. the defendant or extradited expressly waives them; or
- b. the person extradited:
 1. in spite of being advised of the consequences has not left the territory of the requesting State within forty-five days of his conditional or final release despite having the opportunity to do so, or if, after leaving that territory, he has returned, or

⁸⁴ SR 311.0

⁸⁵ SR 321.0

⁸⁶ Amended by No I 4 of the FA of 18 June 2010 on the Amendment of the Federal Act in Implementation of the Rome Statute of the International Criminal Court, in force since 1 Jan. 2011 (AS 2010 4963; BBl 2008 3863).

⁸⁷ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁸⁸ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁸⁹ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁹⁰ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

2. has been returned by a third State.⁹¹

Art. 39 Extension

If the extradited person is charged with other offences, the State to which he was extradited may be permitted, on making a new request, to prosecute these offences as well.

Art. 40 Requests by more than one State

¹ If two or more States request extradition for the same offence, extradition shall be granted as a rule to the State where the offence was committed or principally perpetrated.

² If extradition is requested by more than one State for different offences, the decision shall be made having due regard to all circumstances, especially the seriousness of the offences, the place of commission, the chronological order in which the requests were received, the nationality of the defendant, the better prospect of social rehabilitation and the possibility of extradition to another State.

Chapter 2 Procedure

Section 1 Requests

Art. 41 Documents supporting the request

In addition to the documents specified in Article 28 paragraph 3, the following shall be enclosed with the request: the original or an officially authenticated copy of an enforceable judgment, of an arrest warrant or of any other document issued in accordance with the regulations of the requesting State and having the same effect.

Art. 42 Request for tracing and arrest

Requests for tracing and arrest with a view to extradition shall contain, in addition to the items of information specified in Article 28 paragraphs 2 and 3 letter a, references to the following:

- a. the existence of a valid arrest warrant, its date of issue and the name of the issuing authority;
- b. the intention of the competent authority to make a request for extradition.

Art. 43 Consideration of the request

The FOJ shall decide whether and under what conditions it will consider the request.

Section 2 Provisional Measures

Art. 44 Arrest

Foreign nationals may be arrested with a view to extradition on the basis of a request by an Interpol National Central Bureau or the Ministry of Justice of another State or on the basis of an international alert in a police search system.⁹² Article 52 paragraphs 1 and 2 apply by analogy.

⁹¹ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁹² Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

Art. 45 Seizure of objects

¹ At the time of arrest, objects and assets which can serve as evidence in foreign criminal proceedings or which originate from an offence shall be seized.

² The cantonal authorities may, if necessary, order that the arrested person or the rooms be searched.

Art. 46 Notice of execution. Duration of measures

¹ Arrest and seizure shall be reported to the FOJ.

² They shall continue until a decision concerning the detention awaiting extradition is issued but at the latest until the third workday after the arrest.

Section 3 Detention awaiting Extradition and Seizure**Art. 47** Arrest warrant and other rulings

¹ The FOJ shall issue an arrest warrant with a view to extradition. It may decline to do so, especially if the defendant:

- a. will probably not elude extradition and will not endanger the criminal investigation; or
- b. can prove without delay that he was not at the place of the offence when it was committed.

² If the defendant is unfit to remain in detention or if there are other valid reasons, the FOJ may order measures other than detention to ensure his presence.

³ At the same time the FOJ shall rule on which objects and assets will remain seized or must be seized.

Art. 48 Content

¹ Rulings under Article 47 shall contain:

- a. information, provided by the foreign authority, concerning the identity of the defendant and the offence alleged against this person;
- b. the name of the office which made the request;
- c. the confirmation that extradition will be requested;
- d. the notice regarding the right of appeal under paragraph 2 and the right to appoint a legal adviser.

² An appeal against these rulings may be filed with the Appeals Chamber of the Federal Criminal Court within ten days of the serving of the written arrest warrant with a view to extradition. Articles 379–397 CrimPC⁹³ apply by analogy to the appeal procedure.⁹⁴

Art. 49 Execution

¹ The execution of rulings under Article 47 is a matter for the cantonal authorities.

⁹³ SR 312.0

⁹⁴ Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

² The arrest warrant with a view to extradition may not be executed while the defendant is held in detention awaiting trial or is serving a sentence.⁹⁵

³ The defendant may neither be released nor deported from Switzerland without the consent of the FOJ.

Art. 50 Release from detention

¹ The FOJ shall order the release of the person concerned from detention 18 days after arrest if the request for extradition and the documents supporting it have not been received.⁹⁶ This period may be extended for special cause by up to 40 days.

² If the defendant is already detained, the period shall start when he is detained with a view to extradition.

³ By way of exception, the person concerned may be released from detention with a view to extradition at any stage of the proceedings if this is appropriate in the circumstances. The defendant may lodge a petition for release at any time.

⁴ In addition, Articles 238–240 CrimPC⁹⁷ apply by analogy to release from detention.⁹⁸

Art. 51 Continuation and renewal of detention

¹ If the request and its enclosures are received in time and if extradition is not obviously inadmissible, detention shall continue throughout the proceedings without special ruling.

² If the defendant has been released, detention with a view to extradition may be ordered again.

Section 4 Preparation of the Extradition Decision**Art. 52** Right to be heard

¹ The request and the documents supporting it shall be submitted to the defendant and to his legal adviser. When formally presenting the defendant with the arrest warrant with a view to extradition, the cantonal authority shall ascertain if the defendant is identical with the person mentioned in the request. It shall explain to him the conditions of extradition and of simplified extradition and advise him of the right to appeal, to appoint a legal adviser or to have a legal adviser officially appointed.⁹⁹

² The defendant shall be questioned briefly about his personal circumstances, and especially his nationality and relationship with the requesting State, and asked if and for what reasons he raises objections to the arrest warrant or his extradition. His legal adviser may assist in this hearing.

³ If the extradited person is to be prosecuted for other offences or re-extradited to a third State, the FOJ shall arrange for him to be questioned on the record in accordance with paragraph 2 by a judicial authority of the requesting State.

⁹⁵ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁹⁶ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁹⁷ SR 312.0

⁹⁸ Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

⁹⁹ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

Art. 53 Alibi evidence

¹ If the defendant claims to be able to prove that he was not at the scene of the offence when it was committed, the FOJ shall make the necessary investigations.

² Extradition shall be denied in clear cases. In other cases, the exculpatory evidence shall be submitted to the requesting State which shall be asked to declare within a short time whether it wishes to continue with its request.

Art. 54¹⁰⁰ Simplified extradition

¹ If the defendant places on the record before a judicial authority that he waives the requirement of extradition proceedings, the FOJ shall order his surrender unless there are special considerations prohibiting it.

² This waiver may be revoked provided the FOJ has not ordered the surrender.

³ Simplified extradition shall have the effect of extradition and is subject to the same conditions. The requesting State shall be given notice thereof.

Section 5 Decision on Extradition**Art. 55** Competence

¹ After setting the defendant and the third party objecting to the handing over of objects an appropriate deadline for stating their position, the FOJ shall rule on the extradition of the defendant and the handing over of objects and assets seized.¹⁰¹

² If the defendant claims that he is being charged with a political offence or if the investigation reveals serious grounds to believe that the offence is of a political nature, the Appeals Chamber of the Federal Criminal Court shall decide the case.¹⁰² The FOJ shall send the file to this Court, together with its proposal. The defendant shall be given the opportunity to state his position.

³ The procedure for an appeal under Article 25 applies by analogy.¹⁰³

Art. 55a¹⁰⁴ Coordination with asylum proceedings

If the defendant has applied for asylum under the Asylum Act of 26 June 1998¹⁰⁵, the FOJ and the appellate authority shall consult the files from the asylum proceedings when deciding on extradition.

Section 6 Execution**Art. 56** Executability

¹ Extradition may be executed if the defendant:

¹⁰⁰ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹⁰¹ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹⁰² Amended by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, in force since 1 Jan. 2007 (AS 2006 2197; BBl 2001 4202).

¹⁰³ Amended by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 Jan. 2007 (AS 2006 2197; BBl 2001 4202).

¹⁰⁴ Inserted by No I 3 of the FA of 1 Oct. 2010 on the Coordination of Asylum and Extradition Procedures, in force since 1 April 2011 (AS 2011 925; BBl 2010 1467).

¹⁰⁵ SR 142.31

a. expressly requests his own immediate extradition; or

b. does not give notice within five days of the issue of the ruling that he will file an appeal.

² If extradition is refused, the FOJ shall release the person concerned from detention with a view to extradition.

Art. 57 Extradition

¹ The FOJ shall issue the necessary rulings in agreement with the cantonal authorities.

² It shall notify the requesting State of the decision as well as of the date and place of extradition.

Art. 58 Postponement. Provisional surrender

¹ Extradition may be postponed provided the person to be extradited is being prosecuted in Switzerland for other offences or if he has to serve a sentence involving deprivation of liberty.

² However, provisional surrender of the defendant may be granted if:

a. this will not be prejudicial to the Swiss criminal proceedings; and

b. the requesting State has guaranteed to keep the defendant in custody during his stay in that State and will return him regardless of his nationality.

Art. 59¹⁰⁶ Handing over of objects and assets

¹ If the conditions set for the extradition are met, objects and assets shall also be handed over which:

a. can serve as evidence; or

b. derive from the offence.

² If an authority, or a third party with rights acquired in good faith, or the victim who lives in Switzerland asserts rights over the objects or assets which can serve as evidence, their handing over shall be subject to the condition that the requesting State guarantees their return without costs after the conclusion of its proceedings.

³ The objects or assets which derive from the offence include:

a. instruments which served to commit the offence;

b. products or profits of the offence, their replacement value and any unlawful advantage;

c. gifts and other benefits which served to instigate the offence or recompense the perpetrator for the offence, as well as their replacement value.

⁴ The objects or assets which derive from the offence may be retained in Switzerland if:

a. the victim is habitually resident in Switzerland and they have to be returned to him;

b. an authority asserts rights over them; or

c. a person not involved in the offence and whose claims are not guaranteed by the requesting State shows probable cause that he has acquired rights over the objects and assets in good faith in Switzerland, or, if he is habitually resident in Switzerland, in a foreign country.

⁵ Objects or assets mentioned in the first paragraph and which are required for pending criminal proceedings in Switzerland may also be retained in Switzerland.

¹⁰⁶ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

⁶ If a person entitled to the objects or assets makes a claim under paragraph 4, the objects or assets shall not be handed over until the legal position has been clarified. Objects or assets in dispute shall be returned to the person entitled only if:

- a. the requesting State gives its consent;
- b. in the case of paragraph 4 letter b, the authority gives its consent; or
- c. the justification of the claim is recognised by a Swiss judicial authority.

⁷ The handing over of objects and assets is not dependent on the execution of the extradition of the defendant.

⁸ Objects and assets in accordance with paragraph 1 letter b to which Switzerland is entitled according to an asset-sharing agreement based on the Federal Act of 19 March 2004¹⁰⁷ on the Division of Forfeited Assets are not handed over.¹⁰⁸

Art. 60 Fiscal lien

¹ If objects or assets are handed over and their return is waived, the customs lien or any other real liability under Swiss customs or tax law shall not be claimed if the owner who suffered loss as a result of the offence does not personally owe the duty or tax.

² The waiver of such a fiscal lien may be made dependent on reciprocity.

Art. 61 Time limit for taking over

If the requesting State does not take the necessary steps to take over the person to be extradited within ten days of notification of the execution order, he shall be released. This time limit may be extended up to 30 days in response to a justified request from the requesting State.

Art. 62 Costs

¹ In the event of extradition to a foreign country, the Swiss Confederation shall pay the costs of detention and transportation provided that it is customary in international relations for the requested State to pay such costs.

² The personal property of the defendant may be used to cover the costs provided it does not have to be handed over to the requesting State.

Part Three Other Mutual Assistance

Chapter 1 Requirements

Section 1 General

Art. 63 Principle

¹ Mutual assistance within the meaning of Part Three of this Act shall comprise the transmission of information, as well as procedural acts and other official acts permitted under Swiss law provided these acts appear to be necessary for proceedings carried out abroad in criminal matters or serve to retrieve the proceeds of the offence.¹⁰⁹

² Mutual assistance measures shall include in particular:

¹⁰⁷ SR 312.4

¹⁰⁸ Inserted by Annex No 2 of the FA of 19 March 2004 on the Division of Forfeited Assets, in force since 1 August 2004 (AS 2004 3503; BBl 2002 441).

¹⁰⁹ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

- a. the service of documents;
- b. obtaining evidence, and in particular searching persons and rooms, seizure, orders to produce, expert opinions, conducting hearings and confrontations of persons;
- c. production of documents and papers;
- d. handing over of objects or assets with a view to forfeiture or for restitution to the entitled person.¹¹⁰

³ The following shall, in particular, be considered proceedings carried out in criminal matters:

- a. prosecution of criminal offences as provided for in Article 1 paragraph 3;
- b. administrative measures against an offender;
- c. execution of criminal judgments and pardons;
- d. compensation for unjustified detention.¹¹¹

⁴ Assistance may also be granted to the European Court of Human Rights and to the European Commission on Human Rights in proceedings regarding the safeguarding of human rights and fundamental freedoms.

⁵ Assistance which will exonerate a defendant is permitted even if the request is inadmissible under Articles 3–5.

Art. 64 Compulsory measures

¹ Measures under Article 63 which require the use of procedural compulsion may be ordered only if the description of the circumstances of the case indicates that the offence being prosecuted abroad contains the objective elements of an offence under Swiss law. The measures must be carried out in accordance with Swiss law.

² If the offence prosecuted abroad is not an offence in Switzerland, measures under Article 63 which require the use of procedural compulsion shall be allowed for:

- a. the exoneration of a defendant;
- b.¹¹² the prosecution of offences involving sexual acts with minors.¹¹³

Art. 65¹¹⁴ Application of foreign law

¹ At the express request of the foreign State:

- a. the statements of witnesses or experts shall be affirmed in the form prescribed by the laws of the requesting State, even if the applicable Swiss law does not provide such a form;
- b. forms necessary to obtain other evidence that is admissible in court may be taken into consideration.

² Forms for obtaining and affirming evidence according to paragraph 1 must be compatible with Swiss law, and no essential prejudice may result therefrom to the persons involved.

¹¹⁰ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹¹¹ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹¹² Amended by Annex No 16 of the FA of 19 Dec. 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

¹¹³ Amended by Annex No 4 of the FA of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459; BBl 1999 1979).

¹¹⁴ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

³ A person may also refuse to testify provided the law of the requesting State so provides or if the fact of testifying may cause criminal or disciplinary sanctions to be imposed under the laws of that State or of the State where the examined person lives.

Art. 65a¹¹⁵ Presence of persons participating in proceedings abroad

¹ When the requesting State, based on its law, so requests, persons who are participating in proceedings abroad may be authorised to attend mutual assistance proceedings and to have access to the files.

² Their presence may also be permitted if it substantially helps to facilitate the execution of the request or the foreign criminal proceedings.

³ Their presence may not lead to their obtaining access to information within the scope of secrecy before the appropriate authority has decided whether, and to what extent, assistance may be granted.

Art. 66 Principle of «*Ne bis in idem*»¹¹⁶

¹ Assistance may be denied if the defendant resides in Switzerland and proceedings are already pending here regarding the offence to which the request relates.

² However, assistance may be granted if the proceedings carried out abroad are not directed solely against the defendant who is residing in Switzerland, or if the execution of the request serves to exonerate him.¹¹⁷

Art. 67¹¹⁸ Principle of speciality

¹ Information and documents obtained through mutual assistance may not be used for investigative purposes or as evidence in the requesting State in any proceedings relating to an offence for which assistance is not admissible.

² Any further use shall be subject to approval by the FOJ. This approval is not necessary if:

- a. the act to which the request relates constitutes another offence for which mutual assistance would be granted; or
- b. the foreign criminal proceedings are directed against other persons who have participated in committing the offence.

³ Presence at the mutual assistance proceedings and access to the files shall be permitted under the same conditions (Art. 65a para.1).

Art. 67a¹¹⁹ Spontaneous transmission of information and evidence

¹ An authority prosecuting offences may, without being requested to do so, transmit to a foreign authority prosecuting offences information or evidence that it has gathered in the course of its own investigation, when it determines that this transmission may:

- a. permit the opening of criminal proceedings; or
- b. facilitate an ongoing criminal investigation.

¹¹⁵ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹¹⁶ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹¹⁷ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹¹⁸ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹¹⁹ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

² The transmission as defined in paragraph 1 does not have any effect on the criminal proceedings pending in Switzerland.

³ The transmission of evidence to a State with which Switzerland does not have an international agreement shall be subject to authorisation by the FOJ.

⁴ Paragraphs 1 and 2 do not apply to evidence that is subject to the rules on secrecy.

⁵ Information that is subject to the rules on secrecy may be transmitted if it may enable the foreign State to present a request for mutual assistance.

⁶ A record shall be made of each spontaneous transmission.

Section 2 Specific Mutual Assistance Measures

Art. 68 Service of documents. General provisions

¹ Where a Swiss authority is requested to serve documents, service may be effected by personal or postal delivery to the recipient.

² The Federal Council may permit the direct service of documents from abroad to the recipient in Switzerland. It shall determine the conditions for such service.

³ Service is presumed to be effected if acceptance or refusal to accept has been confirmed in writing.

Art. 69 Service of summonses. Safe conduct

¹ There is no obligation to comply for any person who accepts a summons to appear before a foreign authority.

² Summonses containing threats of compulsion shall not be served.

³ Service of a summons may be made subject to the condition that the recipient is guaranteed safe conduct for an appropriate period of time and will not be prevented from freely leaving the territory of the requesting State. If the recipient so requires, the authority effecting service shall ask the requesting State to give a written assurance thereof before proof of service is furnished.

Art. 70 Transfer of arrested persons

¹ Persons held in custody in Switzerland may be transferred to a foreign authority for the purpose of investigations if they are guaranteed safe conduct and if it is guaranteed that they will be kept in custody and returned to Switzerland on request.

² Persons who are not indicted abroad and Swiss citizens may be transferred only with their written consent. This is not necessary if the transfer is required for the execution of a Swiss request or for confrontation with other persons abroad.

Art. 71¹²⁰**Art. 72** Maintaining of custody

¹ If a detained person is surrendered to the Swiss authorities in the course of an act of assistance, the warrant for his arrest issued abroad shall also be valid in Switzerland for the period of his stay in Switzerland.

² During transit the defendant shall be kept in custody by virtue of the order for transit given by the FOJ.

³ In those cases the detained person may be released only with the agreement of the competent foreign authority.

Art. 73 Safe conduct in Switzerland

¹ A person habitually resident abroad and who appears in Switzerland in a criminal case pursuant to a summons may neither be prosecuted nor restricted in his personal freedom for reasons that occurred prior to his entry into Switzerland.

² The defendant shall enjoy no safe conduct regarding the offences specified in the summons.

³ The safe conduct provided for in paragraph 1 shall cease when this person leaves Switzerland but at the latest three days after he is permitted to leave by the summoning authorities.

Art. 74¹²¹ Handing over of evidence

¹ On request, objects, documents or assets seized as evidence as well as records and decisions shall be made available to the competent foreign authority after conclusion of the mutual assistance proceedings (Art. 80d).

² If a third party with rights acquired in good faith, an authority, or the victim who is habitually resident in Switzerland claim that they have rights over the objects, documents or assets under paragraph 1, their handing over shall be subject to the condition that the requesting State gives the guarantee to return them free of charge after the conclusion of the proceedings.

³ Return may be delayed if the objects, documents or assets are necessary for criminal proceedings pending in Switzerland.

⁴ Article 60 applies to fiscal liens.

Art. 74a¹²² Handing over of objects or assets for the purpose of forfeiture or return

¹ On request, objects or assets subject to a precautionary seizure may be handed over to the competent foreign authority after conclusion of the mutual assistance proceedings (Art. 80d) for the purpose of forfeiture or return to the person entitled.

² The objects or assets referred to in paragraph 1 include:

- a. instruments which were used to commit the offence;
- b. products of or profits from the offence, their replacement value and any unlawful advantage;
- c. gifts and other contributions which served to instigate the offence or recompense the offender, as well as their replacement value.

¹²⁰ Repealed by No I of the FA of 4 Oct. 1996, with effect from 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹²¹ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹²² Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

³ The handing over may take place at any stage of the foreign proceedings, normally based on a final and executable decision from the requesting State.

⁴ However, the objects or assets may be retained in Switzerland if:

- a. the victim is habitually resident in Switzerland and they have to be returned to him;
- b. an authority asserts rights over them;
- c. a person not involved in the offence and whose claims are not guaranteed by the requesting State shows probable cause that he has acquired rights over these objects and assets in good faith in Switzerland, or if he is habitually resident in Switzerland, in a foreign country; or
- d. the objects or assets are necessary for pending criminal proceedings in Switzerland or appear, because of their nature, to be subject to forfeiture in Switzerland.

⁵ Whenever a person claims to have rights over the objects or assets under paragraph 4, its handing over to the requesting State shall be postponed until the legal situation is clear. The objects or assets claimed may be handed over to the person entitled if:

- a. the requesting State agrees;
- b. in the case of paragraph 4 letter b, the authority gives its consent; or
- c. the claim has been recognised by a Swiss court.

⁶ Article 60 applies to fiscal liens.

⁷ Objects and assets to which Switzerland is entitled according to an asset sharing agreement based on the Federal Act of 19 March 2004¹²³ on the Division of Forfeited Assets shall not be handed over in accordance with paragraph 1.¹²⁴

Chapter 2 Procedure**Section 1** Requests for Mutual Assistance**Art. 75** Authorisation for requesting mutual assistance

¹ Requests for assistance may be submitted by authorities that are competent to investigate offences or make decisions in other proceedings to which this Act is applicable.

² Swiss authorities may also accept requests for the execution of procedural acts from the parties authorised to make them if those acts are incumbent upon the parties under the laws of the requesting State.

³ The FOJ shall make requests for mutual assistance that is needed outside criminal proceedings.¹²⁵

Art. 75a¹²⁶ Police requests

¹ The commissioners of police of the Confederation and of the cantons may make a request under Article 63 on their own behalf and may grant such requests emanating from foreign authorities.

² The following requests are excluded:

¹²³ SR 312.4

¹²⁴ Inserted by Annex No 2 of the FA of 19 March 2004 on the Division of Forfeited Assets, in force since 1 August 2004 (AS 2004 3503; BBl 2002 441).

¹²⁵ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹²⁶ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

- a. requests which necessitate the use of procedural compulsion;
- b. requests for information or measures in proceedings regarding extradition, transfer of proceedings and execution of criminal judgments;
- c. requests for the handing over of criminal decisions or criminal files.

Art. 76 Content and documents

In addition to the information and documents required by Article 28, the following shall be specified in or enclosed with a request:

- a. in requests for service: the name and address of the recipient and his position in the proceedings as well as the type of document to be served;
- b. with requests for transit: one of the documents listed in Article 41;
- c. with requests for search of persons or rooms, for seizure or handing over of objects: confirmation that these measures are permitted in the requesting State.

Art. 77 Way of transmission¹²⁷

¹ Foreign requests shall be addressed to the appropriate cantonal authority through the intermediary of the FOJ.

² Requests for extracts from the Register of Convictions or for determining the identity of a person shall be addressed to the FOJ¹²⁸.

Section 2¹²⁹ Treatment of the Request

Art. 78 Receipt and transmission

¹ The FOJ shall receive foreign requests unless provision is made for direct transmission to the competent cantonal or federal executing authority.

² The FOJ shall summarily examine whether the request meets the formal requirements of this Act and shall forward it to the appropriate executing authority unless the request clearly appears to be inadmissible.

³ If necessary, the FOJ shall return the request to the requesting State for improvement or completion.

⁴ Receipt and transmission of the request to the competent authority are not subject to appeal.

⁵ The procedural provisions of Article 18 are reserved.

Art. 79 Delegation of execution

¹ If the execution of the request necessitates investigations in more than one canton or if it also concerns a federal authority, the FOJ may entrust a single authority with its execution. Articles 44–47, 52 and 53 CrimPC¹³⁰ apply by analogy.¹³¹

¹²⁷ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹²⁸ The designation of the administrative unit has been adapted according to Art. 16 para. 3 of the Publications O of 17 Nov. 2004 (AS 2004 4937).

¹²⁹ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

¹³⁰ SR 312.0

¹³¹ Second sentence Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

² The FOJ may delegate all or part of the execution of a request to the federal authority which would be competent if the offence had been committed in Switzerland.

³ The FOJ may also entrust the execution of supplementary requests to the authority to which execution was delegated.

⁴ The designation of the cantonal or federal authority responsible shall not be subject to appeal.

Art. 79a Decision of the FOJ

The FOJ may decide whether mutual assistance is permitted and delegate its execution to a cantonal authority or itself decide on the execution if:

- a. the execution of the request necessitates investigations in more than one canton;
- b. the competent cantonal authority is unable to make a decision within the appropriate time; or
- c. the cases are complex or particularly important.

Art. 80 Preliminary examination

¹ The request shall be subject to preliminary examination by the cantonal or federal authority responsible for its execution.

² If the request cannot be granted, the executing authority shall return it to the requesting authority by the same channel through which it was received.

Art. 80a Consideration and execution

¹ The executing authority shall issue a summary ruling on whether to consider the case and shall order the mutual assistance measures permitted.

² It shall execute the mutual assistance measures in accordance with its own procedural law.

Art. 80b Participation in the proceedings and access to the files

¹ The persons entitled may participate in the proceedings and have access to the files provided this is necessary to safeguard their interests.

² The rights provided for in paragraph 1 may be limited only:

- a. in the interest of the foreign proceedings;
- b. for the protection of an important legal interest if the requesting State so requests;
- c. because of the nature or urgency of the measures to be taken;
- d. for the protection of important private interests;
- e. in the interest of Swiss proceedings.

³ Access to the files or participation in the proceedings may only be denied in the case of files or procedural measures for reasons of confidentiality.

Art. 80c Simplified execution

¹ The persons entitled, and in particular the holders of documents, information or assets may consent to handing them over without formality at any time prior to the conclusion of the proceedings. Consent is irrevocable.

² If all the persons entitled give their consent, the competent authority shall make a written record thereof and conclude the proceedings.

³ If only some of the documents, information or assets required are handed over, the ordinary proceedings shall be followed for the remaining part.

Art. 80d Conclusion of the mutual assistance proceedings

When the executing authority determines that the request is completely or partially executed, it shall issue a ruling giving reasons on whether mutual assistance is granted and to what extent.

Art. 80d^{bis}¹³² Early transmission of information and evidence

¹ The competent cantonal or federal authority may by way of exception order the early transmission of information or evidence gathered before the final ruling is issued:

- a. if foreign investigations in cases relating to organised crime or terrorism would be made disproportionately difficult without this mutual assistance measure, in particular where there is a risk of collusion or in order to safeguard the confidentiality of the proceedings; or
- b. in order to avert a serious and immediate danger, and in particular the commission of a terrorist offence.

² The information or evidence concerned must be connected with the prevention or the prosecution of an extraditable criminal offence.

³ Early transmission may be ordered with or without a request being received. If it is ordered in the absence of a request, the competent cantonal or federal authority shall transmit only the non-personal data required to assess the position, subject to receiving the undertakings specified in paragraph 4.

⁴ Early transmission is conditional on the requesting authority providing an undertaking in advance that:

- a. the information or evidence will be used solely to assist with investigations, and under no circumstances for the purpose of requesting, justifying or issuing a final decision;
- b. it will inform the competent cantonal or federal authority as soon as the foreign proceedings permit that the person concerned may be notified of the early transmission under Article 80m so that he or she can respond before the final ruling is issued;
- c. it will remove the information or evidence obtained through early transmission from the files for the foreign proceedings if mutual assistance is refused.

⁵ Notification of the person concerned shall be deferred.

⁶ Notice of the interim ruling in accordance with paragraph 1 shall be given to the FOJ without delay and before the early transmission. It is not in itself contestable.

¹³² Inserted by Annex No II 5 of the FedD of 25 Sept. 2020 on the Approval and Implementation of the Council of Europe Convention on the Prevention of Terrorism and its Additional Protocol and the Strengthening of Criminal Justice Instruments for combating Terrorism and Organised Crime, in force since 1 July 2021 (AS 2021 360; BBl 2018 6427).

Section 2a¹³³ Joint Investigation Team

Art. 80d^{ter} Appointment of a joint investigation team

¹ The cantonal or federal mutual assistance authority may for a specific purpose and in consultation with the competent foreign judicial authority appoint a joint investigation team (JIT) to conduct or support the conduct of a criminal investigation in a state participating in the JIT.

² A JIT may in particular be appointed in a difficult or complex criminal investigation that involves one or more other states and which requires considerable resources as well as coordinated and concerted action.

³ It may only be appointed if a request for mutual assistance has been submitted by a judicial authority.

⁴ The JIT must be appointed for a limited duration. The appointment may be extended as required.

⁵ The competent authority shall designate the persons responsible and the members of the JIT for its state. The JIT may call on the services of experts and auxiliary personnel as required.

⁶ Notice of the act of appointment shall be given to the FOJ in writing.

Art. 80d^{quater} Applicable law

The JIT's activities are governed by the law of the state in which the investigation is conducted.

Art. 80d^{quinquies} Accountability

The representative of the criminal or mutual assistance authority in whose state an investigative measure is carried out is responsible for that investigative measure.

Art. 80d^{sexies} Status in relation to criminal and civil liability

The foreign person responsible and the foreign members of the JIT, as well as the foreign experts and auxiliary personnel under Article 80d^{ter} paragraph 5 are deemed equivalent to the Swiss person responsible and the Swiss members of the JIT during an operation on Swiss national territory in relation to any offences committed against them or that they themselves commit. They are also deemed equivalent to them in relation to any injury, loss or damage that they cause during their operation.

Art. 80d^{septies} Access to documents, information and evidence

¹ The persons responsible and members of the JIT shall have access to:

- a. documents and information that are related to the relevant criminal investigation;
- b. evidence that has been gathered in the course of the relevant criminal investigation.

² They shall be denied access to documents, information and evidence if a decision to that effect has been taken by a person responsible for the JIT or by a criminal or mutual assistance authority. The foregoing also applies if the documents, information or evidence were obtained before the JIT was appointed.

¹³³ Inserted by Annex No II 5 of the FedD of 25 Sept. 2020 on the Approval and Implementation of the Council of Europe Convention on the Prevention of Terrorism and its Additional Protocol and the Strengthening of Criminal Justice Instruments for combating Terrorism and Organised Crime, in force since 1 July 2021 (AS 2021 360; BBl 2018 6427).

³ The experts and auxiliary personnel under Article 80^{dter} paragraph 5 shall have access only to documents, information and evidence that are required for them to fulfil the tasks assigned to them.

Art. 80^{docties} Early transmission

The early transmission of documents, information and evidence that are to located on Swiss sovereign territory is governed by Article 80^{dbis}.

Art. 80^{dnovies} Confidentiality and data protection

¹ The confidentiality of the information, including the confidentiality of the investigation, must be preserved.

² The protection of personal data is governed by the law of the state in which the investigative measure is carried out.

Art. 80^{ddecies} Dealings with the media

If the bodies normally competent to do so in the judicial authorities concerned intend to issue a press release, the Swiss criminal or mutual assistance authority and its foreign partner authority shall discuss the content beforehand.

Art. 80^{dundecies} Costs

¹ The costs of the investigative activities shall be borne by the state in which the act concerned is carried out.

² The costs related to time spent in the other country, travel and accommodation for the persons responsible and the other members of the JIT shall be borne by their own country.

³ The rooms and the technical resources required to conduct the investigative activities, such as office space, communication media or special equipment, shall be provided by the state in which the activity concerned is carried out.

Art. 80^{duodecies} Act of appointment

¹ The act of appointment must include the following information:

- a. the purpose of the JIT;
- b. the names of the Swiss and the foreign criminal or mutual assistance authorities;
- c. the names of the persons responsible for each state participating in the JIT and the names of the other members of the JIT and their functions;
- d. the criminal investigation, including the factual circumstances, that is the subject matter of the criminal investigation, and the offences under investigation;
- e. the states on whose territory the JIT will conduct investigations in accordance with the relevant national law;
- f. the duration for which the JIT is appointed, with the date on which this period ends;
- g. the names of any experts and auxiliary personnel who are not members of the JIT, in particular of those who come from other services or administrative units in the participating states, as well as the names of any experts and auxiliary personnel from Eurojust and Europol;
- h. the procedure for dealings with the media;

- i. the arrangements for bearing the costs of the criminal investigation and investigative activities;
- j. the arrangements for bearing the costs of time spent in the other country, travel and accommodation for the persons responsible, the other members of the JIT and the experts and auxiliary personnel;
- k. the technical resources required to conduct the operations.

² The act of appointment may be amended if the investigations so require. In particular, further members may be added to the JIT or the time limit may be extended.

Section 3¹³⁴ Appeal

Art. 80^{e135} Appeal against the ruling of the executing authority

¹ The ruling of the executing cantonal or federal authority on the conclusion of the mutual assistance proceedings together with the preceding interim rulings shall be subject to appeal to the Appeals Chamber of the Federal Criminal Court.

² Interim rulings preceding the final ruling may be appealed against separately provided that they cause immediate and irreparable prejudice through:

- a. the seizure of assets or valuables; or
- b. the presence of persons involved in the foreign proceedings.

³ Article 80/ paragraphs 2 and 3 applies by analogy.

Art. 80/ and 80^{g136}

Art. 80/h Right of appeal

The following shall be entitled to appeal:

- a. the FOJ;
- b. any person who is personally and directly affected by a mutual assistance measure and has a legitimate interest in that measure being annulled or modified.

Art. 80/i Reasons for appeal

¹ The appeal may be filed to challenge:

- a. a violation of federal law, including excessive use or abuse of discretion;
- b. the inadmissible or manifestly incorrect application of foreign law in the cases under Article 65.

² ...¹³⁷

¹³⁴ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

¹³⁵ Amended by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, in force since 1 Jan. 2007 (AS **2006** 2197; BBl **2001** 4202).

¹³⁶ Repealed by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, with effect from 1 Jan. 2007 (AS **2006** 2197; BBl **2001** 4202).

¹³⁷ Repealed by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, with effect from 1 Jan. 2007 (AS **2006** 2197; BBl **2001** 4202).

Art. 80k Deadline for appeal

The deadline for appeal against the final ruling shall be 30 days, or ten days in the case of an interim ruling, from the written communication of the ruling.

Art. 80l Suspensive effect

¹ Only appeals against the final ruling or any other ruling authorising the transmission of classified information or the handing over of objects or assets to a foreign State shall have suspensive effect.¹³⁸

² An interim ruling preceding the final ruling may be executed immediately.

³ The Appeals Chamber of the Federal Criminal Court may grant suspensive effect to an interim ruling in accordance with paragraph 2 if the person entitled shows probable cause that immediate and irreparable prejudice as defined in Article 80e, paragraph 2 may result.¹³⁹

Section 4¹⁴⁰ Special Provisions**Art. 80m** Notification of rulings

¹ The executing authority and the appellate authority shall give notice of their rulings to:

- a. the entitled person living in Switzerland;
- b. the entitled person living abroad and with an address for service of documents in Switzerland.

² The right to notification shall end when the ruling concluding the mutual assistance proceedings becomes legally enforceable.

Art. 80n Right to inform

¹ Holders of documents have the right to inform their clients of the existence of the request and of all the facts relating thereto unless the competent authority has, as an exception, expressly prohibited this and made reference to Article 292 of the Swiss Criminal Code¹⁴¹ and the penalties that it carries.

² The person entitled who intervenes in pending proceedings may no longer challenge rulings that have become legally enforceable.

Art. 80o Inquiry addressed to the requesting State

¹ If additional information is necessary, the executing or the appellate authority shall request the FOJ to obtain it from the requesting State.

² If necessary, the competent authority shall suspend dealing with all or part of the request and rule on the points that may be dealt with based on the documents available.

³ The FOJ shall give the requesting State an appropriate deadline by which to respond. If the deadline given is not respected, the request for mutual assistance shall be examined based on the documents available.

¹³⁸ Amended by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, in force since 1 Jan. 2007 (AS **2006** 2197; BBl **2001** 4202).

¹³⁹ Amended by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, in force since 1 Jan. 2007 (AS **2006** 2197; BBl **2001** 4202).

¹⁴⁰ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

¹⁴¹ SR **311.0**

Art. 80p Conditions subject to acceptance

¹ The executing and the appellate authority as well as the FOJ may make the granting of mutual assistance wholly or partly subject to certain conditions.

² The FOJ shall communicate the conditions to the requesting State when the ruling on the granting and the extent of the mutual assistance is final and shall give it an appropriate deadline by which to accept or refuse. If the deadline given is not respected, mutual assistance may be granted on the points that are not subject to conditions.

³ The FOJ shall examine if the response of the requesting State satisfies the conditions set.

⁴ The ruling of the FOJ is subject to an appeal to the Appeals Chamber of the Federal Criminal Court within ten days of its notice being given in writing. The decision of the Appeals Chamber is final.¹⁴²

Art. 80q Costs

The requesting State shall be charged for:

- a. the remuneration of experts;
- b. the return of objects or assets for the purpose of restitution to the person entitled.

Art. 81–84¹⁴³**Part Four Transfer of Proceedings****Chapter 1 Conditions****Section 1 Prosecution in Switzerland on behalf of another State****Art. 85** Principle

¹ At the request of the State in which the offence was committed, Switzerland may prosecute on its behalf an offence committed abroad if:

- a. extradition is not permitted;
- b. the defendant has to face charges in Switzerland for other more serious offences; and
- c. it is guaranteed that the requesting State will not prosecute him for the same offence after acquittal or completing a sentence in Switzerland.

² A foreign national who is habitually resident in Switzerland may also be prosecuted in Switzerland if his extradition cannot be justified and prosecution in Switzerland seems appropriate with regard to his personal situation and social rehabilitation.

³ These provisions do not apply if the offence is subject to Swiss jurisdiction on the basis of another provision.¹⁴⁴

Art. 86 Applicable law

¹ The offence shall be judged according to Swiss law as if it had been committed in Switzerland.

¹⁴² Amended by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, in force since 1 Jan. 2007 (AS **2006** 2197; BBl **2001** 4202).

¹⁴³ Repealed by No I of the FA of 4 Oct. 1996, with effect from 1 Feb. 1997

(AS **1997** 114; BBl **1995** III 1).

¹⁴⁴ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

² The foreign law applies if it is more lenient. The court may impose only the sentences provided for by Swiss law.

³ Proceedings in the absence of the defendant are not permitted.

Art. 87¹⁴⁵ Jurisdiction

If Swiss jurisdiction is not yet established, it shall be determined in accordance with Article 32 CrimPC¹⁴⁶.

Section 2 Transfer to Foreign States

Art. 88¹⁴⁷ Conditions

Another State may be requested to prosecute an offence subject to Swiss jurisdiction if its laws allow the prosecution and judicial punishment of the offence and if:

- a. the defendant is present there and his extradition to Switzerland is inappropriate or not permitted; or
- b. he is extradited to this State and the transfer of the prosecution offers the prospect of better social rehabilitation.

Art. 89 Effects

¹ If another State prosecutes the offence, the Swiss authorities may not take further measures against the defendant for the same offence:

- a. unless the requested State has given notice that it is not in a position to conclude the prosecution; or
- b. if, according to the decision made in the requested State, the conditions of Article 5 letter a or b are met.

² The effect of the time limitation provisions under Swiss law is suspended provided the proceedings including enforcement of the sentence are ongoing in the requested State.¹⁴⁸

³ If the defendant was extradited to the requested State for other offences, this State need not observe the conditions of extradition in accordance with Article 38 provided it grants the request for prosecution.

Chapter 2 Procedure

Art. 90 Documents

In addition to the documents specified in Article 28 paragraph 3, the record of criminal proceedings as well as any evidentiary productions must be enclosed with the request.

¹⁴⁵ Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

¹⁴⁶ SR **312.0**

¹⁴⁷ Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

¹⁴⁸ The suspension of the effects of the time limitation provisions has been abolished by Art. 97 ff. of the Swiss Criminal Code (SR **311.0**) and time limits for execution have been replaced by an extension of the regular time limit (AS **2006** 3459; BBl **1999** 1979).

Art. 91 Decision on the request

¹ The FOJ shall decide on whether to accept the foreign request after consulting the prosecuting authorities.

² If it accepts the request, it shall transmit the file to the prosecuting authority and notify the requesting State and the person concerned.

³ The decision does not create an obligation to institute criminal proceedings.

⁴ The FOJ may refuse to assume responsibility for the prosecution if there is good cause not to do so or if the seriousness of the offence does not justify it.

Art. 92 Foreign investigative measures

Any investigative measure carried out by the authorities of the requesting State under its law shall be considered equivalent to a corresponding Swiss investigative measure.

Art. 93 Costs

¹ The costs of the proceedings set by the requesting State shall be added to the costs of the proceedings in Switzerland and collected. They are not refunded to the requesting State.

² The cantons shall have a right of disposal over any fines paid and, subject to the provisions of the Federal Act of 19 March 2004¹⁴⁹ on the Division of Forfeited Assets, over forfeited objects.¹⁵⁰

³ The requested State shall be notified of the costs of the proceedings incurred in Switzerland if the requested State takes over the prosecution. Their reimbursement shall not be requested.

Part Five Enforcement of Criminal Judgments

Chapter 1 Conditions

Section 1 Enforcement by Switzerland

Art. 94 Principle

¹ Final and enforceable criminal judgments from another State may be enforced at that State's request if:

- a. the convicted person is habitually resident in Switzerland or has to face charges here for a serious offence;
- b. the subject of the conviction is an offence committed abroad which, if committed in Switzerland, would be punishable here; and
- c. enforcement in Switzerland seems to be appropriate for one of the reasons specified in Article 85 paragraphs 1 and 2 or likely to be barred in the requesting State.

² Sentences imposed abroad shall be executed provided they do not exceed the maximum penalty provided by Swiss law for a corresponding offence. Sentences that remain below the minimum penalty according to Swiss law may be executed.

³ ...¹⁵¹

¹⁴⁹ SR **312.4**

¹⁵⁰ Amended by Annex No 2 of the FA of 19 March 2004 on the Division of Forfeited Assets, in force since 1 August 2004 (AS **2004** 3503; BBl **2002** 441).

¹⁵¹ Repealed by No I of the FA of 4 Oct. 1996, with effect from 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

⁴ Fines as well as costs arising from proceedings under Article 63 may also be enforced if the convicted person is habitually resident abroad but has assets at his disposal in Switzerland and if the requesting State grants reciprocity.

Art. 95 Inadmissibility of the enforcement order

¹ The order permitting enforcement (exequatur) may not be issued if:

- a.¹⁵² the conviction took place at a time when, under Swiss law, the prosecution would have been time barred;
- b. the sentence would have been time barred under Swiss law if a Swiss authority had imposed it at the same time; or
- c. the offence is also subject to Swiss jurisdiction and no sentence could be imposed under Swiss law for other reasons.

² Decisions on costs shall be declared enforceable only if the costs are to be paid to the State.

Art. 96 Refusal to enforce

The court shall refuse to enforce in whole or in part if:

- a. the convicted person has incurred a sentence involving deprivation of liberty in Switzerland for other offences and enforcement as requested would result in an obviously more severe punishment than if the offences taken as a whole were judged in Switzerland; or
- b. the execution of any of the accessory criminal measures in Switzerland is not permitted, or
- c. it is of the opinion that the convicted person has good reason to oppose the enforcement of a judgment or penalty order that was issued in his absence and which is no longer subject to a right of objection or appeal under the law of the requesting State.

Art. 97 Binding force of the findings in fact

In assessing criminal liability and the possibility of prosecution under Swiss law, the court shall be bound to the findings in fact on which the decision relies. If they do not suffice, the gathering of evidence may be ordered.

Art. 98 Effects of enforcement

If Switzerland assumes responsibility for enforcement, no criminal proceedings against the convicted person for the same offence may be instituted or continued here.

Art. 99 Use of Swiss institutions by foreign States

¹ If the conditions of Article 94 paragraph 1 are not met, sentences involving restriction of liberty that have been imposed on a non-Swiss national in another State may be enforced in Switzerland under Swiss law if the other State cannot execute them itself.

² In this case, the final and enforceable foreign decision shall constitute the legal basis for the restriction of the convicted person's liberty.

³ If persons are surrendered to Switzerland in accordance with paragraph 1, then unless arrangements to the contrary have been made with the competent authorities of the surrendering State,

¹⁵² The amendment in accordance with Art. 97 ff. of the Swiss Criminal Code (SR 311.0) contains a limitation system (AS 2006 3459; BBl 1999 1979).

they may neither be prosecuted nor punished nor extradited to a third State by the Swiss authorities for offences that they committed before their surrender and that were not the subject of their conviction. These effects shall expire ten days after release on parole or final release from the institution.

⁴ The Federal Council shall regulate the details.

Section 2 Transfer to a Foreign State

Art. 100 Principle

Another State may be requested to enforce a Swiss criminal judgment if:

- a. it is certain to accept the binding force of the judgment in accordance with Article 97; and
- b. the transfer of enforcement is likely to improve the prospects of the social rehabilitation of the convicted person or if Switzerland cannot obtain his extradition.

Art. 101 Conditions for transfer

¹ The convicted person who is detained in Switzerland may only be transferred with a view to enforcement of the judgment under Article 100 if he agrees and if the requested State is expected to accept the conditions set by the FOJ.

² The convicted person may be transferred without his consent if an international agreement ratified by Switzerland so provides. In this case the conditions and effects of the transfer are regulated exclusively by the said international agreement.¹⁵³

Art. 102 Effects of transfer

¹ If another State enforces the criminal judgment, the Swiss authority shall abandon enforcement provided the requested State has not given notice that it will not conclude it.

² The convicted person may be taken into custody so as to ensure his transfer.

³ Article 89 paragraphs 2 and 3 apply by analogy.

Chapter 2 Procedure

Section 1 Request

Art. 103 Documents

In addition to the documents specified in Article 28 paragraph 3, the following shall be enclosed with a request:

- a. the original or an officially authenticated copy of the judgment with a certificate attesting that it is legally enforceable;
- b. a certificate attesting the period of detention undergone in the requesting State;
- c. if the requested State so requests, the original or officially authenticated copy of the criminal file.

¹⁵³ Inserted by art. 2 of the FD of 19 Dec. 2003, in force since 1 Oct. 2004 (AS 2004 4161 4162; BBl 2002 4340).

Art. 104 Decision on the request

¹ After consulting with the authority which will execute the request, the FOJ shall decide whether to accept the foreign request. If it accepts, it shall convey the file and its opinion to the executing authority and inform the requesting State. Article 91 paragraph 4 applies by analogy.

² If there is Swiss jurisdiction and if a sentence which is more severe than the one provided by Swiss law was imposed abroad, the prosecution may be taken over instead of the enforcement of the judgment if the requesting State so requests.

Section 2 Procedure of Exequatur**Art. 105¹⁵⁴** Competent judge

The competent court under Article 32 CrimPC¹⁵⁵ shall inform the convicted person of the applicable procedure, hear him on the matter, as well as his counsel, and decide on enforcement.

Art. 106 Declaration of exequatur

¹ The court shall examine ex officio whether the conditions for enforcement are met and gather the necessary evidence.

² If the conditions are met, the court shall declare that the decision may be enforced and take the measures necessary for enforcement.

³ The decision shall be made in the form of a judgment containing a statement of the rationale therefor. Cantonal law shall provide for an appeal.

Section 3 Enforcement**Art. 107** Execution of the sentence

¹ The sentence determined by the court shall be executed in accordance with Swiss law.

² Execution shall be discontinued if the decision is no longer enforceable in the requesting State.

³ If enforcement relates solely to a decision on costs, the amounts collected after deduction of the costs incurred shall be transferred to the requesting State if it guarantees reciprocity.

Art. 108 Costs

In addition to the costs for the execution of the sentence, the costs of exequatur proceedings and other enforcement measures shall also be regarded as costs in accordance with Article 31.

Part Six Final Provisions**Art. 109** Repeal and amendment of current law

¹ The Federal Act of 22 January 1892¹⁵⁶ on Extradition to Foreign States is hereby repealed.

¹⁵⁴ Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

¹⁵⁵ SR **312.0**

¹⁵⁶ [BS 3 509]

2–3 ...¹⁵⁷

Art. 110 Transitional provisions

¹ Extradition proceedings which are pending on the commencement of this Act shall be completed in accordance with the procedural provisions of the Federal Act of 22 January 1892¹⁵⁸ on Extradition to Foreign States.

² The prosecution and the enforcement of decisions in accordance with Parts Four and Five of this Act may be taken over only if the offence to which the request refers was committed after the commencement of this Act.

³ Requests for extradition or other assistance in relation to offences which under Article 75^{bis} of the Swiss Criminal Code¹⁵⁹ or Article 56^{bis} of the Military Criminal Code¹⁶⁰ are not subject to a time limit may be granted by the Federal Council even if, on the date that these provisions come into force, the prosecution or the penalty is time barred.

Art. 110a¹⁶¹ Transitional provision for the amendment of 4 October 1996

The provisions of the amendment of 4 October 1996 to this Act apply to all proceedings pending when such provisions come into force.

Art. 110b¹⁶² Transitional provision for the amendment of 17 June 2005

The previous law applies to appeal proceedings against rulings issued by the court of first instance before this amendment comes into force.

Art. 111 Implementation

¹ The Federal Council shall issue the implementing provisions.

² It may establish a standing committee to examine the question of whether the seriousness of the offence justifies the disclosure of classified information. The members of the committee are bound to secrecy like officials of the Confederation.

Art. 112 Commencement and referendum

¹ This Act is subject to the optional referendum.

² The Federal Council shall determine the commencement date.

Commencement date: 1 January 1983¹⁶³

¹⁵⁷ The amendments may be consulted under AS **1982** 846.

¹⁵⁸ [BS 3 509]

¹⁵⁹ SR **311.0**. Presently Art. 101 Swiss Criminal Code (AS **2006** 3459).

¹⁶⁰ SR **321.0**. Presently Art. 59 of the Military penal code (AS **2006** 3389).

¹⁶¹ Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS **1997** 114; BBl **1995** III 1).

¹⁶² Inserted by Annex No 30 of the FA of 17 June 2005 on the Federal Administrative Court, in force since 1 Jan. 2007 (AS **2006** 2197; BBl **2001** 4202).

¹⁶³ FCD of 24 Feb. 1982.