



a JUSTICE publication



EU CRIMINAL PROCEDURE

**A general defence
practitioner's guide**

Author: Jodie Blackstock



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JUSTICE – advancing justice, human rights and the rule of law

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Foreword

JUSTICE has followed law making in the EU for many years, in particular the development of cooperation in criminal matters. We have, as with all our work, aimed to ensure that the rule of law is properly respected by these instruments, access to justice is effectively afforded and human rights are not infringed. This is a difficult task when 27 member states have a view, which until very recently has been focussed solely on efficient ways to prosecute crime.

Many lawyers will be familiar with the European arrest warrant and assume that EU criminal law is for specialists. In fact, EU activity has expanded into all areas of procedure, from bail through to custody and almost everything in between. These measures are slowly coming into force throughout the EU and we are now beginning to see their impact.

With this guide we aim to introduce the EU in a simple and accessible way so that busy practitioners can get to grips with what they need to know quickly. In Chapter 3, we have identified three measures which we feel it is important practitioners familiarise themselves with as they could arise at any time during the course of day to day practice. These relate to freezing orders, financial penalties, and of most importance, taking account of EU convictions in domestic criminal proceedings. The latter has the potential for significant impact on a defence where EU convictions are held.

We have set out the issues as we see them and provided the relevant materials in the annex to allow practitioners to grapple with some of the issues that may arise with these measures.

We hope that this guide will prove useful. Do let us know if it has been of assistance since, as we set out in Chapter 2, there are many more instruments on the way, which we could highlight in the future.

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Glossary

EU Member state: a member state of the European Union is a state that is party to treaties of the European Union (EU) and has thereby undertaken the privileges and obligations that EU membership entails.

Work programme: the multi-annual programme agreed in the European Council which focuses the policies and legislation developed during its operation.

Soft law measures: agreements made that are not binding law.

Proposal: equivalent to a bill of legislation.

General approach: agreed amendments in the Council of the content of a proposal which can then be sent to the European Parliament.

MEP rapporteur: a member of the European parliament who is a member of a parliamentary committee and appointed by that committee to report on a proposal.

Plenary sessions: the European Parliament sitting in plenary in Strasbourg. Parliamentary committees hold sessions in Brussels.

Regulation: a legislative act of the EU that becomes immediately enforceable as law in all member states simultaneously.

Directive: a legislative act of the EU which requires member states to achieve a particular result without dictating the means of achieving that result.

Advocate general: act in the Court of Justice of the European Union, presenting in open court impartial and independent opinions in cases.

Council decisions: a soft law measure that comes into force in all member states simultaneously. Available for the Council to make agreements under the former Treaty of the European Union and continuing under the Lisbon Treaty for specific areas of law making.

Framework decisions: a legislative act of the EU which requires member states to achieve a particular result without dictating the means of achieving that result. The mechanism of making law under the old Treaty of the European Union and continuing under the Lisbon Treaty for specific areas of law making. Distinguished from directives because they are not enforceable.

Chapter 1 – Introduction to the EU – The EU Institutions and Law Making

The main law making institutions of the EU are the European Commission, the European Council, the Council of Ministers, the European Parliament, and the European Court of Justice. This first chapter sets out the roles of these institutions, their responsibilities and operation and the European legislative process. It then considers the structure of lawmaking under the treaty system and its potential impact, with a particular focus on the UK.

European Commission - responsible for the day to day operation of the EU. In almost all matters the Commission makes proposals for new legislation and reviews the implementation and effectiveness of that legislation. It does this following the agreement of a 'work programme' proposed in the Commission and passed in the European Council. In the area of Justice and Home Affairs, the priorities are set out under the Stockholm Programme which operates between 2009 and 2014. The work programme develops out of a consultation process, instigated by the Commission, with member states and civil society, and sometimes expert groups. A Commissioner is responsible for the running of each area of activity in the EU. There are 27, one appointed from each member state.

European Council - comprises heads of state from each EU member state which meet to discuss high level issues affecting the EU such as the economy, climate change and international concerns. The European Council adopts the most significant legislative acts such as treaties, and issues work programmes, statements and recommendations to shape the development of the Union.

Council - consists of the relevant minister from each EU member state for the area concerned. For example, in justice matters, the ministers of justice from each EU member state attend meetings. The Council meets four times a year to discuss the passage of legislation and soft law measures on how the EU will agree to proceed on an issue, such as the Handbook on the European arrest warrant. It holds working parties where experts from EU member states' government departments meet to discuss the development of an instrument as proposed by the Commission. These working parties feed their progress into the meetings of the relevant Council to try and reach agreement on the text of the proposed legislation. Once this 'general approach' is reached, the text as amended will

pass to the European Parliament for its consideration, (though in practice the European Parliament will already have been considering the text in parallel with the Council). The Council is responsible for adoption of legislation following co-decision with Parliament. It operates through rolling six month Presidencies of the member states. The working party meetings will be chaired by relevant civil servants and Council meetings by ministers from the presiding member state. Each Presidency will decide its own priorities, in accordance with the Working Programme that applies during its term.

In the area of cooperation in criminal matters, one third of the Council (i.e. 7 member states) can propose legislation in addition to the Commission. The same process of adoption of the legislation will apply. However, the Commission is obliged to consult with the member states and civil society when it is considering proposing legislation. It will prepare a green paper in advance and following the replies it will then conduct an impact assessment of the costs and benefits of the proposal using an outside agency. The Council is not required to do the same.

European Parliament – comprises elected representatives of each EU member state (MEPs). It has 20 committees covering each area of legislative activity. The Civil Liberties, Justice and Home Affairs committee considers most of the proposals on Justice and Home Affairs instruments, but the committees on legal affairs, human rights and women and gender equality may also consider the same proposal where it is relevant to their concerns. An MEP rapporteur is appointed to report to the Committee. Once agreement on amendment to the text is reached in the Committee, the proposal goes to the floor of the Parliament at plenary sessions held in Strasbourg. When an agreed version is ready, this will be sent back to the Council to consider the proposed amendments. This process can happen up to three times before the Commission is called in to try and mediate and then if nothing can be resolved the proposal has to be shelved. In practice, there are regular meetings of the rapporteur and Presidency representative (who will lead the Council discussions for their six month term) to try and ensure the proposal is agreed in the first round.

Once the proposal is finally agreed it will be adopted by the Council. If it is a regulation, it will have direct effect from the date specified in the text. If it is a directive, the member states will have to implement it by way of domestic law by the date specified. The domestic law must follow the nature and purpose of the EU law but does not have to be identical to it.

Court of Justice of the European Union - Once the legislation comes into force, the Court of Justice has a role in interpreting the legislation. The Court consists of a general court and a referral court, the European Court of Justice (ECJ). A judge is appointed from each EU member state to each court. The ECJ operates with eight Advocates General. Member states can bring actions against the EU institutions to the General Court and it can hear matters as between the EU institutions. The Commission can bring infringement proceedings to the ECJ against a member state where it considers the state to have failed to comply with EU law. Domestic courts can make preliminary references to the ECJ for interpretation of a law to assist in a domestic case.

The Treaty System

The European Union was established in 1958 by the European Economic Community (EEC). Its founding members (the European Coal and Steel Community (ECSC)) comprised of six member states. Since then, the former treaty base developed until the Treaty of Nice (2003) in which 15 member states approved the accession to the EU of a further 17 member states. The EU therefore now consists of a total of 27 EU member states.

As a result of this expansion, the former legal framework of the EU was considered unworkable for the size and diversity of the modern day Union. The Lisbon Treaty took six years to draft (inclusive of the Constitutional Treaty proposal which was rejected at member state referendums) and aims to make the EU more efficient, transparent and effective.

Under the old treaty base, the three 'pillar' system provided different procedures for the proposal, scrutiny and adoption of law depending upon which pillar was engaged. The third pillar evolved to deal with cooperation on matters which member states were not yet comfortable to give up national sovereignty in, namely criminal justice matters. Law passed under the third pillar was called Union law, whereas the more integrated law in the first and second pillars was referred to as Community law. The third pillar had three main distinctions to the other pillars:

1. The European Parliament had co-decision in Community law but not Union law. In the third pillar, the Parliament only had to be consulted by the Council, whereas in the other pillars, co-decision (the process outlined above) was necessary for legislation to be passed. In reality, the Council barely considered the views of the Parliament.

2. Law was passed by way of council and framework decisions not regulations and directives (though case law from the ECJ gave them a similar legal function, see for example Pupino¹). The Court of Justice only had jurisdiction to hear cases if a member state actively signed up to it. In the majority of cases, including in the UK, this was not done and very few legislative acts in the area of criminal cooperation were reviewed by the Court.
3. The passage of legislation required unanimity of votes in the Council. Under Community law, qualified majority voting (QMV) applied.

The Lisbon Treaty makes structural changes to the Treaty on the European Union (TEU) and introduces the Treaty on the Functioning of the European Union (TFEU). It creates new policy areas in which it affirms action will be taken – such as climate change. The main changes are as follows:

- **All reference to Community law has been removed in favour of Union law**, thereby resolving the prior confusion.
- **The EU will become a signatory to the European Convention on Human Rights and the TEU incorporates the Charter of Fundamental Rights**. It should be noted that the UK, Poland and the Czech Republic have a curious protocol which applies to the operation of the Charter. On one view, it is simply a restatement of the contents of the Charter – that it will only apply to Union and not wholly domestic law. On another view it takes most of the operation of the Charter away by stating that domestic courts cannot declare any law incompatible with the Charter. We await interpretation of the Protocol by the ECJ.
- **Laws will now have to be deposited in national parliaments for consideration before the legislative process at EU level begins**. The Treaty provides a two month period for national parliaments to raise objections to a proposal if they consider that the proposal does not accord with subsidiarity (action only where it is more effective at EU rather than national level). If one third of national parliaments object, then the proposal will be sent back for review by the Commission (the ‘yellow card’). If a majority of national parliaments oppose a

¹ C-105/03 *Criminal Proceedings against Maria Pupino* [2005] ECR I-5285

Commission proposal, and national governments or MEPs agree, then it can be struck down completely (the 'orange card').

- **A Citizen's Initiative** has also been created whereby one million people throughout a significant number of member states can invite the Commission to propose a legal initiative. The mechanism for how this will work is under development.
- **New positions of office have been created: the President of the European Council and the High Representative of the Union for Foreign Affairs and Security.** The first will be appointed for a once renewable term of two and a half years. The President now represents the EU, as if he is a head of state, when the European Council meets and in external relations. The aim of this position is to afford greater continuity of policy priorities and law making between each six month presidency and also to create a representative for the international community to identify with. The High Representative is the vice-president of the Commission and merges the current positions of High Representative for the Common Foreign and Security Policy and the External Relations Commissioner. This role is also designed to bring greater coherence to the EU's external action. She chairs the Council of ministers on foreign affairs and represents the Union's position in these areas at international meetings.
- **Title IV to the TFEU on Justice and Home Affairs is subsumed into the general law of the Union and the pillar system is abolished.** Co-decision is re-named 'ordinary legislative procedure' and applies to all law making, save for operational policing matters, defence and taxation decisions (which remain under the former system). Any decision will use the pre-Lisbon third pillar procedure (called the 'special procedure').
- **The option to create a European public prosecutor is provided in order to combat crimes affecting the financial interests of the Union.** Any decision will use the pre-Lisbon third pillar procedure (called the 'special procedure').
- **Qualified Majority Voting ('QMV') applies to the adoption of legislation.** 55% of the member states will have to approve a measure (that being 15 or more member states) accounting for 65% of the EU's

population before a measure can be passed. A blocking minority must be at least four member states. Where measures cannot be agreed, an enhanced co-operation system has been created for groups of member states to act in an area between themselves without binding the other member states.

- **Transitional measures apply to Title IV of the TFEU which mean that the current laws will remain in force until 2014**, but after that date they will become regulations or directives, and subject to the same enforcement mechanisms as the old Community law instruments (i.e. the jurisdiction of the Court under Protocol 36 and infringement proceedings brought by the Commission). The UK and Ireland have a separate protocol of operation in this area (Protocol 21). These member states can now decide whether to opt in to a legislative instrument (which extends the opt-out the UK has in the area of asylum and immigration). Under Protocol 36, with respect to the existing instruments we have until six months prior to their transition to decide whether we want to continue to engage with them once the full Union law applies. If not, we will opt out of all existing instruments. The Stockholm Programme incorporates review of all existing measures with a view to the Commission proposing new instruments where necessary prior to transition. Prior to 2014, where amending instruments are agreed without our cooperation, there will need to be a review of whether the system is workable with us operating under the old instrument. Denmark has opted out of all Title IV measures and will therefore no longer cooperate after 2014.

Thoughts on the Treaty Amendments

The move to the ordinary legislative procedure in Justice and Home Affairs (JHA) is perhaps a double edged sword. Unanimity was useful to block passage of instruments which did not accord with national policy, the rule of law and fundamental human rights principles, but also blocked measures which were essential (such as procedural safeguards). Majority voting will ensure that legislation is passed which is more representative of the member states. Some countries will lose votes in the adjusted weights (e.g. Ireland) but others will gain votes (e.g. the UK). Hopefully with the scrutiny of national and European parliaments this will favour the rule of law, but measures which may not be considered necessary or appropriate for one member state can no longer be easily blocked (though of course the UK and Ireland can still exercise their opt out).

Once passed, interpretation and transposition of JHA law in the UK will be open to the jurisdiction of the Court, a frustrating omission from the prior framework. Through the principle of direct effect, nationals will be able to rely upon any rights granted in a regulation or directive before the national court. Where the UK has not implemented a directive (which will still have to be transposed into national law, whereas a regulation will be binding without transposition), it will not be able to pass any law that is inconsistent with the directive. Equally, the role of the CJEU will be significant for the UK where it has not had any operation previously. Whilst the House of Lords and subsequently the UK Supreme Court have looked to the reasoning of the ECJ in their decision making, litigants will be able to request cases be decided by the ECJ rather than the domestic final court. This has already occurred in relation to interpretation of Protocol 30 on the application of the Charter; Judgment of the ECJ is pending in the case of *Saeedi v Secretary of State for the Home Department*. Other member states did take the jurisdiction of the court and there are at least some instructive judgments concerning cases from Italy, Belgium and Germany about the operation of criminal cooperation measures (see chapter 2).

The Citizen's Initiative may simply pay lip service to the idea of allowing the public a greater say, and in practice is likely to be rarely used. It may prove a helpful tool for interest groups, such as environmental and human rights campaigners however, though it is not clear how the proposed law will fit into the legislative timetable already progressing at EU level.

The newly created offices of President and High Representative do not particularly wield power but are rather spokespersons for policy initiatives agreed by the Council. If these roles are clearly adhered to there should be no confusion as to their standing in the international arena. Herman van Rompuy and Baroness Ashton appear to be fulfilling their respective roles without expanding their remit and trampling on national sovereignty.

Overall, in JUSTICE's view, the Lisbon Treaty will afford greater democratic scrutiny of the EU institutions. Accountability to Strasbourg and law making which accords with the Charter on Fundamental Rights should also mean more responsible law making. The greater scrutiny of legislation at both national and EU parliamentary levels will help to address the democratic deficit, so long as the proposed measures are afforded proper parliamentary time to ensure that all parties can fully engage in the discussions. The EU Scrutiny Committee already carries out this role for the House of Commons and the EU Sub-Committee for the House of Lords in the UK. However, notwithstanding these committees,

public awareness in the UK of EU law making can only be described, at best, as minimal.

Chapter 2 – Introduction to Cooperation in Criminal Matters

The third pillar was created as an exceptional arrangement to allow EU member states to retain their national sovereignty over criminal justice matters, but recognised the need for cooperation between member states to combat cross border crime (which had increased with the opening of the borders). Abolition of the third pillar has not changed the jurisdiction for law in this area to be adopted, but it has changed the method of adoption and enforcement (as set out in Chapter 1). It does mean that criminal procedural law is now an intrinsic part of EU law making.

Law in this area continues to be based on the principle of mutual recognition of judgments and judicial decisions. Pursuant to article 83 of the Treaty on the Functioning of the European Union (TFEU), the European Parliament and Council are only entitled to adopt measures to:

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

However, article 82(2) TFEU now allows for some harmonising laws rather than just procedural measures in specific areas so as to facilitate mutual recognition. The laws must concern:

- a. mutual admissibility of evidence between member states;
- b. the rights of individuals in criminal procedure;
- c. the rights of victims of crime;

- d. any other specific aspects of criminal procedure which the Council has identified in advance by a decision. For the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

Equally, article 83 allows for the establishment of minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross border dimension (which result from the nature or impact of such offences or from a need to combat them on a common basis). The areas of crime are listed in the article as terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. The Council may adopt a decision identifying other areas of crime where developments have found them to fall within the remit of article 83. As in article 82, such a decision must be adopted unanimously after obtaining the consent of the Parliament.

So far, the UK has exercised its option to opt into most key measures presented. A notable exception is the proposal for a directive on trafficking in human beings. The instrument gives rights to victims which would create enforceable powers domestically. This was perceived as a step too far for the UK. However, the progress of the proposal is being kept under review and it seems likely that the UK will opt in sometime in the future. Ireland has not opted in to the proposal for a directive on a European Investigation Order (EIO), but did agree an earlier measure on a European evidence warrant which was supposed to come in to force in January 2011. Because negotiations have been progressing on the new EIO, few member states have implemented the previous directive concerning evidence gathering. It is not clear whether Ireland and Denmark (which as explained in Chapter 1 has a complete opt out) will be obligated to implement the evidence warrant or simply be bound by earlier mutual legal assistance instruments.

Instruments passed under the old third pillar forming the *acquis* (that is, the instruments comprising the law) on criminal procedure

Prior to the passage of laws under the former Nice Treaty, which provided for mutual recognition in the form of so called 'framework decisions', general conventions and actions were agreed between member states. These attempted to provide more streamlined regimes for cross border cooperation than the widely optional Council of Europe conventions. These instruments remain

largely in force despite the passage of a number of framework decisions in the area. They are the Convention on Mutual Assistance in Criminal Matters (OJ 2000 C 197/1) and subsequent Protocol to May 2000 Convention on Mutual Assistance in Criminal Matters (OJ 2001 C 326/1) as well as the Schengen Convention (Convention implementing the Schengen Agreement of 14 June 1985, OJ 2000 L 239/19) which has sections on raising and answering alerts for arrest warrants, missing persons and property. The UK has opted in to the criminal procedure elements of the Convention.²

Framework Decisions began to be passed after the Nice Treaty. They were designed to make action under the recognised ‘third pillar’ more effective. They were used to align the laws and regulations of the member states to increase cooperation between member states. Framework Decisions are similar to directives, in that they are binding on the member states as to the result to be achieved and leave the form and methods to the national authorities. They differ in that they are not produced through the same interpretative obligations or the same legislative procedure and are not enforceable (see Chapter 1). There are now 15 instruments either in force or due to be implemented:

Instruments in Force

1. Framework Decision 2001/220/JHA on the status of victims in criminal proceedings (OJ 2000 L 82/1)
2. Framework Decision 2001/500/JHA on proceeds from crime (OJ 2001 L 182/1)
3. Framework Decision 2002/584/JHA on the European arrest warrant and surrender procedures (OJ 2002 L 190/1)
4. Framework Decision 2003/577/JHA on the execution of orders freezing property or evidence (OJ 2003 L 196/45)
5. Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (OJ 2005 L 76/16)

² Joint Actions between 1996 and 2000 were passed on a range of areas such as money laundering and proceeds of crime, human trafficking and exploitation of children, and the creation of a European Judicial Network. The Actions were a consensus that member states would, generally, make arrangements by way of national law to either assist or not impede cooperation in these areas.

6. Framework Decision 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property (OJ 2005 L 68/49)
7. Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders
8. Framework Decision 2008/675/JHA on taking account of convictions in the member states of the EU in the course of new criminal proceedings (OJ 2008 L 220/32)
9. Framework Decision 2008/978/JHA on the European evidence warrant (OJ 2008 L 350/72) – *this instrument has not been implemented in most member states as a result of ongoing negotiations for its replacement.*
10. Framework Decision 2009/299/JHA amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ 2009 L 81/24) – *Italy does not have to implement this FD until 1 January 2014*

Instruments Adopted but not yet due for implementation

11. Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU (OJ 2008 L 327/27) – *deadline for implementation 5 December 2011*
12. Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation matters with a view to supervision of probation measures and alternative sanctions (OJ 2008 L 327/27) – *deadline for implementation 6 December 2011*
13. Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between member states (OJ 2009 L 93/23) – *deadline for implementation 27 April 2012*

14. Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ 2009 L 294/20) – *deadline for implementation 1 December 2012*
15. Framework Decision 2009/948/JHA on prevention and settlement of conflicts of jurisdiction in criminal matters (OJ 2009 L 328/42) – *deadline for implementation 15 June 2012*

Instruments passed under the Lisbon Treaty

The ratification of the Lisbon Treaty was officially completed by all member states of the European Union on 13 November 2009 and came into force on 1st December 2009. Since then only one directive in this area has been passed (on 20 October 2010):

- Directive 2010/64 on the right to interpretation and translation in criminal proceedings (OJ 2010 L 280/1)

Instruments before the EU Council and Parliament

- Member state initiative for a directive on a European protection order (OJ 2010 C 69/5)
- Member state initiative for a directive on a European investigation order (OJ 2010 C 165/22)
- Proposal for a directive on the right to information in criminal proceedings (COM (2010) 392, 20 July 2010)
- Proposal for a directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest (COM(2011) 326/3, 8th June 2011)
- Proposal for a directive establishing minimum standards of the rights, support and protection of victims of crime (COM(2011) 275, 18th May 2011)

Instruments expected in 2011/12

- Proceeds of crime;
- Enforcement of financial penalties;
- Green paper on pre-trial detention

Because much work in this area took place under the third pillar and few countries acceded to the jurisdiction of the Court of Justice of the EU, there have been few decisions interpreting the operation of the law. Only 12 cases have been heard in Luxembourg on issues arising under the Conventions or cases. The most important have been the *Advocaten voor de Wereld* case³ confirming that the European arrest warrant conforms to the legal principles of the EU – though on the understanding that it would be applied proportionately, which arguably has since not been the case. In *Pupino*⁴ the court confirmed that framework decisions have the same interpretative obligations as directives, namely that they are binding upon member states, as to their nature and content, but the form is for the domestic legislature to decide. The decision on the Schengen Convention also confirms that the principle of double jeopardy applies to decisions to discontinue prosecutions where guilt has been admitted and an out of court disposal is made, as well as final decisions following trial.⁵

The only instrument in force which has actually been taken up by all member states is the European arrest warrant. This is seen as successful with over 15,000 requests for surrender being made between member states in 2010. Member states have been reluctant to take up other measures and with no powers to enforce compliance, the Commission has only been able to issue critical reports. However, there is gradually starting to be more uptake of the financial penalties, confiscation and compensation measures.

Many questions remain outstanding about concepts such as what is criminal law for the purposes of the cooperation in this area? Does mutual recognition actually work as a compromise or is it going to be necessary to harmonise some principles if cooperation is to be properly effective? It is also unclear what ongoing role the Mutual Legal Assistance Convention and its Protocol will continue to have. With the Lisbon Treaty bringing in the jurisdiction of the Court of Justice, the instruments that are adopted will be open to consideration

3 Case C-303/05 *Advocaten voor de Wereld VZW v Leden van de Ministerraad* [2007] ECR I-3633 (ECJ)

4 C-105/03 *Criminal Proceedings against Maria Pupino* [2005] ECR I-5285

5 C-187/01 and C-385/01 *Gozutok and Brugge* [2003] ECR I-1345

and we may see answers to these questions coming from the Court which has thus far been unable to express its view.

Chapter 3 – EU Instruments affecting general criminal practice

The increasing activity in the EU area of freedom, security and justice is such that it is no longer the subject area of specialist lawyers. Increasingly measures are being passed that affect general criminal practice. The three we have selected below are in force and general criminal practitioners should be aware that they could come across their application in day to day practice.

Framework Decision 2003/577/JHA on the execution of orders freezing property or evidence

This framework decision is implemented by the Crime (International Co-operation) Act 2003 (CICA). It allows for requests to secure *evidence* or subsequent *confiscation of property* (article 1 of the Framework Decision). The two terms are widely defined: Evidence is objects, documents or data which could be produced as evidence in criminal proceedings (article 2(e)). Property can be of any description whether corporeal, incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which is considered the proceeds of an offence, or equivalent value, or constitutes the instrumentalities or object of an offence (article 2(d)). It is not therefore ‘freezing’ in the sense that we would normally understand, but rather search and seizure which may come before any domestic court and affect any person concerned with the materials requested.

Ss 10 to 12 deal with requests to other countries from the UK (domestic freezing orders). Under s10(1), when requesting evidence from abroad, the constable in England and Wales, or procurator fiscal in Scotland must satisfy the court that:

- a. that proceedings in respect of a listed offence have been instituted or such an offence is being investigated,
- b. that there are reasonable grounds to believe that there is evidence in a participating country which satisfies the requirements of subsection (3), and
- c. that a request has been made, or will be made, under section 7 for the evidence to be sent to the authority making the request

A listed offence is one set out in article 3(2) of the framework decision. This lists 32 offences which are not subject to a double criminal check (i.e. whether the offence is a crime in the UK), if they are punishable by a custodial sentence of a maximum period of at least three years.

Subsection (3) then further specifies that the evidence to be secured in the other country is:

- a. on premises in the other country specified in the application
- b. is likely to be of substantial value (by itself or with other evidence) to the proceedings or investigation
- c. is likely to be admissible and
- d. is not subject to legal privilege.

Once made, the judge must send the order to the Secretary of State for transmission together with the information set out in the certificate in the annex to the framework decision (which includes the purpose for the order, precise details of the property or evidence to seize, and details of the person(s) to whom the freezing order relates).

There is no requirement to notify a person before the transmission is made. The only way of challenging an order is to apply for a variation or revocation of the order under s12 as a person affected by the order (s12(2)(d)), which would presumably not be known by that person until the order had been executed in the other country and the evidence or property had been seized.

Where a request comes to the UK, ss20 to 27 apply. S20 explains that an overseas freezing order is to protect, pending transfer, evidence in the UK which may be used in proceedings or an investigation in the other country. The order must have been made by a criminal court, prosecutor or other authority which has the function to make such orders (s20(3)). It must relate to either criminal proceedings instituted or a criminal investigation for a listed offence in that country (s20(4)) and be accompanied by a valid certificate (s20(5)). The court must consider the order once received of its own initiative. However, it must give the chief officer of police, or procurator fiscal in Scotland an opportunity to be heard, **but not a person affected by the order** (s21(5)). Under ss(6) and (7) the court can only decide **not** to give effect to the order if:

- The person whose conduct is in question were charged in the participating country with the offence to which the overseas freezing order relates or in the United Kingdom with a corresponding offence, he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction; or
- Giving effect to the overseas freezing order would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).

Therefore, the court must decide, without representations from the affected person, whether the order would breach the rule against double jeopardy or whether their human rights would be infringed. This is a very difficult task without knowledge of the circumstances of the affected person.⁶ The court can issue a search and seizure warrant under s22(1) or a production order under s22(2)-(5). S24 then requires the police to retain the evidence seized until the court gives a notice authorising it to either be sent to the other country or to release it following application under s25.

S25 provides that the court can authorise release of the material seized by the police on application by the police/procurator fiscal or an affected person where it is satisfied that the conditions under s21(6) or (7) are made out, or the order has ceased to have effect in the other country. It seems therefore that the affected person will come to know of a seizure only once the warrant is affected by the police. It is only then that they will have the opportunity to make representations.

S26(1) contains a further power by which a court may refuse to issue a *warrant* where the material consists of or includes items subject to legal privilege, excluded or special procedure material (as defined in PACE and in Scotland, chapter 3 to part 8 of the Proceeds of Crime Act 2002). The provision does not give a power to the court to refuse the request for an order from the foreign court, but where there is privileged material it would seem to have this effect indirectly.

There is little in the framework decision or CICA about how the material will be treated once transferred to the requesting country, nor how data protection

⁶ For a treatment of similar issues under s15 CICA see *R (on the application of Hafner, and Hafner and Hochstrasser) v Westminster Magistrates Court, and Australian Securities and Investments Commission*, [2008] EWHC 524 (Admin) where it was found that the district judge did not properly consider the article 8 right to privilege contained in business documents.

rules will apply. The only reference is in article 10(2) which states that mutual assistance rules will apply to the submission and process of evidence on transfer. The measures have the potential for wide reaching effect. As of 21st January 2011, twenty four member states had brought the framework decision into force.⁷ There is no information available about how many requests have been made. The instrument will be superseded by the European investigation order when it is finally adopted, and the anticipated proposal for a directive on proceeds of crime, which will be subject to the Lisbon Treaty enforcement mechanisms.

Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties

This measure was implemented by the Criminal Justice and Immigration Act 2008. A financial penalty is a fine, compensation order, surcharge or other sum payable by virtue of the enactments set out in s80(5). A fines officer (pursuant to Schedule 5 to the Courts Act 2003, as amended by s80(1)) or a designated officer for a magistrates' court pursuant to s80(2) can issue a certificate requesting enforcement of a fine in another EU country provided the person is normally resident or has property or income in another member state than the UK. The Lord Chancellor must then send the certificate with the order imposing the fine to that other member state (s80(3)).

Where another member state requests payment from the UK, the Lord Chancellor must forward the certificate and decision imposing the penalty to the appropriate local justice area and specify whether he thinks that any grounds for refusal apply (s 84). The procedure in Northern Ireland is set out in ss82, 83 and 87. Scotland is not covered by the legislation. The relevant magistrates' court must then decide whether to enforce the penalty in the UK. Schedule 18 sets out when a penalty is suitable:

- If the person is normally resident in England, Wales or Northern Ireland
- If the person is not normally resident but has property or a source of income here

⁷ Council general secretariat, *Implementation of the Framework Decision of the Council of the European Union of 22 July 2003 (2003/577/JHA) on the execution in the European Union of Orders freezing property or evidence*, 16921/1/10 (Brussels, 21 January 2011)

If it is suitable, the court must then consider whether any grounds for refusal apply. The grounds are set out in Schedule 19 to the act and encompass:

- Double jeopardy, either in the UK or another member state
- An offence not recognised in the UK, or in the EU framework list which for this instrument covers 46 offences, without any sentencing restriction
- Extra territorial offences which the UK would not by way of domestic law be able to prosecute
- The age of criminal responsibility in the UK has not been reached (i.e. the person is a child under 10 years old)
- The certificate does not confirm whether the principle of *ne bis in idem* was upheld
- The financial penalty is for less than €0

As with freezing orders, it seems that some of the grounds will be difficult for a magistrates' court to make out without assistance from the affected person, in particular double jeopardy and *ne bis in idem*. If the court decides to allow the penalty, domestic legislation will apply as appropriate (pursuant to s85(6) and (7): either part 3 to the Magistrates' Courts Act 1980 (MCA), Schedules 5 and 6 to the Courts Act 2003 or related subordinate legislation) as if it were a sum adjudged to be paid by a magistrates' court. This will allow for dispensation of immediate payment, variation, remittance, warrant of distress and committal as in any domestic matter. It should be possible to argue on an application for remittance under s85 MCA that grounds for refusal do in fact apply. If the court is satisfied that this is the case, it would have the power to remit payment of the fine, despite having accepted the responsibility to enforce the fine. What the court cannot do, however, is go behind the penalty once it is satisfied that there are no grounds for a refusal. A challenge to the imposition of the penalty must be made to the issuing court in the other EU member state. This will need to be undertaken by the affected person or a lawyer instructed for them in that country.

As of 21st January 2011, the framework decision is in force in 23 member states.⁸ There is no information available as to how often it is used. The measure may, once properly enforced, provide an alternative to the use of the European arrest warrant for the non payment of fines. To this end it is a welcome measure. The measure is also to be superseded by a further measure this year which will be subject to the Lisbon Treaty enforcement mechanisms (see Chapter 1).

The approach in both instruments of only giving a role to the defence after an order has been made is probably not the best way of giving effect to mutual recognition instruments, since a successful application by the affected person after the order has been enforced will require the UK to rescind its earlier indication to the other member state that it will assist. Unless a hearing is built in prior to the decision to execute the request there is no way of ensuring that the affected person's position is fully known.

Framework Decision 2008/675/JHA: Taking account of convictions in the course of new criminal proceedings

In *Kordansinky* [2006] EWCA Crim 2984 the Court of Appeal made clear that foreign convictions could be used in the course of a trial in England and Wales provided they are accepted by the defendant or can be proved to the satisfaction of the court. There is nothing objectionable about that on a case by case basis.

However, the recent EU Framework Decision on taking account of convictions in the course of new criminal proceedings (the Framework Decision) *obliges* domestic courts to take into consideration the prior convictions of defendants from other EU member states whenever they consider domestic criminal proceedings. Article 3 of the Framework Decision states that member states *shall ensure* that in criminal proceedings, previous convictions handed down against a defendant in other members states are taken into account in the same way as national convictions. UK domestic legislation pertaining to the consideration of criminal convictions pre-trial (bail and mode of trial), during trial (bad character) and post conviction (sentence) has been amended to fulfil the Decision's requirements by way of section 144 and Schedule 17 of the Coroners and Justice Act 2009 (CJA) and s71 and schedule 4 of the Criminal Justice and Licensing (Scotland) Act. We concentrate on the CJA provisions below but the same considerations will apply to the Scottish legislation.

⁸ Council general secretariat, *Implementation of the Framework Decision of the Council of the European Union of 24 February 2005 (2005/214/JHA) of the application of the principle of mutual recognition to financial penalties*, 16924/2/10 (Brussels 21 January 2011)

This throws up all sorts of considerations for the effective defence of a person who holds convictions from other EU countries.

From one perspective by setting a criteria whereby previous convictions are taken into account, the legislation requires the courts to ensure that there will not be double jeopardy in a case which could be tried in more than one member state (as any conviction will be made known through this process). However, this will require consideration by the courts of whether the same facts occurred in the previous convicted crime as the one that is now being indicted. As we will see below, that exercise is not going to be an easy one.

Historical Development

Previously, articles 13 and 22 of the Council of Europe's European Convention on Mutual Assistance in Criminal Matters 1959 (and its subsequent protocol) provided for the exchange and use of criminal records. However, there were three major problems with the Convention: rapidly identifying the member states where individuals have already been convicted, obtaining that information quickly and simply, and understanding the information provided. The EU then legislated to attempt to grapple with these problems by way of Council Decision 2005/876/JHA on the exchange of information extracted from the criminal record (OJ 2005 L 322/33). This provides that if a member state convicts a national of another member state, that information must be transmitted to any other member states of which the person holds nationality. Information can also be requested about convictions from any other member state for use in particular criminal proceedings, and a reply to that request is to be provided within ten days.

The UK Central Authority for the Exchange of Criminal Records (UKCA-ECR) was set up pursuant to the 2005 Council Decision to deal with the transmission of records. It receives the records from other member states, translates them into English and finds the equivalent UK offence. The UKCA-ECR is currently engaged in a European Commission funded project to ensure that equivalent offence codes are established throughout the EU, to make it possible to easily apply foreign convictions in a domestic trial. Following Council Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) (OJ 2009 L 93/33) by 7 April 2012 member states will be required to start applying the equivalence codes set out in the annex to that 2009 Decision when transmitting convictions. Member states will also have to submit information about criminal offences and types of sentences to the Council to compile a manual for practitioners to use in applying the Decisions.

Despite this legislative reform, whilst information has been shared, there has been no consensus between member states as to how convictions from other member states should be used. The EU has sought to resolve this in the Framework Decision so as to ensure that the effects of a conviction handed down in another member state are equivalent to the effect of a national conviction, thereby putting the citizens of Europe on an equal footing.

Applying the Framework Decision

It should be noted that under the CJA, not all areas of criminal procedure will be required to take account of EU convictions immediately, such as mode of trial decisions for either way offences or community orders following convictions where a fine was imposed. These will be included at a later date.

A Ministry of Justice circular issued to the CPS and police⁹ advises that the amendments will not make major changes, but rather clarify that foreign convictions *can* be used in the course of criminal proceedings. This is because the circular distinguishes between the discretion to obtain the foreign record in the first place and the obligation, once information is known, to use it. This is a carefully nuanced distinction. What the circular does not make clear is that once the police are in receipt of the foreign convictions, the CPS is now *obligated* by way of the legislation to use them in all subsequent prosecutions. It also does not explain that through the operation of UKCA-ECR, records concerning UK nationals are increasingly containing their foreign convictions.

The circular does observe that there have historically been practical challenges around the ability of some countries to provide information in enough detail and in sufficient time so as to enable its use in the court case for which it was requested. It is comforting to know that the CPS will be obliged to disclose records early, in order to enable any necessary challenges to be made. It is envisaged that the convictions will appear on the usual PNC record provided with advanced disclosure. The circular also notes the resource and cost issues associated with making checks on information transmitted from other member states. It is clear that a decision as to whether or not it is appropriate to make an overseas record check will need to be taken on a case-by-case basis, and in each case on the basis of all the information available and bearing in mind any local policy or guidance. The circular suggests, however, that there is a benefit to using the records of EU convictions and that checks should definitely be considered in homicide or rape cases, particularly Crown Court matters where

⁹ Ministry of Justice Circular 2010/12, *Implementation of section 144 and Schedule 17 of the Coroners and Justice Act 2009*.

an indeterminate sentence for public protection is a possibility, a burglary or class A trafficking case (as a result of the sentencing implications with these offences), and where there might be similar offences for the purposes of bad character. This suggests that the CPS in these cases will actively request the police to carry out checks where there is a possibility of EU convictions but none are shown on the PNC print out.

The judiciary has estimated that the uptake of the amendments will be slow, since in most cases there will be little interest in whether EU convictions exist. Ultimately because this is a pre-Lisbon Treaty legislative act, the European Commission has no jurisdiction to bring infringement proceedings against the UK for not following the legislation to the letter. However, given the UK's involvement in the development of ECRIS it would be surprising if the measure were not complied with. Furthermore, once the proposed future interaction of records systems comes online in 2012, the framework decision is bound to have an increasing impact.

Challenging the use of EU convictions

The first issue to be aware of is that the convictions will have to be proved by obtaining a certificate of the 'proper officer' of the foreign court (see Para 13 to the Schedule CJA). Section 73(3) of PACE is amended to provide a description of the 'proper officer' as the clerk of the court, that clerk's deputy or any other person having custody of the court record. The old method will still apply in proving convictions from non-EU States – that is, authenticated copies of convictions, sealed by the appropriate foreign court will be required pursuant to section 7 of the Evidence Act 1851 (*R v Mauricia* [2002] EWCA Crim 676).

Defence lawyers should consider going behind the certificates to check their veracity. It is not clear who a proper officer will be in other jurisdictions and there may be faults in the way the certificate is authenticated. Ultimately, by law, the prosecution will have to prove that the proper officer signed the certificate. However, given that this is a mutual recognition instrument, the domestic courts are likely to be reluctant to question the veracity of the certificate, in a similar way as the extradition courts have been reluctant to question the purposes of request to surrender under the European arrest warrant.

The framework decision does not waive the requirement of double criminality and therefore the prosecution will be required to show that the offence is equivalent to one which could have been committed in England and Wales at the time the offence was committed. Whilst the certificate will refer to the

relevant law in the other member state, the offence stated may be very different to a domestic understanding of the offence. Time will therefore be needed for the prosecution to show the offence is the same as recognised by our criminal law, through obtaining information about the conduct giving rise to the conviction. Delay for this reason, particularly where a client is remanded in custody, could be used in argument to prevent the EU conviction being taken into account. It should be remembered that it is for the prosecution to prove a conviction, not for the defence to agree it (*cf. R v Hanson* [2005] 2 Cr. App. R. 21, where Lord Justice Rose considered that relevant circumstances of previous convictions would generally to be capable of agreement and, subject to the trial judge's ruling as to admissibility, would be put before the jury by way of admission.)

Sections 74 and 75 PACE are also amended to enable foreign convictions with respect to non-defendants. The same concerns as above will apply in terms of proving these.

With respect to admitting bad character evidence, all the gateways still apply. The test under s103 Criminal Justice Act has been expanded to include convictions outside of England and Wales by ss(7) and (8):

(7) Where—

(a) a defendant has been convicted of an offence under the law of any country outside England and Wales (“the previous offence”), and

(b) the previous offence would constitute an offence under the law of England and Wales (“the corresponding offence”) if it were done in England and Wales at the time of the trial for the offence with which the defendant is now charged (“the current offence”), subsection (8) applies for the purpose of determining if the previous offence and the current offence are of the same description or category.

(8) For the purposes of subsection (2)—

(a) the previous offence is of the same description as the current offence **if the corresponding offence is of that same description**, as set out in subsection (4)(a);

(b) the previous offence is of the same category as the current offence if the current offence and the corresponding offence **belong to the same category of offences** prescribed as mentioned in subsection (4)(b).

Therefore, the judge will have to reach a decision in both law and fact as to whether the foreign conviction is of the same description or category as the offence at trial. Without sufficient evidence to show this it will be very difficult for a judge to decide that ss(7) or (8) are satisfied. In addition, prosecutors will have to provide their applications in good time to allow defence representatives suitable time to challenge the use of the foreign convictions at trial. Certificates simply confirming the conviction will be insufficient to enable bad character to be admitted. How then is the description of the offence going to be proved? PNC descriptions are often used in domestic cases to verify the ingredients of a conviction in minor cases, but where the admission is challenged, the case papers from the prior offence are often required. The prosecution may have difficulties obtaining these, particularly in English.

Note that this section applies to *anywhere outside the UK, not just the EU*. The justification for this is that the gateways provide scrutiny of the convictions before they are admitted and prior convictions from other countries may prove relevant in the course of a trial. The justification assumes that the application of EU convictions in other areas of the trial process will not be afforded the same level of scrutiny.

In our view, when considering bail (which seems to apply only so s25 Criminal Justice and Public Order Act 1995 cases), mode of trial (when the provisions are in force) and sentencing, in establishing the actual equivalence of the offences to domestic matters and what the offences entailed, the same considerations will nevertheless have to be met as with bad character. In particular with sentencing, seriousness and the question of whether custodial sentences ought to be imposed (in relation to domestic burglary and Class A drug trafficking pursuant to s143 of the CJA and ss110, 111 and 113 of the Powers of Criminal Courts (Sentencing) Act 2000 respectively) will require proper review of those prior EU convictions.

Defence lawyers wishing to raise doubt in relation to any use of the foreign convictions may need the assistance of a lawyer in the country where the conviction was imposed. This is particularly so where the defendant challenges the veracity of the conviction. If your client is legally aided, you should apply to the Legal Services Commission for expert assistance from the foreign lawyer.

Remember, article 6 ECHR applies in ensuring a fair trial takes place. Article 47(3) of the Charter of Fundamental Rights is also engaged because the request concerns the operation of EU law (article 51(1)): *Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access justice.*

If you are going to raise arguments about the application of foreign law in your domestic case, either through the use of an expert in the other member state or legal texts, be ready to use the hearsay provisions of the Criminal Justice Act 2003 to do so.

Chapter 4 – Practical issues arising from the legislation

Terminology concerning the EU institutions and law making can be difficult to understand. We have attempted to explain some of this for you in this guide and provided a glossary at the beginning.

Furthermore, laws from the EU, particularly the framework decisions and, post-Lisbon Treaty, directives are implemented in the UK in a very piecemeal fashion, often at the back of a lengthy criminal justice act with little reference to the EU. It is therefore difficult to know what is coming into force, and when. The UK legislation, whilst giving effect to the EU laws may not implement exactly what the EU measure says. In these circumstances it is necessary to look at the EU measure for guidance and interpretation. This means knowing where to look for the EU measures as well as the domestic ones.

Despite the goal of mutual recognition, there are still many differences between the criminal justice systems of EU member states and it is not easy to find common ground. Length of pre-trial detention, sentences and proceedings generally can differ markedly. Equally, offences can hold great importance in some member states which are not even recognised in others, e.g. xenophobia, holocaust denial, abortion, cashing cheques to name a few.

Often in these cross border matters, even where they are dealt with solely by the courts here, such as the three pieces of legislation mentioned in chapter 3, obtaining the necessary evidence to make submissions on behalf of an affected person or defendant can be very difficult.

Witnesses

It may be necessary to obtain evidence from abroad to support a point where one of these instruments is in issue. If a witness is willing to attend it is possible to call them in person (if you can obtain funding from the LSC to cover it). It might be possible to apply to admit their evidence as hearsay where they cannot attend, for example, where they are an expert advising on the law or practice and their evidence is not challenged. Where witness evidence is challenged, the Crown is unlikely to accept a written statement. It might be possible to make an application for witness evidence to be heard through a live link – they would still be attending in this instance, and it would be less costly than having them

attend in person. The conditions for this are set out in s32 of the Criminal Justice Act 1988.

Where the witness is unwilling to attend a witness summons can be served by direct postal transmission (the Mutual Legal Assistance Convention article 5(1) says that this is the most appropriate method). Pursuant to ss3-6 CICA the courts in the UK will serve the process/citation by direct post. Ss4 and 6 provide for service in accordance with 'arrangements' made by the Secretary of State or Lord Advocate where the address is unknown, service by post has not been effective or there are good reasons for thinking it will not be effective. These arrangements will involve a letter of request for assistance from the crown prosecutor/procurator fiscal to the relevant authority in the other member state. However, there are no rules on when service must be effected and often it will not be prioritised by the other EU member state. As such, it is possible that it may not even take place until after the trial! Equally, ss3 and 5 CICA make clear that there is no obligation to comply with the summons. As such, a person cannot be held in contempt where they do not answer process or citation served overseas. If they are unwilling to attend, it may be possible get a written statement and apply under the hearsay rules for it to be admitted.

Real Evidence

Real evidence is much more accessible as it is not subject to questions as to credibility, though it will still be necessary to ensure a chain of custody in relation to where the evidence came from. Where the Crown seeks to rely on evidence from abroad, the fact that it may have been obtained unlawfully (i.e. through covert surveillance) will not necessarily make it inadmissible in the UK courts. That will depend on whether the police officers gathering the evidence can be shown to have acted in bad faith (*Daniel Redmond* (2009) 1 Cr App R 25).

Useful Links

EU law is difficult to follow and difficult to find if you don't know where to look. However, there are a number of websites which can help:

Information about EU law and other EU member states

<https://e-justice.europa.eu/home.do?plang=en&action=home> The ejustice portal was created in 2009 and is a very good starting point for understanding EU law and the laws of other member states. It also provides links to facilities provided in other member states as well as at EU level.

EU Institutions

<http://eur-lex.europa.eu/en/index.htm> Eur-lex is the main place to go to find laws once passed and reported in the official journal of the EU. Where a law has been considered in the European Parliament, by a European Commission report or in case law of the Court of Justice of the EU it will also be referred to here.

http://curia.europa.eu/jcms/jcms/j_6/ The eur-lex site will only give a summary of a case. The full judgment and any opinion of the advocate general in the case can be accessed from the Court of Justice's website.

<http://ec.europa.eu/prelex/apcnet.cfm?CL=en> Law which is being considered by the EU institutions is tracked by Pre-lex and will show you the progress made together with proposed amendments by the Council and Parliament.

<http://www.consilium.europa.eu/showpage.aspx?id=1279&clang=EN> The Council website has a helpful search function (under the header 'documents') for all documents deposited in the Council by member states or the general secretariat. These will cover ongoing discussions about proposed legislation and reports on implementation of legislation that has been passed.

http://ec.europa.eu/index_en.htm The European Commission provides general information about the laws and policies it is involved with on these pages. It has document depositories per subject matter.

http://europa.eu/index_en.htm General information about the EU can be found here.

Networks

There are a number of organisations with cross EU activity which may be able to provide contact details for lawyers or experts in other countries to provide assistance in a domestic case. It is the aim of the ejustice portal that it will also provide this service.

<http://www.ecba.org> The European Criminal Bar Association has members in nearly all Council of Europe countries. It holds conferences twice a year and is actively involved in a number of projects spanning multiple EU countries. It can provide details of lawyers in other countries who may be able to offer assistance in cross border matters.

<http://www.eucriminallaw.com/> The European Criminal Law Association UK brings together lawyers, academics and others interested to discuss topical issues in the field of EU criminal law. It regularly holds seminars and circulates information amongst its members to promote awareness of relevant issues.

<http://www.ejn-crimjust.europa.eu/ejn/> The European Judicial Network was set up to enable mutual legal assistance and has many tools to assist with this as well as information about the procedure concerning cross border instruments in each member state.

Appendix

We include here materials that we have referred to in this guide, and extracts from the relevant parts of the current EU Treaties which it is helpful to understand by way of background to the legislation. We also include the EU Charter of Fundamental Rights. The most relevant articles for the area of criminal law are articles 47 to 50 but others may be of useful application. It should be noted that the Charter only applies when EU law is in issue however (article 51).

Appendix 1 – Treaty of the European Union, Title 1

30.3.2010

EN

Official Journal of the European Union

C 83/13

CONSOLIDATED VERSION
OF
THE TREATY ON EUROPEAN UNION

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

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

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

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

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

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

(List of plenipotentiaries not reproduced)

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

TITLE I

COMMON PROVISIONS

Article 1

(ex Article 1 TEU) ⁽¹⁾

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

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

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

⁽¹⁾ These references are merely indicative. For more ample information, please refer to the tables of equivalences between the old and the new numbering of the Treaties.

Article 2

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

Article 3

(ex Article 2 TEU)

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

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

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

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.
4. The Union shall establish an economic and monetary union whose currency is the euro.
5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

Article 4

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

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

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

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

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

Article 5

(ex Article 5 TEC)

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

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

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

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

Article 6

(ex Article 6 TEU)

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

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

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

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

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

Article 7

(ex Article 7 TEU)

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

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

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

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

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

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

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

Article 8

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

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

TITLE II

PROVISIONS ON DEMOCRATIC PRINCIPLES

Article 9

In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

Article 10

1. The functioning of the Union shall be founded on representative democracy.
2. Citizens are directly represented at Union level in the European Parliament.

Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.
4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.

Appendix 2 – Treaty on the Functioning of the European Union, parts I, II, III (Title V), protocols 21, 30 and 36

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

PART ONE**PRINCIPLES***Article 1*

1. This Treaty organises the functioning of the Union and determines the areas of, delimitation of, and arrangements for exercising its competences.
2. This Treaty and the Treaty on European Union constitute the Treaties on which the Union is founded. These two Treaties, which have the same legal value, shall be referred to as 'the Treaties'.

TITLE I**CATEGORIES AND AREAS OF UNION COMPETENCE***Article 2*

1. When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.
2. When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.
3. The Member States shall coordinate their economic and employment policies within arrangements as determined by this Treaty, which the Union shall have competence to provide.
4. The Union shall have competence, in accordance with the provisions of the Treaty on European Union, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.
5. In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.

Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States' laws or regulations.

6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions of the Treaties relating to each area.

Article 3

1. The Union shall have exclusive competence in the following areas:

- (a) customs union;
- (b) the establishing of the competition rules necessary for the functioning of the internal market;
- (c) monetary policy for the Member States whose currency is the euro;
- (d) the conservation of marine biological resources under the common fisheries policy;
- (e) common commercial policy.

2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

Article 4

1. The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.

2. Shared competence between the Union and the Member States applies in the following principal areas:

- (a) internal market;
- (b) social policy, for the aspects defined in this Treaty;
- (c) economic, social and territorial cohesion;
- (d) agriculture and fisheries, excluding the conservation of marine biological resources;
- (e) environment;
- (f) consumer protection;
- (g) transport;
- (h) trans-European networks;
- (i) energy;

(j) area of freedom, security and justice;

(k) common safety concerns in public health matters, for the aspects defined in this Treaty.

3. In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

Article 5

1. The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies.

Specific provisions shall apply to those Member States whose currency is the euro.

2. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.

3. The Union may take initiatives to ensure coordination of Member States' social policies.

Article 6

The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be:

(a) protection and improvement of human health;

(b) industry;

(c) culture;

(d) tourism;

(e) education, vocational training, youth and sport;

- (f) civil protection;
- (g) administrative cooperation.

TITLE II
PROVISIONS HAVING GENERAL APPLICATION

Article 7

The Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers.

Article 8

(ex Article 3(2) TEC) ⁽¹⁾

In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

Article 9

In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

Article 10

In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 11

(ex Article 6 TEC)

Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.

⁽¹⁾ These references are merely indicative. For more ample information, please refer to the tables of equivalences between the old and the new numbering of the Treaties.

Article 12

(ex Article 153(2) TEC)

Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities.

Article 13

In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

Article 14

(ex Article 16 TEC)

Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.

Article 15

(ex Article 255 TEC)

1. In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible.
2. The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.
3. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.

General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure.

Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph.

The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph.

Article 16

(ex Article 286 TEC)

1. Everyone has the right to the protection of personal data concerning them.
2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.

The rules adopted on the basis of this Article shall be without prejudice to the specific rules laid down in Article 39 of the Treaty on European Union.

Article 17

1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status under national law of philosophical and non-confessional organisations.
3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

PART TWO
NON-DISCRIMINATION AND CITIZENSHIP OF THE UNION

Article 18
(ex Article 12 TEC)

Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination.

Article 19
(ex Article 13 TEC)

1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.

Article 20
(ex Article 17 TEC)

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:

- (a) the right to move and reside freely within the territory of the Member States;
- (b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

- (c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
- (d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.

Article 21

(ex Article 18 TEC)

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.
2. If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.
3. For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.

Article 22

(ex Article 19 TEC)

1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.
2. Without prejudice to Article 223(1) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

Article 23

(ex Article 20 TEC)

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection.

The Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, may adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection.

Article 24

(ex Article 21 TEC)

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come.

Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 227.

Every citizen of the Union may apply to the Ombudsman established in accordance with Article 228.

Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 13 of the Treaty on European Union in one of the languages mentioned in Article 55(1) of the Treaty on European Union and have an answer in the same language.

Article 25

(ex Article 22 TEC)

The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of this Part. This report shall take account of the development of the Union.

On this basis, and without prejudice to the other provisions of the Treaties, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may adopt provisions to strengthen or to add to the rights listed in Article 20(2). These provisions shall enter into force after their approval by the Member States in accordance with their respective constitutional requirements.

4. In the absence of measures pursuant to Article 64(3), the Commission or, in the absence of a Commission decision within three months from the request of the Member State concerned, the Council, may adopt a decision stating that restrictive tax measures adopted by a Member State concerning one or more third countries are to be considered compatible with the Treaties in so far as they are justified by one of the objectives of the Union and compatible with the proper functioning of the internal market. The Council shall act unanimously on application by a Member State.

Article 66

(ex Article 59 TEC)

Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council, on a proposal from the Commission and after consulting the European Central Bank, may take safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary.

TITLE V

AREA OF FREEDOM, SECURITY AND JUSTICE

CHAPTER 1

GENERAL PROVISIONS

Article 67

(ex Article 61 TEC and ex Article 29 TEU)

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

Article 68

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

Article 69

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

Article 70

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

Article 71

(ex Article 36 TEU)

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

Article 72

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

This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article 73

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

Article 74

(ex Article 66 TEC)

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

Article 75

(ex Article 60 TEC)

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

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

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

Article 76

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

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

CHAPTER 2

POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

Article 77

(ex Article 62 TEC)

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

- (b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
- (c) the gradual introduction of an integrated management system for external borders.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:
- (a) the common policy on visas and other short-stay residence permits;
- (b) the checks to which persons crossing external borders are subject;
- (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
- (d) any measure necessary for the gradual establishment of an integrated management system for external borders;
- (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.
3. If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 20(2)(a), and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament.
4. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Article 78

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

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:
- (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
- (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;

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

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

Article 79

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

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:
 - (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;
 - (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;
 - (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
 - (d) combating trafficking in persons, in particular women and children.
3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

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

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

Article 80

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

CHAPTER 3

JUDICIAL COOPERATION IN CIVIL MATTERS

Article 81

(ex Article 65 TEC)

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

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

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

(g) the development of alternative methods of dispute settlement;

(h) support for the training of the judiciary and judicial staff.

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

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

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

CHAPTER 4

JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article 82

(ex Article 31 TEU)

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

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

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

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

They shall concern:

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

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

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

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

Article 83
(ex Article 31 TEU)

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

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

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

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

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

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

Article 84

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

Article 85

(ex Article 31 TEU)

1. Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

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

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

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

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

Article 86

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

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

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

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

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

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

CHAPTER 5 POLICE COOPERATION

Article 87 (ex Article 30 TEU)

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

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

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

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

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

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

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

Article 88
(ex Article 30 TEU)

1. Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.

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

- (a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;
- (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

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

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

Article 89
(ex Article 32 TEU)

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

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

THE HIGH CONTRACTING PARTIES,

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

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

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

Article 1

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

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

Article 2

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

Article 3

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

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

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

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

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

Article 4

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

Article 4a

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

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

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

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

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

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

Article 5

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

Article 6

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

Article 6a

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

Article 7

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

Article 8

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

Article 9

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

PROTOCOL (No 30)
**ON THE APPLICATION OF THE CHARTER OF
FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION
TO POLAND AND TO THE UNITED KINGDOM**

THE HIGH CONTRACTING PARTIES,

WHEREAS in Article 6 of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union,

WHEREAS the Charter is to be applied in strict accordance with the provisions of the aforementioned Article 6 and Title VII of the Charter itself,

WHEREAS the aforementioned Article 6 requires the Charter to be applied and interpreted by the courts of Poland and of the United Kingdom strictly in accordance with the explanations referred to in that Article,

WHEREAS the Charter contains both rights and principles,

WHEREAS the Charter contains both provisions which are civil and political in character and those which are economic and social in character,

WHEREAS the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles,

RECALLING the obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally,

NOTING the wish of Poland and the United Kingdom to clarify certain aspects of the application of the Charter,

DESIROUS therefore of clarifying the application of the Charter in relation to the laws and administrative action of Poland and of the United Kingdom and of its justiciability within Poland and within the United Kingdom,

REAFFIRMING that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter,

REAFFIRMING that this Protocol is without prejudice to the application of the Charter to other Member States,

REAFFIRMING that this Protocol is without prejudice to other obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally,

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

Article 1

1. The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.

2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom.

PROTOCOL (No 36)
ON TRANSITIONAL PROVISIONS

THE HIGH CONTRACTING PARTIES,

WHEREAS, in order to organise the transition from the institutional provisions of the Treaties applicable prior to the entry into force of the Treaty of Lisbon to the provisions contained in that Treaty, it is necessary to lay down transitional provisions,

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

Article 1

In this Protocol, the words 'the Treaties' shall mean the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community.

TITLE I

PROVISIONS CONCERNING THE EUROPEAN PARLIAMENT

Article 2

In accordance with the second subparagraph of Article 14(2) of the Treaty on European Union, the European Council shall adopt a decision determining the composition of the European Parliament in good time before the 2009 European Parliament elections.

Until the end of the 2004-2009 parliamentary term, the composition and the number of representatives elected to the European Parliament shall remain the same as on the date of the entry into force of the Treaty of Lisbon.

TITLE II

PROVISIONS CONCERNING THE QUALIFIED MAJORITY

Article 3

1. In accordance with Article 16(4) of the Treaty on European Union, the provisions of that paragraph and of Article 238(2) of the Treaty on the Functioning of the European Union relating to the definition of the qualified majority in the European Council and the Council shall take effect on 1 November 2014.

2. Between 1 November 2014 and 31 March 2017, when an act is to be adopted by qualified majority, a member of the Council may request that it be adopted in accordance with the qualified majority as defined in paragraph 3. In that case, paragraphs 3 and 4 shall apply.

3. Until 31 October 2014, the following provisions shall remain in force, without prejudice to the second subparagraph of Article 235(1) of the Treaty on the Functioning of the European Union.

For acts of the European Council and of the Council requiring a qualified majority, members' votes shall be weighted as follows:

Belgium	12	Luxembourg	4
Bulgaria	10	Hungary	12
Czech Republic	12	Malta	3
Denmark	7	Netherlands	13
Germany	29	Austria	10
Estonia	4	Poland	27
Ireland	7	Portugal	12
Greece	12	Romania	14
Spain	27	Slovenia	4
France	29	Slovakia	7
Italy	29	Finland	7
Cyprus	4	Sweden	10
Latvia	4	United Kingdom	29
Lithuania	7		

Acts shall be adopted if there are at least 255 votes in favour representing a majority of the members where, under the Treaties, they must be adopted on a proposal from the Commission. In other cases decisions shall be adopted if there are at least 255 votes in favour representing at least two thirds of the members.

A member of the European Council or the Council may request that, where an act is adopted by the European Council or the Council by a qualified majority, a check is made to ensure that the Member States comprising the qualified majority represent at least 62 % of the total population of the Union. If that proves not to be the case, the act shall not be adopted.

4. Until 31 October 2014, the qualified majority shall, in cases where, under the Treaties, not all the members of the Council participate in voting, namely in the cases where reference is made to the qualified majority as defined in Article 238(3) of the Treaty on the Functioning of the European Union, be defined as the same proportion of the weighted votes and the same proportion of the number of the Council members and, if appropriate, the same percentage of the population of the Member States concerned as laid down in paragraph 3 of this Article.

TITLE III

PROVISIONS CONCERNING THE CONFIGURATIONS OF THE COUNCIL

Article 4

Until the entry into force of the decision referred to in the first subparagraph of Article 16(6) of the Treaty on European Union, the Council may meet in the configurations laid down in the second and third subparagraphs of that paragraph and in the other configurations on the list established by a decision of the General Affairs Council, acting by a simple majority.

TITLE IV

PROVISIONS CONCERNING THE COMMISSION, INCLUDING THE HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY*Article 5*

The members of the Commission in office on the date of entry into force of the Treaty of Lisbon shall remain in office until the end of their term of office. However, on the day of the appointment of the High Representative of the Union for Foreign Affairs and Security Policy, the term of office of the member having the same nationality as the High Representative shall end.

TITLE V

PROVISIONS CONCERNING THE SECRETARY-GENERAL OF THE COUNCIL, HIGH REPRESENTATIVE FOR THE COMMON FOREIGN AND SECURITY POLICY, AND THE DEPUTY SECRETARY-GENERAL OF THE COUNCIL*Article 6*

The terms of office of the Secretary-General of the Council, High Representative for the common foreign and security policy, and the Deputy Secretary-General of the Council shall end on the date of entry into force of the Treaty of Lisbon. The Council shall appoint a Secretary-General in conformity with Article 240(2) of the Treaty on the Functioning of the European Union.

TITLE VI

PROVISIONS CONCERNING ADVISORY BODIES*Article 7*

Until the entry into force of the decision referred to in Article 301 of the Treaty on the Functioning of the European Union, the allocation of members of the Economic and Social Committee shall be as follows:

Belgium	12	Spain	21
Bulgaria	12	France	24
Czech Republic	12	Italy	24
Denmark	9	Cyprus	6
Germany	24	Latvia	7
Estonia	7	Lithuania	9
Ireland	9	Luxembourg	6
Greece	12	Hungary	12

Malta	5	Slovenia	7
Netherlands	12	Slovakia	9
Austria	12	Finland	9
Poland	21	Sweden	12
Portugal	12	United Kingdom	24
Romania	15		

Article 8

Until the entry into force of the decision referred to in Article 305 of the Treaty on the Functioning of the European Union, the allocation of members of the Committee of the Regions shall be as follows:

Belgium	12	Hungary	12
Bulgaria	12	Malta	5
Czech Republic	12	Netherlands	12
Denmark	9	Austria	12
Germany	24	Poland	21
Estonia	7	Portugal	12
Ireland	9	Romania	15
Greece	12	Slovenia	7
Spain	21	Slovakia	9
France	24	Finland	9
Italy	24	Sweden	12
Cyprus	6	United Kingdom	24
Latvia	7		
Lithuania	9		
Luxembourg	6		

TITLE VII

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

Article 9

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

Article 10

1. As a transitional measure, and with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon, the powers of the institutions shall be the following at

the date of entry into force of that Treaty: the powers of the Commission under Article 258 of the Treaty on the Functioning of the European Union shall not be applicable and the powers of the Court of Justice of the European Union under Title VI of the Treaty on European Union, in the version in force before the entry into force of the Treaty of Lisbon, shall remain the same, including where they have been accepted under Article 35(2) of the said Treaty on European Union.

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

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

4. At the latest six months before the expiry of the transitional period referred to in paragraph 3, the United Kingdom may notify to the Council that it does not accept, with respect to the acts referred to in paragraph 1, the powers of the institutions referred to in paragraph 1 as set out in the Treaties. In case the United Kingdom has made that notification, all acts referred to in paragraph 1 shall cease to apply to it as from the date of expiry of the transitional period referred to in paragraph 3. This subparagraph shall not apply with respect to the amended acts which are applicable to the United Kingdom as referred to in paragraph 2.

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

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

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

Appendix 3 – Charter of Fundamental Rights

30.3.2010

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CHARTER OF FUNDAMENTAL RIGHTS OF THE
EUROPEAN UNION

(2010/C 83/02)

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

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Preamble

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

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

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

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

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

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

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

TITLE I

DIGNITY

*Article 1***Human dignity**

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

*Article 2***Right to life**

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

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

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

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

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

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

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

TITLE II
FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

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

Article 8

Protection of personal data

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

Article 9

Right to marry and right to found a family

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

Article 10

Freedom of thought, conscience and religion

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

*Article 11***Freedom of expression and information**

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

*Article 12***Freedom of assembly and of association**

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

*Article 13***Freedom of the arts and sciences**

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

*Article 14***Right to education**

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

*Article 15***Freedom to choose an occupation and right to engage in work**

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

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

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

*Article 17***Right to property**

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

2. Intellectual property shall be protected.

*Article 18***Right to asylum**

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

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

1. Collective expulsions are prohibited.

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

TITLE III

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

Everyone is equal before the law.

*Article 21***Non-discrimination**

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

*Article 22***Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

*Article 23***Equality between women and men**

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

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

*Article 24***The rights of the child**

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

*Article 25***The rights of the elderly**

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

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

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

TITLE IV

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

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

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

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

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

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

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

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

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

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

*Article 32***Prohibition of child labour and protection of young people at work**

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

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

*Article 33***Family and professional life**

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

*Article 34***Social security and social assistance**

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

*Article 35***Health care**

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

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

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

*Article 37***Environmental protection**

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

*Article 38***Consumer protection**

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

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

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

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

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

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

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

2. This right includes:
- (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

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

Article 43

European Ombudsman

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

Article 44

Right to petition

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

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

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

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

TITLE VI

JUSTICE

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

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

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

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

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

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

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

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

*Article 50***Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

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

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

*Article 51***Field of application**

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

*Article 52***Scope and interpretation of rights and principles**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Article 53

Level of protection

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

Article 54

Prohibition of abuse of rights

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

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

Appendix 4 – Framework Decision 2003/577/JHA on the execution of orders freezing property or evidence (OJ 2003 L 196/45)

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

**COUNCIL FRAMEWORK DECISION 2003/577/JHA
of 22 July 2003**

on the execution in the European Union of orders freezing property or evidence

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative by the Republic of France, the Kingdom of Sweden and the Kingdom of Belgium ⁽¹⁾,

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

Whereas:

- (1) The European Council, meeting in Tampere on 15 and 16 October 1999, endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.
- (2) The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent judicial authorities quickly to secure evidence and to seize property which are easily movable.
- (3) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition in criminal matters, giving first priority (measures 6 and 7) to the adoption of an instrument applying the principle of mutual recognition to the freezing of evidence and property.
- (4) Cooperation between Member States, based on the principle of mutual recognition and immediate execution of judicial decisions, presupposes confidence that the decisions to be recognised and enforced will always be taken in compliance with the principles of legality, subsidiarity and proportionality.
- (5) Rights granted to the parties or bona fide interested third parties should be preserved.
- (6) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be

interpreted as prohibiting refusal to freeze property for which a freezing order has been issued when there are reasons to believe, on the basis of objective elements, that the freezing order is issued for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

HAS ADOPTED THIS FRAMEWORK DECISION:

TITLE I

SCOPE

Article 1

Objective

The purpose of the Framework Decision is to establish the rules under which a Member State shall recognise and execute in its territory a freezing order issued by a judicial authority of another Member State in the framework of criminal proceedings. It shall not have the effect of amending the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

Article 2

Definitions

For the purposes of this Framework Decision:

- (a) 'issuing State' shall mean the Member State in which a judicial authority, as defined in the national law of the issuing State, has made, validated or in any way confirmed a freezing order in the framework of criminal proceedings;

⁽¹⁾ OJ C 75, 7.3.2001, p. 3.

⁽²⁾ Opinion delivered on 11 June 2002 (not yet published in the Official Journal).

- (b) 'executing State' shall mean the Member State in whose territory the property or evidence is located;
- (c) 'freezing order' property that could be subject to confiscation or evidence;
- (d) 'property' includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which the competent judicial authority in the issuing State considers:
- is the proceeds of an offence referred to in Article 3, or equivalent to either the full value or part of the value of such proceeds, or
 - constitutes the instrumentalities or the objects of such an offence;
- (e) 'evidence' shall mean objects, documents or data which could be produced as evidence in criminal proceedings concerning an offence referred to in Article 3.

Article 3

Offences

1. This Framework Decision applies to freezing orders issued for purposes of:

- (a) securing evidence, or
- (b) subsequent confiscation of property.

2. The following offences, as they are defined by the law of the issuing State, and if they are punishable in the issuing State by a custodial sentence of a maximum period of at least three years shall not be subject to verification of the double criminality of the act:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the Protection of the European Communities' Financial Interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,

- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Tribunal,
- unlawful seizure of aircraft/ships,
- sabotage.

3. The Council may decide, at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty, to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 14 of this Framework Decision, whether the list should be extended or amended.

4. For cases not covered by paragraph 2, the executing State may subject the recognition and enforcement of a freezing order made for purposes referred to in paragraph 1(a) to the condition that the acts for which the order was issued constitute an offence under the laws of that State, whatever the constituent elements or however described under the law of the issuing State.

For cases not covered by paragraph 2, the executing State may subject the recognition and enforcement of a freezing order made for purposes referred to in paragraph 1(b) to the condition that the acts for which the order was issued constitute an offence which, under the laws of that State, allows for such freezing, whatever the constituent elements or however described under the law of the issuing State.

Article 5

Recognition and immediate execution

1. The competent judicial authorities of the executing State shall recognise a freezing order, transmitted in accordance with Article 4, without any further formality being required and shall forthwith take the necessary measures for its immediate execution in the same way as for a freezing order made by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7 or one of the grounds for postponement provided for in Article 8.

Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order.

A report on the execution of the freezing order shall be made forthwith to the competent authority in the issuing State by any means capable of producing a written record.

2. Any additional coercive measures rendered necessary by the freezing order shall be taken in accordance with the applicable procedural rules of the executing State.

3. The competent judicial authorities of the executing State shall decide and communicate the decision on a freezing order as soon as possible and, wherever practicable, within 24 hours of receipt of the freezing order.

Article 6

Duration of the freezing

1. The property shall remain frozen in the executing State until that State has responded definitively to any request made under Article 10(1)(a) or (b).

2. However, after consulting the issuing State, the executing State may in accordance with its national law and practices lay down appropriate conditions in the light of the circumstances of the case in order to limit the period for which the property will be frozen. If, in accordance with those conditions, it envisages lifting the measure, it shall inform the issuing State, which shall be given the opportunity to submit its comments.

TITLE II

PROCEDURE FOR EXECUTING FREEZING ORDERS

Article 4

Transmission of freezing orders

1. A freezing order within the meaning of this Framework Decision, together with the certificate provided for in Article 9, shall be transmitted by the judicial authority which issued it directly to the competent judicial authority for execution by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.

2. The United Kingdom and Ireland, respectively, may, before the date referred to in Article 14(1), state in a declaration that the freezing order together with the certificate must be sent via a central authority or authorities specified by it in the declaration. Any such declaration may be modified by a further declaration or withdrawn any time. Any declaration or withdrawal shall be deposited with the General Secretariat of the Council and notified to the Commission. These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 1. They shall do so when the provisions on mutual assistance of the Convention implementing the Schengen Agreement are put into effect for them.

3. If the competent judicial authority for execution is unknown, the judicial authority in the issuing State shall make all necessary inquiries, including via the contact points of the European Judicial Network⁽¹⁾, in order to obtain the information from the executing State.

4. When the judicial authority in the executing State which receives a freezing order has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, *ex officio*, transmit the freezing order to the competent judicial authority for execution and shall so inform the judicial authority in the issuing State which issued it.

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

3. The judicial authorities of the issuing State shall forthwith notify the judicial authorities of the executing State that the freezing order has been lifted. In these circumstances it shall be the responsibility of the executing State to lift the measure as soon as possible.

Article 7

Grounds for non-recognition or non-execution

1. The competent judicial authorities of the executing State may refuse to recognise or execute the freezing order only if:
 - (a) the certificate provided for in Article 9 is not produced, is incomplete or manifestly does not correspond to the freezing order;
 - (b) there is an immunity or privilege under the law of the executing State which makes it impossible to execute the freezing order;
 - (c) it is instantly clear from the information provided in the certificate that rendering judicial assistance pursuant to Article 10 for the offence in respect of which the freezing order has been made, would infringe the *ne bis in idem* principle;
 - (d) if, in one of the cases referred to in Article 3(4), the act on which the freezing order is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of the freezing order may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.
2. In case of paragraph 1(a), the competent judicial authority may:
 - (a) specify a deadline for its presentation, completion or correction; or
 - (b) accept an equivalent document; or
 - (c) exempt the issuing judicial authority from the requirement if it considers that the information provided is sufficient.
3. Any decision to refuse recognition or execution shall be taken and notified forthwith to the competent judicial authorities of the issuing State by any means capable of producing a written record.
4. In case it is in practice impossible to execute the freezing order for the reason that the property or evidence have disappeared, have been destroyed, cannot be found in the location indicated in the certificate or the location of the property or

evidence has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the competent judicial authorities of the issuing State shall likewise be notified forthwith.

Article 8

Grounds for postponement of execution

1. The competent judicial authority of the executing State may postpone the execution of a freezing order transmitted in accordance with Article 4:
 - (a) where its execution might damage an ongoing criminal investigation, until such time as it deems reasonable;
 - (b) where the property or evidence concerned have already been subjected to a freezing order in criminal proceedings, and until that freezing order is lifted;
 - (c) where, in the case of an order freezing property in criminal proceedings with a view to its subsequent confiscation, that property is already subject to an order made in the course of other proceedings in the executing State and until that order is lifted. However, this point shall only apply where such an order would have priority over subsequent national freezing orders in criminal proceedings under national law.
2. A report on the postponement of the execution of the freezing order, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be made forthwith to the competent authority in the issuing State by any means capable of producing a written record.
3. As soon as the ground for postponement has ceased to exist, the competent judicial authority of the executing State shall forthwith take the necessary measures for the execution of the freezing order and inform the competent authority in the issuing State thereof by any means capable of producing a written record.
4. The competent judicial authority of the executing State shall inform the competent authority of the issuing State about any other restraint measure to which the property concerned may be subjected.

Article 9

Certificate

1. The certificate, the standard form for which is given in the Annex, shall be signed, and its contents certified as accurate, by the competent judicial authority in the issuing State that ordered the measure.

2.8.2003

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Official Journal of the European Union

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2. The certificate must be translated into the official language or one of the official languages of the executing State.

3. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the institutions of the European Communities.

Article 10

Subsequent treatment of the frozen property

1. The transmission referred to in Article 4:

(a) shall be accompanied by a request for the evidence to be transferred to the issuing State;

or

(b) shall be accompanied by a request for confiscation requiring either enforcement of a confiscation order that has been issued in the issuing State or confiscation in the executing State and subsequent enforcement of any such order;

or

(c) shall contain an instruction in the certificate that the property shall remain in the executing State pending a request referred to in (a) or (b). The issuing State shall indicate in the certificate the (estimated) date for submission of this request. Article 6(2) shall apply.

2. Requests referred to in paragraph 1(a) and (b) shall be submitted by the issuing State and processed by the executing State in accordance with the rules applicable to mutual assistance in criminal matters and the rules applicable to international cooperation relating to confiscation.

3. However, by way of derogation from the rules on mutual assistance referred to in paragraph 2, the executing State may not refuse requests referred to under paragraph 1(a) on grounds of absence of double criminality, where the requests concern the offences referred to in Article 3(2) and those offences are punishable in the issuing State by a prison sentence of at least three years.

Article 11

Legal remedies

1. Member States shall put in place the necessary arrangements to ensure that any interested party, including bona fide third parties, have legal remedies without suspensive effect against a freezing order executed pursuant to Article 5, in order to preserve their legitimate interests; the action shall be brought before a court in the issuing State or in the executing State in accordance with the national law of each.

2. The substantive reasons for issuing the freezing order can be challenged only in an action brought before a court in the issuing State.

3. If the action is brought in the executing State, the judicial authority of the issuing State shall be informed thereof and of the grounds of the action, so that it can submit the arguments that it deems necessary. It shall be informed of the outcome of the action.

4. The issuing and executing States shall take the necessary measures to facilitate the exercise of the right to bring an action mentioned in paragraph 1, in particular by providing adequate information to interested parties.

5. The issuing State shall ensure that any time limits for bringing an action mentioned in paragraph 1 are applied in a way that guarantees the possibility of an effective legal remedy for the interested parties.

Article 12

Reimbursement

1. Without prejudice to Article 11(2), where the executing State under its law is responsible for injury caused to one of the parties mentioned in Article 11 by the execution of a freezing order transmitted to it pursuant to Article 4, the issuing State shall reimburse to the executing State any sums paid in damages by virtue of that responsibility to the said party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State.

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

TITLE III

FINAL PROVISIONS

Article 13

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 14

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision before 2 August 2005.

2. By the same date Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established using this information and a written report by the Commission, the Council shall, before 2 August 2006, assess the extent to which Member States have complied with the provisions of this Framework Decision.

3. The General Secretariat of the Council shall notify Member States and the Commission of the declarations made pursuant to Article 9(3).

Article 15

Entry into force

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

Done at Brussels, 22 July 2003.

For the Council
The President
G. ALEMANNO

ANNEX

CERTIFICATE PROVIDED FOR IN ARTICLE 9

(a) The judicial authority which issued the freezing order:

Official name:

.....

Name of its representative:

Post held (title/grade):

File reference:

Address:

.....

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

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

E-mail:

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

.....

Contact details (including languages in which it is possible to communicate with the person(s) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence (if applicable):

.....

.....

(b) The authority competent for the enforcement of the freezing order in the issuing State

Official name:

.....

Name of its representative:

Post held (title/grade):

File reference:

Address:

.....

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

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

E-mail:

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

.....

Contact details (including languages in which it is possible to communicate with the person(s) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence (if applicable):

.....

.....

(c) In the case where points (a) and (b) have been filled, this point must be filled in order to indicate which or both of these two authorities must be contacted:

Authority mentioned under point (a)

Authority mentioned under point (b)

(d) Where a central authority has been made responsible for the transmission and administrative reception of freezing orders (only applicable for Ireland and the United Kingdom):

Name of the central authority:

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

Address:

File reference

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

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

E-mail:

(e) The freezing order:

1. Date and if applicable reference number
2. State the purpose of the order
- 2.1. Subsequent confiscation
- 2.2. Securing evidence
3. Description of formalities and procedures to be observed when executing a freezing order concerning evidence (if applicable)

(f) Information regarding the property or evidence in the executing State covered by the freezing order:

Description of the property or evidence and location:

1. (a) Precise description of the property and, where applicable, the maximum amount for which recovery is sought (if such maximum amount is indicated in the order concerning the value of proceeds)
- (b) Precise description of the evidence
2. Exact location of the property or evidence (if not known, the last known location)
3. Party having custody of the property or evidence or known beneficial owner of the property or evidence, if different from the person suspected of the offence or convicted (if applicable under the national law of the issuing State)

.....

.....

2.8.2003

EN

Official Journal of the European Union

L 196/53

(g) Information regarding the identity of the (1) natural or (2) legal person(s), suspected of the offence or convicted (if applicable under the national law of the issuing State) or/and the person(s) to whom the freezing order relates (if available):

1. Natural persons

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address; if not known state the last known address:

.....

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

.....

2. Legal persons

Name:

Form of legal person:

Registration number:

Registered seat:

.....

(h) Action to be taken by the executing State after executing the freezing order

Confiscation

1.1. The property is to be kept in the executing State for the purpose of subsequent confiscation of the property

1.1.1. Find enclosed request regarding enforcement of a confiscation order issued in the issuing State on (date)

1.1.2. Find enclosed request regarding confiscation in the executing State and subsequent enforcement of that order

1.1.3. Estimated date for submission of a request referred to in 1.1.1 or 1.1.2.

or

Securing of evidence

2.1. The property is to be transferred to the issuing State to serve as evidence

2.1.1. Find enclosed a request for the transfer

or

2.2. The property is to be kept in the executing State for the purpose of subsequent use as evidence in the issuing State

2.2.2. Estimated date for submission of a request referred to in 2.1.1.

(f) Offences:

Description of the relevant grounds for the freezing order and a summary of facts as known to the judicial authority issuing the freezing order and certificate:

.....

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

.....

1. If applicable, tick one or more of the following offences to which the offence(s) identified above relate(s), if the offence(s) are punishable in the issuing State by a custodial sentence of a maximum of at least three years:

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

2. Full descriptions of offence(s) not covered by section 1 above:

.....

(j) Legal remedies against the freezing order for interested parties, including bona fide third parties, available in the issuing State:

Description of the legal remedies available including necessary steps to take

Court before which the action may be taken

Information as to those for whom the action is available

Time limit for submission of the action

Authority in the issuing State who can supply further information on procedures for submitting appeals in the issuing State and on whether legal assistance and translation is available:

Name

Contact person (if applicable):

Address:

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

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

E-mail:

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

.....

.....

(l) The text of the freezing order is attached to the certificate.

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

.....

Name:

Post held (title/grade):

Date:

Official stamp (if available)

Appendix 5 – Crime (International Co-operation) Act Chapter 2

Status: This version of this chapter contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Crime (International Co-operation) Act 2003. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)



Crime (International Co-operation) Act 2003

2003 CHAPTER 32

PROSPECTIVE

PART 1

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

CHAPTER 2

MUTUAL PROVISION OF EVIDENCE

Assistance in obtaining evidence abroad

7 Requests for assistance in obtaining evidence abroad

- (1) If it appears to a judicial authority in the United Kingdom on an application made by a person mentioned in subsection (3)—
 - (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and
 - (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,the judicial authority may request assistance under this section.
- (2) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom any evidence specified in the request for use in the proceedings or investigation.
- (3) The application may be made—

Status: This version of this chapter contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to *Crime (International Co-operation) Act 2003*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (a) in relation to England and Wales and Northern Ireland, by a prosecuting authority,
 - (b) in relation to Scotland, by the Lord Advocate or a procurator fiscal,
 - (c) where proceedings have been instituted, by the person charged in those proceedings.
- (4) The judicial authorities are—
- (a) in relation to England and Wales, any judge or justice of the peace,
 - (b) in relation to Scotland, any judge of the High Court or sheriff,
 - (c) in relation to Northern Ireland, any judge or resident magistrate.
- (5) In relation to England and Wales or Northern Ireland, a designated prosecuting authority may itself request assistance under this section if—
- (a) it appears to the authority that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and
 - (b) the authority has instituted proceedings in respect of the offence in question or it is being investigated.
- “Designated” means designated by an order made by the Secretary of State.
- (6) In relation to Scotland, the Lord Advocate or a procurator fiscal may himself request assistance under this section if it appears to him—
- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and
 - (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated.
- (7) If a request for assistance under this section is made in reliance on Article 2 of the 2001 Protocol (requests for information on banking transactions) in connection with the investigation of an offence, the request must state the grounds on which the person making the request considers the evidence specified in it to be relevant for the purposes of the investigation.

8 Sending requests for assistance

- (1) A request for assistance under section 7 may be sent—
- (a) to a court exercising jurisdiction in the place where the evidence is situated, or
 - (b) to any authority recognised by the government of the country in question as the appropriate authority for receiving requests of that kind.
- (2) Alternatively, if it is a request by a judicial authority or a designated prosecuting authority it may be sent to the Secretary of State (in Scotland, the Lord Advocate) for forwarding to a court or authority mentioned in subsection (1).
- (3) In cases of urgency, a request for assistance may be sent to—
- (a) the International Criminal Police Organisation, or
 - (b) any body or person competent to receive it under any provisions adopted under the Treaty on European Union,
- for forwarding to any court or authority mentioned in subsection (1).

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to *Crime (International Co-operation) Act 2003*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

9 Use of evidence obtained

- (1) This section applies to evidence obtained pursuant to a request for assistance under section 7.
- (2) The evidence may not without the consent of the appropriate overseas authority be used for any purpose other than that specified in the request.
- (3) When the evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it must be returned to the appropriate overseas authority, unless that authority indicates that it need not be returned.
- (4) In exercising the discretion conferred by section 25 of the Criminal Justice Act 1988 (c. 33) or Article 5 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17)) (exclusion of evidence otherwise admissible) in relation to a statement contained in the evidence, the court must have regard—
 - (a) to whether it was possible to challenge the statement by questioning the person who made it, and
 - (b) if proceedings have been instituted, to whether the local law allowed the parties to the proceedings to be legally represented when the evidence was being obtained.
- (5) In Scotland, the evidence may be received in evidence without being sworn to by witnesses, so far as that may be done without unfairness to either party.
- (6) In this section, the appropriate overseas authority means the authority recognised by the government of the country in question as the appropriate authority for receiving requests of the kind in question.

10 Domestic freezing orders

- (1) If it appears to a judicial authority in the United Kingdom, on an application made by a person mentioned in subsection (4)—
 - (a) that proceedings in respect of a listed offence have been instituted or such an offence is being investigated,
 - (b) that there are reasonable grounds to believe that there is evidence in a participating country which satisfies the requirements of subsection (3), and
 - (c) that a request has been made, or will be made, under section 7 for the evidence to be sent to the authority making the request,
 the judicial authority may make a domestic freezing order in respect of the evidence.
- (2) A domestic freezing order is an order for protecting evidence which is in the participating country pending its transfer to the United Kingdom.
- (3) The requirements are that the evidence—
 - (a) is on premises specified in the application in the participating country,
 - (b) is likely to be of substantial value (whether by itself or together with other evidence) to the proceedings or investigation,
 - (c) is likely to be admissible in evidence at a trial for the offence, and
 - (d) does not consist of or include items subject to legal privilege.
- (4) The application may be made—
 - (a) in relation to England and Wales and Northern Ireland, by a constable,
 - (b) in relation to Scotland, by the Lord Advocate or a procurator fiscal.

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- (5) The judicial authorities are—
- (a) in relation to England and Wales, any judge or justice of the peace,
 - (b) in relation to Scotland, any judge of the High Court or sheriff,
 - (c) in relation to Northern Ireland, any judge or resident magistrate.
- (6) This section does not prejudice the generality of the power to make a request for assistance under section 7.

11 Sending freezing orders

- (1) A domestic freezing order made in England and Wales or Northern Ireland is to be sent to the Secretary of State for forwarding to—
- (a) a court exercising jurisdiction in the place where the evidence is situated, or
 - (b) any authority recognised by the government of the country in question as the appropriate authority for receiving orders of that kind.
- (2) A domestic freezing order made in Scotland is to be sent to the Lord Advocate for forwarding to such a court or authority.
- (3) The judicial authority is to send the order to the Secretary of State or the Lord Advocate before the end of the period of 14 days beginning with its being made.
- (4) The order must be accompanied by a certificate giving the specified information and, unless the certificate indicates when the judicial authority expects such a request to be made, by a request under section 7 for the evidence to be sent to the authority making the request.
- (5) The certificate must include a translation of it into an appropriate language of the participating country (if that language is not English).
- (6) The certificate must be signed by or on behalf of the judicial authority who made the order and must include a statement as to the accuracy of the information given in it.
- The signature may be an electronic signature.

12 Variation or revocation of freezing orders

- (1) The judicial authority that made a domestic freezing order may vary or revoke it on an application by a person mentioned below.
- (2) The persons are—
- (a) the person who applied for the order,
 - (b) in relation to England and Wales and Northern Ireland, a prosecuting authority,
 - (c) in relation to Scotland, the Lord Advocate,
 - (d) any other person affected by the order.

Assisting overseas authorities to obtain evidence in the UK

13 Requests for assistance from overseas authorities

- (1) Where a request for assistance in obtaining evidence in a part of the United Kingdom is received by the territorial authority for that part, the authority may—

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- (a) if the conditions in section 14 are met, arrange for the evidence to be obtained under section 15, or
 - (b) direct that a search warrant be applied for under or by virtue of section 16 or 17 or, in relation to evidence in Scotland, 18.
- (2) The request for assistance may be made only by—
- (a) a court exercising criminal jurisdiction, or a prosecuting authority, in a country outside the United Kingdom,
 - (b) any other authority in such a country which appears to the territorial authority to have the function of making such requests for assistance,
 - (c) any international authority mentioned in subsection (3).
- (3) The international authorities are—
- (a) the International Criminal Police Organisation,
 - (b) any other body or person competent to make a request of the kind to which this section applies under any provisions adopted under the Treaty on European Union.

14 Powers to arrange for evidence to be obtained

- (1) The territorial authority may arrange for evidence to be obtained under section 15 if the request for assistance in obtaining the evidence is made in connection with—
- (a) criminal proceedings or a criminal investigation, being carried on outside the United Kingdom,
 - (b) administrative proceedings, or an investigation into an act punishable in such proceedings, being carried on there,
 - (c) clemency proceedings, or proceedings on an appeal before a court against a decision in administrative proceedings, being carried on, or intended to be carried on, there.
- (2) In a case within subsection (1)(a) or (b), the authority may arrange for the evidence to be so obtained only if the authority is satisfied—
- (a) that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and
 - (b) that proceedings in respect of the offence have been instituted in that country or that an investigation into the offence is being carried on there.
- An offence includes an act punishable in administrative proceedings.
- (3) The territorial authority is to regard as conclusive a certificate as to the matters mentioned in subsection (2)(a) and (b) issued by any authority in the country in question which appears to him to be the appropriate authority to do so.
- (4) If it appears to the territorial authority that the request for assistance relates to a fiscal offence in respect of which proceedings have not yet been instituted, the authority may not arrange for the evidence to be so obtained unless—
- (a) the request is from a country which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party, or
 - (b) the authority is satisfied that if the conduct constituting the offence were to occur in a part of the United Kingdom, it would constitute an offence in that part.

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15 Nominating a court etc. to receive evidence

- (1) Where the evidence is in England and Wales or Northern Ireland, the Secretary of State may by a notice nominate a court to receive any evidence to which the request relates which appears to the court to be appropriate for the purpose of giving effect to the request.
- (2) But if it appears to the Secretary of State that the request relates to an offence involving serious or complex fraud, he may refer the request (or any part of it) to the Director of the Serious Fraud Office for the Director to obtain any evidence to which the request or part relates which appears to him to be appropriate for the purpose of giving effect to the request or part.
- (3) Where the evidence is in Scotland, the Lord Advocate may by a notice nominate a court to receive any evidence to which the request relates which appears to the court to be appropriate for the purpose of giving effect to the request.
- (4) But if it appears to the Lord Advocate that the request relates to an offence involving serious or complex fraud, he may give a direction under section 27 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (directions applying investigatory provisions).
- (5) Schedule 1 is to have effect in relation to proceedings before a court nominated under this section.

16 Extension of statutory search powers in England and Wales and Northern Ireland

- (1) Part 2 of the Police and Criminal Evidence Act 1984 (c. 60) (powers of entry, search and seizure) is to have effect as if references to serious arrestable offences in section 8 of, and Schedule 1 to, that Act included any conduct which—
 - (a) constitutes an offence under the law of a country outside the United Kingdom, and
 - (b) would, if it occurred in England and Wales, constitute a serious arrestable offence.
- (2) But an application for a warrant or order by virtue of subsection (1) may be made only—
 - (a) in pursuance of a direction given under section 13, or
 - (b) if it is an application for a warrant or order under section 8 of, or Schedule 1 to, that Act by a constable for the purposes of an investigation by an international joint investigation team of which he is a member.
- (3) Part 3 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (powers of entry, search and seizure) is to have effect as if references to serious arrestable offences in Article 10 of, and Schedule 1 to, that Order included any conduct which—
 - (a) constitutes an offence under the law of a country outside the United Kingdom, and
 - (b) would, if it occurred in Northern Ireland, constitute a serious arrestable offence.
- (4) But an application for a warrant or order by virtue of subsection (3) may be made only—
 - (a) in pursuance of a direction given under section 13, or

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- (b) if it is an application for a warrant or order under Article 10 of, or Schedule 1 to, that Order, by a constable for the purposes of an investigation by an international joint investigation team of which he is a member.
- (5) In this section, “international joint investigation team” has the meaning given by section 88(7) of the Police Act 1996 (c. 16).

17 Warrants in England and Wales or Northern Ireland

- (1) A justice of the peace may issue a warrant under this section if he is satisfied, on an application made by a constable, that the following conditions are met.
- (2) But an application for a warrant under subsection (1) may be made only in pursuance of a direction given under section 13.
- (3) The conditions are that—
 - (a) criminal proceedings have been instituted against a person in a country outside the United Kingdom or a person has been arrested in the course of a criminal investigation carried on there,
 - (b) the conduct constituting the offence which is the subject of the proceedings or investigation would, if it occurred in England and Wales or (as the case may be) Northern Ireland, constitute an arrestable offence, and
 - (c) there are reasonable grounds for suspecting that there is on premises in England and Wales or (as the case may be) Northern Ireland occupied or controlled by that person evidence relating to the offence.

“Arrestable offence” has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60) or (as the case may be) the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/ 1341 (N.I.12)).
- (4) A warrant under this section may authorise a constable—
 - (a) to enter the premises in question and search the premises to the extent reasonably required for the purpose of discovering any evidence relating to the offence,
 - (b) to seize and retain any evidence for which he is authorised to search.

18 Warrants in Scotland

- (1) If, on an application made by the procurator fiscal, it appears to the sheriff—
 - (a) that there are reasonable grounds for suspecting that an offence under the law of a country outside the United Kingdom has been committed, and
 - (b) that the conduct constituting the offence would, if it occurred in Scotland, constitute an offence punishable by imprisonment,

the sheriff has the like power to grant warrant authorising entry, search and seizure by any constable or customs officer as he has under section 134 of the Criminal Procedure (Scotland) Act 1995 (c. 46) in respect of any offence punishable at common law in Scotland.
- (2) But an application for a warrant by virtue of subsection (1) may be made only—
 - (a) in pursuance of a direction given under section 13, or
 - (b) if it is an application made at the request of an international joint investigation team for the purposes of their investigation.

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“International joint investigation team” has the meaning given by section 39(6) of the Police (Scotland) Act 1967 (c. 77).

19 Seized evidence

- (1) Any evidence seized by a constable under or by virtue of section 16, 17 or 18 is to be sent to the court or authority which made the request for assistance or to the territorial authority for forwarding to that court or authority.
- (2) So far as may be necessary in order to comply with the request for assistance—
 - (a) where the evidence consists of a document, the original or a copy is to be sent, and
 - (b) where the evidence consists of any other article, the article itself or a description, photograph or other representation of it is to be sent.
- (3) This section does not apply to evidence seized under or by virtue of section 16(2)(b) or (4)(b) or 18(2)(b).

Overseas freezing orders

20 Overseas freezing orders

- (1) Section 21 applies where an overseas freezing order made by a court or authority in a participating country is received from the court or authority which made or confirmed the order by the territorial authority for the part of the United Kingdom in which the evidence to which the order relates is situated.
- (2) An overseas freezing order is an order—
 - (a) for protecting, pending its transfer to the participating country, evidence which is in the United Kingdom and may be used in any proceedings or investigation in the participating country, and
 - (b) in respect of which the following requirements of this section are met.
- (3) The order must have been made by—
 - (a) a court exercising criminal jurisdiction in the country,
 - (b) a prosecuting authority in the country,
 - (c) any other authority in the country which appears to the territorial authority to have the function of making such orders.
- (4) The order must relate to—
 - (a) criminal proceedings instituted in the participating country in respect of a listed offence, or
 - (b) a criminal investigation being carried on there into such an offence.
- (5) The order must be accompanied by a certificate which gives the specified information; but a certificate may be treated as giving any specified information which is not given in it if the territorial authority has the information in question.
- (6) The certificate must—
 - (a) be signed by or on behalf of the court or authority which made or confirmed the order,
 - (b) include a statement as to the accuracy of the information given in it,

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- (c) if it is not in English, include a translation of it into English (or, if appropriate, Welsh).

The signature may be an electronic signature.

- (7) The order must be accompanied by a request for the evidence to be sent to a court or authority mentioned in section 13(2), unless the certificate indicates when such a request is expected to be made.
- (8) References below in this Chapter to an overseas freezing order include its accompanying certificate.

21 Considering the order

- (1) In relation to England and Wales and Northern Ireland, where this section applies the Secretary of State must—
- by a notice nominate a court in England and Wales or (as the case may be) Northern Ireland to give effect to the overseas freezing order,
 - send a copy of the overseas freezing order to the nominated court and to the chief officer of police for the area in which the evidence is situated,
 - tell the chief officer which court has been nominated.
- (2) In relation to Scotland, where this section applies the Lord Advocate must—
- by a notice nominate a sheriff to give effect to the overseas freezing order,
 - send a copy of the overseas freezing order to the sheriff and to the procurator fiscal.

In relation to Scotland, references below in this section and in sections 22 to 25 to the nominated court are to be read as references to the nominated sheriff.

- (3) The nominated court is to consider the overseas freezing order on its own initiative within a period prescribed by rules of court.
- (4) Before giving effect to the overseas freezing order, the nominated court must give the chief officer of police or (as the case may be) the procurator fiscal an opportunity to be heard.
- (5) The court may decide not to give effect to the overseas freezing order only if, in its opinion, one of the following conditions is met.
- (6) The first condition is that, if the person whose conduct is in question were charged in the participating country with the offence to which the overseas freezing order relates or in the United Kingdom with a corresponding offence, he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.
- (7) The second condition is that giving effect to the overseas freezing order would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)).

22 Giving effect to the order

- (1) The nominated court is to give effect to the overseas freezing order by issuing a warrant authorising a constable—

Status: This version of this chapter contains provisions that are prospective.

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- (a) to enter the premises to which the overseas freezing order relates and search the premises to the extent reasonably required for the purpose of discovering any evidence to which the order relates, and
 - (b) to seize and retain any evidence for which he is authorised to search.
- (2) But, in relation to England and Wales and Northern Ireland, so far as the overseas freezing order relates to excluded material or special procedure material the court is to give effect to the order by making a production order.
- (3) A production order is an order for the person who appears to the court to be in possession of the material to produce it to a constable before the end of the period of seven days beginning with the date of the production order or such longer period as the production order may specify.
- (4) The constable may take away any material produced to him under a production order; and the material is to be treated for the purposes of section 21 of the Police and Criminal Evidence Act 1984 (c. 60) or (as the case may be) Article 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/ 1341 (N.I.12)) (access and copying) as if it had been seized by the constable.
- (5) If a person fails to comply with a production order, the court may (whether or not it deals with the matter as a contempt of court) issue a warrant under subsection (1) in respect of the material to which the production order relates.
- (6) Section 409 of the Proceeds of Crime Act 2002 (c. 29) (jurisdiction of sheriff) has effect for the purposes of subsection (1) as if that subsection were included in Chapter 3 of Part 8 of that Act.

23 Postponed effect

The nominated court may postpone giving effect to an overseas freezing order in respect of any evidence—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
- (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the evidence may not be removed from the United Kingdom.

24 Evidence seized under the order

- (1) Any evidence seized by or produced to the constable under section 22 is to be retained by him until he is given a notice under subsection (2) or authorised to release it under section 25.
- (2) If—
- (a) the overseas freezing order was accompanied by a request for the evidence to be sent to a court or authority mentioned in section 13(2), or
 - (b) the territorial authority subsequently receives such a request,
- the territorial authority may by notice require the constable to send the evidence to the court or authority that made the request.

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25 Release of evidence held under the order

- (1) On an application made by a person mentioned below, the nominated court may authorise the release of any evidence retained by a constable under section 24 if, in its opinion—
 - (a) the condition in section 21(6) or (7) is met, or
 - (b) the overseas freezing order has ceased to have effect in the participating country.
- (2) In relation to England and Wales and Northern Ireland, the persons are—
 - (a) the chief officer of police to whom a copy of the order was sent,
 - (b) the constable,
 - (c) any other person affected by the order.
- (3) In relation to Scotland, the persons are—
 - (a) the procurator fiscal to whom a copy of the order was sent,
 - (b) any other person affected by the order.
- (4) If the territorial authority decides not to give a notice under section 24(2) in respect of any evidence retained by a constable under that section, the authority must give the constable a notice authorising him to release the evidence.

General

26 Powers under warrants

- (1) A court in England and Wales or Northern Ireland, or a justice of the peace, may not issue a warrant under section 17 or 22 in respect of any evidence unless the court or justice has reasonable grounds for believing that it does not consist of or include items subject to legal privilege, excluded material or special procedure material.
- (2) Subsection (1) does not prevent a warrant being issued by virtue of section 22(5) in respect of excluded material or special procedure material.
- (3) In Schedule 1 to the Criminal Justice and Police Act 2001 (c. 16) (powers of seizure), in Part 1 (powers to which the additional powers in section 50 apply)—
 - (a) paragraph 49 is omitted,
 - (b) after paragraph 73B there is inserted—

73C “*Crime (International Co-operation) Act 2003*

The power of seizure conferred by sections 17 and 22 of the *Crime (International Co-operation) Act 2003* (seizure of evidence relevant to overseas investigation or offence).”

- (4) References in this Chapter to evidence seized by a person by virtue of or under any provision of this Chapter include evidence seized by a person by virtue of section 50 of the Criminal Justice and Police Act 2001 (additional powers of seizure), if it is seized in the course of a search authorised by a warrant issued by virtue of or under the provision in question.

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- (5) Subsection (4) does not require any evidence to be sent to the territorial authority or to any court or authority—
- (a) before it has been found, on the completion of any examination required to be made by arrangements under section 53(2) of the Criminal Justice and Police Act 2001, to be property within subsection (3) of that section (property which may be retained after examination), or
 - (b) at a time when it constitutes property in respect of which a person is required to ensure that arrangements such as are mentioned in section 61(1) of that Act (duty to secure) are in force.

27 Exercise of powers by others

- (1) The Treasury may by order provide, in relation to England and Wales or Northern Ireland—
- (a) for any function conferred on the Secretary of State (whether or not in terms) under sections 10, 11 and 13 to 26 to be exercisable instead in prescribed circumstances by the Commissioners of Customs and Excise,
 - (b) for any function conferred on a constable under those sections to be exercisable instead in prescribed circumstances by a customs officer or a person acting under the direction of such an officer.
 “Prescribed” means prescribed by the order.
- (2) The Secretary of State may by order provide, in relation to England and Wales or Northern Ireland—
- (a) for any function conferred on him under sections 13 to 26 to be exercisable instead in prescribed circumstances by a prescribed person,
 - (b) for any function conferred on a constable under those sections to be exercisable instead in prescribed circumstances by a prescribed person.
 “Prescribed” means prescribed by the order.
- (3) Subsection (2)(b) does not apply to any powers exercisable by virtue of section 16(2)(b) or (4)(b).

28 Interpretation of Chapter 2

- (1) In this Chapter—
- “domestic freezing order” has the meaning given by section 10(2),
 - “notice” means a notice in writing,
 - “overseas freezing order” has the meaning given by section 20,
 - “premises” has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60), Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (c. 29) or the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (as the case may be),
 - “the relevant Framework Decision” means the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003.
- (2) The following provisions have effect for the purposes of this Chapter.
- (3) In relation to England and Wales and Northern Ireland, “items subject to legal privilege”, “excluded material” and “special procedure material” have the same

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meaning as in the Police and Criminal Evidence Act 1984 or (as the case may be) the Police and Criminal Evidence (Northern Ireland) Order 1989.

- (4) In relation to Scotland, “items subject to legal privilege” has the same meaning as in Chapter 3 of Part 8 of the Proceeds of Crime Act 2002.
- (5) A listed offence means—
- (a) an offence described in Article 3(2) of the relevant Framework Decision, or
 - (b) an offence prescribed or of a description prescribed by an order made by the Secretary of State.
- (6) An order prescribing an offence or a description of offences under subsection (5)(b) may require, in the case of an overseas freezing order, that the conduct which constitutes the offence or offences would, if it occurred in a part of the United Kingdom, constitute an offence in that part.
- (7) Specified information, in relation to a certificate required by section 11(4) or 20(5), means—
- (a) any information required to be given by the form of certificate annexed to the relevant Framework Decision, or
 - (b) any information prescribed by an order made by the Secretary of State.
- (8) In relation to Scotland, references above in this section to the Secretary of State are to be read as references to the Scottish Ministers.
- (9) The territorial authority—
- (a) in relation to evidence in England and Wales or Northern Ireland, is the Secretary of State,
 - (b) in relation to evidence in Scotland, is the Lord Advocate.

Status:

This version of this chapter contains provisions that are prospective.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Act Appointed Day(s) by S.S.I. 2004/175 (commencement order for 2003 c. 32)
- Act Appointed Day(s) by S.I. 2004/2624 (commencement order for 2003 c. 32)
- Act Appointed Day(s) by S.I. 2004/786 (commencement order for 2003 c. 32)
- Act Appointed Day(s) by S.I. 2006/281 (commencement order for 2003 c. 32)
- Act Appointed Day(s) by S.I. 2006/2811 (commencement order for 2002 c. 32)
- Act Appointed Day(s) by S.I. 2008/3009 (commencement order for 2003 c. 32)
- Act Appointed Day(s) by S.I. 2009/2605 (commencement order for 2003 c. 32)
- S.R. 2006/368 commences (SI 2005/1965 (N.I. 15))
- S.R. 2006/63 commences (SI 2004/1501 (N.I. 10))
- S.S.I. 2010/413 commences (2010 asp 13)
- S.I. 2005/1126 commences (2005 c. 11)
- S.I. 2005/2122 amendment to earlier commencing SI 2005/950 Sch. 2 para. 23
- S.I. 2005/3495 commences (2005 c. 15)
- S.I. 2005/950 commences (2003 c. 44. This SI is amended by SI 2005/2122, SI 2007/391, 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2, SI 2009/616 and SI 2009/3111)
- S.I. 2006/378 commences (2005 c. 15)
- S.I. 2008/1586 commences (2008 c. 4)
- S.I. 2008/1918 commences (2006 c. 49)
- S.I. 2008/3164 commences (2006 c. 49)
- S.I. 2008/755 commences (2007 c. 27)
- S.I. 2009/1059 transitional provisions for effects of commencing SI 2009/812
- S.I. 2009/1167 commences (2006 c. 52)
- S.I. 2009/1604 commences (2005 c. 4)
- S.I. 2009/812 commences (2006 c. 52)
- Act inserted by 2003 c. 44

Appendix 6 – Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (OJ 2005 L 76/16)

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

COUNCIL FRAMEWORK DECISION 2005/214/JHA

of 24 February 2005

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

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas:

- (1) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.
- (2) The principle of mutual recognition should apply to financial penalties imposed by judicial or administrative authorities for the purpose of facilitating the enforcement of such penalties in a Member State other than the State in which the penalties are imposed.
- (3) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters ⁽³⁾, giving priority to the adoption of an instrument applying the principle of mutual recognition to financial penalties (measure 18).
- (4) This Framework Decision should also cover financial penalties imposed in respect of road traffic offences.
- (5) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union ⁽⁴⁾, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to execute a decision

when there are reasons to believe, on the basis of objective elements, that the financial penalty has the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

- (6) This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision:

- (a) 'decision' shall mean a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:
 - (i) a court of the issuing State in respect of a criminal offence under the law of the issuing State;
 - (ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;
 - (iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;
 - (iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii);

⁽¹⁾ OJ C 278, 2.10.2001, p. 4.

⁽²⁾ OJ C 271 E, 7.11.2002, p. 423.

⁽³⁾ OJ C 12, 15.1.2001, p. 10.

⁽⁴⁾ OJ C 364, 18.12.2000, p. 1.

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

A financial penalty shall not include:

- orders for the confiscation of instrumentalities or proceeds of crime,
 - orders that have a civil nature and arise out of a claim for damages and restitution and which are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽¹⁾;
- (c) 'issuing State' shall mean the Member State in which a decision within the meaning of this Framework Decision was delivered;
- (d) 'executing State' shall mean the Member State to which a decision has been transmitted for the purpose of enforcement.

Article 2

Determination of the competent authorities

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

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

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

Article 3

Fundamental rights

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

Article 4

Transmission of decisions and recourse to the central authority

1. A decision, together with a certificate as provided for in this Article, may be transmitted to the competent authorities of a Member State in which the natural or legal person against whom a decision has been passed has property or income, is normally resident or, in the case of a legal person, has its registered seat.
2. The certificate, the standard form for which is given in the Annex, must be signed, and its contents certified as accurate, by the competent authority in the issuing State.
3. The decision or a certified copy of it, together with the certificate, shall be transmitted by the competent authority in the issuing State directly to the competent authority in the executing State by any means which leaves a written record under conditions allowing the executing State to establish its authenticity. The original of the decision, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.

4. The issuing State shall only transmit a decision to one executing State at any one time.

5. If the competent authority in the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network⁽²⁾ in order to obtain the information from the executing State.

6. When an authority in the executing State which receives a decision has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, *ex officio*, transmit the decision to the competent authority and shall inform the competent authority in the issuing State accordingly.

⁽²⁾ Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

7. The United Kingdom and Ireland, respectively, may state in a declaration that the decision together with the certificate must be sent via its central authority or authorities specified by it in the declaration. These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 3. They shall do so when the provisions on mutual assistance of the Schengen Implementation Convention are put into effect for them. Any declaration shall be deposited with the General Secretariat of the Council and notified to the Commission.

Article 5

Scope

1. The following offences, if they are punishable in the issuing State and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition and enforcement of decisions:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage,
- conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods,
- smuggling of goods,
- infringements of intellectual property rights,
- threats and acts of violence against persons, including violence during sport events,
- criminal damage,
- theft,
- offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

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

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

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

Article 6

Recognition and execution of decisions

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

Article 7

Grounds for non-recognition and non-execution

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

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

- (a) decision against the sentenced person in respect of the same acts has been delivered in the executing State or in any State other than the issuing or the executing State, and, in the latter case, that decision has been executed;
- (b) in one of the cases referred to in Article 5(3), the decision relates to acts which would not constitute an offence under the law of the executing State;

(c) the execution of the decision is statute-barred according to the law of the executing State and the decision relates to acts which fall within the jurisdiction of that State under its own law.

(d) the decision relates to acts which:

- (i) are regarded by the law of the executing State as having been committed in whole or in part in the territory of the executing State or in a place treated as such, or
- (ii) have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory;

(e) there is immunity under the law of the executing State, which makes it impossible to execute the decision;

(f) the decision has been imposed on a natural person who under the law of the executing State due to his or her age could not yet have been held criminally liable for the acts in respect of which the decision was passed;

(g) according to the certificate provided for in Article 4, the person concerned

- (i) in case of a written procedure was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his right to contest the case and of time limits of such a legal remedy, or

(ii) did not appear personally, unless the certificate states:

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

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

(h) the financial penalty is below EUR 70 or the equivalent to that amount.

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

*Article 8***Determination of the amount to be paid**

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

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

*Article 9***Law governing enforcement**

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

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

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

*Article 10***Imprisonment or other alternative sanction by way of substitution for non-recovery of the financial penalty**

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

*Article 11***Amnesty, pardon, review of sentence**

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

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

*Article 12***Termination of enforcement**

1. The competent authority of the issuing State shall forthwith inform the competent authority of the executing State of any decision or measure as a result of which the decision ceases to be enforceable or is withdrawn from the executing State for any other reason.

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

*Article 13***Accrual of monies obtained from enforcement of decisions**

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

*Article 14***Information from the executing State**

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

- (a) of the transmission of the decision to the competent authority, according to Article 4(6);
- (b) of any decision not to recognise and execute a decision, according to Articles 7 or 20(3), together with the reasons for the decision;
- (c) of the total or partial non-execution of the decision for the reasons referred to in Article 8, Article 9(1) and (2), and Article 11(1);

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- (d) of the execution of the decision as soon as the execution has been completed;
- (e) of the application of alternative sanction, according to Article 10.

Article 15

Consequences of transmission of a decision

1. Subject to paragraph 2, the issuing State may not proceed with the execution of a decision transmitted pursuant to Article 4.
2. The right of execution of the decision shall revert to the issuing State:
- (a) upon it being informed by the executing State of the total or partial non-execution or the non-recognition or the non-enforcement of the decision in the case of Article 7, with the exception of Article 7(2)(a), in the case of Article 11(1), and in the case of Article 20(3); or
- (b) when the executing State has been informed by the issuing State that the decision has been withdrawn from the executing State pursuant to Article 12.
3. If, after transmission of a decision in accordance with Article 4, an authority of the issuing State receives any sum of money which the sentenced person has paid voluntarily in respect of the decision, that authority shall inform the competent authority in the executing State without delay. Article 9(2) shall apply.

Article 16

Languages

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

Article 17

Costs

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

Article 18

Relationship with other agreements and arrangements

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

Article 19

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 20

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 22 March 2007.
2. Each Member State may for a period of up to five years from the date of entry into force of this Framework Decision limit its application to:
- (a) decisions mentioned in Article 1 (a)(6) and (v); and/or
- (b) with regard to legal persons, decisions related to conduct for which a European instrument provides for the application of the principle of liability of legal persons.

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

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

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

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

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

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

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

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

Article 21

Entry into force

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

Done at Brussels, 24 February 2005.

For the Council

The President

N. SCHMIT

ANNEX
 CERTIFICATE

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

(a)

* Issuing State:

* Executing State:

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

Official name:

Address:

.....

File reference (...)

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

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

E-mail (when available)

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

.....

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

.....

.....

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

Official name:

.....

Address:

.....

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

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

E-mail (when available)

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

.....

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

.....

.....

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

Name of the central authority:

.....

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

.....

Address:

.....

File reference

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

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

E-mail (when available):

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

Authority mentioned under point (b)

Can be contacted for questions concerning:

Authority mentioned under point (c)

Can be contacted for questions concerning:

Authority mentioned under point (d)

Can be contacted for questions concerning:

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

I. In case of a natural person

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (when available):

Date of birth:

Place of birth:

Last known address:

.....

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

.....

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

Normal residence in the executing State:

.....

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

Description of the property of the person:

.....

Location of the property of the person:

.....

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

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

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

2. In case of a legal person:

Name:

Form of legal person:

Registration number (if available) ⁽¹⁾:

Registered seat (if available) ⁽¹⁾:

Address of the legal person:

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

Description of the property of the legal person:

Location of the property of the legal person:

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

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

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

(g) The decision imposing a financial penalty:

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

(i) Decision of a court of the issuing State in respect of a criminal offence under the law of the issuing State

(ii) Decision of an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.

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

(iv) Decision of a court having jurisdiction in particular in criminal matters regarding a decision as referred to in point iii.

The decision was made on (date)

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

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The decision became final on (date)

Reference number of the decision (if available):

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

(i) A sum of money on conviction of an offence imposed in a decision.
Amount:

(ii) Compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in its exercise of its criminal jurisdiction.
Amount:

(iii) A sum of money in respect of the costs of court or administrative proceedings leading to the decision.
Amount:

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

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

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

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

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

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

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

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;

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

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theft

offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

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

.....

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

.....

.....

.....

(h) Status of the decision imposing the financial penalty

1. Confirm that (tick the boxes):

(a) the decision is a final decision

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

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

(a) No, it has not.

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

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

(a) Yes, he or she did.

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

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

or

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

4. Partial payment of the penalty

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

.....

(i) Alternative sanctions, including custodial sanctions

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

- yes
- no

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

- Custody, Maximum period:
- Community service (or equivalent), Maximum period
- Other sanctions. Description:

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

.....

.....

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

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

Name:

Post held (title/grade):

Date:

Official stamp (if available)

Appendix 7 – Criminal Justice and Immigration Act 2008, Part 6, Schedule 18 and Schedule 19

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Criminal Justice and Immigration Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)



Criminal Justice and Immigration Act 2008

2008 CHAPTER 4

PROSPECTIVE

PART 6

INTERNATIONAL CO-OPERATION IN RELATION TO CRIMINAL JUSTICE MATTERS

Recognition of financial penalties: requests to other member States

80 Requests to other member States: England and Wales

(1) In Schedule 5 to the Courts Act 2003 (c. 39) (collection of fines and other sums imposed on conviction) in paragraph 38 (the range of further steps available against defaulters)—

- (a) after sub-paragraph (1)(e) insert—
 - “(f) subject to sub-paragraph (4), issuing a certificate requesting enforcement under the Framework Decision on financial penalties;”, and
- (b) after sub-paragraph (3) insert—

“(4) A certificate requesting enforcement under the Framework Decision on financial penalties may only be issued where—

- (a) the sum due is a financial penalty within the meaning of section 80 of the Criminal Justice and Immigration Act 2008, and
- (b) it appears to the fines officer or the court that P is normally resident, or has property or income, in a member State other than the United Kingdom.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Criminal Justice and Immigration Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (5) In this paragraph, references to a certificate requesting enforcement under the Framework Decision on financial penalties are to be construed in accordance with section 92(3) of the Criminal Justice and Immigration Act 2008.”
- (2) The designated officer for a magistrates' court may issue a certificate requesting enforcement under the Framework Decision on financial penalties where—
- a person is required to pay a financial penalty,
 - the penalty is not paid in full within the time allowed for payment,
 - there is no appeal outstanding in relation to the penalty,
 - Schedule 5 to the Courts Act 2003 (c. 39) does not apply in relation to the enforcement of the penalty, and
 - it appears to the designated officer that the person is normally resident in, or has property or income in, a member State other than the United Kingdom.
- (3) For the purposes of subsection (2)(c), there is no appeal outstanding in relation to a financial penalty if—
- no appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal, or
 - such an appeal has been brought but the proceedings on appeal have been concluded.
- (4) Where the person required to pay the financial penalty is a body corporate, subsection (2)(e) applies as if the reference to the person being normally resident in a member State other than the United Kingdom were a reference to the person having its registered office in a member State other than the United Kingdom.
- (5) In this section, “financial penalty” means—
- a fine imposed by a court in England and Wales on a person's conviction of an offence;
 - any sum payable under a compensation order (within the meaning of section 130(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6));
 - a surcharge under section 161A of the Criminal Justice Act 2003 (c. 44);
 - any sum payable under any such order as is mentioned in paragraphs 1 to 9 of Schedule 9 to the Administration of Justice Act 1970 (c. 31) (orders for payment of costs);
 - any sum payable by virtue of section 137(1) or (1A) of the Powers of Criminal Courts (Sentencing) Act 2000 (orders requiring parents to pay fines etc.);
 - any fine or other sum mentioned in section 82(4)(b)(i) to (iv), or any fine imposed by a court in Scotland, which is enforceable in a local justice area in England and Wales by virtue of section 91 of the Magistrates' Courts Act 1980 (c. 43);
 - any other financial penalty, within the meaning of the Framework Decision on financial penalties, specified in an order made by the Lord Chancellor.

81 Procedure on issue of certificate: England and Wales

- (1) This section applies where—
- a magistrates' court or a fines officer has, under paragraph 39(3)(b) or 40 of Schedule 5 to the Courts Act 2003 (c. 39), issued a certificate requesting enforcement under the Framework Decision on financial penalties, or

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- (b) the designated officer for a magistrates' court has issued such a certificate under section 80(2) of this Act.
- (2) The fines officer (in the case of a certificate issued by the officer) or the designated officer for the magistrates' court (in any other case) must give the Lord Chancellor the certificate, together with a certified copy of the decision requiring payment of the financial penalty.
- (3) On receipt of the documents mentioned in subsection (2), the Lord Chancellor must give those documents to the central authority or competent authority of the member State in which the person required to pay the penalty appears to be normally resident or (as the case may be) to have property or income.
- (4) Where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3), no further steps to enforce the decision may be taken in England and Wales except in accordance with provision made by order by the Lord Chancellor.
- (5) Where the person required to pay the financial penalty is a body corporate, subsection (3) applies as if the reference to the member State in which the person appears to be normally resident were a reference to the member State in which the person appears to have its registered office.

82 Requests to other member States: Northern Ireland

- (1) A designated officer of the Northern Ireland Court Service may issue a certificate requesting enforcement under the Framework Decision on financial penalties where—
 - (a) a person is required to pay a financial penalty,
 - (b) the penalty is not paid in full within the time allowed for payment,
 - (c) there is no appeal outstanding in relation to the penalty, and
 - (d) it appears to the designated officer that the person is normally resident in, or has property or income in, a member State other than the United Kingdom.
- (2) For the purposes of subsection (1)(c), there is no appeal outstanding in relation to a financial penalty if—
 - (a) no appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal, or
 - (b) such an appeal has been brought but the proceedings on appeal have been concluded.
- (3) Where the person required to pay the financial penalty is a body corporate, subsection (1)(d) applies as if the reference to the person being normally resident in a member State other than the United Kingdom were a reference to the person having its registered office in a member State other than the United Kingdom.
- (4) In this section—
 - (a) “designated officer of the Northern Ireland Court Service” means a member of the staff of the Northern Ireland Court Service designated by the Lord Chancellor for the purposes of this section;
 - (b) “financial penalty” means—
 - (i) a fine imposed by a court in Northern Ireland on a person's conviction of an offence;

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- (ii) any sum payable under a compensation order (within the meaning of Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I.1994/2795 (N.I.15));
- (iii) any sum payable under an order made under section 2(1), 4(1) or 5(1) of the Costs in Criminal Cases Act (Northern Ireland) 1968 (N.I. 10) or section 41(1) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47);
- (iv) any sum payable by virtue of Article 35 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9) (orders requiring parents to pay fines etc.);
- (v) any fine or other sum mentioned in section 80(5)(a) to (e), or any fine imposed by a court in Scotland, which is enforceable in a petty sessions district in Northern Ireland by virtue of Article 96 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26));
- (vi) any other financial penalty, within the meaning of the Framework Decision on financial penalties, specified in an order made by the Lord Chancellor.

83 Procedure on issue of certificate: Northern Ireland

- (1) This section applies where a designated officer has issued a certificate under section 82(1).
- (2) The designated officer must give the Lord Chancellor the certificate, together with a certified copy of the decision requiring payment of the financial penalty.
- (3) On receipt of the documents mentioned in subsection (2), the Lord Chancellor must give those documents to the central authority or competent authority of the member State in which the person required to pay the penalty appears to be normally resident or (as the case may be) to have property or income.
- (4) Where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3), no further steps to enforce the decision may be taken in Northern Ireland except in accordance with provision made by order by the Lord Chancellor.
- (5) Where the person required to pay the financial penalty is a body corporate, subsection (3) applies as if the reference to the member State in which the person appears to be normally resident were a reference to the member State in which the person appears to have its registered office.

Recognition of financial penalties: requests from other member States

84 Requests from other member States: England and Wales

- (1) This section applies where—
 - (a) the competent authority or central authority of a member State other than the United Kingdom gives the Lord Chancellor—
 - (i) a certificate requesting enforcement under the Framework Decision on financial penalties, and
 - (ii) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and

Stamps: This version of this part contains provisions that are prospective.

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- (b) the financial penalty is suitable for enforcement in England and Wales (see section 91(1)).
- (2) If the certificate states that the person required to pay the financial penalty is normally resident in England and Wales, the Lord Chancellor must give the documents mentioned in subsection (1)(a) to the designated officer for the local justice area in which it appears that the person is normally resident.
- (3) Otherwise, the Lord Chancellor must give the documents mentioned in subsection (1)(a) to the designated officer for such local justice area as appears appropriate.
- (4) Where the Lord Chancellor acts under subsection (2) or (3), the Lord Chancellor must also give the designated officer a notice—
 - (a) stating whether the Lord Chancellor thinks that any of the grounds for refusal apply (see section 91(2)), and
 - (b) giving reasons for that opinion.
- (5) Where the person required to pay the financial penalty is a body corporate, subsection (2) applies as if the reference to the local justice area in which it appears that the person is normally resident were a reference to the local justice area in which it appears that the person has its registered office.
- (6) Where—
 - (a) the competent authority or central authority of a member State other than the United Kingdom gives the central authority for Scotland the documents mentioned in subsection (1)(a), and
 - (b) without taking any action to enforce the financial penalty in Scotland, the central authority for Scotland gives the documents to the Lord Chancellor,
 this section applies as if the competent authority or central authority of the other member State gave the documents to the Lord Chancellor.

85 Procedure on receipt of certificate by designated officer

- (1) This section applies where the Lord Chancellor gives the designated officer for a local justice area—
 - (a) a certificate requesting enforcement under the Framework Decision on financial penalties,
 - (b) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and
 - (c) a notice under section 84(4).
- (2) The designated officer must refer the matter to a magistrates' court acting for that area.
- (3) The magistrates' court must decide whether it is satisfied that any of the grounds for refusal apply (see section 91(2)).
- (4) The designated officer must inform the Lord Chancellor of the decision of the magistrates' court.
- (5) Subsection (6) applies unless the magistrates' court is satisfied that one or more of the grounds for refusal apply.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Criminal Justice and Immigration Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (6) The enactments specified in subsection (7) apply in relation to the financial penalty as if it were a sum adjudged to be paid by a conviction of the magistrates' court on the date when the court made the decision mentioned in subsection (4).
- (7) The enactments specified in this subsection are—
- (a) Part 3 of the Magistrates' Courts Act 1980 (c. 43) (satisfaction and enforcement);
 - (b) Schedules 5 and 6 to the Courts Act 2003 (c. 39) (collection of fines etc. and discharge of fines etc. by unpaid work);
 - (c) any subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)) made under the enactments specified in paragraphs (a) and (b).
- (8) If the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid, the reference in subsection (6) to the financial penalty is to be read as a reference to such part of the penalty as remains unpaid.

86 Modification of Magistrates' Courts Act 1980

- (1) Section 90 of the Magistrates' Courts Act 1980 is modified as follows in its application to financial penalties by virtue of section 85(6) of this Act.
- (2) Subsection (1) applies as if for the words from “he is residing” to the end of that subsection there were substituted “he is residing, or has property or a source of income, in any petty sessions district in Northern Ireland—
- (a) the court or the fines officer (as the case may be) may order that payment of the sum shall be enforceable in that petty sessions district, and
 - (b) if such an order is made, the court or the fines officer must notify the Lord Chancellor.”

87 Requests from other member States: Northern Ireland

- (1) This section applies where—
- (a) the competent authority or central authority of a member State other than the United Kingdom gives the Lord Chancellor—
 - (i) a certificate requesting enforcement under the Framework Decision on financial penalties, and
 - (ii) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and
 - (b) the financial penalty is suitable for enforcement in Northern Ireland (see section 91(1)).
- (2) If the certificate states that the person required to pay the financial penalty is normally resident in Northern Ireland, the Lord Chancellor must give the documents mentioned in subsection (1)(a) to the clerk of petty sessions for the petty sessions district in which it appears that the person is normally resident.
- (3) Otherwise, the Lord Chancellor must give the documents mentioned in subsection (1) (a) to the clerk of petty sessions for such petty sessions district as appears appropriate.

Stamps: This version of this part contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Criminal Justice and Immigration Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (4) Where the Lord Chancellor acts under subsection (2) or (3), the Lord Chancellor must also give the clerk of petty sessions a notice—
 - (a) stating whether the Lord Chancellor thinks that any of the grounds for refusal apply (see section 91(2)), and
 - (b) giving reasons for that opinion.
- (5) Where the person required to pay the financial penalty is a body corporate, subsection (2) applies as if the reference to the petty sessions district in which it appears that the person is normally resident were a reference to the petty sessions district in which it appears that the person has its registered office.
- (6) Where—
 - (a) the competent authority or central authority of a member State other than the United Kingdom gives the central authority for Scotland the documents mentioned in subsection (1)(a), and
 - (b) without taking any action to enforce the financial penalty in Scotland, the central authority for Scotland gives the documents to the Lord Chancellor,
 this section applies as if the competent authority or central authority of the other member State gave the documents to the Lord Chancellor.

88 Procedure on receipt of certificate by clerk of petty sessions

- (1) This section applies where the Lord Chancellor gives the clerk of petty sessions for a petty sessions district—
 - (a) a certificate requesting enforcement under the Framework Decision on financial penalties,
 - (b) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and
 - (c) a notice under section 87(4).
- (2) The clerk must refer the matter to a magistrates' court acting for the petty sessions district.
- (3) The magistrates' court must decide whether it is satisfied that any of the grounds for refusal apply (see section 91(2)).
- (4) The clerk must inform the Lord Chancellor of the decision of the magistrates' court.
- (5) Subsection (6) applies unless the magistrates' court is satisfied that one or more of the grounds for refusal apply.
- (6) Part 9 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)), and any instrument made under that Part, apply in relation to the financial penalty as if it were a sum adjudged to be paid by a conviction of the magistrates' court on the date when the court made the decision mentioned in subsection (4).
- (7) If the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid, the reference in subsection (6) to the financial penalty is to be read as a reference to such part of the penalty as remains unpaid.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Criminal Justice and Immigration Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

89 Modification of Magistrates' Courts (Northern Ireland) Order 1981

- (1) Part 9 of the Magistrates' Courts (Northern Ireland) Order 1981 is modified as follows in its application to financial penalties by virtue of section 88(6) of this Act.
- (2) Article 92 applies in relation to any financial penalty for an amount exceeding £20,000 as if for paragraph (5) there were substituted—
 - “(5) The period for which a person may be committed to prison under this Article in default of payment or levy of any sum or part of such sum shall not exceed the maximum period which the Crown Court could have fixed under section 35(1)(c) of the Criminal Justice Act (Northern Ireland) 1945 had the financial penalty been a fine imposed by the Crown Court.”
- (3) For the purposes of subsection (2), if the amount of a financial penalty is specified in a currency other than sterling, that amount must be converted to sterling by reference to the London closing exchange rate on the relevant date.
- (4) In subsection (3), the “relevant date” means the date on which the decision imposing the financial penalty was made.
- (5) Article 95 applies as if for the words from “he is residing” in paragraph (1) to the end of that paragraph there were substituted “he is residing, or has property or a source of income, in any local justice area in England and Wales—
 - (a) the court may order that payment of the sum shall be enforceable in that local justice area, and
 - (b) if such an order is made, the court must notify the Lord Chancellor.”

90 Transfer of certificates to central authority for Scotland

- (1) This section applies where—
 - (a) the competent authority or central authority of a member State other than the United Kingdom gives the Lord Chancellor—
 - (i) a certificate requesting enforcement under the Framework Decision on financial penalties, and
 - (ii) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, but
 - (b) the Lord Chancellor is not required by section 84 or 87 to give the documents to a designated officer for a local justice area in England and Wales or to a clerk of petty sessions for a petty sessions district in Northern Ireland.
- (2) If the certificate states that the person is normally resident or has property or a source of income in Scotland, the Lord Chancellor must give the documents to the central authority for Scotland.

Recognition of financial penalties: miscellaneous

91 Recognition of financial penalties: general

- (1) Schedule 18 specifies when a financial penalty is suitable for enforcement in England and Wales for the purposes of section 84(1) and when a financial penalty is suitable for enforcement in Northern Ireland for the purposes of section 87(1).

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- (2) Schedule 19 specifies the grounds for refusal for the purposes of sections 84(4)(a), 85(3) and (5), 87(4)(a) and 88(3) and (5).
- (3) The Lord Chancellor may by order make further provision for or in connection with giving effect to the Framework Decision on financial penalties.
- (4) An order under section 81(4), 83(4) or subsection (3) of this section may in particular modify, amend, repeal or revoke any provision of—
 - (a) any Act (including this Act and any Act passed in the same Session as this Act);
 - (b) subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)) made before the passing of this Act;
 - (c) Northern Ireland legislation passed, or made, before the passing of this Act;
 - (d) any instrument made, before the passing of this Act, under Northern Ireland legislation.

92 Interpretation of sections 80 to 91 etc.

- (1) In sections 80 to 91 and Schedules 18 and 19—
 - “central authority”, in relation to a member State other than the United Kingdom, means an authority designated by the State as a central authority for the purposes of the Framework Decision on financial penalties;
 - “central authority for Scotland” means the person or body which, by virtue of an order under section 56 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) (recognition of EU financial penalties), acts as the central authority in relation to Scotland for the purposes of the Framework Decision;
 - “competent authority”, in relation to a member State, means an authority designated by the State as a competent authority for the purposes of that Decision;
 - “the Framework Decision on financial penalties” means the Framework Decision of the Council of the European Union made on 24 February 2005 on the application of the principle of mutual recognition to financial penalties (2005/214/JHA).
- (2) In sections 84 to 91 and Schedules 18 and 19—
 - “decision” has the meaning given by Article 1 of the Framework Decision on financial penalties (except in sections 85(4) and 88(4));
 - “financial penalty” has the meaning given by that Article.
- (3) References in sections 80 to 91 to a certificate requesting enforcement under the Framework Decision on financial penalties are references to such a certificate as is provided for by Article 4 of that Decision.

Repatriation of prisoners

93 Delivery of prisoner to place abroad for purposes of transfer out of the United Kingdom

In section 2(1) of the Repatriation of Prisoners Act 1984 (c. 47) (transfer out of the UK), for subsection (1) substitute—

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“(1) The effect of a warrant under section 1 providing for the transfer of the prisoner out of the United Kingdom shall be to authorise—

- (a) the taking of the prisoner to any place in any part of the United Kingdom, his delivery at a place of departure from the United Kingdom into the custody of an appropriate person and his removal by that person from the United Kingdom to a place outside the United Kingdom; or
- (b) the taking of the prisoner to any place in any part of the United Kingdom, his removal from the United Kingdom and his delivery, at the place of arrival from the United Kingdom, into the custody of an appropriate person.

(1A) In subsection (1) “appropriate person” means a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred.”

94 Issue of warrant transferring responsibility for detention and release of an offender to or from the relevant Minister

After section 4 of the Repatriation of Prisoners Act 1984 (transfer into the United Kingdom) insert—

“Transfer of responsibility for detention and release of offender present outside the country or territory in which he is required to be detained

4A Issue of warrant transferring responsibility for detention and release of offender

(1) This section enables responsibility for the detention and release of a person to whom subsection (2) or (3) applies to be transferred between the relevant Minister in the United Kingdom and the appropriate authority in a country or territory outside the British Islands.

(2) A person falls within this subsection if that person—

- (a) is a person to whom section 1(7) applies by virtue of—
 - (i) an order made in the course of the exercise by a court or tribunal in any part of the United Kingdom of its criminal jurisdiction; or
 - (ii) any of the provisions of this Act or any similar provisions of the law of any part of the United Kingdom; and
- (b) is present in a country or territory outside the British Islands.

(3) A person falls within this subsection if that person—

- (a) is a person to whom section 1(7) applies by virtue of —
 - (i) an order made in the course of the exercise by a court or tribunal in a country or territory outside the British Islands of its criminal jurisdiction; or
 - (ii) any provisions of the law of such a country or territory which are similar to any of the provisions of this Act; and
- (b) is present in the United Kingdom.

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- (4) Terms used in subsection (2)(a) and (3)(a) have the same meaning as in section 1(7).
- (5) Subject to the following provisions of this section, where—
- (a) the United Kingdom is a party to international arrangements providing for the transfer between the United Kingdom and a country or territory outside the British Islands of responsibility for the detention and release of persons to whom subsection (2) or (3) applies,
 - (b) the relevant Minister and the appropriate authority of that country or territory have each agreed to the transfer under those arrangements of responsibility for the detention and release of a particular person to whom subsection (2) or (3) applies (in this Act referred to as “the relevant person”), and
 - (c) in a case in which the terms of those arrangements provide for the transfer of responsibility to take place only with the relevant person’s consent, that consent has been given,
- the relevant Minister shall issue a warrant providing for the transfer of responsibility for the detention and release of the relevant person from that Minister (where subsection (2) applies) or to that Minister (where subsection (3) applies).
- (6) The relevant Minister shall not issue a warrant under this section providing for the transfer of responsibility for the detention and release of a person to the relevant Minister unless—
- (a) that person is a British citizen;
 - (b) the transfer appears to the relevant Minister to be appropriate having regard to any close ties which that person has with the United Kingdom.
- (7) The relevant Minister shall not issue a warrant under this section where, after the duty in subsection (5) has arisen, circumstances arise or are brought to his attention which in his opinion make it inappropriate that the transfer of responsibility should take place.
- (8) The relevant Minister shall not issue a warrant under this section (other than one superseding an earlier warrant) unless he is satisfied that all reasonable steps have been taken to inform the relevant person in writing in his own language—
- (a) of the substance, so far as relevant to the case, of the international arrangements in accordance with which it is proposed to transfer responsibility for his detention and release;
 - (b) of the effect in relation to the relevant person of the warrant which it is proposed to issue under this section;
 - (c) in the case of a person to whom subsection (2) applies, of the effect in relation to his case of so much of the law of the country or territory concerned as has effect with respect to transfers under those arrangements of responsibility for his detention and release;
 - (d) in the case of a person to whom subsection (3) applies, of the effect in relation to his case of the law relating to his detention under that warrant and subsequent release (including the effect of any enactment or instrument under which he may be released earlier than provided for by the terms of the warrant); and
 - (e) of the powers of the relevant Minister under section 6;

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and the relevant Minister shall not issue a warrant superseding an earlier warrant under this section unless the requirements of this subsection were fulfilled in relation to the earlier warrant.

- (9) A consent given for the purposes of subsection (5)(c) shall not be capable of being withdrawn after a warrant under this section has been issued in respect of the relevant person; and, accordingly, a purported withdrawal of that consent after that time shall not affect the validity of the warrant, or of any provision which by virtue of section 6 subsequently supersedes provisions of that warrant, or of any direction given in relation to the prisoner under section 4B(3).

- (10) In this section “relevant Minister” means—

- (a) the Scottish Ministers in a case where the person who is the subject of the proposed transfer of responsibility is—
- (i) a person to whom subsection (2) applies who is for the time being required to be detained at a place in Scotland; or
 - (ii) a person to whom subsection (3) applies, if it is proposed that he will be detained at a place in Scotland;
- (b) the Secretary of State, in any other case.

4B Transfer of responsibility from the United Kingdom

- (1) The effect of a warrant under section 4A relating to a person to whom subsection (2) of that section applies shall be to transfer responsibility for the detention and release of that person from the relevant Minister (as defined in section 4A(10)) to the appropriate authority of the country or territory in which he is present.
- (2) Subject to subsections (3) to (6), the order by virtue of which the relevant person is required to be detained at the time such a warrant is issued in respect of him shall continue to have effect after the transfer of responsibility so as to apply to him if he comes to be in the United Kingdom at any time when under that order he is to be, or may be, detained.
- (3) If, at any time after the transfer of responsibility, it appears to the relevant Minister appropriate to do so in order that effect may be given to the international arrangements in accordance with which the transfer took place, the relevant Minister may give a direction—
- (a) varying the order referred to in subsection (2); or
 - (b) providing for the order to cease to have effect.
- (4) In subsection (3) “relevant Minister” means—
- (a) the Scottish Ministers, where Scotland is the part of the United Kingdom in which the order referred to in subsection (2) has effect; and
 - (b) the Secretary of State in any other case.
- (5) The power by direction under subsection (3) to vary the order referred to in subsection (2) includes power by direction—
- (a) to provide for how any period during which the detention and release of the relevant person is, by virtue of a warrant under section 4A, the responsibility of a country or territory outside the United Kingdom is to be treated for the purposes of the order; and

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- (b) to provide for the relevant person to be treated as having been released or discharged as mentioned in any paragraph of section 2(4)(b).
- (6) Except in relation to any period during which a restriction order is in force in respect of the relevant person, subsection (2) shall not apply in relation to a hospital order; and, accordingly, a hospital order shall cease to have effect in relation to that person—
 - (a) at the time of the transfer of responsibility, if no restriction order is in force in respect of him at that time; and
 - (b) if at that time a restriction order is in force in respect of him, as soon after the transfer of responsibility as the restriction order ceases to have effect.
- (7) In subsection (6) “hospital order” and “restriction order” have the same meaning as in section 2(6).
- (8) References in this section to the order by virtue of which a person is required to be detained at the time a warrant under section 4A is issued in respect of him include references to any order by virtue of which he is required to be detained after the order by virtue of which he is required to be detained at that time ceases to have effect.

4C Transfer of responsibility to the United Kingdom

- (1) The effect of a warrant under section 4A relating to a person to whom subsection (3) of that section applies shall be to transfer responsibility for the detention and release of that person to the relevant Minister (as defined in section 4A(10)) and to authorise—
 - (a) the taking of that person in custody to such place in any part of the United Kingdom as may be specified in the warrant, being a place at which effect may be given to the provisions contained in the warrant by virtue of paragraph (b); and
 - (b) the detention of that person in any part of the United Kingdom in accordance with such provisions as may be contained in the warrant, being provisions appearing to the relevant Minister to be appropriate for giving effect to the international arrangements in accordance with which responsibility for that person is transferred.
- (2) A provision shall not be contained by virtue of subsection (1)(b) in a warrant under section 4A unless it satisfies the following two conditions, that is to say—
 - (a) it is a provision with respect to the detention of a person in a prison, a hospital or any other institution; and
 - (b) it is a provision which at the time the warrant is issued may be contained in an order made either—
 - (i) in the course of the exercise of its criminal jurisdiction by a court in the part of the United Kingdom in which the person is to be detained; or
 - (ii) otherwise than by a court but for the purpose of giving effect to an order made as mentioned in sub-paragraph (i).
- (3) Section 3(3) applies for determining for the purposes of paragraph (b) of subsection (1) above what provisions are appropriate for giving effect to the international arrangements mentioned in that paragraph in a relevant person's

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case as it applies for the purposes of section 3(1)(c) in the case of a prisoner who is to be transferred into the United Kingdom.

- (4) Subject to subsection (6) and Part 2 of the Schedule to this Act, a provision contained by virtue of subsection (1)(b) in a warrant under section 4A shall for all purposes have the same effect as the same provision contained in an order made as mentioned in sub-paragraph (i) or, as the case may be, sub-paragraph (ii) of subsection (2)(b).
- (5) A provision contained by virtue of subsection (1)(b) in a warrant under section 4A shall take effect with the delivery of the relevant person to the place specified in the warrant for the purposes of subsection (1)(a).
- (6) Subsection (4) shall not confer any right of appeal on the relevant person against provisions contained by virtue of subsection (1)(b) in a warrant under this section.
- (7) Part 2 of the Schedule to this Act shall have effect with respect to the operation of certain enactments in relation to provisions contained by virtue of subsection (1)(b) in a warrant under section 4A.
- (8) For the purposes of determining whether at any particular time any such order as is mentioned in subsection (2)(b) could have been made as so mentioned, there shall be disregarded both—
 - (a) any requirement that certain conditions must be satisfied before the order is made; and
 - (b) any restriction on the minimum period in respect of which the order may be made.”

95 Powers to arrest and detain persons believed to fall within section 4A(3) of Repatriation of Prisoners Act 1984

After section 4C of the Repatriation of Prisoners Act 1984 (c. 47) (as inserted by section 94) insert—

“Persons believed to fall within section 4A(3): powers of arrest and detention

4D Arrest and detention with a view to establishing whether a person falls within section 4A(3) etc.

- (1) The Secretary of State or the Scottish Ministers may issue a certificate stating that the issuing authority—
 - (a) considers that there are reasonable grounds for believing that a person in the United Kingdom is a person falling within section 4A(3), and
 - (b) has requested written confirmation from the country or territory concerned of the details of that person's case.
- (2) The issuing authority may send the certificate (with any other documents appearing to the authority to be relevant) to the appropriate judge with a view to obtaining the issue of a warrant under subsection (3).
- (3) The appropriate judge may, on receiving the certificate, issue a warrant for the arrest of the person concerned if the judge is satisfied that there are reasonable grounds for believing that the person falls within section 4A(3).

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- (4) The warrant may be executed anywhere in the United Kingdom by any designated person (and it is immaterial whether or not he is in possession of the warrant or a copy of it).
- (5) A person arrested under this section shall, as soon as is practicable—
 - (a) be given a copy of the warrant for his arrest; and
 - (b) be brought before the appropriate judge.
- (6) The appropriate judge may order that a person before him who is the subject of a certificate under this section is to be detained from the time the order is made until the end of the period of seven days beginning with the day after that on which the order is made.
- (7) The purpose of an order under subsection (6) is to secure the detention of the person concerned while—
 - (a) written confirmation is obtained from a representative of the country or territory concerned of the details of his case;
 - (b) it is established whether he is a person falling within section 4A(3); and
 - (c) any application for an order under section 4E(6) is made in respect of him.
- (8) Subject to subsection (9), a person detained under such an order may be released at any time during the period mentioned in subsection (6) and shall be released at the end of that period (if not released sooner).
- (9) Subsection (8) ceases to apply to the detained person if, during that period, an order under section 4E is made in respect of him.
- (10) It is immaterial for the purposes of subsection (6) whether or not the person concerned has previously been arrested under this section.

4E Arrest and detention with a view to determining whether to issue a warrant under section 4A

- (1) The Secretary of State or the Scottish Ministers may issue a certificate stating that the issuing authority—
 - (a) considers that a person in the United Kingdom is a person falling within section 4A(3), and
 - (b) has received written confirmation from a representative of the country or territory concerned of the details of that person's case;and it is immaterial for the purposes of this section whether or not the person concerned has been previously arrested or detained under section 4D.
- (2) The issuing authority may send the certificate (with a copy of the written confirmation mentioned in subsection (1)(b) and any other documents appearing to that authority to be relevant) to the appropriate judge with a view to obtaining the issue of a warrant under subsection (3).
- (3) The appropriate judge may, on receiving the certificate, issue a warrant for the arrest of the person concerned if the judge is satisfied that there are reasonable grounds for believing that the person falls within section 4A(3).

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- (4) The warrant may be executed anywhere in the United Kingdom by any designated person (and it is immaterial whether or not that person is in possession of the warrant or a copy of it).
- (5) A person arrested under this section shall, as soon as is practicable—
 - (a) be given a copy of the warrant for his arrest; and
 - (b) be brought before the appropriate judge.
- (6) The appropriate judge may, on the application of the Secretary of State or the Scottish Ministers, order that a person before the judge who—
 - (a) is the subject of a certificate under this section, and
 - (b) the judge is satisfied is a person falling within section 4A(3),
 shall be detained from the time the order is made until the end of the period of fourteen days beginning with the day after that on which the order is made.
- (7) The purpose of an order under subsection (6) is to secure the detention of the person concerned until—
 - (a) it is determined whether to issue a warrant under section 4A; and
 - (b) if so determined, such a warrant is issued.
- (8) Subject to subsection (9), a person detained under such an order may be released at any time during the period mentioned in subsection (6) and shall be released at the end of that period (if not released sooner).
- (9) Subsection (8) ceases to apply to the detained person if, during that period, a warrant under section 4A is issued in respect of him.
- (10) It is immaterial for the purposes of subsection (6) whether or not the person concerned has previously been arrested or detained under section 4D or arrested under this section.

4F Sections 4D and 4E: supplementary provisions

- (1) This section has effect for the purposes of sections 4D and 4E.
- (2) A “designated person” is a person designated by the Secretary of State or the Scottish Ministers.
- (3) The appropriate judge is—
 - (a) in England and Wales, any District Judge (Magistrates’ Courts) who is designated for those purposes by the Lord Chief Justice after consulting the Lord Chancellor;
 - (b) in Scotland, the sheriff of Lothian and Borders; and
 - (c) in Northern Ireland, any county court judge or resident magistrate who is designated for those purposes by the Lord Chief Justice of Northern Ireland after consulting the Lord Chancellor.
- (4) A designation under subsection (2) or (3)(a) or (c) may be made—
 - (a) for the purposes of section 4D or 4E (or both); and
 - (b) for all cases or only for cases (or cases of a description) specified in the designation.

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- (5) A designated person shall have all the powers, authority, protection and privileges of a constable in any part of the United Kingdom in which a person who may be arrested under section 4D or 4E is for the time being.”

96 Amendments relating to Scotland

- (1) The amendments of section 1 of the Repatriation of Prisoners Act 1984 (c. 47) made by section 44(2) and (3) of the Police and Justice Act 2006 (c. 48) (which amend the requirement for the prisoner's consent to any transfer to or from the United Kingdom) apply in relation to cases in which the relevant Minister for the purposes of section 1 is the Scottish Ministers as they apply in other cases.
- (2) In section 2(6) of the Repatriation of Prisoners Act 1984 (transfer out of the United Kingdom) in the definition of “hospital order”, after “1986” insert “ or a compulsion order under section 57A of the Criminal Procedure (Scotland) Act 1995”.
- (3) In section 8(1) (interpretation etc.), before the definition of “international arrangements” insert—
- ““enactment” includes an enactment comprised in, or in an instrument under, an Act of the Scottish Parliament;”.

Mutual legal assistance in revenue matters

97 Power to transfer functions under Crime (International Co-operation) Act 2003 in relation to direct taxation

- (1) In section 27(1) of the Crime (International Co-operation) Act 2003 (c. 32) (exercise of powers by others)—
- (a) in paragraph (a), for “Commissioners of Customs and Excise” substitute “ Commissioners for Revenue and Customs”; and
- (b) in paragraph (b), for “a customs officer” substitute “ an officer of Revenue and Customs”.
- (2) Paragraph 14 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (power under section 27(1) not applicable to former inland revenue matters etc.) ceases to have effect.

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Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Act Appointed Day(s) by S.R. 2009/243 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.R. 2010/349 (commencement order for 2007 c. 2 (N.I.))
- Act Appointed Day(s) by S.I. 2008/1466 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2008/1586 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2008/2712 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2008/2993 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2008/3260 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/1028 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/140 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/1678 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/1842 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/2606 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/2780 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/3074 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/860 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2010/712 (commencement order for 2008 c. 4)
- S.I. 2010/413 commences (2010 asp 13)
- S.I. 2009/1357 commences (SI 2009/1182)
- S.I. 2009/3074 commences (2008 c. 4)
- S.I. 2009/415 commences (2008 c. 17)
- S.I. 2010/1858 commences (2009 c. 25)
- S.I. 2010/293 commences (2009 c. 24)
- Act inserted by S.I. 2010/976

Criminal Justice and Immigration Act 2008 (c. 4)
SCHEDULE 18 – Penalties suitable for enforcement in England and Wales or Northern Ireland
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1

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SCHEDULES

PROSPECTIVE

SCHEDULE 18

Section 91(1)

PENALTIES SUITABLE FOR ENFORCEMENT IN
ENGLAND AND WALES OR NORTHERN IRELAND

Person residing in England and Wales

- 1 The financial penalty is suitable for enforcement in England and Wales if the certificate states that the person required to pay the penalty is normally resident in England and Wales.

Person residing in Northern Ireland

- 2 The financial penalty is suitable for enforcement in Northern Ireland if the certificate states that the person required to pay the penalty is normally resident in Northern Ireland.

Person having property etc. in England and Wales

- 3 The financial penalty is suitable for enforcement in England and Wales if—
- (a) the certificate states that the person required to pay the penalty has property or a source of income in England and Wales, and
 - (b) the certificate does not state—
 - (i) that the person has property or a source of income in Northern Ireland or Scotland, or
 - (ii) that the person is normally resident in the United Kingdom.

Person having property etc. in Northern Ireland

- 4 The financial penalty is suitable for enforcement in Northern Ireland if—
- (a) the certificate states that the person required to pay the penalty has property or a source of income in Northern Ireland, and
 - (b) the certificate does not state—
 - (i) that the person has property or a source of income in England and Wales or Scotland, or
 - (ii) that the person is normally resident in the United Kingdom.

Person having property etc. in England and Wales and Northern Ireland

- 5 (1) This paragraph applies if—

2

Criminal Justice and Immigration Act 2008 (c. 9)
 SCHEDULE 18 – Penalties suitable for enforcement in England and Wales or Northern Ireland
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- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in England and Wales,
 - (b) the certificate also states that the person has property or a source of income in Northern Ireland, and
 - (c) the certificate does not state—
 - (i) that the person has property or a source of income in Scotland, or
 - (ii) that the person is normally resident in the United Kingdom.
- (2) The financial penalty is suitable for enforcement in England and Wales unless it is suitable for enforcement in Northern Ireland by virtue of sub-paragraph (3).
- (3) The financial penalty is suitable for enforcement in Northern Ireland if the Lord Chancellor thinks that it is more appropriate for the penalty to be enforced in Northern Ireland than in England and Wales.

Person having property etc. in England and Wales and Scotland

- 6 (1) This paragraph applies if—
- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in England and Wales,
 - (b) the certificate also states that the person has property or a source of income in Scotland, and
 - (c) the certificate does not state—
 - (i) that the person has property or a source of income in Northern Ireland, or
 - (ii) that the person is normally resident in the United Kingdom.
- (2) The financial penalty is suitable for enforcement in England and Wales unless sub-paragraph (3) applies.
- (3) This sub-paragraph applies if—
- (a) the Lord Chancellor was given the certificate by the competent authority or central authority of another member State (and not by the central authority for Scotland), and
 - (b) the Lord Chancellor thinks that it is more appropriate for the financial penalty to be enforced in Scotland than in England and Wales.

Person having property etc. in Northern Ireland and Scotland

- 7 (1) This paragraph applies if—
- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in Northern Ireland,
 - (b) the certificate also states that the person has property or a source of income in Scotland, and
 - (c) the certificate does not state —
 - (i) that the person has property or a source of income in England and Wales, or
 - (ii) that the person is normally resident in the United Kingdom.
- (2) The financial penalty is suitable for enforcement in Northern Ireland unless sub-paragraph (3) applies.

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Criminal Justice and Immigration Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(3) This sub-paragraph applies if—

- (a) the Lord Chancellor was given the certificate by the competent authority or central authority of another member State (and not by the central authority for Scotland), and
- (b) the Lord Chancellor thinks that it is more appropriate for the financial penalty to be enforced in Scotland than in Northern Ireland.

Person having property etc. in England and Wales, Scotland and Northern Ireland

8 (1) This paragraph applies if—

- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in Northern Ireland,
- (b) the certificate also states that the person has property or a source of income in England and Wales and in Scotland, and
- (c) the certificate does not state that the person is normally resident in the United Kingdom.

(2) The financial penalty is suitable for enforcement in England and Wales unless—

- (a) the penalty is suitable for enforcement in Northern Ireland by virtue of sub-paragraph (3) or (4), or
- (b) sub-paragraph (5) applies.

(3) The financial penalty is suitable for enforcement in Northern Ireland if—

- (a) the Lord Chancellor was given the certificate by the competent authority or central authority of another member State (and not by the central authority for Scotland), and
- (b) the Lord Chancellor thinks that it is more appropriate for the financial penalty to be enforced in Northern Ireland than in England and Wales or Scotland.

(4) The financial penalty is suitable for enforcement in Northern Ireland if—

- (a) the Lord Chancellor was given the certificate by the central authority for Scotland, and
- (b) the Lord Chancellor thinks that it is more appropriate for the financial penalty to be enforced in Northern Ireland than in England and Wales.

(5) This sub-paragraph applies if—

- (a) the Lord Chancellor was given the certificate by the competent authority or central authority of another member State (and not by the central authority for Scotland), and
- (b) the Lord Chancellor thinks that it is more appropriate for the financial penalty to be enforced in Scotland than in England and Wales or Northern Ireland.

Interpretation

9 Where the person required to pay the financial penalty is a body corporate, this Schedule applies as if—

- (a) the reference in paragraph 1 to the person being normally resident in England and Wales were a reference to the person having its registered office in England and Wales,

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Criminal Justice and Immigration Act 2008 (c. 9)
SCHEDULE 18 – Penalties suitable for enforcement in England and Wales or Northern Ireland
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- (b) the reference in paragraph 2 to the person being normally resident in Northern Ireland were a reference to the person having its registered office in Northern Ireland, and
- (c) any reference to the person being normally resident in the United Kingdom were a reference to the person having its registered office in the United Kingdom.

Status:

This version of this schedule contains provisions that are prospective.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Act Appointed Day(s) by S.R. 2009/243 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.R. 2010/349 (commencement order for 2007 c. 2 (N.L.))
- Act Appointed Day(s) by S.I. 2008/1466 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2008/1586 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2008/2712 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2008/2993 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2008/3260 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/1028 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/140 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/1678 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/1842 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/2606 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/2780 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/3074 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/860 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2010/712 (commencement order for 2008 c. 4)
- S.S.I. 2010/413 commences (2010 asp 13)
- S.I. 2009/1357 commences (SI 2009/1182)
- S.I. 2009/3074 commences (2008 c. 4)
- S.I. 2009/415 commences (2008 c. 17)
- S.I. 2010/1858 commences (2009 c. 25)
- S.I. 2010/293 commences (2009 c. 24)
- Act inserted by S.I. 2010/976
- Act text amended by S.I. 2010/976
- Act text amended by S.I. 2011/1043

Criminal Justice and Immigration Act 2008 (c. 4)
SCHEDULE 19 – Grounds for refusal to enforce financial penalties
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1

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Criminal Justice and Immigration Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

PROSPECTIVE

SCHEDULE 19

Section 91(2)

GROUND FOR REFUSAL TO ENFORCE FINANCIAL PENALTIES

PART 1

THE GROUNDS FOR REFUSAL

- 1 A penalty (of any kind) has been imposed on the liable person in respect of the conduct to which the certificate relates under the law of any part of the United Kingdom (whether or not the penalty has been enforced).
- 2 A penalty (of any kind) has been imposed on the liable person in respect of that conduct under the law of any member State, other than the United Kingdom and the issuing State, and that penalty has been enforced.
- 3 (1) The decision was made in respect of conduct—
 - (a) that is not specified in Part 2 of this Schedule, and
 - (b) would not constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part.
 (2) In sub-paragraph (1), “the relevant part of the United Kingdom” means—
 - (a) in the application of this Schedule to England and Wales, England and Wales, and
 - (b) in the application of this Schedule to Northern Ireland, Northern Ireland.
- 4 (1) The decision was made in respect of conduct—
 - (a) that occurred outside the territory of the issuing State, and
 - (b) would not constitute an offence under the law of the relevant part of the United Kingdom if it occurred outside that part.
 (2) In sub-paragraph (1), “the relevant part of the United Kingdom” has the same meaning as in paragraph 3(2).
- 5 The decision was made in respect of conduct by a person who was under the age of 10 when the conduct took place.
- 6 The certificate does not confirm that—
 - (a) if the proceedings in which the decision was made were conducted in writing, the liable person was informed of the right to contest the proceedings and of the time limits that applied to the exercise of that right;
 - (b) if those proceedings provided for a hearing to take place and the liable person did not attend, the liable person was informed of the proceedings or indicated an intention not to contest them.

2

Criminal Justice and Immigration Act 2008 (c. 4)
 SCHEDULE 19 – *Criteria for refusal to enforce financial penalties*
 Document Generated: 2011-06-13

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Criminal Justice and Immigration Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- 7 (1) The financial penalty is for an amount less than 70 euros.
- (2) For the purposes of sub-paragraph (1), if the amount of a financial penalty is specified in a currency other than the euro, that amount must be converted to euros by reference to the London closing exchange rate on the date the decision was made.
- (3) The Lord Chancellor may by order substitute a different amount for the amount for the time being specified in sub-paragraph (1).

PART 2

EUROPEAN FRAMEWORK LIST (FINANCIAL PENALTIES)

- 8 Participation in a criminal organisation.
- 9 Terrorism.
- 10 Trafficking in human beings.
- 11 Sexual exploitation of children and child pornography.
- 12 Illicit trafficking in narcotic drugs and psychotropic substances.
- 13 Illicit trafficking in weapons, munitions and explosives.
- 14 Corruption.
- 15 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.
- 16 Laundering of the proceeds of crime.
- 17 Counterfeiting currency, including of the euro.
- 18 Computer-related crime.
- 19 Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties.
- 20 Facilitation of unauthorised entry and residence.
- 21 Murder, grievous bodily injury.
- 22 Illicit trade in human organs and tissue.
- 23 Kidnapping, illegal restraint and hostage-taking.
- 24 Racism and xenophobia.
- 25 Organised or armed robbery.
- 26 Illicit trafficking in cultural goods, including antiques and works of art.
- 27 Swindling.
- 28 Racketeering and extortion.
- 29 Counterfeiting and piracy of products.
- 30 Forgery of administrative documents and trafficking therein.
- 31 Forgery of means of payment.
- 32 Illicit trafficking in hormonal substances and other growth promoters.

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- 33 Illicit trafficking in nuclear or radioactive materials.
- 34 Trafficking in stolen vehicles.
- 35 Rape.
- 36 Arson.
- 37 Crimes within the jurisdiction of the International Criminal Court.
- 38 Unlawful seizure of aircraft or ships.
- 39 Sabotage.
- 40 Conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods.
- 41 Smuggling of goods.
- 42 Infringement of intellectual property rights.
- 43 Threats and acts of violence against persons, including violence during sport events.
- 44 Criminal damage.
- 45 Theft.
- 46 Offences created by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the treaty establishing the European Community or under Title VI of the Treaty on European Union.

PART 3

INTERPRETATION

- 47 (1) In this Schedule—
 - (a) “conduct” includes any act or omission;
 - (b) “liable person” means the person required to pay the financial penalty to which the certificate relates.
- (2) If the decision was made in respect of conduct by a person other than the liable person, the references in paragraph 6 to the liable person are to be read as references to that other person.

Status:

This version of this schedule contains provisions that are prospective.

Changes to legislation:

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- Act Appointed Day(s) by S.I. 2008/1586 (commencement order for 2008 c. 4)
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- Act Appointed Day(s) by S.I. 2008/2993 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2008/3260 (commencement order for 2008 c. 4)
- Act Appointed Day(s) by S.I. 2009/1028 (commencement order for 2008 c. 4)
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- Act Appointed Day(s) by S.I. 2009/1678 (commencement order for 2008 c. 4)
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- S.I. 2010/1858 commences (2009 c. 25)
- S.I. 2010/293 commences (2009 c. 24)
- Act inserted by S.I. 2010/976
- Act text amended by S.I. 2011/1043

Appendix 8 – Framework Decision 2008/675/JHA on taking account of convictions in the member states of the EU in the course of new criminal proceedings (OJ 2008 L 220/32)

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2008/675/JHA

of 24 July 2008

on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Whereas:

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. This objective requires that it be possible for information on convictions handed down in the Member States to be taken into account outside the convicting Member State, both in order to prevent new offences and in the course of new criminal proceedings.

(2) On 29 November 2000 the Council, in accordance with the conclusions of the Tampere European Council, adopted the programme of measures to implement the principle of mutual recognition of decisions in criminal matters ⁽²⁾, which provides for the 'adoption of one or more instruments establishing the principle that a court in one Member State must be able to take account of final criminal judgments rendered by the courts in other Member States for the purposes of assessing the offender's criminal record and establishing whether he has reoffended, and in order to determine the type of sentence applicable and the arrangements for enforcing it'.

(3) The purpose of this Framework Decision is to establish a minimum obligation for Member States to take into account convictions handed down in other Member States. Thus this Framework Decision should not prevent Member States from taking into account, in accordance with their law and when they have information available, for example, final decisions of administrative authorities whose decisions can be appealed against in the criminal courts establishing guilt of a criminal offence or an act punishable under national law by virtue of being an infringement of the rules of law.

(4) Some Member States attach effects to convictions handed down in other Member States, whereas others take account only of convictions handed down by their own courts.

(5) The principle that the Member States should attach to a conviction handed down in other Member States effects equivalent to those attached to a conviction handed down by their own courts in accordance with national law should be affirmed, whether those effects be regarded by national law as matters of fact or of procedural or substantive law. However, this Framework Decision does not seek to harmonise the consequences attached by the different national legislations to the existence of previous convictions, and the obligation to take into account previous convictions handed down in other Member States exists only to the extent that previous national convictions are taken into account under national law.

(6) In contrast to other instruments, this Framework Decision does not aim at the execution in one Member State of judicial decisions taken in other Member States, but rather aims at enabling consequences to be attached to a previous conviction handed down in one Member State in the course of new criminal proceedings in another Member State to the extent that such consequences are attached to previous national convictions under the law of that other Member State.

⁽¹⁾ Opinion of 27 September 2006 (not yet published in the Official Journal).

⁽²⁾ OJ C 12, 15.1.2001, p. 10.

- Therefore this Framework Decision contains no obligation to take into account such previous convictions, for example, in cases where the information obtained under applicable instruments is not sufficient, where a national conviction would not have been possible regarding the act for which the previous conviction had been imposed or where the previously imposed sanction is unknown to the national legal system.
- (7) The effects of a conviction handed down in another Member State should be equivalent to the effects of a national decision at the pre-trial stage of criminal proceedings, at the trial stage and at the time of execution of the sentence.
- (8) Where, in the course of criminal proceedings in a Member State, information is available on a previous conviction in another Member State, it should as far as possible be avoided that the person concerned is treated less favourably than if the previous conviction had been a national conviction.
- (9) Article 3(5) should be interpreted, *inter alia*, in line with recital 8, in such a manner that if the national court in the new criminal proceedings, when taking into account a previously imposed sentence handed down in another Member State, is of the opinion that imposing a certain level of sentence within the limits of national law would be disproportionately harsh on the offender, considering his or her circumstances, and if the purpose of the punishment can be achieved by a lower sentence, it may reduce the level of sentence accordingly, if doing so would have been possible in purely domestic cases.
- (10) This Framework Decision is to replace the provisions of Article 56 of the European Convention of 28 May 1970 on the International Validity of Criminal Judgments, concerning the taking into consideration of criminal judgments, as between the Member States parties to that Convention.
- (11) This Framework Decision respects the principle of subsidiarity provided for by Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community in so far as it aims to approximate the laws and regulations of the Member States, which cannot be done adequately by the Member States acting unilaterally and requires concerted action in the European Union. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty establishing the European Community, this Framework Decision does not go beyond what is necessary in order to achieve that objective.
- (12) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union.
- (13) This Framework Decision respects the variety of domestic solutions and procedures required for taking into account a previous conviction handed down in another Member State. The exclusion of a possibility to review a previous conviction should not prevent a Member State from issuing a decision, if necessary, in order to attach the equivalent legal effects to such previous conviction. However, the procedures involved in issuing such a decision should not, in view of the time and procedures or formalities required, render it impossible to attach equivalent effects to a previous conviction handed down in another Member State.
- (14) Interference with a judgment or its execution covers, *inter alia*, situations where, according to the national law of the second Member State, the sanction imposed in a previous judgment is to be absorbed by or included in another sanction, which is then to be effectively executed, to the extent that the first sentence has not already been executed or its execution has not been transferred to the second Member State.

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Subject matter

1. The purpose of this Framework Decision is to determine the conditions under which, in the course of criminal proceedings in a Member State against a person, previous convictions handed down against the same person for different facts in other Member States, are taken into account.
2. This Framework Decision shall not have the effect of amending the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

Article 2

Definitions

For the purposes of this Framework Decision 'conviction' means any final decision of a criminal court establishing guilt of a criminal offence.

*Article 3***Taking into account, in the course of new criminal proceedings, a conviction handed down in another Member State**

1. Each Member State shall ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account to the extent previous national convictions are taken into account, and that equivalent legal effects are attached to them as to previous national convictions, in accordance with national law.

2. Paragraph 1 shall apply at the pre-trial stage, at the trial stage itself and at the time of execution of the conviction, in particular with regard to the applicable rules of procedure, including those relating to provisional detention, the definition of the offence, the type and level of the sentence, and the rules governing the execution of the decision.

3. The taking into account of previous convictions handed down in other Member States, as provided for in paragraph 1, shall not have the effect of interfering with, revoking or reviewing previous convictions or any decision relating to their execution by the Member State conducting the new proceedings.

4. In accordance with paragraph 3, paragraph 1 shall not apply to the extent that, had the previous conviction been a national conviction of the Member State conducting the new proceedings, the taking into account of the previous conviction would, according to the national law of that Member State, have had the effect of interfering with, revoking or reviewing the previous conviction or any decision relating to its execution.

5. If the offence for which the new proceedings being conducted was committed before the previous conviction had been handed down or fully executed, paragraphs 1 and 2 shall not have the effect of requiring Member States to apply their national rules on imposing sentences, where the application of those rules to foreign convictions would limit the judge in imposing a sentence in the new proceedings.

However, the Member States shall ensure that in such cases their courts can otherwise take into account previous convictions handed down in other Member States.

*Article 4***Relation to other legal instruments**

This Framework Decision shall replace Article 56 of the European Convention of 28 May 1970 on the International Validity of Criminal Judgments as between the Member States parties to that Convention, without prejudice to the application of that Article in relations between the Member States and third countries.

*Article 5***Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 15 August 2010.

2. Member States shall communicate to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

3. On the basis of that information the Commission shall, by 15 August 2011, present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

*Article 6***Entry into force**

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

Done at Brussels, 24 July 2008.

For the Council
The President
B. HORTÉFELUX

**Appendix 9 – Framework Decision
2009/315/JHA on the organisation
and content of the exchange of
information extracted from the
criminal record between member
states (OJ 2009 L 93/23)**

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2009/315/JHA

of 26 February 2009

on the organisation and content of the exchange of information extracted from the criminal record between Member States

THE COUNCIL OF THE EUROPEAN UNION,

(4) The need to improve the quality of information exchanged on convictions was prioritised in the European Council Declaration on Combating Terrorism of 25 and 26 March 2004 and was reiterated in the Hague Programme^(*), adopted by the European Council on 4 and 5 November 2004, which called for greater exchange of information from national conviction and disqualification registers. These objectives are reflected in the Action Plan jointly adopted by the Council and the Commission on 2 and 3 June 2005 with a view to carrying out the Hague Programme.

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

Having regard to the proposal from the Commission and the initiative of the Kingdom of Belgium,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas:

(1) The European Union has set itself the objective of providing citizens with a high level of safety within the area of freedom, security and justice. This objective presupposes the exchange between the competent authorities of the Member States of information extracted from criminal records.

(2) On 29 November 2000 the Council, in accordance with the conclusions of the Tampere European Council of 15 and 16 October 1999, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters⁽²⁾. This Framework Decision contributes to achieving the goals provided for by measure 3 of the programme, which calls for the establishment of a standard form like that drawn up for the Schengen bodies, translated into all the official languages of the Union, for criminal records requests.

(3) The Final Report on the first evaluation exercise on mutual legal assistance in criminal matters⁽³⁾ called on the Member States to simplify the procedures for transferring documents between States, using, if necessary, standard forms to facilitate mutual legal assistance.

(5) With a view to improving the exchange of information between Member States on criminal records, projects developed with the aim to achieve this objective are welcomed, including the existing project for the interconnection of national criminal registers. The experience gathered from these activities has encouraged the Member States to further enhance their efforts and showed the importance to continue streamlining the mutual exchange of information on convictions between the Member States.

(6) This Framework Decision is a response to the wishes expressed by the Council on 14 April 2005, following the publication of the White Paper on exchanges of information on convictions and the effect of such convictions in the European Union and the subsequent general discussion thereof. Its main aim is to improve the exchange of information on convictions and, where imposed and entered in the criminal records of the convicting Member State, on disqualifications arising from criminal conviction of citizens of the Union.

(7) The application of the mechanisms established by this Framework Decision only to the transmission of information extracted from criminal records concerning natural persons should be without prejudice to a possible future broadening of the scope of application of such mechanisms to the exchange of information concerning legal persons.

⁽¹⁾ Opinion delivered on 17 June 2008 (not yet published in the Official Journal).

⁽²⁾ OJ C 12, 15.1.2001, p. 10.

⁽³⁾ OJ C 216, 1.8.2001, p. 14.

^(*) OJ C 53, 3.3.2005, p. 1.

- (8) Information on convictions handed down in other Member States is currently governed by Articles 13 and 22 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. These provisions are not, however, sufficient to meet the present requirements of judicial cooperation in an area such as the European Union.
- (9) As between the Member States, this Framework Decision should replace Article 22 of the European Convention on Mutual Assistance in Criminal Matters. In addition to the obligations of a convicting Member State to transmit information to the Member States of the person's nationality concerning convictions handed down against their nationals which this Framework Decision incorporates and further defines, an obligation on the Member States of the person's nationality to store information so transmitted is also introduced, in order to ensure that they are able to reply fully to requests for information from other Member States.
- (10) This Framework Decision should be without prejudice to the possibility of judicial authorities' directly requesting and transmitting information from criminal records pursuant to Article 13 in conjunction with Article 15(3), of the European Convention on Mutual Assistance in Criminal Matters and without prejudice to Article 6(1) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, established by Council Act of 29 May 2000 ⁽¹⁾.
- (11) Improving the circulation of information on convictions is of little benefit if Member States are not able to take transmitted information into account. On 24 July 2008, Council adopted Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings ⁽²⁾.
- (12) The main objective of the initiative of the Kingdom of Belgium is attained by this Framework Decision to the extent that the central authority of every Member State should request and include all information provided from the criminal records of the Member State of the person's nationality in its extract from criminal records when it replies to a request from the person concerned. Awareness of the existence of the conviction as well as, where imposed and entered in the criminal record, of a disqualification arising from it, is a prerequisite for giving them effect in accordance with the national law of the Member State in which the person intends to perform professional activity related to supervision of children. The mechanism established by this Framework Decision aims at *inter alia* ensuring that a person convicted of a sexual offence against children should no longer, where the criminal record of that person in the convicting Member State contains such conviction and, if imposed and entered in the criminal record, a disqualification arising from it, be able to conceal this conviction or disqualification with a view to performing professional activity related to supervision of children in another Member State.
- (13) This Framework Decision establishes rules on the protection of personal data transmitted between the Member States as a result of its implementation. Existing general rules on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters are complemented by the rules established in this Framework Decision. Furthermore, the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data applies to the personal data handled on the basis of this Framework Decision. This Framework Decision also incorporates the provisions of Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record ⁽³⁾ which limit the use the requesting Member State can make of information asked for. This Framework Decision supplements such provisions with specific rules applying where the Member State of the person's nationality forwards information on convictions transmitted to it by the convicting Member State.
- (14) This Framework Decision does not modify obligations and practices established in relation to third States under the European Convention on Mutual Assistance in Criminal Matters, in so far as that instrument remains applicable.
- (15) Under Council of Europe Recommendation No R (84) 10 on criminal records and rehabilitation of convicted persons, the main aim of establishment of criminal records is to inform the authorities responsible for the criminal justice system of the background of a person subject to legal proceedings with a view to adapting the decision to be taken to the individual situation. Since all other use of criminal records that might compromise the chances of social rehabilitation of the convicted person must be as limited as possible, the use of information transmitted under this Framework Decision for purposes other than that of criminal proceedings can be limited in accordance with the national law of the requested Member State and the requesting Member State.

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

⁽²⁾ OJ L 220, 15.8.2008, p. 32.

⁽³⁾ OJ L 322, 9.12.2005, p. 33.

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(16) The aim of the provisions of this Framework Decision concerning the transmission of information to the Member State of the person's nationality for the purpose of its storage and retransmission is not to harmonise national systems of criminal records of the Member States. This Framework Decision does not oblige the convicting Member State to change its internal system of criminal records as regards the use of information for domestic purposes.

(17) Improving the circulation of information on convictions is of little benefit if such information cannot be understood by the Member State receiving it. Mutual understanding may be enhanced by the creation of a 'standardised European format' allowing information to be exchanged in a uniform, electronic and easily machine-translatable way. Information on convictions sent by the convicting Member State should be transmitted in the official language or one of the official languages of that Member State. Measures should be taken by Council to set up the information exchange system introduced by this Framework Decision.

(18) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union.

(19) This Framework Decision respects the principle of subsidiarity referred to in Article 2 of the Treaty on European Union and set out in Article 5 of the Treaty establishing the European Community since the improvement of systems for the transmission of information on convictions between Member States cannot be carried out adequately by the Member States unilaterally and requires coordinated action in the European Union. In accordance with the principle of proportionality, as set out in the Article 5 of the Treaty establishing the European Community, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Objective

The purpose of this Framework Decision is:

(a) to define the ways in which a Member State where a conviction is handed down against a national of another Member State (the 'convicting Member State') transmits the information on such a conviction to the Member

State of the convicted person's nationality (the 'Member State of the person's nationality');

(b) to define storage obligations for the Member State of the person's nationality and to specify the methods to be followed when replying to a request for information extracted from criminal records;

(c) to lay down the framework for a computerised system of exchange of information on convictions between Member States to be built and developed on the basis of this Framework Decision and the subsequent decision referred to in Article 11(4).

Article 2

Definitions

For the purposes of this Framework Decision:

(a) 'conviction' means any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent these decisions are entered in the criminal record of the convicting Member State;

(b) 'criminal proceedings' means the pre-trial stage, the trial stage itself and the execution of the conviction;

(c) 'criminal record' means the national register or registers recording convictions in accordance with national law.

Article 3

Central authority

1. For the purposes of this Framework Decision, each Member State shall designate a central authority. However, for the transmission of information under Article 4 and for replies under Article 7 to requests referred to in Article 6, Member States may designate one or more central authorities.

2. Each Member State shall inform the General Secretariat of the Council and the Commission of the central authority or authorities designated in accordance with paragraph 1. The General Secretariat of the Council shall notify the Member States and Eurojust of this information.

Article 4

Obligations of the convicting Member State

1. Each Member State shall take the necessary measures to ensure that all convictions handed down within its territory are accompanied, when provided to its criminal record, by information on the nationality or nationalities of the convicted person if he is a national of another Member State.

2. The central authority of the convicting Member State shall, as soon as possible, inform the central authorities of the other Member States of any convictions handed down within its territory against the nationals of such other Member States, as entered in the criminal record.

If it is known that the convicted person is a national of several Member States, the relevant information shall be transmitted to each of these Member States, even if the convicted person is a national of the Member State within whose territory he was convicted.

3. Information on subsequent alteration or deletion of information contained in the criminal record shall be immediately transmitted by the central authority of the convicting Member State to the central authority of the Member State of the person's nationality.

4. Any Member State which has provided information under paragraphs 2 and 3 shall communicate to the central authority of the Member State of the person's nationality, on the latter's request in individual cases, a copy of the convictions and subsequent measures as well as any other information relevant thereto in order to enable it to consider whether they necessitate any measure at national level.

Article 5

Obligations of the Member State of the person's nationality

1. The central authority of the Member State of the person's nationality shall store all information in accordance with Article 11(1) and (2) transmitted under Article 4(2) and (3), for the purpose of retransmission in accordance with Article 7.

2. Any alteration or deletion of information transmitted in accordance with Article 4(3) shall entail identical alteration or deletion by the Member State of the person's nationality regarding information stored in accordance with paragraph 1 of this Article for the purpose of retransmission in accordance with Article 7.

3. For the purpose of retransmission in accordance with Article 7 the Member State of the person's nationality may only use information which has been updated in accordance with paragraph 2 of this Article.

Article 6

Request for information on convictions

1. When information from the criminal record of a Member State is requested for the purposes of criminal proceedings against a person or for any purposes other than that of

criminal proceedings, the central authority of that Member State may, in accordance with its national law, submit a request to the central authority of another Member State for information and related data to be extracted from the criminal record.

2. When a person asks for information on his own criminal record, the central authority of the Member State in which the request is made may, in accordance with its national law, submit a request to the central authority of another Member State for information and related data to be extracted from the criminal record, provided the person concerned is or was a resident or a national of the requesting or requested Member State.

3. Once the time limit set out in Article 11(7) has elapsed, whenever a person asks the central authority of a Member State other than the Member State of the person's nationality for information on his own criminal record, the central authority of the Member State in which the request is made shall submit a request to the central authority of the Member State of the person's nationality for information and related data to be extracted from the criminal record in order to be able to include such information and related data in the extract to be provided to the person concerned.

4. All requests from the central authority of a Member State for information extracted from the criminal record shall be submitted using the form set out in the Annex.

Article 7

Reply to a request for information on convictions

1. When information extracted from the criminal record is requested under Article 6 from the central authority of the Member State of the person's nationality for the purposes of criminal proceedings, that central authority shall transmit to the central authority of the requesting Member State information on:

- (a) convictions handed down in the Member State of the person's nationality and entered in the criminal record;
- (b) any convictions handed down in other Member States which were transmitted to it after 27 April 2012, in application of Article 4, and stored in accordance with Article 5(1) and (2);

(c) any convictions handed down in other Member States which were transmitted to it by 27 April 2012, and entered in the criminal record;

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(d) any convictions handed down in third countries and subsequently transmitted to it and entered in the criminal record.

2. When information extracted from the criminal record is requested under Article 6 from the central authority of the Member State of the person's nationality for any purposes other than that of criminal proceedings, that central authority shall in respect of convictions handed down in the Member State of the person's nationality and of convictions handed down in third countries, which have been subsequently transmitted to it and entered in its criminal record, reply in accordance with its national law.

In respect of information on convictions handed down in another Member State, which have been transmitted to the Member State of the person's nationality, the central authority of the latter Member State shall in accordance with its national law transmit to the requesting Member State the information which has been stored in accordance with Article 5 (1) and (2) as well as the information which has been transmitted to that central authority by 27 April 2012, and has been entered in its criminal record.

When transmitting the information in accordance with Article 4, the central authority of the convicting Member State may inform the central authority of the Member State of the person's nationality that the information on convictions handed down in the former Member State and transmitted to the latter central authority may not be retransmitted for any purposes other than that of criminal proceedings. In this case, the central authority of the Member State of the person's nationality shall, in respect of such convictions, inform the requesting Member State which other Member State had transmitted such information so as to enable the requesting Member State to submit a request directly to the convicting Member State in order to receive information on these convictions.

3. When information extracted from the criminal record is requested from the central authority of the Member State of the person's nationality by a third country, the Member State of the person's nationality may reply in respect of convictions transmitted by another Member State only within the limitations applicable to the transmission of information to other Member States in accordance with paragraphs 1 and 2.

4. When information extracted from the criminal record is requested under Article 6 from the central authority of a Member State other than the Member State of the person's nationality, the requested Member State shall transmit information on convictions handed down in the requested Member State and on convictions handed down against third

country nationals and against stateless persons contained in its criminal record to the same extent as provided for in Article 13 of the European Convention on Mutual Assistance in Criminal Matters.

5. The reply shall be made using the form set out in the Annex. It shall be accompanied by a list of convictions, as provided for by national law.

Article 8

Deadlines for replies

1. Replies to the requests referred to in Article 6(1) shall be transmitted by the central authority of the requested Member State to the central authority of the requesting Member State immediately and in any event within a period not exceeding ten working days from the date the request was received, as provided for by its national law, rules or practice, using the form set out in the Annex.

When the requested Member State requires further information to identify the person involved in the request, it shall immediately consult the requesting Member State with a view to providing a reply within ten working days from the date the additional information is received.

2. Replies to the request referred to in Article 6(2) shall be transmitted within twenty working days from the date the request was received.

Article 9

Conditions for the use of personal data

1. Personal data provided under Article 7(1) and (4) for the purposes of criminal proceedings may be used by the requesting Member State only for the purposes of the criminal proceedings for which it was requested, as specified in the form set out in the Annex.

2. Personal data provided under Article 7(2) and (4) for any purposes other than that of criminal proceedings may be used by the requesting Member State in accordance with its national law only for the purposes for which it was requested and within the limits specified by the requested Member State in the form set out in the Annex.

3. Notwithstanding paragraphs 1 and 2, personal data provided under Article 7(1), (2) and (4) may be used by the requesting Member State for preventing an immediate and serious threat to public security.

4. Member States shall take the necessary measures to ensure that personal data received from another Member State under Article 4, if transmitted to a third country in accordance with Article 7(3), is subject to the same usage limitations as those applicable in a requesting Member State in accordance with paragraph 2 of this Article. Member States shall specify that personal data, if transmitted to a third country for the purposes of a criminal proceeding, may be further used by that third country only for the purposes of criminal proceedings.

5. This Article does not apply to personal data obtained by a Member State under this Framework Decision and originating from that Member State.

Article 10

Languages

When submitting a request referred to in Article 6(1), the requesting Member State shall transmit to the requested Member State the form set out in the Annex in the official language or one of the official languages of the latter Member State.

The requested Member State shall reply either in one of its official languages or in any other language accepted by both Member States.

Any Member State may, at the time of the adoption of this Framework Decision or at a later date, indicate, in a statement to the General Secretariat of the Council, which are the official languages of the institutions of the European Union that it accepts. The General Secretariat of the Council shall notify the Member States of this information.

Article 11

Format and other ways of organising and facilitating exchanges of information on convictions

1. When transmitting information in accordance with Article 4(2) and (3), the central authority of the convicting Member State shall transmit the following information:

- (a) information that shall always be transmitted, unless, in individual cases, such information is not known to the central authority (obligatory information):
 - (i) information on the convicted person (full name, date of birth, place of birth (town and State), gender, nationality and – if applicable – previous name(s));
 - (ii) information on the nature of the conviction (date of conviction, name of the court, date on which the decision became final);

- (iii) information on the offence giving rise to the conviction (date of the offence underlying the conviction and name or legal classification of the offence as well as reference to the applicable legal provisions); and
 - (iv) information on the contents of the conviction (notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence);
- (b) information that shall be transmitted if entered in the criminal record (optional information):
 - (i) the convicted person's parents' names;
 - (ii) the reference number of the conviction;
 - (iii) the place of the offence; and
 - (iv) disqualifications arising from the conviction;
 - (c) information that shall be transmitted, if available to the central authority (additional information):
 - (i) the convicted person's identity number, or the type and number of the person's identification document;
 - (ii) fingerprints, which have been taken from that person; and
 - (iii) if applicable, pseudonym and/or alias name(s).

In addition, the central authority may transmit any other information concerning convictions entered in the criminal record.

2. The central authority of the Member State of the person's nationality shall store all information of the types listed in points (a) and (b) of paragraph 1, which it has received in accordance with Article 5(1) for the purpose of retransmission in accordance with Article 7. For the same purpose it may store the information of the types listed in point (c) of the first subparagraph and in the second subparagraph of paragraph 1.

3. Until the time limit set out in paragraph 7 has elapsed, central authorities of Member States which have not carried out the notification referred to in paragraph 6 shall transmit all information in accordance with Article 4, requests in accordance with Article 6, replies in accordance with Article 7 and other relevant information by any means capable of producing a written record under conditions allowing the central authority of the receiving Member State to establish the authenticity thereof.

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Once the time limit set out in paragraph 7 of this Article has elapsed, central authorities of Member States shall transmit such information electronically using a standardised format.

4. The format referred to in paragraph 3 and any other means of organising and facilitating exchanges of information on convictions between central authorities of Member States shall be set up by the Council in accordance with the relevant procedures of the Treaty on the European Union by 27 April 2012.

Other such means include:

- (a) defining all means by which understanding and automatically translating transmitted information may be facilitated;
- (b) defining the means by which information may be exchanged electronically, particularly as regards the technical specification to be used and, if need be, any applicable exchange procedures;
- (c) possible alterations to the form set out in the Annex.

5. If the mode of transmission referred to in paragraphs 3 and 4 is not available, the first subparagraph of paragraph 3 shall remain applicable for the entire period of such unavailability.

6. Each Member State shall carry out the necessary technical alterations to be able to use the standardised format and electronically transmit it to other Member States. It shall notify the Council of the date from which it will be able to carry out such transmissions.

7. Member States shall carry out the technical alterations referred to in paragraph 6 within three years from the date of adoption of the format and the means by which information on convictions may be exchanged electronically.

Article 12

Relationship to other legal instruments

1. In relations between the Member States, this Framework Decision supplements the provisions of Article 13 of the European Convention on Mutual Assistance in Criminal Matters, its additional Protocols of 17 March 1978 and 8 November 2001, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Protocol of 16 October 2001 ⁽¹⁾.

2. For the purposes of this Framework Decision, Member States shall waive the right to rely among themselves on their

reservations to Article 13 of the European Convention on Mutual Assistance in Criminal Matters.

3. Without prejudice to their application in relations between Member States and third States, this Framework Decision replaces in relations between Member States which have taken the necessary measures to comply with this Framework Decision and ultimately with effect from 27 April 2012 the provisions of Article 22 of the European Convention on Mutual Assistance in Criminal Matters, as supplemented by Article 4 of said Convention's additional Protocol of 17 March 1978.

4. Decision 2005/876/JHA is hereby repealed.

5. This Framework Decision shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States.

Article 13

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 27 April 2012.

2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

3. On the basis of that information the Commission shall, by 27 April 2015, present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

Article 14

Entry into force

This Framework Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 26 February 2009.

For the Council
The President
I. LANGER

⁽¹⁾ OJ C 326, 21.11.2001, p. 1.

ANNEX

Form referred to in Articles 6, 7, 8, 9 and 10 of the Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States

Request for information extracted from the criminal record

Members States are to consult the Manual of Procedures for assistance in filling in this form correctly

(a) Information on the requesting Member State:

Member State:

Central authority(ies):

Contact person:

Telephone (with STD code):

Fax (with STD code):

E-mail address:

Correspondence address:

File reference, if known:

(b) Information on the identity of the person concerned by the request (*):

Full name (forenames and all surnames)

Previous names:

Pseudonym and/or alias, if any:

Gender: M F

Nationality:

Date of birth (in figures: dd/mm/yyyy):

Place of birth (town and State):

Father's name:

Mother's name:

Residence or known address:

Person's identity number or type and number of the person's identification document:

Fingerprints:

Other available identification information:

(*) To facilitate the identification of the person as much information as possible is to be provided.

(c) Purpose of the request:

Please tick the appropriate box

- (1) criminal proceedings (please identify the authority before which the proceedings are pending and, if available, the case reference number)
- (2) request outside the context of criminal proceedings (please identify the authority before which the proceedings are pending and, if available, the case reference number, while ticking the relevant box):
- (i) from a judicial authority
- (ii) from a competent administrative authority
- (iii) from the person concerned for information on own criminal record

Purpose for which the information is requested:

Requesting authority:

- the person concerned does not consent for this information to be divulged (if the person concerned was asked for its consent in accordance with the law of the requesting Member State).

Contact person for any further information needed:

Name:

Telephone:

E-mail address:

Other information (e.g. urgency of the request):

Reply to the request

Information relating to the person concerned

Please tick the appropriate box

The undersigned authority confirms that:

- there is no information on convictions in the criminal record of the person concerned
- there is information on convictions entered in the criminal record of the person concerned; a list of convictions is attached
- there is other information entered in the criminal record of the person concerned; such information is attached (optional)
- there is information on convictions entered in the criminal record of the person concerned but the convicting Member State intimated that the information about these convictions may not be retransmitted for any purposes other than that of criminal proceedings. The request for more information may be sent directly to (please indicate the convicting Member State)
- in accordance with the national law of the requested Member State, requests made for any purposes other than that of criminal proceedings may not be dealt with.

Contact person for any further information needed:

Name:

Telephone:

E-mail address:

Other information (limitations of use of the data concerning requests outside the context of criminal proceedings):

Please indicate the number of pages attached to the reply form:

Done at

on

Signature and official stamp (if appropriate):

Name and position/organisation:

If appropriate, please attach a list of convictions and send the complete package to the requesting Member State. It is not necessary to translate the form or the list into the language of the requesting Member State.

**Appendix 10 – Council Decision
2005/876/JHA on the exchange
of information extracted from the
criminal record (OJ 2005 L 322/33)**

9.12.2005

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Official Journal of the European Union

L 322/33

*(Acts adopted under Title VI of the Treaty on European Union)***COUNCIL DECISION 2005/876/JHA****of 21 November 2005****on the exchange of information extracted from the criminal record**

THE COUNCIL OF THE EUROPEAN UNION,

Parties, but they are too slow to meet the demands of judicial cooperation in an area such as that of the European Union.

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

- (4) The Final Report on the first evaluation exercise — mutual legal assistance in criminal matters ⁽⁵⁾, called on Member States to simplify the procedures for transferring documents between States, using, if necessary, standard forms to facilitate mutual judicial assistance.

Having regard to the proposal from the Commission ⁽¹⁾,Having regard to the opinion of the European Parliament ⁽²⁾,

- (5) On 25 March 2004, the European Council instructed the Council to examine measures on the exchange of information on convictions for terrorist offences and the possibility of a European register on convictions and disqualifications, and the Commission in its communication on measures to be taken to combat terrorism and other forms of serious crime, in particular to improve exchanges of information, stressed the importance of an effective mechanism for transmission of information on convictions and disqualifications.

Whereas:

- (1) According to Article 29 of the Treaty on European Union, the European Union has set itself the objective to provide citizens with a high level of safety within an area of freedom, security and justice. This objective presupposes the exchange of information concerning criminal convictions of persons who reside in the territory of the Member States between the competent authorities of the Member States.

- (6) This Decision respects the principle of subsidiarity referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community, since the improvement of systems for the transmission of information on convictions between Member States cannot be carried out adequately by the Member States unilaterally and requires coordinated action in the European Union. In accordance with the principle of proportionality, as set out in the said Article 5, this Decision does not go beyond what is necessary in order to achieve that objective.

- (2) On 29 November 2000, the Council, in accordance with the conclusions of the Tampere European Council of 15 and 16 October 1999, adopted a programme of measures to implement the principle of mutual recognition in criminal matters ⁽³⁾. This Decision contributes to achieving the goals provided for by Measure 3 of the programme, which calls for the establishment of a standard form like that drawn up for the Schengen bodies, translated into all the official Union languages, for criminal records applications.

- (7) The improvement of systems for the transmission of information on convictions implies that convictions pronounced in a Member State against nationals of another Member State are known about by the latter Member State as soon as possible and that each Member State may obtain information which it needs from criminal records from other Member States within a very short time.

- (3) Articles 13 and 22 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 ⁽⁴⁾ provide for systems for the transmission of information on convictions between the Contracting

⁽¹⁾ OJ C 322, 29.12.2004, p. 9.

⁽²⁾ Not yet published in the Official Journal.

⁽³⁾ OJ C 12, 15.1.2001, p. 10.

⁽⁴⁾ Council of Europe, European Treaties Series, No 30.

⁽⁵⁾ OJ C 216, 1.8.2001, p. 14.

- (8) This Decision supplements and facilitates the existing mechanisms for the transmission of information on convictions based on existing conventions. In particular, the provisions concerning requests for information extracted from the criminal record do not replace the possibility available to the judicial authorities of transmitting information concerning criminal records direct to each other under Article 6(1) of the Convention on mutual assistance in criminal matters between the Member States of the European Union established by Council Act of 29 May 2000⁽¹⁾. It provides, however, for a specific right for the central authority of a Member State to send a request for information extracted from the criminal record to the central authority of another Member State, in the circumstances determined by national law.
- (9) The personal data processed under this Decision will be protected in accordance with the principles enacted in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data.
- (10) Under Council of Europe Recommendation No R (84) 10 on the criminal record and rehabilitation of convicted persons, the main aim of establishment of the criminal record is to inform the authorities responsible for the criminal justice system of the background of a person subject to legal proceedings with a view to adapting the decision to be taken to the individual situation. Since all other use of the criminal record that might compromise the chances of social rehabilitation of the convicted person must be as limited as possible, the use of information transmitted under this Decision for use otherwise than in the course of criminal proceedings can be limited in accordance with the national legislation of the requested State and the requesting State.
- (11) This Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and restated by the Charter of Fundamental Rights of the European Union.
- (12) This Decision does not have the effect of obliging Member States to register convictions or information in criminal matters in their criminal record other than those which they are obliged to register according to national law.
- (13) This Decision does not apply to the transmission of rulings or copies thereof.

(1) OJ C 197, 12.7.2000, p. 1.

HAS DECIDED AS FOLLOWS:

Article 1

Central authority

1. For the purposes of Articles 2 and 3, each Member State shall designate a central authority. However, for sending information under Article 2 and replying to requests under Article 3 Member States may designate one or more central authorities.

2. Each Member State shall inform the General Secretariat of the Council and the Commission of the authority designated in accordance with paragraph 1. The General Secretariat of the Council shall notify the Member States and Eurojust of this information.

Article 2

Own-initiative information on convictions

Each central authority shall, without delay, inform the central authorities of the other Member States of criminal convictions and subsequent measures in respect of nationals of those Member States entered in the criminal record. Where the person concerned is a national of two or more other Member States, the information shall be given to each of these Member States, unless the person is a national of the Member State in the territory of which he has been convicted.

Article 3

Request for information on convictions

1. Where information from the criminal records of a Member State is requested, the central authority may, in accordance with national law, send a request for extracts from, and information relating to, criminal records to the central authority of another Member State. All information requests shall be sent on the basis of the request form set out in the Annex hereto.

When a person requests information on his or her criminal record, the central authority of the Member State where this request is made, may in accordance with national law send a request for extracts from, and information relating to, criminal records to the central authority of another Member State if the person concerned is or has been a resident or a national of the requesting or the requested Member State.

2. The reply shall be sent immediately and, in any event within a period not exceeding 10 working days from the receipt of the request, under the conditions provided for by national law, regulations or practice by the central authority of the requested Member State, to the central authority of the requesting Member State on the basis of the form set out in the Annex hereto. It shall include the information received in accordance with Article 2 and registered in the criminal record of the requested Member State.

If the request is made for the person concerned in accordance with paragraph 1, second subparagraph, the period referred to in the first subparagraph of this paragraph shall not exceed 20 working days from the receipt of the request.

3. Where the requested Member State needs further information to identify the person to whom the request refers, it shall immediately consult with the requesting Member State with a view to providing a reply within 10 working days of receipt of the additional information sought.

4. The reply shall be accompanied by a statement of convictions, under the conditions provided for by national law.

5. Requests, replies and other relevant information may be transmitted by any means capable of producing a written record under conditions allowing the receiving Member State to establish authenticity.

Article 4

Conditions for the use of personal data

1. Personal data communicated under Article 3 for the purpose of criminal proceedings may be used by the requesting Member State only for the purpose of the criminal proceedings for which it has been requested as specified in the form set out in the Annex hereto.

2. Personal data communicated under Article 3 for purposes other than criminal proceedings, may be used by the requesting Member State in accordance with its national law only for the purpose for which it has been requested and within the limits specified by the requested Member State in the form.

3. This Article does not apply to personal data obtained by a Member State under this Decision and originating from that Member State.

Article 5

Languages

The form shall be sent by the requesting Member State in the official language, or one of the official languages of the requested Member State. The requested Member State shall reply either in one of its official languages or in another language agreeable to both Member States. Any Member State may, at the time of the adoption of this Decision or at a later date, indicate, in a statement to the General Secretariat of the Council, which are the official languages of the institutions of

the European Communities that it accepts. The General Secretariat of the Council shall notify the Member States of this information.

Article 6

Relationship to other legal instruments

1. With respect to the Member States, this Decision supplements and facilitates the implementation of Articles 13 and 22 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, its additional Protocols of 17 March 1978 ⁽¹⁾ and 8 November 2001 ⁽²⁾, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ⁽³⁾ and its Protocol of 16 October 2001 ⁽⁴⁾.

2. For the purpose of this Decision, Member States shall waive the right to rely among themselves on their reservations to Article 13 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. This Decision shall not affect reservations made with respect to Article 22 of that Convention. Such reservations may be invoked with respect to Article 2 of this Decision.

3. This Decision shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States.

Article 7

Implementation

Member States shall implement this Decision as soon as possible and in any event no later than 21 May 2006.

Article 8

Application

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

Done at Brussels, 21 November 2005.

For the Council
The President
J. STRAW

⁽¹⁾ Council of Europe, European Treaty Series, No 99.
⁽²⁾ Council of Europe, European Treaty Series, No 182.
⁽³⁾ OJ C 197, 12.7.2000, p. 3.
⁽⁴⁾ OJ C 326, 21.11.2001, p. 1.

ANNEX

Form referred to in Articles 3, 4 and 5 of Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record

Request for information extracted from the criminal record

To be able to fill in this form correctly, Member States should take note of the Manual of Procedure.

(a) Information relating to the requesting State:

Member State:
 Central authority:
 Contact person:
 Telephone (with STD code):
 Fax (with STD code):
 E-mail:
 Postal address:
 File reference where available:

(b) Information relating to the identity of the person concerned by the request:

Name:
 First name(s):
 Birth name if appropriate:
 Aliases where applicable:
 Sex: M F
 Nationality:
 Date of birth (in figures: dd/mm/yyyy):
 Place of birth (town and State):
 Father's name: (*)
 Mother's name: (*)
 Residence or known address (optional):
 Fingerprints where available (optional):
 Other identification data where available (e.g. national register number, social security number, etc.) (optional)
 (*) To be filled in, in accordance with the Manual of Procedure, otherwise, where available.

(c) Purpose of the request:

Please tick the appropriate box

1. criminal proceedings
2. request from a judicial authority outside the context of criminal proceedings
 request from a competent administrative authority
3. request from the person concerned

Purpose for which the information is requested to be filled in, in accordance with the Manual of Procedure, otherwise, where available.

Requesting authority:

The person concerned has given his/her consent for obtaining the information (where this consent is required by the law of the requested Member State).

Please note that the request shall be complied with in accordance with the conditions provided for by the law, regulations or practice of the requested Member State.

Contact person if additional information is needed:

Name:

Telephone:

E-mail:

Other information (e.g. urgency of the request, etc.)

9.12.2005

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Reply to the request

Information relating to the abovementioned person
Please tick the appropriate box
The undersigned authority confirms that <input type="checkbox"/> there are no convictions registered in the criminal record of the abovementioned person <input type="checkbox"/> there are convictions recorded in the criminal record of the abovementioned person. A statement of convictions is annexed hereto <input type="checkbox"/> the request is made for purposes other than criminal proceedings and cannot be complied with under the law, regulations or practice of the requested Member State.
Contact person if additional information is needed: Name: Telephone: E-mail: Other information (e.g. limits specified according to Article 4(2))
The transmitted data may only be used for the purpose for which it has been requested
Done at, On Signature and official stamp (if available): Name and position:

If applicable, please attach statement of convictions and return to requesting Member State. Form and statement of convictions do not have to be translated in the language of the requesting Member State.

**Appendix 11 – Council Decision
2009/316/JHA on the establishment
of the European Criminal Records
Information System in application
of article 11 of Framework Decision
2009/315/JHA (OJ 2009 L 93/33)**

7.4.2009

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COUNCIL DECISION 2009/316/JHA

of 6 April 2009

on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA

THE COUNCIL OF THE EUROPEAN UNION,

(4) The computerised interconnection of criminal records is part of the E-Justice project, which was acknowledged as a priority by the European Council several times in 2007.

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

(5) A pilot project is currently being developed with a view to interconnecting criminal records. Its achievements constitute a valuable basis for further work on computerised exchange of information at the European Union level.

Having regard to the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States⁽¹⁾, and in particular Article 11(4) thereof,

Having regard to the proposal from the Commission,

(6) This Decision aims to implement Framework Decision 2009/315/JHA in order to build and develop a computerised system of exchange of information on convictions between Member States. Such a system should be capable of communicating information on convictions in a form which is easily understandable. Therefore, a standardised format allowing information to be exchanged in a uniform, electronic and easily computer-translatable way as well as any other means of organising and facilitating electronic exchanges of information on convictions between central authorities of Member States should be set up.

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

Whereas:

(1) Article 29 of the Treaty on European Union states that the Union's objective is to provide citizens with a high level of safety in the area of freedom, security and justice. This objective presupposes the systematic exchange between the competent authorities of the Member States of information extracted from criminal records in a way that would guarantee its common understanding and the efficiency of such exchange.

(7) This Decision is based on the principles established by Framework Decision 2009/315/JHA and applies and supplements those principles from a technical standpoint.

(2) Information on convictions handed down against Member States' nationals by other Member States does not circulate efficiently on the current basis of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. Therefore, there is a need for more efficient and accessible procedures of exchange of such information at European Union level.

(8) The categories of data to be entered into the system, the purposes for which the data is to be entered, the criteria for its entry, the authorities permitted to access the data, and some specific rules on protection of personal data are defined in the Framework Decision 2009/315/JHA.

(3) The need to improve the exchange of information on convictions was prioritised in the European Council Declaration on Combating Terrorism of 25 and 26 March 2004 and was subsequently reiterated in the Hague Programme⁽³⁾ and in the Action Plan⁽⁴⁾ on its implementation. Furthermore, the computerised interconnection of criminal records at European Union level was recognised as a political priority by the European Council in its Conclusions of 21 and 22 June 2007.

(9) Neither this Decision nor Framework Decision 2009/315/JHA establishes any obligation to exchange information about non-criminal rulings.

(10) Since the objective of this Decision is not to harmonise national systems of criminal records there is no obligation for a convicting Member State to change its internal system of criminal records as regards the use of information for domestic purposes.

⁽¹⁾ See page 23 of this Official Journal.

⁽²⁾ Opinion delivered on 9 October 2008 (not yet published in the Official Journal).

⁽³⁾ OJ C 53, 3.3.2005, p. 1.

⁽⁴⁾ OJ C 198, 12.8.2005, p. 1.

- (11) The European Criminal Records System (ECRS) is a decentralised information technology system. The criminal records data should be stored solely in databases operated by Member States, and there should be no direct online access to criminal records databases of other Member States. Member States should bear the responsibility for the operation of national criminal records databases and for the efficient exchanges of information between themselves. The common communication infrastructure of ECRS should be initially the Trans European Services for Telematics between Administrations (S-TESTA) network. All expenditure concerning the common communication infrastructure should be covered by the general budget of the European Union.
- (12) The reference tables of categories of offences and categories of penalties and measures provided for in this Decision should facilitate the automatic translation and should enable the mutual understanding of the information transmitted by using a system of codes. The content of the tables is the result of the analysis of the needs of all 27 Member States. That analysis took into account the pilot project categorisation and the results of the clustering exercise of various national offences and penalties and measures. Moreover, in case of the table of offences, it also took into consideration the existing harmonised common definitions on the European and international level as well as the Eurojust and Europol data models.
- (13) In order to ensure the mutual understanding and transparency of the common categorisation, each Member State should submit the list of national offences and penalties and measures falling in each category referred to in the respective table. Member States may provide a description of offences and penalties and measures and, given the usefulness of such description, they should be encouraged to do so. Such information should be made accessible to Member States.
- (14) The reference tables of categories of offences and categories of penalties and measures provided for in this Decision are not designed to set up legal equivalences between offences and penalties and measures existing at national level. They are a tool aimed at helping the recipient to gain better understanding of the fact(s) and type of penalty(ies) or measure(s) contained in the information transmitted. The accuracy of the codes mentioned cannot be fully guaranteed by the Member State supplying the information and it should not preclude the competent authorities in the receiving Member State from interpreting the information.
- (15) The reference tables of categories of offences and categories of penalties and measures should be revised and updated in accordance with the procedure for the adoption of implementing measures for decisions provided for in the Treaty on European Union.
- (16) Member States and the Commission should inform and consult one another within the Council in accordance with the modalities set out in the Treaty on European Union, with a view to drawing up a non-binding manual for practitioners which should address the procedures governing the exchange of information, in particular modalities of identification of offenders, common understanding of the categories of offences and penalties and measures, and explanation of problematic national offences and penalties and measures, and ensuring the coordination necessary for the development and operation of ECRIS.
- (17) In order to accelerate the development of ECRIS, the Commission should adopt a number of technical measures to assist Member States in preparing the technical infrastructure for interconnecting their criminal records databases. The Commission may provide reference implementation software, namely appropriate software enabling Member States to make this interconnection, which they may choose to apply instead of their own interconnection software implementing a common set of protocols enabling the exchange of information between criminal records databases.
- (18) Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ⁽¹⁾ should apply in the context of computerised exchange of information extracted from criminal records of Member States, providing for an adequate level of data protection when information is exchanged between Member States, whilst allowing for Member States to require higher standards of protection to national data processing.
- (19) Since the objective of this Decision, namely the development of a computerised system for the exchange of information on convictions between Member States, cannot be adequately achieved by the Member States unilaterally, and can therefore, by reason of the necessity for coordinated action in the European Union, be better achieved at the level of the European Union, the Council may adopt measures, in accordance with the principle of subsidiarity referred to in Article 2 of the Treaty on European Union and set out in Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the Article 5 of the Treaty establishing the European Community, this Decision does not go beyond what is necessary in order to achieve that objective.
- (20) This Decision respects fundamental rights and observes the principles recognised in particular by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union.

⁽¹⁾ OJ L 350, 30.12.2008, p. 60.

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

This Decision establishes the European Criminal Records Information System (ECRIS).

This Decision also establishes the elements of a standardised format for the electronic exchange of information extracted from criminal records between the Member States, in particular as regards information on the offence giving rise to the conviction and information on the content of the conviction, as well as other general and technical implementation means related to organising and facilitating the exchange of information.

Article 2

Definitions

For the purposes of this Decision, the definitions laid down in Framework Decision 2009/315/JHA shall apply.

Article 3

European Criminal Records Information System (ECRIS)

1. ECRIS is a decentralised information technology system based on the criminal records databases in each Member State. It is composed of the following elements:

- (a) an interconnection software built in compliance with a common set of protocols enabling the exchange of information between Member States' criminal records databases;
- (b) a common communication infrastructure that provides an encrypted network.

2. This Decision is not aimed at establishing any centralised criminal records database. All criminal records data shall be stored solely in databases operated by the Member States.

3. Central authorities of the Member States referred to in Article 3 of Framework Decision 2009/315/JHA shall not have direct online access to criminal records databases of other Member States. The best available techniques identified together by Member States with the support of the Commission shall be employed to ensure the confidentiality and integrity of criminal records information transmitted to other Member States.

4. The interconnection software and databases storing, sending and receiving information extracted from criminal

records shall operate under the responsibility of the Member State concerned.

5. The common communication infrastructure shall be the S-TESTA communications network. Any further developments thereof or any alternative secure network shall ensure that the common communication infrastructure in place continues to meet the conditions set out in paragraph 6.

6. The common communication infrastructure shall be operated under the responsibility of the Commission, and shall fulfil the security requirements and thoroughly respond to the needs of ECRIS.

7. In order to ensure the efficient operation of ECRIS, the Commission shall provide general support and technical assistance, including the collection and drawing up of statistics referred to in Article 6(2)(b)(i) and the reference implementation software.

8. Notwithstanding the possibility of using the European Union financial programmes in accordance with the applicable rules, each Member State shall bear its own costs arising from the implementation, administration, use and maintenance of its criminal records database and the interconnection software referred to in paragraph 1.

The Commission shall bear the costs arising from the implementation, administration, use, maintenance and future developments of the common communication infrastructure of ECRIS, as well as the implementation and future developments of the reference implementation software.

Article 4

Format of transmission of information

1. When transmitting information in accordance with Article 4(2) and (3) and Article 7 of Framework Decision 2009/315/JHA relating to the name or legal classification of the offence and to the applicable legal provisions, Member States shall refer to the corresponding code for each of the offences referred to in the transmission, as provided for in the table of offences in Annex A. By way of exception, where the offence does not correspond to any specific sub-category, the 'open category' code of the relevant or closest category of offences or, in the absence of the latter, an 'other offences' code, shall be used for that particular offence.

Member States may also provide available information relating to the level of completion and the level of participation in the offence and, where applicable, to the existence of total or partial exemption from criminal responsibility or to recidivism.

2. When transmitting information in accordance with Article 4(2) and (3) and Article 7 of Framework Decision 2009/315/JHA relating to the contents of the conviction, notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence, Member States shall refer to the corresponding code for each of the penalties and measures referred to in the transmission, as provided for in the table of penalties and measures in Annex B. By way of exception, where the penalty or measure does not correspond to any specific sub-category, the 'open category' code of the relevant or closest category of penalties and measures or, in the absence of the latter, an 'other penalties and measures' code, shall be used for that particular penalty or measure.

Member States shall also provide, where applicable, available information relating to the nature and/or conditions of execution of the penalty or measure imposed as provided for in the parameters of Annex B. The parameter 'non-criminal ruling' shall be indicated only in cases where information on such a ruling is provided on a voluntary basis by the Member State of nationality of the person concerned, when replying to a request for information on convictions.

Article 5

Information on national offences and penalties and measures

1. The following information shall be provided by the Member States to the General Secretariat of the Council, with a view in particular to drawing up the non-binding manual for practitioners referred to in Article 6(2)(a):

- (a) the list of national offences in each of the categories referred to in the table of offences in Annex A. The list shall include the name or legal classification of the offence and reference to the applicable legal provisions. It may also include a short description of the constitutive elements of the offence;
- (b) the list of types of sentences, possible supplementary penalties and security measures and possible subsequent decisions modifying the enforcement of the sentence as defined in national law, in each of the categories referred to in the table of penalties and measures in Annex B. It may also include a short description of the specific penalty or measure.

2. The lists and descriptions referred to in paragraph 1 shall be regularly updated by Member States. Updated information shall be sent to the General Secretariat of the Council.

3. The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to this Article.

Article 6

Implementing measures

1. The Council, acting by a qualified majority and after consulting the European Parliament, shall adopt any modifications of Annexes A and B as may be necessary.

2. The representatives of the relevant departments of the administrations of the Member States and the Commission shall inform and consult one another within the Council with a view to:

- (a) drawing up a non-binding manual for practitioners setting out the procedure for the exchange of information through ECRIS, addressing in particular the modalities of identification of offenders, as well as recording the common understanding of the categories of offences and penalties and measures listed respectively in Annexes A and B;
- (b) coordinating their action for the development and operation of ECRIS, concerning in particular:
 - (i) the establishment of logging systems and procedures making it possible to monitor the functioning of ECRIS and the establishment of non-personal statistics relating to the exchange through ECRIS of information extracted from criminal records;
 - (ii) the adoption of technical specifications of the exchange, including security requirements, in particular the common set of protocols;
 - (iii) the establishment of procedures verifying the conformity of the national software applications with the technical specifications.

Article 7

Report

The Commission services shall regularly publish a report concerning the exchange, through ECRIS, of information extracted from the criminal record based in particular on the statistics referred to in Article 6(2)(b)(i). This report shall be published for the first time one year after submitting the report referred to in Article 13(3) of Framework Decision 2009/315/JHA.

Article 8

Implementation and time limits

1. Member States shall take the necessary measures to comply with the provisions of this Decision by 7 April 2012.

2. Member States shall use the format specified in Article 4 and comply with the means of organising and facilitating exchanges of information laid down in this Decision from the date notified in accordance with Article 11(6) of Framework Decision 2009/315/JHA.

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Article 9

Taking of effect

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

Done at Luxembourg, 6 April 2009.

For the Council
The President
J. POŠPIŠIL

ANNEX A

Common table of offences categories referred to in Article 4

Parameters		
Level of completion:	Completed act	C
	Attempt or preparation	A
	Non-transmitted element	∅
Level of participation:	Perpetrator	M
	Aider and abettor or instigator/ organiser, conspirator	H
	Non-transmitted element	∅
Exemption from criminal responsibility:	Insanity or diminished responsibility	S
Recidivism		R

Code	Categories and sub-categories of offences
0100 00 open category	Crimes within the jurisdiction of the International Criminal Court
0101 00	Genocide
0102 00	Crimes against humanity
0103 00	War crimes
0200 00 open category	Participation in a criminal organisation
0201 00	Directing a criminal organisation
0202 00	Knowingly taking part in the criminal activities of a criminal organisation
0203 00	Knowingly taking part in the non-criminal activities of a criminal organisation
0300 00 open category	Terrorism
0301 00	Directing a terrorist group
0302 00	Knowingly participating in the activities of a terrorist group
0303 00	Financing of terrorism
0304 00	Public provocation to commit a terrorist offence
0305 00	Recruitment or training for terrorism
0400 00 open category	Trafficking in human beings

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Code	Categories and sub-categories of offences
0401 00	Trafficking in human beings for the purposes of labour or services exploitation
0402 00	Trafficking in human beings for the purposes of the exploitation of the prostitution of others or other forms of sexual exploitation
0403 00	Trafficking in human beings for the purposes of organ or human tissue removal
0404 00	Trafficking in human beings for the purpose of slavery, practices similar to slavery or servitude
0405 00	Trafficking in human beings for the purposes of labour or services exploitation of a minor
0406 00	Trafficking in human beings for the purposes of the exploitation of the prostitution of minors or other forms of their sexual exploitation
0407 00	Trafficking in human beings for the purposes of organ or human tissue removal of a minor
0408 00	Trafficking in human beings for the purpose of slavery, practices similar to slavery or servitude of a minor
0500 00 open category	Illicit trafficking⁽¹⁾ and other offences related to weapons, firearms, their parts and components, ammunition and explosives
0501 00	Illicit manufacturing of weapons, firearms, their parts and components, ammunition and explosives
0502 00	Illicit trafficking of weapons, firearms, their parts and components ammunition and explosives at national level ⁽²⁾
0503 00	Illicit exportation or importation of weapons, firearms, their parts and components, ammunition and explosives
0504 00	Unauthorised possession or use of weapons, firearms, their parts and components, ammunition and explosives
0600 00 open category	Environmental crime
0601 00	Destroying or damaging protected fauna and flora species
0602 00	Unlawful discharges of polluting substances or ionising radiation into air, soil or water
0603 00	Offences related to waste, including hazardous waste
0604 00	Offences related to illicit trafficking ⁽¹⁾ in protected fauna and flora species or parts thereof
0605 00	Unintentional environmental offences
0700 00 open category	Offences related to drugs or precursors, and other offences against public health
0701 00	Offences related to illicit trafficking ⁽³⁾ in narcotic drugs, psychotropic substances and precursors not exclusively for own personal consumption
0702 00	Illicit consumption of drugs and their acquisition, possession, manufacture or production exclusively for own personal consumption

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Code	Categories and sub-categories of offences
0703 00	Aiding or inciting others to use narcotic drugs or psychotropic substances illicitly
0704 00	Manufacture or production of narcotic drugs not exclusively for personal consumption
0800 00 open category	Crimes against the person
0801 00	Intentional killing
0802 00	Aggravated cases of intentional killing (*)
0803 00	Unintentional killing
0804 00	Intentional killing of a new-born by his/her mother
0805 00	Illegal abortion
0806 00	Illegal euthanasia
0807 00	Offences related to committing suicide
0808 00	Violence causing death
0809 00	Causing grievous bodily injury, disfigurement or permanent disability
0810 00	Unintentionally causing grievous bodily injury, disfigurement or permanent disability
0811 00	Causing minor bodily injury
0812 00	Unintentionally causing minor bodily injury
0813 00	Exposing to danger of loss of life or grievous bodily injury
0814 00	Torture
0815 00	Failure to offer aid or assistance
0816 00	Offences related to organ or tissue removal without authorisation or consent
0817 00	Offences related to illicit trafficking (*) in human organs and tissue
0818 00	Domestic violence or threat
0900 00 open category	Offences against personal liberty, dignity and other protected interests, including racism and xenophobia
0901 00	Kidnapping, kidnapping for ransom, illegal restraint
0902 00	Unlawful arrest or deprivation of liberty by public authority
0903 00	Hostage-taking
0904 00	Unlawful seizure of an aircraft or ship
0905 00	Insults, slander, defamation, contempt

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Code	Categories and sub-categories of offences
0906 00	Threats
0907 00	Duress, pressure, stalking, harassment or aggression of a psychological or emotional nature
0908 00	Extortion
0909 00	Aggravated extortion
0910 00	Illegal entry into private property
0911 00	Invasion of privacy other than illegal entry into private property
0912 00	Offences against protection of personal data
0913 00	Illegal interception of data or communication
0914 00	Discrimination on grounds of gender, race, sexual orientation, religion or ethnic origin
0915 00	Public incitement to racial discrimination
0916 00	Public incitement to racial hatred
0917 00	Blackmail
1000 00 open category	Sexual offences
1001 00	Rape
1002 00	Aggravated rape (*) other than rape of a minor
1003 00	Sexual assault
1004 00	Procuring for prostitution or sexual act
1005 00	Indecent exposure
1006 00	Sexual harassment
1007 00	Soliciting by a prostitute
1008 00	Sexual exploitation of children
1009 00	Offences related to child pornography or indecent images of minors
1010 00	Rape of a minor
1011 00	Sexual assault of a minor
1100 00 open category	Offences against family law
1101 00	Illicit sexual relations between close family members
1102 00	Polygamy

Code	Categories and sub-categories of offences
1103 00	Evading the alimony or maintenance obligation
1104 00	Neglect or desertion of a minor or a disabled person
1105 00	Failure to comply with an order to produce a minor or removal of a minor
1200 00 open category	Offences against the State, public order, course of justice or public officials
1201 00	Espionage
1202 00	High treason
1203 00	Offences related to elections and referendum
1204 00	Attempt against life or health of the Head of State
1205 00	Insult of the State, Nation or State symbols
1206 00	Insult or resistance to a representative of public authority
1207 00	Extortion, duress, pressure towards a representative of public authority
1208 00	Assault or threat on a representative of public authority
1209 00	Public order offences, breach of the public peace
1210 00	Violence during sports events
1211 00	Theft of public or administrative documents
1212 00	Obstructing or perverting the course of justice, making false allegations in the course of criminal or judicial proceedings, perjury
1213 00	Unlawful impersonation of a person or an authority
1214 00	Escape from lawful custody
1300 00 open category	Offences against public property or public interests
1301 00	Public, social security or family benefit fraud
1302 00	Fraud affecting European benefits or allowances
1303 00	Offences related to illegal gambling
1304 00	Obstructing of public tender procedures
1305 00	Active or passive corruption of a civil servant, a person holding public office or public authority
1306 00	Embezzlement, misappropriation or other diversion of property by a public official
1307 00	Abuse of a function by a public official

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Code	Categories and sub-categories of offences
1400 00 open category	Tax and customs offences
1401 00	Tax offences
1402 00	Customs offences
1500 00 open category	Economic and trade related offences
1501 00	Bankruptcy or fraudulent insolvency
1502 00	Breach of accounting regulation, embezzlement, concealment of assets or unlawful increase in a company's liabilities
1503 00	Violation of competition rules
1504 00	Laundrying of proceeds from crime
1505 00	Active or passive corruption in the private sector
1506 00	Revealing a secret or breaching an obligation of secrecy
1507 00	'Insider trading'
1600 00 open category	Offences against property or causing damage to goods
1601 00	Unlawful appropriation
1602 00	Unlawful appropriation or diversion of energy
1603 00	Fraud, including swindling
1604 00	Dealing in stolen goods
1605 00	Illicit trafficking (*) in cultural goods, including antiques and works of art
1606 00	Intentional damage or destruction of property
1607 00	Unintentional damage or destruction of property
1608 00	Sabotage
1609 00	Offences against industrial or intellectual property
1610 00	Arson
1611 00	Arson causing death or injury to persons
1612 00	Forest arson
1700 00 open category	Theft offences

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Code	Categories and sub-categories of offences
1701 00	Theft
1702 00	Theft after unlawful entry into property
1703 00	Theft, using violence or weapons, or using threat of violence or weapons against person
1704 00	Forms of aggravated theft which do not involve use of violence or weapons, or use of threat of violence or weapons, against persons.
1800 00 open category	Offences against information systems and other computer-related crime
1801 00	Illegal access to information systems
1802 00	Illegal system interference
1803 00	Illegal data interference
1804 00	Production, possession, dissemination of or trafficking in computer devices or data enabling commitment of computer-related offences
1900 00 open category	Forgery of means of payment
1901 00	Counterfeiting or forging currency, including the euro
1902 00	Counterfeiting of non-cash means of payment
1903 00	Counterfeiting or forging public fiduciary documents
1904 00	Putting into circulation using counterfeited or forged currency, non-cash means of payment or public fiduciary documents
1905 00	Possession of a device for the counterfeiting or forgery of currency or public fiduciary documents
2000 00 open category	Falsification of documents
2001 00	Falsification of a public or administrative document by a private individual
2002 00	Falsification of a document by a civil servant or a public authority
2003 00	Supply or acquisition of a forged public or administrative document; supply or acquisition of a forged document by a civil servant or a public authority
2004 00	Using forged public or administrative documents
2005 00	Possession of a device for the falsification of public or administrative documents
2006 00	Forgery of private documents by a private individual
2100 00 open category	Offences against traffic regulations
2101 00	Dangerous driving
2102 00	Driving under the influence of alcohol or narcotic drugs

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Code	Categories and sub-categories of offences
2103 00	Driving without a licence or while disqualified
2104 00	Failure to stop after a road accident
2105 00	Avoiding a road check
2106 00	Offences related to road transport
2200 00 open category	Offences against labour law
2201 00	Unlawful employment
2202 00	Offences relating to remuneration, including social security contributions
2203 00	Offences relating to working conditions, health and safety at work
2204 00	Offences relating to access to or exercise of a professional activity
2205 00	Offences relating to working hours and rest time
2300 00 open category	Offences against migration law
2301 00	Unauthorised entry or residence
2302 00	Facilitation of unauthorised entry and residence
2400 00 open category	Offences against military obligations
2500 00 open category	Offences related to hormonal substances and other growth promoters
2501 00	Illicit importation, exportation or supply of hormonal substances and other growth promoters
2600 00 open category	Offences related to nuclear materials or other hazardous radioactive substances
2601 00	Illicit importation, exportation, supply or acquisition of nuclear or radioactive materials
2700 00 open category	Other offences
2701 00	Other intentional offences
2702 00	Other unintentional offences

(1) Unless otherwise specified in this category, 'trafficking' means import, export, acquisition, sale, delivery, movement or transfer.

(2) For the purpose of this sub-category trafficking includes acquisition, sale, delivery, movement or transfer.

(3) For the purpose of this sub-category trafficking includes import, export, acquisition, sale, delivery, movement or transfer.

(4) For example: particularly grave circumstances.

(5) For example rape with particular cruelty.

(6) Trafficking includes import, export, acquisition, sale, delivery, movement or transfer.

ANNEX B

Common table of penalties and measures categories referred to in Article 4

Code	Categories and sub-categories of offences
1000 open category	Deprivation of freedom
1001	Imprisonment
1002	Life imprisonment
2000 open category	Restriction of personal freedom
2001	Prohibition from frequenting some places
2002	Restriction to travel abroad
2003	Prohibition to stay in some places
2004	Prohibition from entry to a mass event
2005	Prohibition to enter in contact with certain persons through whatever means
2006	Placement under electronic surveillance (*)
2007	Obligation to report at specified times to a specific authority
2008	Obligation to stay/reside in a certain place
2009	Obligation to be at the place of residence on the set time
2010	Obligation to comply with the probation measures ordered by the court, including the obligation to remain under supervision
3000 open category	Prohibition of a specific right or capacity
3001	Disqualification from function
3002	Loss/suspension of capacity to hold or to be appointed to public office
3003	Loss/suspension of the right to vote or to be elected
3004	Incapacity to contract with public administration
3005	Ineligibility to obtain public subsidies
3006	Cancellation of the driving licence (*)
3007	Suspension of driving licence
3008	Prohibition to drive certain vehicles
3009	Loss/suspension of the parental authority
3010	Loss/suspension of right to be an expert in court proceedings/witness under oath/juror
3011	Loss/suspension of right to be a legal guardian (*)
3012	Loss/suspension of right of decoration or title
3013	Prohibition to exercise professional, commercial or social activity
3014	Prohibition from working or activity with minors
3015	Obligation to close an establishment
3016	Prohibition to hold or to carry weapons
3017	Withdrawal of a hunting/fishing license

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Code	Categories and sub-categories of offences
3018	Prohibition to issue cheques or to use payment/credit cards
3019	Prohibition to keep animals
3020	Prohibition to possess or use certain items other than weapons
3021	Prohibition to play certain games/sports
4000 open category	Prohibition or expulsion from territory
4001	Prohibition from national territory
4002	Expulsion from national territory
5000 open category	Personal obligation
5001	Submission to medical treatment or other forms of therapy
5002	Submission to a social-educational programme
5003	Obligation to be under the care/control of the family
5004	Educational measures
5005	Socio-judicial probation
5006	Obligation of training/working
5007	Obligation to provide judicial authorities with specific information
5008	Obligation to publish the judgment
5009	Obligation to compensate for the prejudice caused by the offence
6000 open category	Penalty on personal property
6001	Confiscation
6002	Demolition
6003	Restoration
7000 open category	Placing in an institution
7001	Placing in a psychiatric institution
7002	Placing in a detoxification institution
7003	Placing in an educational institution
8000 open category	Financial penalty
8001	Fine
8002	Day-fine (*)
8003	Fine for the benefit of a special recipient (?)
9000 open category	Working penalty
9001	Community service or work
9002	Community service or work accompanied with other restrictive measures

Code	Categories and sub-categories of offences
10000 open category	Military penalty
10001	Loss of military rank ⁽¹⁾
10002	Expulsion from professional military service
10003	Military imprisonment
11000 open category	Exemption/detachment of sentence/penalty, warning
12000 open category	Other penalties and measures

⁽¹⁾ Fixed or mobile placement.

⁽²⁾ Reapplication in order to obtain a new driving licence is necessary.

⁽³⁾ Legal guardian for a person who is legally incompetent or for a minor.

⁽⁴⁾ Fine expressed in daily units.

⁽⁵⁾ E.g. for an institution, association, foundation or a victim.

⁽⁶⁾ Military demotion.

Parameters (to be specified where applicable)

ø	Penalty
m	Measure
a	Suspended penalty/measure
b	Partially suspended penalty/measure
c	Suspended penalty/measure with probation/supervision
d	Partially suspended penalty/measure with probation/supervision
e	Conversion of penalty/measure
f	Alternative penalty/measure imposed as principal penalty
g	Alternative penalty/measure imposed initially in case of non-respect of the principal penalty
h	Revocation of suspended penalty/measure
i	Subsequent formation of an overall penalty
j	Interruption of enforcement/postponement of the penalty/measure ⁽¹⁾
k	Remission of the penalty
l	Remission of the suspended penalty
n	End of penalty
o	Pardon
p	Amnesty
q	Release on parole (liberation of a person before end of the sentence under certain conditions)
r	Rehabilitation (with or without the deletion of penalty from criminal records)
s	Penalty or measure specific to minors
t	Non-criminal ruling ⁽²⁾

⁽¹⁾ Does not lead to avoidance of enforcement of penalty.

⁽²⁾ This parameter will be indicated only when such information is provided in reply to the request received by the Member State of nationality of the person concerned.

Appendix 12 – Coroners and Justice Act 2009, s144 and schedule 17

Status: This version of this provision is prospective.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Coroners and Justice Act 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)



Coroners and Justice Act 2009

2009 CHAPTER 25

PART 5

MISCELLANEOUS CRIMINAL JUSTICE PROVISIONS

PROSPECTIVE

144 Treatment of convictions in other member States etc

Schedule 17 contains—

- (a) amendments relating to the treatment of criminal convictions imposed by courts outside England and Wales, and
- (b) amendments relating to the treatment of criminal convictions imposed by courts outside Northern Ireland.

Status:

This version of this provision is prospective.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Act Appointed Day(s) by S.I. 2009/3253 (commencement order for 2009 c. 25)
- Act Appointed Day(s) by S.I. 2010/145 (commencement order for 2009 c. 25)
- Act Appointed Day(s) by S.I. 2010/28 (commencement order for 2009 c. 25)
- Act Appointed Day(s) by S.I. 2010/816 (commencement order for 2009 c. 25)
- Act Appointed day(s) by S.I. 2010/1858 (commencement order for 2009 c. 25)
- Act amendment to earlier commencing SI 2010/145 by S.I. 2010/186
- Act amendment to earlier commencing SI 2010/816 art. 7(2) by S.I. 2011/722 (commencement order for 2009 c. 25)
- Act text amended by S.I. 2011/1043

Status: This version of this schedule contains provisions that are prospective.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Coroners and Justice Act 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

PROSPECTIVE

SCHEDULE 17

Section 144

TREATMENT OF CONVICTIONS IN OTHER MEMBER STATES ETC

Evidence of bad character

- 1 (1) The Criminal Justice Act 2003 (c. 44) is amended as follows.
- (2) In section 103 (matter in issue between the defendant and the prosecution), after subsection (6) add—
- “(7) Where—
- (a) a defendant has been convicted of an offence under the law of any country outside England and Wales (“the previous offence”), and
 - (b) the previous offence would constitute an offence under the law of England and Wales (“the corresponding offence”) if it were done in England and Wales at the time of the trial for the offence with which the defendant is now charged (“the current offence”),
- subsection (8) applies for the purpose of determining if the previous offence and the current offence are of the same description or category.
- (8) For the purposes of subsection (2)—
- (a) the previous offence is of the same description as the current offence if the corresponding offence is of that same description, as set out in subsection (4)(a),
 - (b) the previous offence is of the same category as the current offence if the current offence and the corresponding offence belong to the same category of offences prescribed as mentioned in subsection (4)(b).
- (9) For the purposes of subsection (10) “foreign service offence” means an offence which—
- (a) was the subject of proceedings under the service law of a country outside the United Kingdom, and
 - (b) would constitute an offence under the law of England and Wales or a service offence (“the corresponding domestic offence”) if it were done in England and Wales by a member of Her Majesty’s forces at the time of the trial for the offence with which the defendant is now charged (“the current offence”).
- (10) Where a defendant has been found guilty of a foreign service offence (“the previous service offence”), for the purposes of subsection (2)—

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- (a) the previous service offence is an offence of the same description as the current offence if the corresponding domestic offence is of that same description, as set out in subsection (4)(a);
- (b) the previous service offence is an offence of the same category as the current offence if the current offence and the corresponding domestic offence belong to the same category of offences prescribed as mentioned in subsection (4)(b).

(11) In this section—

“Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006;

“service law”, in relation to a country outside the United Kingdom, means the law governing all or any of the naval, military or air forces of that country.”

(3) In section 108 (offences committed by defendant when a child), after subsection (2) insert—

“(2A) Subsection (2B) applies where—

- (a) the defendant has been convicted of an offence under the law of any country outside England and Wales (“the previous offence”), and
- (b) the previous offence would constitute an offence under the law of England and Wales (“the corresponding offence”) if it were done in England and Wales at the time of the proceedings for the offence with which the defendant is now charged.

(2B) For the purposes of subsection (2), the previous offence is to be regarded as triable only on indictment if the corresponding offence is so triable.”

2 (1) The Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501 (N.I. 10)) is amended as follows.

(2) In Article 8 (matter in issue between the defendant and the prosecution), after paragraph (6) add—

“(7) Where—

- (a) a defendant has been convicted of an offence under the law of any country outside Northern Ireland (“the previous offence”), and
- (b) the previous offence would constitute an offence under the law of Northern Ireland (“the corresponding offence”) if it were done in Northern Ireland at the time of the trial for the offence with which the defendant is now charged (“the current offence”),

paragraph (8) applies for the purpose of determining if the previous offence and the current offence are of the same description or category.

(8) For the purposes of paragraph (2)—

- (a) the previous offence is of the same description as the current offence, if the corresponding offence is of that same description, as set out in paragraph (4)(a);
- (b) the previous offence is of the same category as the current offence, if the current offence and the corresponding offence belong to the same category of offences prescribed as mentioned in paragraph (4)(b).”

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(3) In Article 13 (offences committed by a defendant when a child), after paragraph (1) insert—

“(1A) Paragraph (1B) applies where—

- (a) the defendant has been convicted of an offence under the law of any country outside Northern Ireland (“the previous offence”), and
- (b) the previous offence would constitute an offence under the law of Northern Ireland (“the corresponding offence”) if it were done in Northern Ireland at the time of the proceedings for the offence for which the defendant is now charged.

(1B) For the purposes of paragraph (1), the previous offence is to be regarded as triable only on indictment if the corresponding offence is so triable.”

Bail

3 (1) Section 25 of the Criminal Justice and Public Order Act 1994 (c. 33) (no bail for defendants charged with or convicted of homicide or rape after previous conviction of such offences) is amended as follows.

(2) For subsection (3) substitute—

“(3) This section applies in the circumstances described in subsection (3A) or (3B) only.

(3A) This section applies where—

- (a) the person has been previously convicted by or before a court in any part of the United Kingdom of any offence within subsection (2) or of culpable homicide, and
- (b) if that previous conviction is one of manslaughter or culpable homicide—
 - (i) the person was then a child or young person, and was sentenced to long-term detention under any of the relevant enactments, or
 - (ii) the person was not then a child or young person, and was sentenced to imprisonment or detention.

(3B) This section applies where—

- (a) the person has been previously convicted by or before a court in another member State of any relevant foreign offence corresponding to an offence within subsection (2) or to culpable homicide, and
- (b) if the previous conviction is of a relevant foreign offence corresponding to the offence of manslaughter or culpable homicide—
 - (i) the person was then a child or young person, and was sentenced to detention for a period in excess of 2 years, or
 - (ii) the person was not then a child or young person, and was sentenced to detention.”

(3) In subsection (5), omit “and” at the end of the definition of “conviction”, and at the end insert—

4

Coroners and Justice Act 2009 (c. 25)
Schedule 17 – Treatment of convictions in other member States etc
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““relevant foreign offence”, in relation to a member State other than the United Kingdom, means an offence under the law in force in that member State.”

(4) After that subsection insert—

“(5A) For the purposes of subsection (3B), a relevant foreign offence corresponds to another offence if the relevant foreign offence would have constituted that other offence if it had been done in any part of the United Kingdom at the time when the relevant foreign offence was committed.”

Decision as to allocation

4 (1) Section 19 of the Magistrates’ Courts Act 1980 (c. 43) (decision as to allocation) (as substituted by Schedule 3 to the Criminal Justice Act 2003 (c. 44)) is amended as follows.

(2) In subsection (5), omit “or” at the end of paragraph (a) and insert—

“(aa) a previous conviction by a court in another member State of a relevant offence under the law of that State; or”.

(3) After that subsection insert—

“(5A) For the purposes of subsection (5)(aa) an offence is “relevant” if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time when the allocation decision is made.”

5 (1) Paragraph 9 of Schedule 3 to the Crime and Disorder Act 1998 (c. 37) (procedure where persons are sent for trial under section 51 of the Crime and Disorder Act 1998) (as amended by Schedule 3 to the Criminal Justice Act 2003) is amended as follows.

(2) In sub-paragraph (5), omit “or” at the end of paragraph (a) and insert—

“(aa) a previous conviction by a court in another member State of a relevant offence under the law of that State, or”.

(3) After that sub-paragraph, insert—

“(5A) For the purposes of sub-paragraph (5)(aa) an offence is “relevant” if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time when the allocation decision is made.”

Seriousness

6 (1) Section 143 of the Criminal Justice Act 2003 (determining the seriousness of an offence) is amended as follows.

(2) In subsection (4)—

(a) omit “or” at the end of paragraph (a) and insert—

“(aa) a previous conviction by a court in another member State of a relevant offence under the law of that State.”, and

(b) after paragraph (b) insert “or

(c) a finding of guilt in respect of a member State service offence.”

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(3) For subsection (5) substitute—

“(5) Subsections (2) and (4) do not prevent the court from treating—

- (a) a previous conviction by a court outside both the United Kingdom and any other member State, or
- (b) a previous conviction by a court in any member State (other than the United Kingdom) of an offence which is not a relevant offence,

as an aggravating factor in any case where the court considers it appropriate to do so.

(6) For the purposes of this section—

- (a) an offence is “relevant” if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction of the defendant for the current offence,
- (b) “member State service offence” means an offence which—
 - (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
 - (ii) would constitute an offence under the law of any part of the United Kingdom, or a service offence (within the meaning of the Armed Forces Act 2006), if it were done in any part of the United Kingdom, by a member of Her Majesty’s forces, at the time of the conviction of the defendant for the current offence,
- (c) “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006, and
- (d) “service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.”

7 (1) Section 238 of the Armed Forces Act 2006 (c. 52) (deciding the seriousness of an offence) is amended as follows.

(2) In subsection (3)—

- (a) omit “or” at the end of paragraph (a), and
- (b) at the end of paragraph (b), insert—

“(c) a previous conviction by a court in a member State other than the United Kingdom of a relevant offence under the law of that State, or

(d) a finding of guilt in respect of a member State service offence.”

(3) For subsection (4) substitute—

“(4) Nothing in this section prevents the court or officer from treating—

- (a) a previous conviction by a court outside both the British Islands and any member State, or
- (b) a previous conviction by a court in any member State (other than the United Kingdom) of an offence which is not a relevant offence or a member State service offence,

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as an aggravating factor in any case where the court or officer considers it appropriate to do so.

(5) For the purposes of this section—

- (a) an offence is “relevant” if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction in respect of the current offence,
- (b) “member State service offence” means an offence which—
 - (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
 - (ii) would constitute an offence under the law of any part of the United Kingdom, or a service offence, if it were done in any part of the United Kingdom, by a member of Her Majesty’s forces, at the time of the conviction of the defendant for the current offence, and
- (c) “service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.”

Availability of community orders

- 8 (1) Section 151 of the Criminal Justice Act 2003 (c. 44) (community order or youth rehabilitation order for persistent offender previously fined) (as amended by the Criminal Justice and Immigration Act 2008 (c. 4)) is amended as follows.
- (2) For subsection (1)(b) substitute—
- “(b) on three or more previous occasions a sentence consisting only of a fine has been passed on the offender on conviction—
- (i) by a court in the United Kingdom of an offence committed by the offender after attaining the age of 16, or
 - (ii) by a court in another member State of a relevant offence so committed, and”.
- (3) For subsection (1A)(c) substitute—
- “(c) on three or more previous occasions a sentence consisting only of a fine has been passed on the offender on conviction—
- (i) by a court in the United Kingdom of an offence committed by the offender after attaining the age of 16, or
 - (ii) by a court in another member State of a relevant offence so committed.”
- (4) For subsection (2A)(b) substitute—
- “(b) on three or more previous occasions a sentence consisting only of a fine has been passed on the offender on conviction—
- (i) by a court in the United Kingdom of an offence committed by the offender after attaining the age of 16, or
 - (ii) by a court in another member State of a relevant offence so committed, and”.
- (5) After subsection (4) insert—

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- “(4A) For the purposes of subsections (1)(b), (1A)(c) and (2A)(b), an offence is “relevant” if the offence would constitute an offence under the law of any part of the United Kingdom if it were done there at the time of the conviction of the defendant for the current offence.”
- (6) In subsection (8) (as inserted by Schedule 16 to the Armed Forces Act 2006 (c. 52))—
- (a) in paragraph (a) for the words “within the meaning of the Armed Forces Act 2006; and”, substitute “ or a member State service offence;”,
 - (b) in paragraph (b)—
 - (i) after “service disciplinary proceedings” insert “ (other than proceedings for a member State service offence)”, and
 - (ii) for “that Act” substitute “ the Armed Forces Act 2006”, and
 - (c) after that paragraph insert—
 - “(c) member State service offence” means an offence which—
 - (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
 - (ii) would constitute an offence under the law of any part of the United Kingdom, or a service offence, if it were done in any part of the United Kingdom, by a member of Her Majesty’s forces, at the time of the conviction of the defendant for the current offence;
 - (d) “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006;
 - (e) “service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State;
 - (f) “service offence” has the same meaning as in the Armed Forces Act 2006.”
- 9 (1) Section 270B of the Armed Forces Act 2006 (c. 52) (community punishment for offender previously fined) is amended as follows.
- (2) In subsection (6) omit “or” at the end of paragraph (a) and insert—
- “(aa) a conviction by a court in any member State other than the United Kingdom of a relevant offence; or”.
- (3) In subsection (10)—
- (a) in paragraph (a) after “offence” insert “ or a member State service offence”;
 - (b) in paragraph (b) for “such proceedings” substitute “ proceedings in respect of a service offence”;
 - (c) after that paragraph insert—
 - “(c) relevant offence” means an offence that would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction of the defendant for the current offence;
 - (d) “member State service offence” means an offence which—
 - (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and

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- (ii) would constitute an offence under the law of any part of the United Kingdom, or a service offence, if it were done in any part of the United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the defendant for the current offence;
- (e) "the service law of a member State other than the United Kingdom" means the law governing all or any of the naval, military or air forces of that State."

Required custodial sentences for certain offences

- 10 (1) Chapter 3 of Part 5 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) is amended as follows.
- (2) In section 110 (minimum sentence of 7 years for third class A drug trafficking offence)—
- (a) in subsection (1)(b), for "been convicted" to the end substitute " 2 relevant drug convictions; and", and
 - (b) after subsection (2) insert—
 - "(2A) For the purposes of subsection (1)—
 - (a) a "relevant drug conviction" means—
 - (i) a conviction in any part of the United Kingdom of a class A drug trafficking offence, or
 - (ii) a conviction in another member State of an offence which was committed after the relevant date and would, if done in the United Kingdom at the time of the conviction, have constituted a class A drug trafficking offence; and
 - (b) "the relevant date" means the date on which this subsection comes into force."
- (3) In section 111 (minimum of 3 years for third domestic burglary)—
- (a) in subsection (1)—
 - (i) in paragraph (b), for "been convicted" to the end substitute " 2 relevant domestic burglary convictions; and", and
 - (ii) in paragraph (c), for "30th November 1999" substitute " the relevant date", and
 - (b) after subsection (2) insert—
 - "(2A) For the purposes of subsection (1)—
 - (a) a "relevant domestic burglary conviction" means—
 - (i) a conviction in England and Wales of a domestic burglary, or
 - (ii) a conviction in any other part of the United Kingdom or any other member State of an offence which would, if done in England and Wales at the time of the conviction, have constituted domestic burglary;
 - (b) "the relevant date", in relation to a relevant domestic burglary conviction, means—

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- (i) in respect of a conviction in England and Wales, 30 November 1999, and
- (ii) in any other case, the day on which this subsection comes into force.”
- (4) In section 113 (certificates of conviction for the purposes of Chapter 3)—
- (a) after subsection (1) insert—
- “(1A) Where—
- (a) a person is convicted—
- (i) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,
- (ii) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or
- (iii) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence,
- (b) in the case of a conviction by or before a court in the United Kingdom, it is stated in open court that the person has been convicted of such an offence on that date, and
- (c) the court by or before which the person is convicted certifies, by way of a certificate signed by the proper officer of the court, the fact that the person has been convicted of such an offence on that date,”the certificate is evidence, for the purposes of the relevant section of this Chapter, that the person was convicted of such an offence on that date.”,
- (b) after subsection (2) insert—
- “(2A) Where—
- (a) a person is convicted—
- (i) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,
- (ii) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or
- (iii) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence,
- (b) in the case of a conviction by or before a court in the United Kingdom, it is stated in open court that the offence was committed on a particular day or over, or at some time during, a particular period, and
- (c) the court by or before which the person is convicted certifies, by way of a certificate signed by the proper officer of the court, that the offence was committed on a particular day or over, or at some time during, a particular period,”the certificate is evidence, for the purposes of the relevant

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section of this Chapter, that the offence was committed on that day or over, or at some time during, that period.”, and

(c) in subsection (3)—

(i) at the beginning of the definitions insert—

““proper officer” means the clerk of the court, that clerk’s deputy or any other person having custody of the court record.”, and

(ii) omit “and” at the end of the definition of “class A drug trafficking offence” and “domestic burglary”, and after those definitions insert

““corresponding drug trafficking offence” means an offence within section 110(2A)(a)(ii);

“corresponding domestic burglary offence” means an offence within section 111(2A)(a)(ii); and”.

(5) In section 114 (offences under service law) (as substituted by Schedule 16 to the Armed Forces Act 2006 (c. 52))—

(a) after subsection (1) insert—

“(1A) Where—

(a) a person has at any time been found guilty of a member State service offence committed after the relevant date, and

(b) the corresponding UK offence was a class A drug trafficking offence or a domestic burglary,

the relevant section of this Chapter and subsection (1) above shall have effect as if the person had at that time been convicted in England and Wales of that corresponding UK offence.

(1B) For the purposes of subsection (1A)—

(a) “member State service offence” means an offence which—
 (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and

(ii) at the time it was done would have constituted an offence under the law of any part of the United Kingdom, or an offence under section 42 of the Armed Forces Act 2006, if it had been done in any part of the United Kingdom by a member of Her Majesty’s forces (“the corresponding UK offence”);

(b) “relevant date” means—

(i) where the corresponding UK offence was a class A drug trafficking offence, the relevant date referred to in section 110(2A)(b), and

(ii) where the corresponding UK offence was a domestic burglary, the relevant date referred to in section 111(2A)(b)(ii);

(c) “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006;

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- (d) “service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.”, and”
- (b) after subsection (3) insert—

“(4) Where—

- (a) the corresponding UK offence is an offence under section 42 of the Armed Forces Act 2006 by reason of section 43, 45, 46 or 47 of that Act (attempting, conspiring to commit, inciting, aiding, abetting, counselling or procuring criminal conduct); and
- (b) the act to which it relates (“the contemplated act”) is not an act that is (or that if done would have been) punishable by the law of England and Wales;

for the purposes of subsections (1A) and (1B) it must be assumed that the contemplated act amounted to the offence under the law of England and Wales that it would have amounted to if it had been the equivalent act in England or Wales.”

Restriction on imposing custodial sentence or service detention

- 11 In section 263 of the Armed Forces Act 2006 (c. 52) (restriction on imposing custodial sentence or service detention on unrepresented offender)—

- (a) at the end of subsection (2)(b) insert “, or sentenced to detention by a court in any other member State or for a member State service offence”, and
- (b) at the end of subsection (6)(b) insert—

“(c) member State service offence” means an offence which—

- (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and

- (ii) at the time it was done, would have constituted an offence in any part of the United Kingdom, or a service offence, if it had been done in any part of the United Kingdom by a member of Her Majesty’s forces;

- (d) “service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.”

Young offenders: referral conditions

- 12 (1) Section 17 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (referral conditions for young offenders) (as amended by the Criminal Justice and Immigration Act 2008 (c. 4)) is amended as follows.

- (2) For subsection (1)(b) substitute—

“(b) has never been—

- (i) convicted by or before a court in the United Kingdom of any offence other than the offence and any connected offence, or
- (ii) convicted by or before a court in another member State of any offence.”

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- (3) In subsection (2A)—
- (a) after “never” insert “—
(a)”,
and
 - (b) at the end insert “, or
(b) been convicted by or before a court in another member State of any offence.”
- (4) For subsection (2B) substitute—
- “(2B) This subsection is satisfied in relation to the offender if, disregarding the offence and any connected offence—
- (a) the offender—
 - (i) has been dealt with by a UK court for any offence on only one previous occasion, and
 - (ii) was not referred to a youth offender panel under section 16 on that occasion; or
 - (b) the offender has been dealt with by a court in any member State other than the United Kingdom on only one previous occasion.”
- (5) For subsection (2C)(a) substitute—
- “(a) disregarding the offence and any connected offence, the offender has been dealt with by a UK court or a court in another member State for any offence on one or more previous occasions, and has either—
- (i) never been referred to a youth offender panel under section 16 above, or
 - (ii) been referred to a youth offender panel on only one previous occasion;”.

Proving of foreign convictions before courts in England and Wales

- 13 (1) Section 73 of the Police and Criminal Evidence Act 1984 (c. 60) (proof of convictions and acquittals) is amended as follows.
- (2) In subsection (1), after “Kingdom” insert “ or any other member State”.
 - (3) In subsection (2), after paragraph (b) insert “; and
(c) shall, as regards a conviction or acquittal by a court in a member State (other than the United Kingdom), consist of a certificate, signed by the proper officer of the court where the conviction or acquittal took place, giving details of the offence, of the conviction or acquittal, and of any sentence;”.
 - (4) In subsection (3)—
 - (a) in paragraph (b), after “other court” insert “ in the United Kingdom”, and
 - (b) after that paragraph add “, and
“(c) in relation to any court in another member State (“the EU court”), a person who would be the proper officer of the EU court if that court were in the United Kingdom.”

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- 14 (1) Section 74 of that Act (conviction as evidence of commission of offence) is amended as follows.
- (2) In subsection (1), after “Kingdom” (in first place it occurs) insert “ or any other member State”.
- (3) In subsection (2), after “Kingdom” (in first place it occurs) insert “ or any other member State”.
- (4) In subsection (3)(a) after “Kingdom” insert “ or any other member State”.
- 15 In section 75 of that Act (provisions supplementary to section 74), for subsection (1) (b) substitute—
- “(b) the contents of—
- (i) the information, complaint, indictment or charge-sheet on which the person in question was convicted, or
- (ii) in the case of a conviction of an offence by a court in a member State (other than the United Kingdom), any document produced in relation to the proceedings for that offence which fulfils a purpose similar to any document or documents specified in sub-paragraph (i).”
- Proving of foreign convictions before courts in Northern Ireland
- 16 (1) Article 71 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (proof of convictions and acquittals) is amended as follows.
- (2) After paragraph (1) insert—
- “(1A) Where in any criminal proceedings the fact that a person has in a member State been convicted or acquitted of an offence is admissible in evidence, it may be proved by—
- (a) producing a certificate of conviction or, as the case may be, of acquittal relating to that offence, and
- (b) proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved.”
- (3) In paragraph (2), after sub-paragraph (b) insert “; and
- “(c) shall, as regards a conviction or acquittal by a court in a member State (other than the United Kingdom), consist of a certificate, signed by the clerk of the court where the conviction or acquittal took place, giving details of the offence, of the conviction or acquittal, and of any sentence;”.
- 17 (1) Article 72 of that Order (conviction as evidence of commission of offence) is amended as follows.
- (2) In paragraph (1), after “Kingdom” (in first place it occurs) insert “ or any other member State”.
- (3) In paragraph (2), after “Kingdom” (in first place it occurs) insert “ or any other member State”.
- (4) In paragraph (3)(a), after “Kingdom” insert “ or any other member State”.

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Coroners and Justice Act 2009 (c. 25)
Schedule 17 – Treatment of convictions in other member States etc
Document Generated: 2011-03-22

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- 18** In Article 73 of that Order (provisions supplementary to Article 72), for paragraph (1) (b) substitute—
- “(b) the contents of—
- (i) the complaint, information, indictment or charge-sheet on which the person in question was convicted, or
 - (ii) in the case of a conviction of an offence by a court in a member State (other than the United Kingdom), any document produced in relation to the proceedings for that offence which fulfils a purpose similar to any document or documents specified in paragraph (i).”

Status:

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Changes to legislation:

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Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- Act Appointed Day(s) by S.I. 2009/3253 (commencement order for 2009 c. 25)
- Act Appointed Day(s) by S.I. 2010/145 (commencement order for 2009 c. 25)
- Act Appointed Day(s) by S.I. 2010/28 (commencement order for 2009 c. 25)
- Act Appointed Day(s) by S.I. 2010/816 (commencement order for 2009 c. 25)
- Act Appointed day(s) by S.I. 2010/1858 (commencement order for 2009 c. 25)
- Act amendment to earlier commencing SI 2010/145 by S.I. 2010/186

Appendix 13 – Ministry of Justice Circular 2010/12 (Implementation of section 144 and schedule 17 of the Coroners and Justice Act 2009)



Ministry of
JUSTICE

Circular 2010/12

TITLE Implementation of section 144 and Schedule 17 of the Coroners and Justice Act 2009

From: Better Trials Unit
Ministry of Justice

Distribution date: 2 August 2010

Implementation date: 15 August 2010

Contact: See end

Broad subject: Legislation

Sub category: Commencement

Sent to: Chief Officers of Police, Association of Chief Police Officers, Police Federation, Police Superintendents' Association, CPS, Whitehall Prosecutors' Group, Law Society, Criminal Bar Association, Solicitors' Association of Higher Court Advocates, Lord Chief Justice, Senior Presiding Judge, Justices of the Supreme Court, Lord Justices of Appeal, Judge Advocate General, High Court Judges, Crown Court Judges, District Judges (Magistrates' Courts), Bench Chairs, Council of Circuit Judges, Magistrates' Association, Justices' Clerks' Society, Judicial Studies Board

The purpose of this circular is to inform criminal justice professionals and any other interested parties that the Coroners and Justice Act 2009 (Commencement No.5) Order 2010 (SI 2010 No.1858 (C.94)) brings section 144 and Schedule 17 (Treatment of convictions in other member States etc) of the Coroners and Justice Act 2009 into force in England and Wales on 15 August 2010.

1. Section 144 and Schedule 17 of the Coroners and Justice Act 2009 implement EU Council Framework Decision 2008/675/JHA on taking account of previous convictions in other EU Member States in the course of new criminal proceedings. The UK must implement the Framework Decision by 15 August 2010.

Extent

2. The following amendments extend to England and Wales. Parallel amendments in relation to Northern Ireland are included in the Act and are subject to a separate Commencement Order. The Framework Decision is being implemented in Scotland by means of separate legislation.

Summary of amendments

3. In summary, these amendments ensure that convictions in other EU Member States are taken into account in criminal proceedings in England and Wales to the extent that domestic convictions are, and that equivalent legal effects are attached to them as to domestic convictions. They add references to EU convictions to the existing provisions set out below. In some instances (noted where appropriate) they also clarify the position regarding convictions from outside the EU. Similar amendments are made in relation to taking into account of EU service offences and in relation to the service justice system.
4. The following brief descriptions of the amendments are provided here for ease of reference. Further explanation is contained in paragraphs 626 to 657 of the Explanatory Notes to the Act, which can be found at: www.opsi.gov.uk/acts/acts2009/en/ukpgaen_20090025_en_7#cpt5-11q144_IDAUGW4D
5. The amendments relating to decision as to allocation for trial summarily or on indictment and to community orders for persistent petty offenders previously fined are included below for the sake of completeness although, for the reasons noted, they will not come into force on 15 August 2010.

Admission of evidence as to bad character of a defendant (*paragraph 1 of Schedule 17, amending sections 103 and 108 of the Criminal Justice Act 2003*) (*Explanatory Notes paragraphs 627 to 630*).

6. Amendments have been made clarifying that a conviction under the law of any country outside England and Wales (including EU convictions) can be admitted to the same extent as convictions in England and Wales, provided that the offence would also have been an offence in England and Wales if it had been done there at the time of the trial (in relation to section 103) or the proceedings (in relation to section 108) for the offence with which the defendant is now charged. The amendments do not have effect in relation to trials or hearings begun before 15 August 2010 – see under “Transition” below. (*Note: As well as clarifying the position in respect of the above Framework Decision these amendments put beyond doubt that convictions in any other country can be admitted under the provisions amended to the same extent as convictions of offences committed in England and Wales, providing that the relevant conditions are met.*)

Granting of bail to persons charged with homicide, rape etc. (paragraph 3 of Schedule 17, amending section 25 of the Criminal Justice and Public Order Act 1994) (Explanatory Notes paragraphs 632 to 634).

7. An EU conviction will be taken into account if the offence would have been one of the UK offences specified if it had been done in the UK at the time when it was committed. If the corresponding domestic offence is manslaughter or culpable homicide it will be necessary for the prosecutor to establish whether the defendant was a child or young person at the time of the previous conviction, and what sentence was received.

Decision as to allocation for trial summarily or on indictment (paragraphs 4 and 5 of Schedule 17, amending section 19 of the Magistrates' Courts Act 1980 and paragraph 9 of Schedule 3 to the Crime and Disorder Act 1998, as substituted by Schedule 3 to the Criminal Justice Act 2003) (Explanatory Notes paragraphs 635 to 636).

8. An EU conviction will be taken into account if the offence would also have been an offence in the UK if it had been done there at the time the allocation decision is made. (*Note: The provisions regarding taking into account of convictions in England and Wales for these purposes have not yet been brought into force. When those provisions are brought into force, these amendments will also be brought into force.*)

Determining the seriousness of an offence when sentencing (paragraph 6 of Schedule 17, amending section 143 of the Criminal Justice Act 2003) (Explanatory Notes paragraphs 637 to 639).

9. An EU conviction will be taken into account if the offence would also have been an offence in the UK if it had been done here at the time of the trial of the defendant for the current offence. The amendment does not have effect in relation to any sentence passed in relation to a conviction for an offence committed before 15 August 2010 – see under "Transition" below. (*Note: This amendment also makes clear that the court is not prevented from treating a conviction by a court outside the UK and an EU Member State, or by a court in an EU Member State for an offence which would not be an offence in the UK, as an aggravating factor where the court considers it appropriate to do so.*)

Community orders for persistent petty offenders previously fined (paragraph 8 of Schedule 17, amending section 151 of the Criminal Justice Act 2003 as amended by the Criminal Justice and Immigration Act 2008) (Explanatory Notes paragraphs 640 to 641).

10. An EU conviction will be taken into account if the offence would also have been an offence in the UK if it had been done there at the time of the defendant's conviction for the current offence. The amendment does not have effect in relation to any sentence passed in relation to a conviction for an offence committed before the coming into force of the amendment – see under "Transition" below. (*Note: The provision regarding community orders for persistent petty offenders previously fined has not yet been brought into force. When it is, this amendment will also be brought into force.*)

Required custodial sentence for a third class A drug trafficking or domestic burglary offence (*paragraph 10 of Schedule 17, amending sections 110, 111 and 113 of the Powers of Criminal Courts (Sentencing) Act 2000*) (*Explanatory Notes paragraphs 642 to 645*).

11. An EU conviction (and, for domestic burglary, a conviction in Scotland or Northern Ireland) will be taken into account if the offence would have been one of the offences specified if it had been done in the UK (or, in the case of domestic burglary, in England and Wales) at the time of the EU (or other UK) conviction. EU offences (and domestic burglary offences in Scotland and Northern Ireland) committed on or before 15 August 2010 will not be relevant. (Section 113 makes provision for proving convictions for the purposes of sections 110 and 111. The amendment to that is dealt with below under "Proving of EU convictions before courts".) The amendments do not have effect in relation to any sentence passed in relation to a conviction for an offence committed before 15 August 2010 – see under "Transition" below.
12. It will be necessary for the prosecutor (assisted if necessary by the UK Central Authority for the Exchange of Criminal Records (UKCA-ECR) or the letter of request procedure – see below) to establish whether the EU conviction for drug trafficking related to what the UK defines as a class A drug trafficking offence and whether the EU (or Scotland or Northern Ireland) conviction for burglary related to what in England and Wales would be a domestic burglary.

Restriction on imposing a custodial sentence or service detention on an unrepresented offender (*paragraph 11 of Schedule 17, amending section 263 of the Armed Forces Act 2006*) (*Explanatory Notes paragraph 646*).

13. A sentence to detention by a court in another EU Member State, or for an EU service offence which would also have been an offence in the UK if it had been done there at the time it was done, will be taken into account when deciding whether this restriction applies, in the same way as a sentence to imprisonment by a civilian court in the UK, or for a UK service offence. The amendment does not have effect in relation to any sentence passed in relation to a conviction for an offence committed before 15 August 2010 – see under "Transition" below.

Circumstances in which courts must or may make a referral order in respect of a young offender (*paragraph 12 of Schedule 17, amending section 17 of the Powers of Criminal Courts (Sentencing) Act 2000 as amended by the Criminal Justice and Immigration Act 2008*) (*Explanatory Notes paragraphs 647 to 652*).

14. Conviction of any offence by a court in another EU Member State will be taken into account in the same way as conviction of any offence by a court in the UK. The provisions that require the number of occasions on which the offender has been dealt with for any offence by a court in the UK to be taken into account are amended to include occasions on which the offender has been dealt with for any offence by a court in another EU Member State. The amendment does not have effect in relation to any sentence passed in relation to a conviction for an offence committed before 15 August 2010 – see under "Transition" below.
15. For the purposes of this amendment there will be no need to establish correspondence of offences (although UKCA-ECR will do so in any event) – any EU conviction will be taken into account. In addition to convictions, to establish whether the discretionary referral conditions are satisfied, it will be necessary to

establish whether the defendant has been dealt with by a court in another Member State and, if so, whether that has happened on only one occasion.

Proving of EU convictions before courts (*paragraphs 13, 14 and 15 of Schedule 17, amending sections 73 to 75 of the Police and Criminal Evidence Act 1984*) (*Explanatory Notes paragraphs 653 to 655*).

16. The amendment to section 73 enables EU convictions or acquittals to be proved in the same way as UK convictions or acquittals, that is, by a certificate signed by the proper officer of the court, as well as by proof of identity of the person convicted or acquitted. The provisions in section 74, which define the extent to which a conviction is evidence of commission of an offence, are amended to include convictions by a court in another EU Member State. The supplementary provisions in section 75 for the content of certain documents, such as the charge-sheet, to be admissible as evidence of the facts on which a conviction was based are amended to include documents which fulfil a similar purpose in the case of an EU conviction. (Sections 74 and 75 relate only to persons other than the accused.) The amendments do not have effect in relation to trials or hearings begun before 15 August 2010 – see under “Transition” below.
17. Proving of convictions for class A drug trafficking or domestic burglary is provided for by section 113 of the Powers of Criminal Courts (Sentencing) Act 2000. That is amended (by paragraph 10(4) of Schedule 17) (Explanatory Notes paragraph 645) to provide that in the case of an EU conviction or a conviction in a part of the UK other than England and Wales a certificate signed by the proper officer of the court is evidence of the fact of the conviction and of the day on which, or the period over or during which, the offence was committed. The amendment does not have effect in relation to any sentence passed in relation to a conviction for an offence committed before 15 August 2010 – see under “Transition” below.
18. The “proper officer” of the court is defined as including the designated officer in a magistrates’ court, and in any other court, the clerk of the court, that clerk’s deputy or any other person having custody of the court record.
19. The above new provisions for proving of convictions are optional alternatives to, not mandatory substitutes for, the existing provision for proving foreign convictions under section 7 of the Evidence Act 1851. In practice a letter of request will still be needed – see under “Procedures for obtaining information” below.

Context of the amendments

20. The above amendments clarify and extend the law where necessary to ensure that it is consistent with the UK’s obligations under the Framework Decision. Where provisions already fully comply with the Decision no amendment has been made. Prior to the above amendments there was scope for foreign convictions to be adduced as evidence of bad character or taken into account in sentencing decisions.

Procedures for obtaining information

21. Convictions of UK nationals in other EU Member States must be notified to the UKCA-ECR and those corresponding to UK recordable offences are recorded on the Police National Computer (PNC). In the case of a non-UK EU national (or UK or non-EU national where intelligence suggests the existence of a conviction in an EU country which has not been notified and recorded), a request for any previous convictions should be sent by the police to the UKCA-ECR - ukca@acro.pnn.police.uk
22. The UKCA-ECR forward requests to the equivalent Central Authority in the other Member State. On receipt of a conviction notification the UKCA-ECR have it translated and identify the UK offence to which the EU offence corresponds. A copy of the notification and translation is sent to the requester and the information it contains can be presented in court.
23. In 2009 the UKCA-ECR made just under 6,000 requests for previous EU convictions. They continue to build expertise and can provide guidance and advice on the interpretation of EU criminal records. The current Council Decision (2005/876/JHA) under which criminal records are exchanged does not make it compulsory to answer requests. The exchange of such information is expected to increase considerably when a new Framework Decision (2009/315/JHA) making this mandatory comes into effect in April 2012 and a codified, computerised system of exchange is also put in place. Replies will have to be given within 10 working days.
24. A request can be made at any stage in the proceedings, but clearly the earlier the better. It is good practice for a request to be made at the point of arrest as all the relevant information can most easily be recorded at the time of going into custody.
25. Under Article 4 of Council Decision 2005/876/JHA use of information relating to a non-UK EU national following a request may only be used for the purpose for which it has been requested. In the case of criminal proceedings, it may only be used in relation to the specific criminal proceedings for which it was requested. This means that if the individual is subsequently involved in different proceedings in relation to a separate offence then a new request must be made. This same usage limitation is contained in Article 9 of the new Framework Decision (2009/315/JHA) save that there is an ability to use the information for preventing an immediate and serious threat to public security. The Home Office have decided that this allows the information to be stored on the PNC in circumstances where the offending behaviour overseas can be considered to amount to a serious threat. UKCA-ECR input such data on the PNC under Home Office guidance.
26. UKCA-ECR only deal with the EU; for other countries, the Serious Organised Crime Agency should be contacted. If intelligence obtained through Interpol suggests that there are other foreign convictions, a letter of request should be considered.

27. A letter of request may be sent by a judicial authority (on the application of a prosecuting authority or a person charged in the proceedings) or designated prosecuting authority to the relevant prosecutor or court overseas for extracts from the judicial records of participating countries. Where a letter of request is being sent to a country outside the EU it must be sent through the UK Central Authority for Mutual Legal Assistance, except in the case of non-EU Schengen Convention states (Iceland, Norway and Switzerland), to which it is sent direct.
28. The letter of request procedure may also need to be used to obtain additional information from another EU country to supplement the very basic information (normally offence, date of offence, date of conviction and sentence) obtained by the UKCA-ECR – for example, where the court is likely to require information about the facts of the offence to which the conviction relates (such as modus operandi) or where more detail is needed about how the offence corresponds to a UK offence.
29. A letter of request will also be needed where the court is likely to require proof of the conviction or of the facts of the offence. Such proof must be provided in the form of either:
- an authenticated copy of the relevant original court document purporting to be sealed with the seal of the court or signed by a judge of the court (section 7 of the Evidence Act 1851); or
 - a certificate of conviction, giving details of the offence, the conviction and any sentence, purporting to be signed by the proper officer of the court (section 73 of the Police and Criminal Evidence Act 1984). The proper officer of the court is defined as the designated officer, the clerk of the court, that clerk's deputy or any other person having custody of the court record.
30. The Framework Decision and the above amendments impose no obligation on the court to take into account a conviction where the information obtained is not sufficient.

Spent convictions

31. The Rehabilitation of Offenders Act 1974 and related practice directions already encompass any conviction "by or before a court outside Great Britain" (section 1(4)). Courts should therefore already be applying the directions that limit reference to spent convictions in open court, which apply to all foreign convictions that would be spent if imposed by a domestic court.

Companies

32. The Framework Decision and the above amendments allow an EU conviction of a company to be taken into account in subsequent criminal proceedings against the company to the extent that a domestic conviction would be taken into account. However, the provisions amended have less application to companies than to natural persons and the notification, requesting and recording mechanisms deal with natural persons only.

Transition

33. Transitional provisions in relation to the above amendments are contained in paragraphs 40 to 42 of Schedule 22 to the Act. They provide that:

- The amendments in relation to bad character and proving of convictions do not have effect in relation to trials or hearings begun before 15 August 2010. In other words, the amended provisions only apply where the trial, or other court hearing, at which the bad character evidence or the conviction evidence is to be admitted begins on or after 15 August 2010. (It does not matter for these purposes whether there was another hearing in the same proceedings begun earlier than this date, provided that the relevant trial or hearing begins on or after 15 August 2010.)
- The amendments in relation to seriousness, required custodial sentences for a third class A drug trafficking or domestic burglary offence (including those in relation to proving of convictions for those offences), restrictions on imposing a custodial sentence or service detention on an unrepresented offender and referral orders in respect of young offenders do not have effect in relation to any sentence passed in relation to a conviction for an offence committed before 15 August 2010. The amendment in relation to community orders for persistent petty offenders does not have effect in relation to any sentence passed in relation to a conviction for an offence committed before the coming into force of the amendment.

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Many lawyers will be familiar with the European arrest warrant and assume that EU criminal law is for specialists. In fact, EU activity has expanded into all areas of procedure, from bail through to custody and almost everything in between. These measures are slowly coming into force throughout the EU and we are now beginning to see their impact.

This guide introduces the EU in a simple and accessible way so that busy practitioners can get to grips with what they need to know quickly. It summarises the relevant legislation and issues arising, providing essential materials in the annex. The guide aims to equip practitioners with the information necessary to grapple with these measures as they arise.

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