AKADÉMIA POLICAJNÉHO ZBORU V BRATISLAVE

EUROPEAN CRIMINAL LAW

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ISBN: 978-80-8054-688-5

EAN: 9788080546885

Introduction

As it is the first textbook of the European criminal law to be published in the English language in the Slovak Republic, an introduction is appropriate. Its purpose is to explain to the reader our methodology. We have decided to divide the text in to three main chapters with regard to the content of the subject matter of the EU legislation. It follows the logic of early writings of the textbooks from the criminal law or the textbooks from the European criminal law that have been already published.

The text book does not cover all EU legislative acts adopted in this fields, the purpose is to cover the most relevant of them and make a proportionate inside look for the reader or student in this area. The textbook is primarily dedicated to the students of the subject the European criminal law.

Due to this reason we have not incorporated the sources of the EU primary law that are subjected to other sources primarily dedicated to the EU institutional or constitutional law.

I am particularly grateful to both the co-authors that they have found time and have been willing to participate and spare their free time to this project.

Marek Kordik

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Chapter I: EU criminal substantial law

I. COUNCIL FRAMEWORK DECISION combating fraud and counterfeiting of non-cash means of payment (2001/413/JHA)

A. General remarks

For the purpose of this Framework Decision under the Article 1:

(a) **'Payment instrument'** shall mean a corporeal instrument, other than legal tender (bank notes and coins), enabling, by its specific nature, alone or in conjunction with another (payment) instrument, the holder or user to transfer money or monetary value, as for example credit cards, eurocheque cards, other cards issued by financial institutions, travellers' cheques, eurocheques, other cheques and bills of exchange, which is protected against imitation or fraudulent use, for example through design, coding or signature;

(b) **'Legal person'** shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations.

B. Offences related to payment instruments, computers, adapted devices

In accoradence with the Article 2 Each Member State shall take the necessary measures to ensure that the following conduct is a criminal offence when committed intentionally, at least in respect of credit cards, eurocheque cards, other cards issued by financial institutions, travellers cheques, eurocheques, other cheques and bills of exchange:

(a) theft or other unlawful appropriation of a payment instrument;

(b) counterfeiting or falsification of a payment instrument in order for it to be used fraudulently;

(c) receiving, obtaining, transporting, sale or transfer to another person or possession of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument in order for it to be used fraudulently;

(d) fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument;

Each Member State shall under the Article 3 take the necessary measures to ensure that the following conduct is a criminal offence when committed intentionally:

performing or causing a transfer of money or monetary value and thereby causing an unauthorised loss of property for another person, with the intention of procuring an unauthorized economic benefit for the person committing the offence or for a third party, by:

— without right introducing, altering, deleting or suppressing computer data, in particular identification data, or

— without right interfering with the functioning of a computer programme or system.

Each Member State shall take under the Article 4 the necessary measures to ensure that the following conduct is established as a criminal offence when committed intentionally:

the fraudulent making, receiving, obtaining, sale or transfer to another person or possession of:

— instruments, articles, computer programmes and any other means peculiarly adapted for the commission of any of the offences described under Article 2(b);

— computer programmes the purpose of which is the commission of any of the offences Article 3 mentioned above.

Each Member State shall take in accordance with the Article 5 the necessary measures to ensure that participating in and instigating the conduct referred above are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition. Each Member State shall take under the Article 7 the necessary measures to ensure that legal persons can be held liable for the above mentioned conduct referred committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

— a power of representation of the legal person, or

— an authority to take decisions on behalf of the legal person, or

— an authority to exercise control within the legal person, as well as for involvement as accessories or instigators in the commission of such an offence.

Apart from the cases provided above, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred above has made possible the commission referred to for the benefit of that legal person by a person under its authority. Liability of a legal person shall not exclude criminal proceedings against natural persons whoare perpetrators, instigators or accessories. Each Member State shall take in the line with the Article 8 the necessary measures to ensure that a legal person held liable, punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up order.

Each Member State shall take under the Article 9 the necessary measures to establish its jurisdiction with regard to the offences referred above, where the offence has been committed:

(a) in whole or in part within its territory; or

(b) by one of its nationals, provided that the law of that Member State may require the conduct to be punishable also in the country where it occurred; or

(c) for the benefit of a legal person that has its head office in the territory of that Member State.

Member States shall bring into force under the Article 12 the measures necessary to comply with this Framework Decision by 2 June 2003.

II. Council Framework Decision on combating terrorism (2002/475/JHA)

A. Terrorist offences and fundamental rights and principles

Each Member State shall take in the line with the Article 1 the necessary measures to ensure that the intentional acts referred to below, as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation where committed with the aim of:

- seriously intimidating a population, or
- unduly compelling a Government or international organisation to perform or abstain from performing any act, or
- seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation, shall be deemed to be terrorist offences:

(a) attacks upon a person's life which may cause death;

(b) attacks upon the physical integrity of a person;

(c) kidnapping or hostage taking;

(d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;

(e) seizure of aircraft, ships or other means of public or goods transport;

(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;

(g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;

(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;

(i) threatening to commit any of the acts listed in (a) to (h).

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

B. Offences relating to a terrorist group

In compliance with the Article 2 For the purposes of this Framework Decision, **"terrorist group"** shall mean: a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences**. "Structured group"** shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

Each Member State shall take the necessary measures to ensure that the following intentional acts are punishable:

(a) directing a terrorist group;

(b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.

C. Offences linked to terrorist activities

Each Member State shall take under the Article 3 the necessary measures to ensure that terrorist-linked offences include the following acts:

(a) aggravated theft with a view to committing one of the acts listed above;

(b) extortion with a view to the perpetration of one of the acts listed above;

(c) drawing up false administrative documents with a view to committing one of the acts listed above.

"Public provocation to commit a terrorist offence" shall mean the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of one of the offences listed above, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed;

"Recruitment for terrorism" shall mean soliciting another person to commit one of the offences listed above;

"Training for terrorism" shall mean providing instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing one of the offences listed above, knowing that the skills provided are intended to be used for this purpose.

Each Member State shall take in compliance with the Article 4 the necessary measures to ensure that inciting or aiding or abetting an offence referred above is made punishable.

Each Member State shall take the necessary measures to ensure that the offences referred above are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.

Each Member State shall take the necessary measures to ensure that the terrorist offences inasmuch as they relate to terrorist offences, are punishable by custodial sentences heavier than those imposable under national law for such offences in the absence of the special intent required, save where the sentences imposable are already the maximum possible sentences under national law.

Each Member State shall take the necessary measures to ensure that offences of terrorist group or structured group are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offence organizing, and for the offences of participating a maximum sentence of not less than eight years.

D. Liability of legal persons

Each Member State shall take under the Article 7 the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 1 to 4 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on one of the following:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person;

(c) an authority to exercise control within the legal person.

Apart from the cases provided, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred above for the benefit of that legal person by a person under its authority.

Liability of legal persons shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in any of the offences referred to in Articles 1 to 4.

Each Member State shall take in the line with the Article 8 the necessary measures to ensure that a legal person is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up order;

(e) temporary or permanent closure of establishments which have been used for committing the offence.

Each Member State shall take under the Article 9 the necessary measures to establish its jurisdiction over the offences referred above where:

(a) the offence is committed in whole or in part in its territory. Each Member State may extend its jurisdiction if the offence is committed in the territory of a Member State;

(b) the offence is committed on board a vessel flying its flag or an aircraft registered there;

(c) the offender is one of its nationals or residents;

(d) the offence is committed for the benefit of a legal person established in its territory;

(e) the offence is committed against the institutions or people of the Member State in question or against an institution of the European Union or a body set up in accordance with the Treaty establishing the European Community or the Treaty on European Union and based in that Member State.

When an offence falls within the jurisdiction of more than one Member State and when any of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States may have recourse to any body or mechanism established within the European Union in order to facilitate cooperation between their judicial authorities and the coordination of their action. Sequential account shall be taken of the following factors:

- the Member State shall be that in the territory of which the acts were committed,
- the Member State shall be that of which the perpetrator is a national or resident,
- the Member State shall be the Member State of origin of the victims,
- the Member State shall be that in the territory of which the perpetrator was found.

Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred above in cases where it refuses to hand over or extradite a person suspected or convicted of such an offence to another Member State or to a third country.

Each Member State shall ensure that its jurisdiction covers cases in which any of the offences referred to in Articles 2 and 4 has been committed in whole or in part within its territory, wherever the terrorist group is based or pursues its criminal activities.

Member States shall take the necessary measures to comply with this Framework Decision by 31 December 2002.

III. COUNCIL FRAMEWORK DECISION 2003/568/JHA of 22 July 2003 on combating corruption in the private sector

A. General remarks

In accordance with the Article 1 for the purposes of this Framework Decision:

- **"legal person"** means any entity having such status under the applicable national law, except for States or other public bodies acting in the exercise of State authority and for public international organisations,
- **"breach of duty"** shall be understood in accordance with national law. The concept of breach of duty in national law should cover as a minimum any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business of a person who in any capacity directs or works for a private sector entity.

B. Active and passive corruption in the private sector

Member States shall take the necessary measures in the line with the Article 2 to ensure that the following intentional conduct constitutes a criminal offence, when it is carried out in the course of business activities:

(a) promising, offering or giving, directly or through an intermediary, to a person who in any capacity directs or works for a private-sector entity an undue advantage of any kind, for that person or for a third party, in order that that person should perform or refrain from performing any act, in breach of that person's duties;

(b) directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a private-sector entity, in order to perform or refrain from performing any act, in breach of one's duties.

It applies to business activities within profit and non-profit entities. A Member State may declare that it will limit the scope of paragraph 1 to such conduct which involves, or could involve, a distortion of competition in relation to the purchase of goods or commercial services.

Member States shall take the necessary measures to ensure that instigating, aiding and abetting the conduct referred above constitute criminal offences as stipulated in the Article 3.

In accordance with the Article 4 each member state shall take the necessary measures to ensure that the conduct referred above is punishable by effective, proportionate and dissuasive criminal penalties.

Each Member State shall take the necessary measures to ensure that the conduct referred to is punishable by a penalty of a maximum of at least one to three years of imprisonment.

Member State shall take the necessary measures in accordance with its constitutional rules and principles to ensure that where a natural person in relation to a certain business activity has been convicted of the conduct referred to, that person may, where appropriate, at least in cases where he or she had a leading position in a company within the business concerned, be

temporarily prohibited from carrying on this particular or comparable business activity in a similar position or capacity, if the facts established give reason to believe there to be a clear risk of abuse of position or of office by active or passive corruption.

Under the Article 5 each member State shall take the necessary measures to ensure that legal persons can be held liable for offences referred above committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.

Each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to letters a) to c) has made possible the commission of an offence of the type referred above for the benefit of that legal person by a person under its authority.

Liability of a legal person shall not exclude criminal proceedings against natural persons who are involved as perpetrators, instigators or accessories in an offence. In compliance with the Article 6 the Each Member State shall take the necessary measures to ensure that a legal person held liable is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties such as:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision; or

(d) a judicial winding-up order.

Each Member State shall take the necessary measures under the Article 7 to establish its jurisdiction with regard to the offences referred above, where the offence has been committed:

(a) in whole or in part within its territory;

(b) by one of its nationals; or

(c) for the benefit of a legal person that has its head office in the territory of that Member State.

Member States shall take the necessary measures to comply with the provisions of this Framework Decision before 22 July 2005.

IV. COUNCIL FRAMEWORK DECISION 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking

A. Definitions

In accordance with the Article 1 for the purposes of this Framework Decision:

'drugs': shall mean any of the substances covered by the following United Nations Conventions:

(a) the 1961 Single Convention on Narcotic Drugs (as amended by the 1972 Protocol);

(b) the 1971 Vienna Convention on Psychotropic Substances. It shall also include the substances subject to controls under Joint Action 97/396/JHA of 16 June 1997 concerning the information exchange risk assessment and the control of new synthetic drugs;

'precursors': shall mean any substance scheduled in the Community legislation giving effect to the obligations deriving from Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988;

'legal person': shall mean any legal entity having such status under the applicable national law, except for States or other public bodies acting in the exercise of their sovereign rights and for public international organisations.

B. Crimes linked to trafficking in drugs and precursors

In the line with the Article 2 each member state shall take the necessary measures to ensure that the following intentional conduct when committed without right is punishable:

(a) the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs;

(b) the cultivation of opium poppy, coca bush or cannabis plant;

(c) the possession or purchase of drugs with a view to conducting one of the activities listed in (a);

(d) the manufacture, transport or distribution of precursors, knowing that they are to be used in or for the illicit production or manufacture of drugs.

In accordance with the Article 3 each Member State shall take the necessary measures to make incitement to commit, aiding and abetting or attempting one of the offences referred above.

Each Member State shall take the measures necessary to ensure that the offences defined in Articles 2 are punishable by effective, proportionate and dissuasive criminal penalties.

Without prejudice to the rights of victims and of other bona fide third parties, each Member State shall take the necessary measures to enable the confiscation of substances which are the object of offences referred above instrumentalities used or intended to be used for these offences and proceeds from these offences or the confiscation of property the value of which corresponds to that of such

proceeds, substances or instrumentalities. The terms **'confiscation', 'instrumentalities', 'proceeds' and 'property'** shall have the same meaning as in Article 1 of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

In the line with the Article 6 each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the criminal offences referred above committed for their benefit by any person, acting either individually or as a member of an organ of the legal person in question, who has a leading position within the legal person, based on one of the following:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person;

(c) an authority to exercise control within the legal person.

Each member state shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred above has made possible the commission of any of the offences referred to in for the benefit of that legal person by a person under its authority.

Under the Article 7 the member states shall take the necessary measures to ensure that a legal person held liable is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

(a) exclusion from entitlement to tax relief or other benefits or public aid;

(b) temporary or permanent disqualification from the pursuit of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up order;

(e) temporary or permanent closure of establishments used for committing the offence;

Pursuant to the Article 8 each member state shall take the necessary measures to establish its jurisdiction over the offences referred above where:

(a) the offence is committed in whole or in part within its territory;

(b) the offender is one of its nationals; or

(c) the offence is committed for the benefit of a legal person established in the territory of that Member State.

V. COUNCIL FRAMEWORK DECISION 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

A. General remarks

In compliance with the Article 1 each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:

(a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;

(b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material;

(c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;

(d) publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.

The member states may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting. The reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin.

Any Member State may, on adoption of this Framework Decision or later, make a statement that it will make punishable the act of denying or grossly trivialising the crimes only if the crimes referred to in these paragraphs have been established by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court only.

Under the Article 2 each member state shall take the measures necessary to ensure that instigating the conduct referred above is punishable. Each Member State shall take the measures necessary to ensure that aiding and abetting in the commission of the conduct referred above is punishable.

B. Racist and xenophobic motivation

Under the Article 4 member states shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.

In compliance with the Article 5 each member state shall take the necessary measures to ensure that a legal person can be held liable for the conduct referred above, committed for its benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.

Apart from the cases provided above, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person has made possible the commission of the conduct for the benefit of that legal person by a person under its authority.

In compliance with the Article 6 each member state shall take the necessary measures to ensure that a legal person held liable is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as:

(a) exclusion from entitlement to public benefits or aid

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up order.

Member States shall take the necessary measures to ensure that a legal person held liable is punishable by effective, proportionate and dissuasive penalties or measures.

As stipulated in the Article 8 Each Member State shall take the necessary measures to ensure that investigations into or prosecution of the conduct shall not be dependent on a report or an accusation made by a victim of the conduct, at least in the most serious cases where the conduct has been committed in its territory.

In accordance with the Article 9 each member state shall take the necessary measures to establish its jurisdiction with regard to the conduct referred to in Articles 1 and 2 where the conduct has been committed:

(a) in whole or in part within its territory;

(b) by one of its nationals; or

(c) for the benefit of a legal person that has its head office in the territory of that Member State.

When establishing jurisdiction, each Member State shall take the necessary measures to ensure that its jurisdiction extends to cases where the conduct is committed through an information system and:

(a) the offender commits the conduct when physically present in its territory, whether or not the conduct involves material hosted on an information system in its territory;

(b) the conduct involves material hosted on an information system in its territory, whether or not the offender commits the conduct when physically present in its territory.

Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 28 November 2010 as stipulated in the Article 10

VI. COUNCIL FRAMEWORK DECISION 2008/841/JHA of 24 October 2008 on the fight against organised crime

A. General remarks

In accordance with the Article 1 for the purposes of this Framework Decision:

'criminal organisation' means a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit;

'**structured association'** means an association that is not randomly formed for the immediate commission of an offence, nor does it need to have formally defined roles for its members, continuity of its membership, or a developed structure.

B. Offences relating to participation in a criminal organisation

As stipulated by the Article 2 each member state shall take the necessary measures to ensure that one or both of the following types of conduct related to a criminal organisation are regarded as offences:

(a) conduct by any person who, with intent and with knowledge of either the aim and general activity of the criminal organisation or its intention to commit the offences in question, actively takes part in the organisation's criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organisation's criminal activities;

(b) conduct by any person consisting in an agreement with one or more persons that an activity should be pursued, which if carried out, would amount to the commission of offences referred to in Article 1, even if that person does not take part in the actual execution of the activity.

Each Member State may take the necessary measures as prescribed by the Article 4 to ensure that the penalties may be reduced or that the offender may be exempted from penalties if he, for example:

(a) renounces criminal activity; and

(b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:

   (i) prevent, end or mitigate the effects of the offence;

   (ii) identify or bring to justice the other offenders;

   (iii) find evidence;

   (iv) deprive the criminal organisation of illicit resources or of the proceeds of its criminal activities; or

   (v) prevent further offences referred to in Article 2 from being committed.

In accordance with the Article 5 Each Member State shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred above committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.

Member States shall also take the necessary measures to ensure that legal persons may be held liable where the lack of supervision or control by a person above has made possible the commission, by a person under its authority for the benefit of that legal person.

Liability of legal persons shall be without prejudice to criminal proceedings against natural persons who are perpetrators of, or accessories to, any of the offences referred to in Article 2.

For the purpose of this Framework Decision 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

As stipulated in the Article 6 each Member State shall take the necessary measures to ensure that a legal person held liable is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, for example:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up;

(e) temporary or permanent closure of establishments which have been used for committing the offence.

In accordance with the Article 7 each member state shall ensure that its jurisdiction covers at least the cases in which the offences referred above were committed:

(a) in whole or in part within its territory, wherever the criminal organisation is based or pursues its criminal activities;

(b) by one of its nationals; or

(c) for the benefit of a legal person established in the territory of that Member State.

A Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in (b) and (c) where the offences are committed outside its territory.

When an offence referred above falls within the jurisdiction of more than one Member State and when any one of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders, with the aim, if possible, of centralising proceedings in a single Member State. To this end, Member States may have recourse to Eurojust or any other body or mechanism established within the European Union in order to facilitate cooperation

between their judicial authorities and the coordination of their action. Special account shall be taken of the following factors:

(a) the Member State in the territory of which the acts were committed;

(b) the Member State of which the perpetrator is a national or resident;

(c) the Member State of the origin of the victims;

(d) the Member State in the territory of which the perpetrator was found.

A Member State which, under its law, does not as yet extradite or surrender its own nationals shall take the necessary measures to establish its jurisdiction over and, where appropriate, to prosecute the offence referred to in Article 2, when committed by one of its nationals outside its territory.

In the line with the Article 10 the member states shall take the necessary measures to comply with the provisions of this Framework Decision before 11 May 2010.

VII. DIRECTIVE 2009/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

A. General remarks

In accordance with the Article 1 this Directive prohibits the employment of illegally staying third-country nationals in order to fight illegal immigration. To this end, it lays down minimum common standards on sanctions and measures to be applied in the Member States against employers who infringe that prohibition.

Article 2 establishes following definitions:

(a) **'third-country national'** means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code;

(b) **'illegally staying third-country national'** means a third-country national present on the territory of a Member State, who does not fulfil, or no longer fulfils, the conditions for stay or residence in that Member State;

(c) **'employment'** means the exercise of activities covering whatever form of labour or work regulated under national law or in accordance with established practice for or under the direction and/or supervision of an employer;

(d) **'illegal employment'** means the employment of an illegally staying third-country national;

(e) **'employer'** means any natural person or any legal entity, including temporary work agencies, for or under the direction and/or supervision of whom the employment is undertaken;

(f) **'subcontractor'** means any natural person or any legal entity, to whom the execution of all or part of the obligations of a prior contract is assigned;

(g) **'legal person'** means any legal entity having such status under applicable national law, except for States or public bodies exercising State authority and for public international organisations;

(h) **'temporary work agency'** means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction;

(i) **'particularly exploitative working conditions'** means working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity;

(j) **'remuneration of illegally staying third-country national'** means the wage or salary and any other consideration, whether in cash or in kind, which a worker

receives directly or indirectly in respect of his employment from his employer and which is equivalent to that which would have been enjoyed by comparable workers in a legal employment relationship.

B. Criminal responsibility

In the line with the Article 9 the member states shall ensure that the infringement of the prohibition referred to in Article 3 constitutes a criminal offence when committed intentionally, in each of the following circumstances as defined by national law:

(a) the infringement continues or is persistently repeated;

(b) the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals;

(c) the infringement is accompanied by particularly exploitative working conditions;

(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings;

(e) the infringement relates to the illegal employment of a minor.

Member States shall ensure that inciting, aiding and abetting the intentional conduct referred to in paragraph 1 is punishable as a criminal offence.

In the line with the Article 10 the member states shall take the necessary measures to ensure that natural persons who commit the criminal offence referred to in Article 9 are punishable by effective, proportionate and dissuasive criminal penalties. Unless prohibited by general principles of law, the criminal penalties provided for in this Article may be applied under national law without prejudice to other sanctions or measures of a non-criminal nature, and they may be accompanied by the publication of the judicial decision relevant to the case.

In the line with the Article 11 the member states shall ensure that legal persons may be held liable for the offence referred to in Article 9 where such an offence has been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, on the basis of:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.

Member States shall also ensure that a legal person may be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the criminal offence referred to in Article 9 for the benefit of that legal person by a person under its authority.

Liability of a legal person shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offence referred to in Article 9.

Member States shall take the necessary measures under the Article 12 to ensure that a legal person held liable pursuant to Article 11 is punishable by effective, proportionate and dissuasive penalties, which may include measures such as those referred above. Member

States may decide that a list of employers who are legal persons and who have been held liable for the criminal offence referred to in Article 9 is made public.

VIII. DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

A. General remarks

This Directive establishes pursuant to the Article 1 minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.

B. Offences concerning trafficking in human beings

Under the Article 2 Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

When the conduct referred above involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

For the purpose of this Directive, 'child' shall mean any person below 18 years of age.

In the line with the Article 3 the member states shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable.

Member States in accordance with the Article 4 shall take the necessary measures to ensure that an offence referred above is punishable by a maximum penalty of at least five years of imprisonment.

Member States shall take the necessary measures to ensure that an offence referred above is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:

(a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;

(b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (15).

(c) deliberately or by gross negligence endangered the life of the victim; or

(d) was committed by use of serious violence or has caused particularly serious harm to the victim.

Member States shall take the necessary measures to ensure that the fact that an offence referred above was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.

Member States shall take the necessary measures to ensure that an offence referred above is punishable by effective, proportionate and dissuasive penalties, which may entail surrender.

Pursuant to the Article 5 the member states shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.

Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred above, has made possible the commission of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

Liability of a legal person shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 2 and 3.

For the purpose of this Directive, 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

In accordance with the Article 6 the Member States shall take the necessary measures to ensure that a legal person held liable is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up;

(e) temporary or permanent closure of establishments which have been used for committing the offence.

Member States shall take the necessary measures in the line with the Article 7 to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3.

Member States shall, in accordance with the Article 8 and in the line with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement, as stipulated in the Article 8.

Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.

Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly.

Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3.

Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 as prescribed by the Article 10, where:

(a) the offence is committed in whole or in part within their territory; or

(b) the offender is one of their nationals.

A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 2 and 3 committed outside its territory, inter alia, where:

(a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;

(b) the offence is committed for the benefit of a legal person established in its territory; or

(c) the offender is an habitual resident in its territory.

For the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned, each Member State shall, in those cases referred to in point (b) of paragraph 1, and may, in those cases referred to in paragraph 2, take the necessary measures to ensure that its jurisdiction is not subject to either of the following conditions:

(a) the acts are a criminal offence at the place where they were performed; or

(b) the prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

C. Assistance and support for victims of trafficking in human beings

Member States shall take in the line with the Article 11 to Article 15 the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.

Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.

Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.

The assistance and support measures referred above shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

The information shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status or pursuant to other international instruments or other similar national rules.

Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

The protection measures referred to in this Article shall apply in addition to the rights set out in Framework Decision 2001/220/JHA.

Member States shall ensure in the line with the Article 12 that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the

purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.

Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:

(a) unnecessary repetition of interviews during investigation, prosecution or trial;

(b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;

(c) giving of evidence in open court; and

(d) unnecessary questioning concerning the victim's private life

Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.

Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection.

Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.

Members States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.

Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is

in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family.

Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative for a child victim of trafficking in human beings where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim.

Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.

Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:

(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;

(b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;

(c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;

(d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;

(e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;

(f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:

(a) the hearing take place without the presence of the public; and

(b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 April 2013.

IX. DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA

A. General remarks

According the Article 1 this Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes. It also introduces provisions to strengthen the prevention of those crimes and the protection of the victims thereof.

For the purposes of this Directive, the following definitions apply in accordance with the Article 2:

(a) 'child' means any person below the age of 18 years;

(b) 'age of sexual consent' means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child;

(c) 'child pornography' means:

- (i) any material that visually depicts a child engaged in real or simulated sexually explicit conduct;
- (ii) any depiction of the sexual organs of a child for primarily sexual purposes;
- (iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or
- (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes;

(d) 'child prostitution' means the use of a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether that payment, promise or consideration is made to the child or to a third party;

(e) 'pornographic performance' means a live exhibition aimed at an audience, including by means of information and communication technology, of:

- (i) a child engaged in real or simulated sexually explicit conduct; or
- (ii) the sexual organs of a child for primarily sexual purposes;

(f) 'legal person' means an entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

B. Punishable conduct

In the line with the Article 3 the member states shall take the necessary measures to ensure that the intentional conduct referred above is punishable. Causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual activities, even

without having to participate, shall be punishable by a maximum term of imprisonment of at least 1 year.

Causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual abuse, even without having to participate, shall be punishable by a maximum term of imprisonment of at least 2 years. Engaging in sexual activities with a child who has not reached the age of sexual consent shall be punishable by a maximum term of imprisonment of at least 5 years.

Engaging in sexual activities with a child, where:

(i) abuse is made of a recognised position of trust, authority or influence over the child, shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 3 years of imprisonment, if the child is over that age; or

(ii) abuse is made of a particularly vulnerable situation of the child, in particular because of a mental or physical disability or a situation of dependence, shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 3 years of imprisonment if the child is over that age; or

(iii) use is made of coercion, force or threats shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

Coercing, forcing or threatening a child into sexual activities with a third party shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

C. Offences concerning sexual exploitation

As stipulated by the Article 4 Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 7 is punishable.

Causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 5 years if the child has not reached the age of sexual consent and of at least 2 years of imprisonment if the child is over that age.

Coercing or forcing a child to participate in pornographic performances, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

Knowingly attending pornographic performances involving the participation of a child shall be punishable by a maximum term of imprisonment of at least 2 years if the child has not reached the age of sexual consent, and of at least 1 year of imprisonment if the child is over that age.

Causing or recruiting a child to participate in child prostitution, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.
Coercing or forcing a child into child prostitution, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.
Engaging in sexual activities with a child, where recourse is made to child prostitution shall be punishable by a maximum term of imprisonment of at least 5 years if the child has not reached the age of sexual consent, and of at least 2 years of imprisonment if the child is over that age.

D. Offences concerning child pornography

In the line with the Article 5 the member states shall take the necessary measures to ensure that the intentional conduct, when committed without right, referred to in paragraphs 2 to 6 is punishable.
Acquisition or possession of child pornography shall be punishable by a maximum term of imprisonment of at least 1 year.
Knowingly obtaining access, by means of information and communication technology, to child pornography shall be punishable by a maximum term of imprisonment of at least 1 year.
Distribution, dissemination or transmission of child pornography shall be punishable by a maximum term of imprisonment of at least 2 years.
Offering, supplying or making available child pornography shall be punishable by a maximum term of imprisonment of at least 2 years.
Production of child pornography shall be punishable by a maximum term of imprisonment of at least 3 years.

E. Solicitation of children for sexual purposes

In accordance with the Article 6 the member states shall take the necessary measures to ensure that the following intentional conduct is punishable:
the proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent, for the purpose of committing any of the offences referred to in Article 3(4) and Article 5(6), where that proposal was followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least 1 year.
Member States shall take the necessary measures to ensure that an attempt, by means of information and communication technology, to commit the offences provided for in Article 5(2) and (3) by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child is punishable.

F. Incitement, aiding and abetting, and attempt

Member States shall take pursuant to the Article 7 the necessary measures to ensure that inciting or aiding and abetting to commit any of the offences referred to in Articles 3 to 6 is punishable.

It shall be within the discretion of Member States to decide in accordance with the Article 8 whether Article 3(2) and (4) apply to consensual sexual activities between peers, who are close in age and degree of psychological and physical development or maturity, in so far as the acts did not involve any abuse.

It shall be within the discretion of Member States to decide whether Article 4(4) applies to a pornographic performance that takes place in the context of a consensual relationship where the child has reached the age of sexual consent or between peers who are close in age and degree of psychological and physical development or maturity, in so far as the acts did not involve any abuse or exploitation and no money or other form of remuneration or consideration is given as payment in exchange for the pornographic performance.

It shall be within the discretion of Member States to decide whether Article 5(2) and (6) apply to the production, acquisition or possession of material involving children who have reached the age of sexual consent where that material is produced and possessed with the consent of those children and only for the private use of the persons involved, in so far as the acts did not involve any abuse.

G. Aggravating circumstances

Article 9 establishes aggravating circumstances. In so far as the following circumstances do not already form part of the constituent elements of the offences referred above, Member States shall take the necessary measures to ensure that the following circumstances may, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances, in relation to the relevant offences referred to in Articles 3 to 7:

(a) the offence was committed against a child in a particularly vulnerable situation, such as a child with a mental or physical disability, in a situation of dependence or in a state of physical or mental incapacity;
(b) the offence was committed by a member of the child's family, a person cohabiting with the child or a person who has abused a recognised position of trust or authority;
(c) the offence was committed by several persons acting together;
(d) the offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (12);
(e) the offender has previously been convicted of offences of the same nature;
(f) the offender has deliberately or recklessly endangered the life of the child; or
(g) the offence involved serious violence or caused serious harm to the child.

H. Seizure and confiscation

As stipulated by the Article 11 the member states shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred above.

I. Liability of legal persons

Pursuant the Article 12 the member states shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Articles 3 to 7 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.

Member States shall also take the necessary measures to ensure that legal persons may be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, by a person under its authority, of any of the offences referred to in Articles 3 to 7 for the benefit of that legal person.

Pursuant to the Article 13 Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 12(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up; or

(e) temporary or permanent closure of establishments which have been used for committing the offence.

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 12(2) is punishable by sanctions or measures which are effective, proportionate and dissuasive.

J. Non-prosecution or non-application of penalties to the victim

Article 14 establishes the impunity of the victims. The Member States shall, in accordance with the basic principles of their legal systems take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on child victims of sexual abuse and sexual exploitation for their involvement in criminal activities, which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred above.

K. Investigation and prosecution

In accordance with the Article 15 the member states shall take the necessary measures to ensure that investigations into or the prosecution of the offences referred to in Articles 3 to 7

are not dependent on a report or accusation being made by the victim or by his or her representative, and that criminal proceedings may continue even if that person has withdrawn his or her statements.

Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 7.

Member States shall take the necessary measures to enable investigative units or services to attempt to identify the victims of the offences referred to in Articles 3 to 7, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

L. Jurisdiction and coordination of prosecution

Member States shall take the necessary measures in accordance with the Article 17 to establish their jurisdiction over the offences referred to in Articles 3 to 7 where:

(a) the offence is committed in whole or in part within their territory; or

(b) the offender is one of their nationals.

A Member State shall inform the Commission where it decides to establish further jurisdiction over an offence referred to in Articles 3 to 7 committed outside its territory, inter alia, where:

(a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;

(b) the offence is committed for the benefit of a legal person established in its territory; or

(c) the offender is an habitual resident in its territory.

Member States shall ensure that their jurisdiction includes situations where an offence referred to in Articles 5 and 6, and in so far as is relevant, in Articles 3 and 7, is committed by means of information and communication technology accessed from their territory, whether or not it is based on their territory.

For the prosecution of any of the offences referred to in Articles 3 to 7 committed outside the territory of the Member State concerned, as regards paragraph 1(b) of this Article, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the prosecution can only be initiated following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

M. Assistance, Protection and support to victims

In the line with the Article 19 the member states shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.

Member States shall, in particular, take the necessary steps to ensure protection for children who report cases of abuse within their family.

Member States shall take the necessary measures to ensure that assistance and support for a child victim are not made conditional on the child victim's willingness to cooperate in the criminal investigation, prosecution or trial.

Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims in enjoying their rights under this Directive, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns.

Child victims of any of the offences referred to in Articles 3 to 7 shall be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Framework Decision 2001/220/JHA.

Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of the child victim in enjoying the rights under this Directive when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family of the child victim.

According the Article 20 the member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a special representative for the child victim where, under national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied or separated from the family.

Member States shall ensure that child victims have, without delay, access to legal counselling and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations relating to any of the offences referred to in Articles 3 to 7:

(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;

(b) interviews with the child victim take place, where necessary, in premises designed or adapted for this purpose;

(c) interviews with the child victim are carried out by or through professionals trained for this purpose;

(d) the same persons, if possible and where appropriate, conduct all interviews with the child victim;

(e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purpose of criminal investigations and proceedings;

(f) the child victim may be accompanied by his or her legal representative or, where appropriate, by an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 3 to 7 all interviews with the child victim or, where appropriate, with a child witness, may be audio-visually recorded and that such audio-visually recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 3 to 7 that it may be ordered that:

(a) the hearing take place without the presence of the public;

(b) the child victim be heard in the courtroom without being present, in particular through the use of appropriate communication technologies.

Member States shall take the necessary measures, where in the interest of child victims and taking into account other overriding interests, to protect the privacy, identity and image of child victims, and to prevent the public dissemination of any information that could lead to their identification.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 18 December 2013 in accordance with the Article 27.

X. DIRECTIVE 2014/62/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA

A. General remarks

Under the Article 1 this Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of counterfeiting of the euro and other currencies. It also introduces common provisions to strengthen the fight against those offences and to improve investigation of them and to ensure better cooperation against counterfeiting.

For the purposes of this Directive the following definitions apply in the line with the Article 2:

(a) **'currency'** means notes and coins, the circulation of which is legally authorised, including euro notes and coins, the circulation of which is legally authorised pursuant to Regulation (EC) No 974/98;

(b) **'legal person'** means any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

B. Offences

Member States shall take the necessary measures as stipulated by the Article 3 to ensure that the following conduct is punishable as a criminal offence, when committed intentionally:

(a) any fraudulent making or altering of currency, whatever means are employed;

(b) the fraudulent uttering of counterfeit currency;

(c) the import, export, transport, receiving or obtaining of counterfeit currency with a view to uttering the same and with knowledge that it is counterfeit;

(d) the fraudulent making, receiving, obtaining or possession of

- (i) instruments, articles, computer programs and data, and any other means peculiarly adapted for the counterfeiting or altering of currency; or
- (ii) security features, such as holograms, watermarks or other components of currency which serve to protect against counterfeiting.

Member States shall take the necessary measures to ensure that the conduct referred to in points (a), (b) and (c) is punishable also with respect to notes or coins being manufactured or having been manufactured by use of legal facilities or materials in violation of the rights or the conditions under which competent authorities may issue notes or coins.

Member States shall take the necessary measures to ensure that the conduct referred above is punishable also in relation to notes and coins which are not yet issued, but are designated for circulation as legal tender.

Member States shall take the necessary measures to ensure in the line with the Article 4 that inciting or aiding and abetting an offence referred to in Article 3 is punishable as a criminal offence.

Member States shall take the necessary measures to ensure that the conduct referred to in Articles 3 and 4 is punishable by effective, proportionate and dissuasive criminal sanctions as required by the Article 4.

C. Liability of legal persons

Pursuant the Article 6 the member states shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 3 and 4 committed for their benefit by any person acting either individually or as part of an organ of the legal person who has a leading position within the legal person based on

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.

Member States shall ensure that a legal person can be held liable where the lack of supervision or control by a person referred above of this Article has made possible the commission of an offence referred to in Articles 3 and 4 for the benefit of that legal person by a person under its authority.

Liability of a legal person referred above shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the offences referred to in Articles 3 and 4.

As required by the Article 7 the member states shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up;

(e) temporary or permanent closure of establishments which have been used for committing the offence.

D. Jurisdiction

Pursuant the Article 8 Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 and 4, where

(a) the offence is committed in whole or in part within its territory; or

(b) the offender is one of its nationals.

Each Member State whose currency is the euro shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 and 4 committed outside its territory, at least where they relate to the euro and where

(a) the offender is in the territory of that Member State and is not extradited; or

(b) counterfeit euro notes or coins related to the offence have been detected in the territory of that Member State.

For the prosecution of the offences referred to in point (a) of Article 3(1), Article 3(2) and (3), where they relate to point (a) of Article 3(1), as well as incitement, aiding and abetting, and attempt to commit those offences, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the acts are a criminal offence at the place where they were committed.

Member States shall take the necessary measures pursuant the Article 9 to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 and 4.

In compliance with the Article 10 the member states shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 May 2016. They shall immediately inform the Commission thereof.

XI. DIRECTIVE 2013/40/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA

A. General remarks

Subject matter of this Directive is to establish minimum rules concerning the definition of criminal offences and sanctions in the area of attacks against information systems. It also aims to facilitate the prevention of such offences and to improve cooperation between judicial and other competent authorities.

For the purposes of this Directive, the following definitions specified in the Article 2 shall apply:

(a) **'information system'** means a device or group of inter-connected or related devices, one or more of which, pursuant to a programme, automatically processes computer data, as well as computer data stored, processed, retrieved or transmitted by that device or group of devices for the purposes of its or their operation, use, protection and maintenance;

(b) **'computer data'** means a representation of facts, information or concepts in a form suitable for processing in an information system, including a programme suitable for causing an information system to perform a function;

(c) **'legal person'** means an entity having the status of legal person under the applicable law, but does not include States or public bodies acting in the exercise of State authority, or public international organisations;

(d) **'without right'** means conduct referred to in this Directive, including access, interference, or interception, which is not authorised by the owner or by another right holder of the system or of part of it, or not permitted under national law.

Pursuant to the Article 3 the member states shall take the necessary measures pursuant to the Article 3 to ensure that, when committed intentionally, the access without right, to the whole or to any part of an information system, is punishable as a criminal offence where committed by infringing a security measure, at least for cases which are not minor.

Under the Article 4 the member states shall take the necessary measures to ensure that seriously hindering or interrupting the functioning of an information system by inputting computer data, by transmitting, damaging, deleting, deteriorating, altering or suppressing such data, or by rendering such data inaccessible, intentionally and without right, is punishable as a criminal offence, at least for cases which are not minor.

In accordance with the Article 5 the member states shall take the necessary measures to ensure that deleting, damaging, deteriorating, altering or suppressing computer data on an information system, or rendering such data inaccessible, intentionally and without right, is punishable as a criminal offence, at least for cases which are not minor.

Member States shall take the necessary measures to ensure that intercepting, by technical means, non-public transmissions of computer data to, from or within an information system, including electromagnetic emissions from an information system carrying such computer

data, intentionally and without right, is punishable as a criminal offence, at least for cases which are not minor.

As required by the Article 7 the member states shall take the necessary measures to ensure that the intentional production, sale, procurement for use, import, distribution or otherwise making available, of one of the following tools, without right and with the intention that it be used to commit any of the offences referred to in Articles 3 to 6, is punishable as a criminal offence, at least for cases which are not minor:

(a) a computer programme, designed or adapted primarily for the purpose of committing any of the offences referred to in Articles 3 to 6;

(b) a computer password, access code, or similar data by which the whole or any part of an information system is capable of being accessed.

Member States shall ensure in compliance with the Article 8 that the incitement, or aiding and abetting, to commit an offence referred to in Articles 3 to 7 is punishable as a criminal offence.

Member States shall ensure that the attempt to commit an offence referred to in Articles 4 and 5 is punishable as a criminal offence.

B. Penalties

Member States shall take the necessary measures in the line with the Article 9 to ensure that the offences referred to in Articles 3 to 8 are punishable by effective, proportionate and dissuasive criminal penalties.

Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 7 are punishable by a maximum term of imprisonment of at least two years, at least for cases which are not minor.

Member States shall take the necessary measures to ensure that the offences referred to in Articles 4 and 5, when committed intentionally, are punishable by a maximum term of imprisonment of at least three years where a significant number of information systems have been affected through the use of a tool, referred to in Article 7, designed or adapted primarily for that purpose.

Member States shall take the necessary measures to ensure that offences referred to in Articles 4 and 5 are punishable by a maximum term of imprisonment of at least five years where:

(a) they are committed within the framework of a criminal organisation, as defined in Framework Decision 2008/841/JHA, irrespective of the penalty provided for therein;

(b) they cause serious damage; or

(c) they are committed against a critical infrastructure information system.

Member States shall take the necessary measures to ensure that when the offences referred to in Articles 4 and 5 are committed by misusing the personal data of another person, with the aim of gaining the trust of a third party, thereby causing prejudice to the rightful identity owner, this may, in accordance with national law, be regarded as aggravating circumstances,

unless those circumstances are already covered by another offence, punishable under national law.

C. Liability of legal persons

Pursuant to the Article 10 the member states shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 to 8, committed for their benefit by any person, acting either individually or as part of a body of the legal person, and having a leading position within the legal person, based on one of the following:

(a) a power of representation of the legal person;
(b) an authority to take decisions on behalf of the legal person;
(c) an authority to exercise control within the legal person.

Member States shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has allowed the commission, by a person under its authority, of any of the offences referred to in Articles 3 to 8 for the benefit of that legal person.

Member States shall take the necessary measures as required in the Article 11 to ensure that a legal person held liable pursuant to Article 10 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and which may include other sanctions, such as:

(a) exclusion from entitlement to public benefits or aid;
(b) temporary or permanent disqualification from the practice of commercial activities;
(c) placing under judicial supervision;
(d) judicial winding-up;
(e) temporary or permanent closure of establishments which have been used for committing the offence.

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to the Article 10(2) is punishable by effective, proportionate and dissuasive sanctions or other measures.

D. Jurisdiction

Member States shall establish their jurisdiction prescribed by the Article 12 as with regard to the offences referred to in Articles 3 to 8 where the offence has been committed:

(a) in whole or in part within their territory; or
(b) by one of their nationals, at least in cases where the act is an offence where it was committed.

When establishing jurisdiction in accordance with point (a), a Member State shall ensure that it has jurisdiction where:

(a) the offender commits the offence when physically present on its territory, whether or not the offence is against an information system on its territory; or
(b) the offence is against an information system on its territory, whether or not the offender commits the offence when physically present on its territory.

A Member State shall inform the Commission where it decides to establish jurisdiction over an offence referred to in Articles 3 to 8 committed outside its territory, including where:

(a) the offender has his or her habitual residence in its territory; or

(b) the offence is committed for the benefit of a legal person established in its territory.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 4 September 2015.

Chapter II: EU criminal procedural law

I. DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the right to interpretation and translation in criminal proceedings

A. General remarks

This Directive under the Article 1 lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant. The right shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, this Directive shall apply only to the proceedings before that court following such an appeal. This Directive does not affect national law concerning the presence of legal counsel during any stage of the criminal proceedings, nor does it affect national law concerning the right of access of a suspected or accused person to documents in criminal proceedings.

B. Right to interpretation

In accordance with the Article 2 the member states shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings. Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications. The right to interpretation includes appropriate assistance for persons with hearing or speech impediments. Member States shall ensure that a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter.

Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings. Where appropriate, communication technology such as videoconferencing, telephone or the Internet may be used, unless the physical presence of the interpreter is required in order to safeguard the

fairness of the proceedings. In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide persons subject to such proceedings who do not speak or understand the language of the proceedings with interpretation. Interpretation provided under this provision shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

C. Right to translation of essential documents

Member States shall ensure in compliance with the Article 3 that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment. The competent authorities shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect. There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.

Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.

In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand the language in which the European arrest warrant is drawn up, or into which it has been translated by the issuing Member State, with a written translation of that document.

As an exception to the general rules, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

Any waiver of the right to translation of documents referred to in this provisions shall be subject to the requirements that suspected or accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.

Translation provided under this provisions shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

Member States shall meet under the Article 4 the costs of interpretation and translation irrespective of the outcome of the proceedings.

D. Quality of the interpretation and translation

In accordance with the Article 5 member states shall take concrete measures to ensure that the interpretation and translation provided meets the quality required. In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities. Member States shall ensure that interpreters and translators be required to observe confidentiality regarding interpretation and translation provided under this Directive.

E. Training

Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request in the line with the Article 6 those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.

F. Record-keeping

Member States shall ensure in the line with the Article 7 that when a suspected or accused person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter pursuant to Article 2, when an oral translation or oral summary of essential documents has been provided in the presence of such an authority or when a person has waived the right to translation it will be noted that these events have occurred, using the recording procedure in accordance with the law of the Member State concerned.

As emphasized in the Article 8 nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union, other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

II. DIRECTIVE 2012/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2012 on the right to information in criminal proceedings

A. General remarks

This Directive in accordance with the Article 1 lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights.

This Directive applies in accordance with the Article 2 from the time persons are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, this Directive shall apply only to the proceedings before that court, following such an appeal.

Under the Article 3 the member states shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively:

- (a) the right of access to a lawyer;
- (b) any entitlement to free legal advice and the conditions for obtaining such advice;
- (c) the right to be informed of the accusation, in accordance with Article 6;
- (d) the right to interpretation and translation;
- (e) the right to remain silent.

Member States shall ensure that the information provided shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.

B. Letter of Rights on arrest

Member States shall ensure under the Article 4 that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. They shall be given an opportunity to read the Letter of Rights and shall be allowed to keep it in their possession throughout the time that they are deprived of liberty. In addition to the information set out in previous paragraph, the Letter of Rights shall contain information about the following rights as they apply under national law:

- (a) the right of access to the materials of the case;
- (b) the right to have consular authorities and one person informed;
- (c) the right of access to urgent medical assistance; and
- (d) the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority.

The Letter of Rights shall also contain basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release. The Letter of Rights shall be drafted in simple and accessible language. An indicative model Letter of Rights is set out in Annex I. Member States shall ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand shall then be given to them without undue delay.

C. Letter of Rights in European Arrest Warrant proceedings

Member States shall ensure in accordance with the Article 5 that persons who are arrested for the purpose of the execution of a European Arrest Warrant are provided promptly with an appropriate Letter of Rights containing information on their rights according to the law implementing Framework Decision 2002/584/JHA in the executing Member State. The Letter of Rights shall be drafted in simple and accessible language.

D. Right to information about the accusation

Under the Article 6 the member states shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence. Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed. Member States shall ensure that, at the latest on submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person. Member States shall ensure that suspects or accused persons are informed promptly of any changes in the information given in accordance with this Article where this is necessary to safeguard the fairness of the proceedings.

E. Right of access to the materials of the case

As stated in the Article 7 where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers. Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence. Access to the above mentioned materials shall be granted in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court. Where further

material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered. This does not prejudice the right to a fair trial, access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted. Member States shall ensure that, in accordance with procedures in national law, a decision to refuse access to certain materials in accordance with this paragraph is taken by a judicial authority or is at least subject to judicial review. Access, as referred to in this Article, shall be provided free of charge.

F. Verification and remedies

Member States shall ensure in accordance with the Article 8 that when information is provided to suspects or accused persons in accordance with Articles 3 to 6 this is noted using the recording procedure specified in the law of the Member State concerned. Member States shall ensure that suspects or accused persons or their lawyers have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive.

G. Non-regression

As stipulated in the Article 10 nothing in this Directive shall be construed as limiting or derogating from any of the rights or procedural safeguards that are ensured under the Charter, the ECHR, other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 June 2014.

H. ANNEX I

Indicative model Letter of Rights

The sole purpose of this model is to assist national authorities in drawing up their Letter of Rights at national level. Member States are not bound to use this model. When preparing their Letter of Rights, Member States may amend this model in order to align it with their national rules and add further useful information. The Member State's Letter of Rights must be given upon arrest or detention. This however does not prevent Member States from providing suspects or accused persons with written information in other situations during criminal proceedings.

A. ASSISTANCE OF A LAWYER/ENTITLEMENT TO LEGAL AID

You have the right to speak confidentially to a lawyer. A lawyer is independent from the police. Ask the police if you need help to get in contact with a lawyer, the police shall help you. In certain cases the assistance may be free of charge. Ask the police for more information.

B. INFORMATION ABOUT THE ACCUSATION

You have the right to know why you have been arrested or detained and what you are suspected or accused of having done.

C. INTERPRETATION AND TRANSLATION

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to translation of at least the relevant passages of essential documents, including any order by a judge allowing your arrest or keeping you in custody, any charge or indictment and any judgment. You may in some circumstances be provided with an oral translation or summary.

D. RIGHT TO REMAIN SILENT

While questioned by the police or other competent authorities, you do not have to answer questions about the alleged offence. Your lawyer can help you to decide on that.

E. ACCESS TO DOCUMENTS

When you are arrested and detained, you (or your lawyer) have the right to access essential documents you need to challenge the arrest or detention. If your case goes to court, you (or your lawyer) have the right to access the material evidence for or against you.

F. INFORMING SOMEONE ELSE ABOUT YOUR ARREST OR DETENTION/INFORMING YOUR CONSULATE OR EMBASSY

When you are arrested or detained, you should tell the police if you want someone to be informed of your detention, for example a family member or your employer. In certain cases the right to inform another person of your detention may be temporarily restricted. In such cases the police will inform you of this.

If you are a foreigner, tell the police if you want your consular authority or embassy to be informed of your detention. Please also tell the police if you want to contact an official of your consular authority or embassy.

G. URGENT MEDICAL ASSISTANCE

When you are arrested or detained, you have the right to urgent medical assistance. Please let the police know if you are in need of such assistance.

H. PERIOD OF DEPRIVATION OF LIBERTY

After your arrest you may be deprived of liberty or detained for a maximum period of … [fill in applicable number of hours/days]. At the end of that period you must either be released or be heard by a judge who will decide on your further detention. Ask your lawyer or the judge for

information about the possibility to challenge your arrest, to review the detention or to ask for provisional release.

I. ANNEX II

Indicative model Letter of Rights for persons arrested on the basis of a European Arrest Warrant

The sole purpose of this model is to assist national authorities in drawing up their Letter of Rights at national level. Member States are not bound to use this model. When preparing their Letter of Rights, Member States may amend this model in order to align it with their national rules and add further useful information.

A. INFORMATION ABOUT THE EUROPEAN ARREST WARRANT

You have the right to be informed about the content of the European Arrest Warrant on the basis of which you have been arrested.

B. ASSISTANCE OF A LAWYER

You have the right to speak confidentially to a lawyer. A lawyer is independent from the police. Ask the police if you need help to get in contact with a lawyer, the police shall help you. In certain cases the assistance may be free of charge. Ask the police for more information.

C. INTERPRETATION AND TRANSLATION

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to a translation of the European Arrest Warrant in a language you understand. You may in some circumstances be provided with an oral translation or summary.

D. POSSIBILITY TO CONSENT

You may consent or not consent to being surrendered to the State seeking you. Your consent would speed up the proceedings. [Possible addition of certain Member States: It may be difficult or even impossible to change this decision at a later stage.] Ask the authorities or your lawyer for more information.

E. HEARING

If you do not consent to your surrender, you have the right to be heard by a judicial authority.

III. Directive 2012/29/EU of the European parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

A. General remarks

The purpose of this Directive under the Article 1 is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

For the purposes of this Directive the following definitions shall apply as defined in the Article 2:

(a) **'victim'** means:

(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;

(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;

(b) **'family members'** means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous

(c) **basis**, the relatives in direct line, the siblings and the dependants of the victim;

(d) **'child'** means any person below 18 years of age;

(e) **'restorative justice'** means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.

Member States may establish procedures:

(a) to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case; and

(b) in relation to(a)(ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.

B. Provision of information and support

1. Right to understand and to be understood

Under the Article 3 the member states shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.

Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.

Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

2. Right to receive information from the first contact with a competent authority

Member States shall ensure in accordance with the Article 4 that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

(a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;
(b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
(c) how and under what conditions they can obtain protection, including protection measures;
(d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;
(e) how and under what conditions they can access compensation;
(f) how and under what conditions they are entitled to interpretation and translation;
(g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;
(h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;
(i) the contact details for communications about their case;
(j) the available restorative justice services;
(k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

The extent or detail of information referred above may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.

3. Right of victims when making a complaint

In accordance with the Article 5 member states shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint, if they so request, in a language that they understand.

4. Right to receive information about their case

As stated in the Article 6 the member dates shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:

(a) any decision not to proceed with or to end an investigation or not to prosecute the offender;

(b) the time and place of the trial, and the nature of the charges against the offender.

Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:

(a) any final judgment in a trial;

(b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.

Information provided for under the letters (a) shall include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.

Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender.

Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

5. Right to interpretation and translation

Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.

Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.

Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

Member States shall ensure that victims who are entitled to information about the time and place of the trial in accordance with Article 6(1)(b) and who do not understand the language of the competent authority, are provided with a translation of the information to which they are entitled, upon request.

Victims may submit a reasoned request to consider a document as essential. There shall be no requirement to translate passages of essential documents which are not relevant for the purpose of enabling victims to actively participate in the criminal proceedings.

An oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

Member States shall ensure that the competent authority assesses whether victims need interpretation or translation. Victims may challenge a decision not to provide interpretation or translation. The procedural rules for such a challenge shall be determined by national law.

Interpretation and translation and any consideration of a challenge of a decision not to provide interpretation or translation under this Article shall not unreasonably prolong the criminal proceedings.

6. Right to access victim support services

In compliance with the Article 8 the member states shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim. Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis. Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

7. Support from victim support services

Victim support services, as referred in the Article 8, shall, as a minimum, provide under the Article 9:

(a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
(b) information about or direct referral to any relevant specialist support services in place;
(c) emotional and, where available, psychological support;
(d) advice relating to financial and practical issues arising from the crime;
(e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime. Unless otherwise provided by other public or private services, specialist support services referred to in Article, shall, as a minimum, develop and provide under the Article 9:

(a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
(b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

C. Participation in criminal proceeding

1. Right to be heard

Member States shall ensure under the Article 10 that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence shall be determined by national law.

2. Rights in the event of a decision not to prosecute

In accordance with the Article 11 the member states shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

Where the decision not to prosecute is taken by the highest prosecuting authority against whose decision no review may be carried out under national law, the review may be carried out by the same authority.

These provisions shall not apply to a decision of the prosecutor not to prosecute, if such a decision results in an out-of-court settlement, in so far as national law makes such provision.

3. Right to safeguards in the context of restorative justice services

In accordance with the Article 12 the member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

(a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;

(b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;

(c) the offender has acknowledged the basic facts of the case;

(d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;

(e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

4. Right to legal aid

In accordance with the Article 13 the member states shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

5. Right to reimbursement of expenses

Member States shall under the Article 14 afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system. The conditions or procedural rules under which victims may be reimbursed shall be determined by national law.

6. Right to the return of property

Member States shall under the Article 15 ensure that, following a decision by a competent authority, recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings. The conditions or procedural rules under which such property is returned to the victims shall be determined by national law.

7. Right to decision on compensation from the offender in the course of criminal proceedings

As stated in the Article 16 Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

8. Rights of victims resident in another Member State

Member States shall ensure under the Article 17 that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the criminal offence was committed shall, in particular, be in a position:

(a) to take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority;

(b) to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 (17) for the purpose of hearing victims who are resident abroad.

Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.

Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.

D. Protection of victims and recognition of victims with specific protection needs

1. Right to protection

Without prejudice to the rights of the defence, Member States shall ensure in accordance with the Article 18 that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

2. Right to avoid contact between victim and offender

Member States shall establish in accordance with the Article 19 the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.

Member States shall ensure that new court premises have separate waiting areas for victims.

Right to protection of victims during criminal investigations

Without prejudice to the rights of the defence and in accordance with the Article 20 with rules of judicial discretion, Member States shall ensure that during criminal investigations:

(a) interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority;
(b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;
(c) victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary;
(d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

3. Right to protection of privacy

Member States shall ensure under the Article 21 that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim. In order to protect the privacy, personal integrity and personal data of victims, Member States shall, with respect for freedom of expression and information and freedom and pluralism of the media, encourage the media to take self-regulatory measures.

4. Individual assessment of victims to identify specific protection needs

Member States shall ensure in accordance with the Article 22 that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. The individual assessment shall, in particular, take into account:

(a) the personal characteristics of the victim;
(b) the type or nature of the crime; and
(c) the circumstances of the crime.

In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.
If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceeding.

5. Right to protection of victims with specific protection needs during criminal proceedings
Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure in the compliance with the Article 23 that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 2, may benefit from the measures provided of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is a an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.
The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22:

(a) interviews with the victim being carried out in premises designed or adapted for that purpose;
(b) interviews with the victim being carried out by or through professionals trained for that purpose;
(c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;
(d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

The following measures shall be available for victims with specific protection needs during court proceedings:

(a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;
(b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;
(c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and
(d) measures allowing a hearing to take place without the presence of the public.

6. Right to protection of child victims during criminal proceedings
In addition to the measures provided for in Article 23, Member States shall ensure that where the victim is a child:

(a) in criminal investigations, all interviews with the child victim may be audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings;
(b) in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family;
(c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

The procedural rules for the audiovisual recordings referred to in point (a) and the use thereof shall be determined by national law. Where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child.

7. Training of practitioners

Member States shall ensure in compliance with the Article 25 that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase the awareness of judges and prosecutors of the needs of victims. With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims. Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

E. Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 November 2015.

IV. DIRECTIVE 2013/48/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

A. General remarks

This Directive lays down minimum rules under the Article 1 concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant to Framework Decision 2002/584/JHA ('European arrest warrant proceedings') to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

This Directive applies in accordance with the Article 2 to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. It applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal. This Directive applies to persons subject to European arrest warrant proceedings (requested persons) from the time of their arrest in the executing Member State in accordance with Article 10.

This Directive also applies, to persons other than suspects or accused persons who, in the course of questioning by the police or by another law enforcement authority, become suspects or accused persons.

Without prejudice to the right to a fair trial, in respect of minor offences:

(a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or

(b) where deprivation of liberty cannot be imposed as a sanction;

this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters. In any event, this Directive shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.

B. The right of access to a lawyer in criminal proceedings

Member States shall ensure under the Article 3 that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively. Suspects or accused persons shall have access to a lawyer without undue delay. In any event, suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest:

(a) before they are questioned by the police or by another law enforcement or judicial authority;

(b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c)

(c) without undue delay after deprivation of liberty;

(d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

C. The right of access to a lawyer shall entail the following:

(a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;

(b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. Such participation shall be in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure in accordance with the law of the Member State concerned;

(c) Member States shall ensure that suspects or accused persons shall have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:

  (i) identity parades;

  (ii) confrontations;

  (iii) reconstructions of the scene of a crime.

Member States shall endeavor to make general information available to facilitate the obtaining of a lawyer by suspects or accused persons. Notwithstanding provisions of national law concerning the mandatory presence of a lawyer, Member States shall make the necessary arrangements to ensure that suspects or accused persons who are deprived of liberty are in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with Article 9.

In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of point??? © where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in above mentioned paragraphs to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

D. Confidentiality

Member States shall respect under the Article 4 the confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

E. The right to have a third person informed of the deprivation of liberty

Member States shall ensure with respect to the Article 5 that suspects or accused persons who are deprived of liberty have the right to have at least one person, such as a relative or an employer, nominated by them, informed of their deprivation of liberty without undue delay if they so wish.

If the suspect or accused person is a child, Member States shall ensure that the holder of parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed. For the purposes of this paragraph, a person below the age of 18 years shall be considered to be a child. Member States may temporarily derogate from the application of the rights set out above where justified in the light of the particular circumstances of the case on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised.

Where Member States temporarily derogate from the application of the right set out above, they shall ensure that an authority responsible for the protection or welfare of children is informed without undue delay of the deprivation of liberty of the child.

F. The right to communicate, while deprived of liberty, with third persons

Member States shall ensure in compliance with the Article 6 that suspects or accused persons who are deprived of liberty have the right to communicate without undue delay with at least one third person, such as a relative, nominated by them. Member States may limit or defer the exercise of the right referred above in view of imperative requirements or proportionate operational requirements.

G. The right to communicate with consular authorities

As stated in the Article 7 member States shall ensure that suspects or accused persons who are non-nationals and who are deprived of liberty have the right to have the consular authorities of their State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities, if they so wish. However, where suspects or accused

persons have two or more nationalities, they may choose which consular authorities, if any, are to be informed of the deprivation of liberty and with whom they wish to communicate. Suspects or accused persons also have the right to be visited by their consular authorities, the right to converse and correspond with them and the right to have legal representation arranged for by their consular authorities, subject to the agreement of those authorities and the wishes of the suspects or accused persons concerned. The exercise of the rights laid down in this Article may be regulated by national law or procedures, provided that such law or procedures enable full effect to be given to the purposes for which these rights are intended.

H. General conditions for applying temporary derogations

As established within the Article 8 any temporary derogation under Article 3 or under Article shall

(a) be proportionate and not go beyond what is necessary;

(b) be strictly limited in time;

(c) not be based exclusively on the type or the seriousness of the alleged offence; and

(d) not prejudice the overall fairness of the proceedings.

Temporary derogations under Article 3 may be authorised only by a duly reasoned decision taken on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review. The duly reasoned decision shall be recorded using the recording procedure in accordance with the law of the Member State concerned.

Temporary derogations under Article 5 may be authorised only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.

I. Waiver

Without prejudice to national law requiring the mandatory presence or assistance of a lawyer, Member States shall ensure pursuant the Article 9 that, in relation to any waiver of a right referred to in Articles 3 and 10:

(a) the suspect or accused person has been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it; and

(b) the waiver is given voluntarily and unequivocally.

The waiver, which can be made in writing or orally, shall be noted, as well as the circumstances under which the waiver was given, using the recording procedure in accordance with the law of the Member State concerned. Member States shall ensure that suspects or accused persons may revoke a waiver subsequently at any point during the criminal proceedings and that they are informed about that possibility. Such a revocation shall have effect from the moment it is made.

J. The right of access to a lawyer in European arrest warrant proceedings

Member States shall ensure pursuant the Article 10 that a requested person has the right of access to a lawyer in the executing Member State upon arrest pursuant to the European arrest

warrant. With regard to the content of the right of access to a lawyer in the executing Member State, requested persons shall have the following rights in that Member State:

(a) the right of access to a lawyer in such time and in such a manner as to allow the requested persons to exercise their rights effectively and in any event without undue delay from deprivation of liberty;
(b) the right to meet and communicate with the lawyer representing them;
(c) the right for their lawyer to be present and, in accordance with procedures in national law, participate during a hearing of a requested person by the executing judicial authority. Where a lawyer participates during the hearing this shall be noted using the recording procedure in accordance with the law of the Member State concerned.

The competent authority in the executing Member State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State. The role of that lawyer in the issuing Member State is to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA.

Where requested persons wish to exercise the right to appoint a lawyer in the issuing Member State and do not already have such a lawyer, the competent authority in the executing Member State shall promptly inform the competent authority in the issuing Member State. The competent authority of that Member State shall, without undue delay, provide the requested persons with information to facilitate them in appointing a lawyer there.

The right of a requested person to appoint a lawyer in the issuing Member State is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation on the executing judicial authority to decide, within those time-limits and the conditions defined under that Framework Decision, whether the person is to be surrendered.

K. Legal aid and Remedies

As established in the Article 11 this Directive is without prejudice to national law in relation to legal aid, which shall apply in accordance with the Charter and the ECHR.

Member States shall ensure in the line with the Article 12 that suspects or accused persons in criminal proceedings, as well as requested persons in European arrest warrant proceedings, have an effective remedy under national law in the event of a breach of the rights under this Directive. Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with Article 3, the rights of the defence and the fairness of the proceedings are respected.

L. Vulnerable persons

Member States shall ensure in compliance with the Article 13 that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of this Directive.

M. Non-regression clause

Nothing in this Directive shall be construed in the line with the Article 14 as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

N. Transposition

Member States shall bring under the Article 15 into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 November 2016. They shall immediately inform the Commission thereof.

V. DIRECTIVE (EU) 2016/343 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings

A. General remarks

In the line with the Article 1 the subject matter of this directive lays down common minimum rules concerning:

a) certain aspects of the presumption of innocence in criminal proceedings;
b) the right to be present at the trial in criminal proceedings.

In accordance with the Article 2 This Directive applies to natural persons who are suspects or accused persons in criminal proceedings. It applies at all stages of the criminal proceedings, from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, until the decision on the final determination of whether that person has committed the criminal offence concerned has become definitive.

B. Presumption of innocence

In compliance with the Article 3 the member states shall ensure that suspects and accused persons are presumed innocent until proved guilty according to law.

As stipulated by the Article 4 the member states shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty. This shall be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence.

Member States shall ensure that appropriate measures are available in the event of a breach of the obligation laid down of this Article not to refer to suspects or accused persons as being guilty, in accordance with this Directive and, in particular, with Article 10.

The obligation laid down in paragraph 1 not to refer to suspects or accused persons as being guilty shall not prevent public authorities from publicly disseminating information on the criminal proceedings where strictly necessary for reasons relating to the criminal investigation or to the public interest.

C. Presentation of suspects and accused persons

As requested by the Article 5 Member States shall take appropriate measures to ensure that suspects and accused persons are not presented as being guilty, in court or in public, through the use of measures of physical restraint.

This shall not prevent Member States from applying measures of physical restraint that are required for case-specific reasons, relating to security or to the prevention of suspects or accused persons from absconding or from having contact with third persons.

In the line with the Article 8 the member states shall ensure that suspects and accused persons have the right to be present at their trial.

Member States may provide that a trial which can result in a decision on the guilt or innocence of a suspect or accused person can be held in his or her absence, provided that:

the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance; or the suspect or accused person, having been informed of the trial, is represented by a mandated lawyer, who was appointed either by the suspect or accused person or by the State.

A decision which has been taken in accordance with paragraph 2 may be enforced against the person concerned.

Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but it is not possible to comply with the conditions laid down in paragraph 2 of

this Article because a suspect or accused person cannot be located despite reasonable efforts having been made, Member States may provide that a decision can nevertheless be taken and enforced. In that case, Member States shall ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they are also informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy, in accordance with Article 9.

This Article shall be without prejudice to national rules that provide that the judge or the competent court can exclude a suspect or accused person temporarily from the trial where necessary in the interests of securing the proper conduct of the criminal proceedings, provided that the rights of the defence are complied with.

This Article shall be without prejudice to national rules that provide for proceedings or certain stages thereof to be conducted in writing, provided that this complies with the right to a fair trial.

As stipulated by the Article 9 the member states shall ensure that, where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) were not met, they have the right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision being reversed. In that regard, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.

D. Burden of proof

In the line with the Article 6 the member states shall ensure that the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution. This shall be without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence, and to the right of the defence to submit evidence in accordance with the applicable national law.

Member States shall ensure that any doubt as to the question of guilt is to benefit the suspect or accused person, including where the court assesses whether the person concerned should be acquitted.

E. Right to remain silent and right not to incriminate oneself

In compliance with the Article 7 the member states shall ensure that suspects and accused persons have the right to remain silent in relation to the criminal offence that they are suspected or accused of having committed.

Member States shall ensure that suspects and accused persons have the right not to incriminate themselves.

The exercise of the right not to incriminate oneself shall not prevent the competent authorities from gathering evidence which may be lawfully obtained through the use of legal powers of compulsion and which has an existence independent of the will of the suspects or accused persons.

Member States may allow their judicial authorities to take into account, when sentencing, cooperative behaviour of suspects and accused persons.

The exercise by suspects and accused persons of the right to remain silent or of the right not to incriminate oneself shall not be used against them and shall not be considered to be evidence that they have committed the criminal offence concerned.

This Article shall not preclude Member States from deciding that, with regard to minor offences, the conduct of the proceedings, or certain stages thereof, may take place in writing or without questioning of the suspect or accused person by the competent authorities in relation to the offence concerned, provided that this complies with the right to a fair trial.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 April 2018.

Chapter III: EU judicial cooperation in criminal matters

I. Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)

A. General remarks

According to the Article 1 The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order, may be issued according the Article 2.1 a European arrest warrant for:

a) acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or,
b) where a sentence has been passed or a detention order has been made, for sentences of at least four months.

The issuing judicial authority shall be according to the Article 6, para 1 the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State, usually a judge. The executing judicial authority shall be according the Article 6, para 2 the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State, usually a judge. Pursuant to the Article 9, para 2,3 the issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS), the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

According to the Article 8 the EAW shall contain the following information set out in accordance with the form contained in the Annex:

(a) the identity and nationality of the requested person;

(b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

(d) the nature and legal classification of the offence, particularly in respect of Article 2;

(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;

(f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

(g) if possible, other consequences of the offence.

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

The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are

defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

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

The European arrest warrant shall contain the following information as stipulated in the Article 8 set out in accordance with the form contained in the Annex:

(a) the identity and nationality of the requested person;

(b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;
(d) the nature and legal classification of the offence, particularly in respect of Article 2;
(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
(f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;
(g) if possible, other consequences of the offence.
The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

B. Surrender procedure

According to the Article 11 when a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.
When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention as stipulated in the Article 12, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.
Article 13 establishes so-called simplified surrender, if the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the "speciality rule", shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State. The European arrest warrant should be taken within a period of 10 days after consent has been given.
In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.
Where the arrested person does not consent to his or her surrender, he or she shall be entitled to be heard by the executing judicial authority in accordance with the Article 14, in accordance with the law of the executing Member State.

The executing judicial authority shall decide within the Article 15 and within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

Acc. The Article 3 the grounds for mandatory non-execution of the European arrest warrant are:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;
2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;
3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

According to the Article 4 the grounds for optional non-execution of the European arrest warrant are:

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

(a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or

(b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions as established by the Article 5:

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

C. Speciality rule

Pursuant to the Article 27 of the EAW FD Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, **consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case executing judicial authority states otherwise in its decision on surrender. Except in the case a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered. This obligation is called speciality rule.**

It does not apply in the following cases:

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

(b) the offence is not punishable by a custodial sentence or detention order;

(c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;

(e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;

(f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

(g) where the executing judicial authority which surrendered the person gives its consent.

II. Council Framework Decision 2003/577/JHE of 22 July 2003 on the execution in the European Union of orders freezing property or evidence

A. General remarks

The purpose of this Framework Decision pursuant the Article 1 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.

The Article 2 of the Framework Decision defines general terms:

"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;

"executing State" shall mean the Member State in whose territory the property or evidence is located;

"freezing order" property that could be subject to confiscation or evidence;

"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;

(**"evidence"** shall mean objects, documents or data which could be produced as evidence in criminal proceedings concerning an offence referred to in Article 3.

According to the Article 3 of the Framework Decision the freezing orders shall be issued for the purposes of:

(a) securing evidence, or

(b) subsequent confiscation of property.

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.

B. Procedure for executing freezing orders

A freezing order within the meaning of this Framework Decision, together with the certificate provided, 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.

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.

Pursuant to the Article 5 the competent judicial authorities of the executing State shall recognise a freezing order, 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 or one of the grounds for postponement as stated further.

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.

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

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

The property shall remain frozen according to the Article 6 in the executing State until that State has responded definitively to any request

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.

The competent judicial authorities of the executing State may refuse pursuant the Article 7 of the FD to recognize or execute the freezing order only if:

(a) the certificate 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 for the offence in respect of which the freezing order has been made, would infringe the ne bis in idem principle;

(d) if, 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.

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.

The competent judicial authority of the executing State may postpone the execution pursuant the Article 8 of a freezing order transmitted if:

(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.
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.
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.
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.
The Article 9 establishes the standard of 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. The certificate 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 European Communities.

III. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence

A. General remarks

The purpose of the Framework Decision according to the Article 1 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.

For the purposes of this Framework Decision the Article 2 defines the general terms:

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

(b) **"executing State"** shall mean the Member State in whose territory the property or evidence is located;

(c) **"freezing order"** property that could be subject to confiscation or evidence;

(d) **"property"** includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which the competent judicial authority in the issuing State considers:

- is the proceeds of an offence referred to in Article 3, or equivalent to either the full value or part of the value of such proceeds, or
- constitutes the instrumentalities or the objects of such an offence;

(e) **"evidence"** shall mean objects, documents or data which could be produced as evidence in criminal proceedings concerning an offence referred to in Article 3.

This Framework Decision applies pursuant the Article 3 to the freezing orders issued for purposes of:

(a) securing evidence, or

(b) subsequent confiscation of property.

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.

The Council may decide, at any time, acting unanimously after consultation of the European Parliament to add other categories of offence to the list contained above. The Council shall examine, whether the list should be extended or amended.

For cases not covered above, the executing State may subject the recognition and enforcement of a freezing order made 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.

B. Procedure for executing the freezing orders

Pursuant the Article 4 a freezing order within the meaning of this Framework Decision, together with the certificate, 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.

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, in order to obtain the information from the executing State.

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.

As stipulated in the Article 5 The competent judicial authorities of the executing State shall recognise a freezing order 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 or one of the grounds for postponement.

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.

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

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

The property shall remain frozen pursuant Article 6 in the executing State until that State has responded definitively to any request.

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.

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.

Grounds for non-recognition or non-execution are established in the Article 7 stated that:

1. The competent judicial authorities of the executing State may refuse to recognise or execute the freezing order only if:

(a) the certificate 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, 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.

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.

The competent judicial authority of the executing State may postpone according the Article 8 the execution of a freezing order transmitted

(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.

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.

Pursuant the Article 9 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. The certificate 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 As stated in the Article 9, subsequent transmission of the freezing order:

(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.

IV. COUNCIL FRAMEWORK DECISION 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties

A. General remarks

For the purposes of this Framework Decision acc. the Article 1:

(a) **'decision'** shall mean a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:

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

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

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

(iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii);

(b) **'financial penalty'** shall mean the obligation to pay:

(i) a sum of money on conviction of an offence imposed in a decision;

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

(iii) a sum of money in respect of the costs of court or administrative proceedings leading to the decision;

(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 (5);

(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.

Acc. the Article 4 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.

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.

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. The issuing State shall only transmit a decision to one executing State at any one time. If the competent authority in the executing State is not known to the competent authority in the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network (6) in order to obtain the information from the executing State.

When an authority in the executing State which receives a decision has no jurisdiction to recognize 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.

The following offences pursuant to the Article 5, 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 organization,

— 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.

For offences other than those covered above, 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.

B. Recognition and execution of decisions

The competent authorities in the executing State shall recognize 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 as stated in the article 7:**

1. The competent authorities in the executing State may refuse to recognize 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 recognize 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) 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.

Where it is established under the Article 8 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. The enforcement of the decision pursuant the Article 9 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.

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. 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. 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.

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 as stated in the Article 10 if its laws so provide in such cases and the issuing State has allowed for the application of such alternative sanctions in the certificate. 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.

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

Moneys obtained from the enforcement of decisions shall accrue to the executing State unless otherwise agreed between the issuing and the executing State.

Acc. the Article 14 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;

(b) of any decision not to recognise and execute a decision, together with the reasons for the decision;

(c) of the total or partial non-execution of the decision;

(d) of the execution of the decision as soon as the execution has been completed;

(e) of the application of alternative sanction.

V. Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

A. General remarks

This framework decision is intended to strengthen cooperation between European Union (EU) countries by enabling judicial decisions to be recognised and executed within strict deadlines (principle of mutual recognition of judicial decisions). For the purposes of this framework decision, each EU country must inform the General Secretariat of the Council of the contact details of the issuing and executing authorities responsible for enforcing domestic law. This information is made available to all EU countries.

Transmission, recognition and execution of the confiscation order

The confiscation order, together with a certificate of which a copy is annexed to the framework decision and that must be translated into the official language of the executing country, or another official language of the EU as indicated by that country, will be sent directly to the competent authority of the EU country where the natural or legal person concerned:

(a) has property or income;

(b) is normally resident or has its registered seat.

If the issuing authority cannot identify the authority in the executing country that is competent to recognise and execute the order, it will make enquiries, including through the European Judicial Network.

A written record of the transmission of the order must be available to the executing country, which checks that it is genuine.

The transmission of a confiscation order does not restrict the right of the issuing country to execute the order itself. Where appropriate, the competent authority in the executing country must be informed.

The executing country recognises and executes the order forthwith and without requiring the completion of any further formalities. The order is executed in accordance with the law of the executing country and in a manner decided upon by its authorities. A confiscation order applying to legal persons must be executed even if the executing country does not recognise the criminal liability of legal persons.

Where two or more requests for execution relate to the same person, the executing country must take a decision on the execution order, bearing in mind the seriousness of the offences and all other relevant circumstances.

The amounts confiscated are disposed of by the executing country as follows:

(a) if the amount is below EUR 10 000, it accrues to the executing country;

(b) if it is above that amount, 50% of it is transferred to the issuing country.

Both the executing and the issuing country can grant a pardon or amnesty, while the issuing country alone is responsible for appeals on substance of the case lodged against the order.

B. Partial abolition of double criminality

Confiscation orders can generally be applied to any offence. At the same time, in order to facilitate the procedure, the double criminality check has been abolished in relation to a list of 32 offences, provided that these offences are punishable in the issuing country by a custodial sentence of at least three years. This means that the executing country cannot refuse to recognise and execute an order issued by the issuing country for an offence that does not exist in its legal order.

For all types of crime other than those listed in the framework decision, the executing country can continue to apply the principle of double criminality – that is, it can make recognition and execution of the order dependent on the condition that the facts giving rise to the confiscation order constitute an offence according to its law.

Reasons for non-recognition and non-execution and postponement

In some cases the executing country may refuse to recognise and execute the order:

(a) if the certificate is missing or incomplete or does not correspond to the order;

(b) in accordance with the ne bis in idem principle (the same person has already been the subject of a confiscation order for the same facts);

(c) if the executing country provides for immunities or privileges that prevent execution;

(d) if the rights of the parties concerned and third persons acting in good faith make it impossible to execute the order under the law of the executing country;

(e) if the judgment was given in the absence of the person concerned, unless s/he was informed of the date and place of the trial and that an order may be handed down regardless of his/her presence, or if s/he was represented by a legal counsellor, or if s/he did not contest the judgement nor request a retrial or an appeal within the set time-limit;

(f) if the offences were committed wholly or partly within the territory of the executing country or outside the territory of the issuing country and the law of the executing country does not permit legal proceedings to be taken in respect of such offences;

(g) if the confiscation order is statute-barred under the national law of the executing country, provided that the acts fall within the jurisdiction of that country under its criminal law.

The framework decision also provides for the postponement of the execution of the order:

(a) when execution of the confiscation order might damage an on-going criminal investigation or on-going criminal proceedings in the executing country;

(b) when it is deemed necessary to have the confiscation order translated.

C. Remedies

EU countries must adopt the necessary measures to guarantee that the:

(a) person concerned and third persons acting in good faith can lodge an appeal with a court in the executing country. If the latter's national law so provides, the action may have suspensive effect in respect of the confiscation order;

(b) substantial reasons for issuing the confiscation order can be challenged before a court in the issuing country.

COUNCIL FRAMEWORK DECISION 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

A. General remarks

Acc. Article 1 this Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the State of conviction.

This Framework Decision shall apply only to:

(a) the recognition of judgments and, where applicable, probation decisions;

(b) the transfer of responsibility for the supervision of probation measures and alternative sanctions;

(c) all other decisions related to those under (a) and (b);

This Framework Decision shall not apply to:

(a) the execution of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of Framework Decision 2008/909/JHA;

(b) recognition and execution of financial penalties and confiscation orders which fall within the scope of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (5) and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (6).

For the purposes of this Framework Decision:

1.**'judgment'** shall mean a final decision or order of a court of the issuing State, establishing that a natural person has committed a criminal offence and imposing:

(a) a custodial sentence or measure involving deprivation of liberty, if a conditional release has been granted on the basis of that judgment or by a subsequent probation decision;

(b) a suspended sentence;

(c) a conditional sentence;

(d) an alternative sanction;

2.**'suspended sentence'** shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

3. **'conditional sentence'** shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

4.**‘alternative sanction’** shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction;

5.**‘probation decision’** shall mean a judgment or a final decision of a competent authority of the issuing State taken on the basis of such judgment:

(a) granting a conditional release; or

(b) imposing probation measures;

6. **‘conditional release’** shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures;

7. **‘probation measures’** shall mean obligations and instructions imposed by a competent authority on a natural person, in accordance with the national law of the issuing State, in connection with a suspended sentence, a conditional sentence or a conditional release;

8.**‘issuing State’** shall mean the Member State in which a judgment is delivered;

9.**‘executing State’** shall mean the Member State in which the probation measures and alternative sanctions are supervised following a decision in accordance with Article 8.

Acc. the Art. 6 each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State.

Framework Decision shall apply to the following probation measures or alternative sanctions pursuant to the Art 4:

(a) an obligation for the sentenced person to inform a specific authority of any change of residence or working place;

(b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;

(c) an obligation containing limitations on leaving the territory of the executing State;

(d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;

(e) an obligation to report at specified times to a specific authority;

(f) an obligation to avoid contact with specific persons;

(g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;

(h) an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation;

(i) an obligation to carry out community service;

(j) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;

(k) an obligation to undergo therapeutic treatment or treatment for addiction.

The competent authority of the issuing State may forward a judgment and, where applicable, a probation decision pursuant to the Art. 5 to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing, in cases where the sentenced person has returned or wants to return to that State. The competent authority of the issuing State may, upon request of the sentenced person, forward the judgment and, where applicable, the probation decision to a competent authority of a Member State other than the Member State in which the sentenced person is lawfully and ordinarily residing, on condition that this latter authority has consented to such forwarding. When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a judgment and, where applicable, a probation decision.
The judgment and, where applicable, the probation decision, together with the certificate, shall be forwarded as stipulated in the Article 6 by the competent authority of the issuing State directly to the competent authority of the executing State by any means which leaves a written record under conditions allowing the executing State to establish their authenticity. The original of the judgment and, where applicable, the probation decision, or certified copies thereof, as well as the original of the certificate, shall be sent to the competent authority of the executing State if it so requires. All official communications shall also be made directly between the said competent authorities. The certificate shall be signed and its content certified as accurate by the competent authority of the issuing State. The competent authority of the issuing State shall forward the judgment and, where applicable, the probation decision, together with the certificate referred only to one executing State at any one time. When an authority of the executing State which receives a judgment and, where applicable, a probation decision, together with the certificate, has no competence to recognise it and take the ensuing necessary measures for the supervision of the probation measure or alternative sanction, it shall, ex officio, forward it to the competent authority and shall without delay inform the competent authority of the issuing State accordingly by any means which leaves a written record.

B. Decision of the executing state

Acc. the Art. 8 of the Framework decision The competent authority of the executing State shall recognise the judgment and, where applicable, the probation decision forwarded in accordance and following the procedure laid down and shall without delay take all necessary measures for the supervision of the probation measures or alternative sanctions, unless it decides to invoke one of the grounds for refusing recognition and supervision. The competent authority of the executing State may postpone the decision on recognition of the judgment and, where applicable, the probation decision in the situation where the certificate is incomplete or obviously does not correspond to the judgment or, where applicable, the probation decision, until such reasonable deadline set for the certificate to be completed or corrected.

If the nature or duration of the relevant probation measure or alternative sanction, or the duration of the probation period, are incompatible with the law of the

executing State, the competent authority of that State may adapt pursuant to the Article 9 them in line with the nature and duration of the probation measures and alternative sanctions, or duration of the probation period, which apply, under the law of the executing State, to equivalent offences. The adapted probation measure, alternative sanction or duration of the probation period shall correspond as far as possible to that imposed in the issuing State.

Where the probation measure, the alternative sanction or the probation period has been adapted because its duration exceeds the maximum duration provided for under the law of the executing State, the duration of the adapted probation measure, alternative sanction or probation period shall not be below the maximum duration provided for equivalent offences under the law of the executing State. The adapted probation measure, alternative sanction or probation period shall not be more severe or longer than the probation measure, alternative sanction or probation period which was originally imposed.

C. Double criminality

The Article 10 establishes the double principle rule. **The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, 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 ac**t, give rise to recognition of the judgment and, where applicable, the probation decision and to supervision of probation measures and alternative sanctions:

— 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 (8),
— 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.

The Council may decide to add other categories of offences to the list provided above at any time, acting unanimously after consultation of the European Parliament. For other offences than those covered above, the executing State may make the recognition of the judgment and, where applicable, the probation decision and the supervision of probation measures and of alternative sanctions subject to the condition that the judgment relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

The competent authority of the executing State may refuse to recognize pursuant to the Article 11 the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures or alternative sanctions if:

(a) the certificate is incomplete or manifestly does not correspond to the judgment or to the probation decision and has not been completed or corrected within a reasonable period set by the competent authority of the executing State

(b) recognition of the judgment and assumption of responsibility for supervising probation measures or alternative sanctions would be contrary to the principle of ne bis in idem;

© in a case the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of the judgment or, where applicable, the probation decision may not be refused on the grounds that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes or duties, customs and exchange regulations as the law of the issuing State;

(d) the enforcement of the sentence is statute-barred according to the law of the executing State and relates to an act which falls within its competence according to that law;

(e) there is immunity under the law of the executing State, which makes it impossible to supervise probation measures or alternative sanctions;

(f) under the law of the executing State, the sentenced person cannot, owing to his or her age, be held criminally liable for the acts in respect of which the judgment was issued;

(g) the judgment was rendered in absentia, unless the certificate states that the person was summoned personally or informed via a representative competent according to the national law of the issuing State of the time and place of the proceedings which resulted in the judgment being rendered in absentia, or that the person has indicated to a competent authority that he or she does not contest the case;

(h) the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which, notwithstanding Article 9, the executing State is unable to supervise in view of its legal or health-care system;

(i) the probation measure or alternative sanction is of less than six months' duration; or

(j) the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

Any decision under letter (j) in relation to offences committed partly within the territory of the executing State, or in a place equivalent to its territory, shall be taken by the competent authority of the executing State only in exceptional circumstances and on a case-by case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.

In the cases deciding not to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures and alternative sanctions, the competent authority of the executing State shall communicate, by appropriate means, with the competent authority of the issuing State and shall, as necessary, ask it to supply all additional information required without delay.

The competent authority of the executing State shall decide as soon as possible, and within 60 days according to the Article 12 of receipt of the judgment and, where applicable, the probation decision, together with the certificate, whether or not to recognise the judgment and, where applicable, the probation decision and assume responsibility for supervising the probation measures or alternative sanctions. It shall immediately inform the competent authority of the issuing State, by any means which leaves a written record, of its decision.

The supervision and application of probation measures and alternative sanctions shall be governed by the law of the executing State as stat in the Article 13.

The competent authority of the executing State shall have the jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence. Such subsequent decisions include notably:

(a) the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period;

(b) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release; and

(c) the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence.

Acc. the Article 19 an amnesty or pardon may be granted by the issuing State and also by the executing State. Only the issuing State may decide on applications for review of the judgment which forms the basis for the probation measures or alternative sanctions to be supervised under this Framework Decision.

If the sentenced person absconds or no longer has a lawful and ordinary residence in the executing State, the competent authority of the executing State may transfer the jurisdiction acc. Article 20 in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State.

If new criminal proceedings against the person concerned are taking place in the issuing State, the competent authority of the issuing State may request the competent authority of the executing State to transfer jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State. In such a case, the competent authority of the executing State may transfer jurisdiction back to the competent authority of the issuing State.

When, in application of this Article, jurisdiction is transferred back to the issuing State, the competent authority of that State shall resume jurisdiction. For the further supervision of the probation measures or alternative sanctions, the competent authority of the issuing State shall take account of the duration and degree of compliance with the probation measures or alternative sanctions in the executing State, as well as of any decisions taken by the executing State.

VII. Council Framework Decision 2008/909/JHA of 27 November 2008 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 European Union.

A. General remarks

According to the Article 3 of the Framework decision the primary purpose and scope is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence. This Framework Decision shall apply where the sentenced person is in the issuing State or in the executing State.

This Framework Decision shall apply only to the recognition of judgments and the enforcement of sentences within the meaning of this Framework Decision. The fact that, in addition to the sentence, a fine and/or a confiscation order has been imposed, which has not yet been paid, recovered or enforced, shall not prevent a judgment from being forwarded. The recognition and enforcement of such fines and confiscation orders in another Member State shall be based on the instruments applicable between the Member States, in particular Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties_and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

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

The Art. 2 of the Framework Decision defines the common terms as follows:

a) judgment' shall mean a final decision or order of a court of the issuing State imposing sentence on a natural person
b) sentence' shall mean any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings;
c) issuing State' shall mean the Member State in which a judgment is delivered; executing State' shall mean the Member State to which a judgment is forwarded for the purpose of its recognition and enforcement.

B. Recognition of judgements and enforcement of the sentences

1. Criteria for forwarding a judgment and a certificate to another Member State

In accordance with the Art. 4 of the Framework decision provided that the sentenced person is in the issuing State or in the executing State, and provided that this person has given his or her consent where required under Article 6, a judgment, together with the certificate for which the standard form is given in Annex I, may be forwarded to one of the following

a) Member States: the Member State of nationality of the sentenced person in which he or she lives; or
b) the Member State of nationality, to which, while not being the Member State where he or she lives, the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment;
c) or any Member State other than a Member State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that Member State.

The forwarding of the judgment and the certificate may take place where the competent authority of the issuing State, where appropriate after consultations between the competent authorities of the issuing and the executing States, is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person. Before forwarding the judgment and the certificate, the competent authority of the issuing State may consult, by any appropriate means, the competent authority of the executing State. Consultation shall be obligatory in the cases referred to letter (c). In such cases the competent authority of the executing State shall promptly inform the issuing State of its decision whether or not to consent to the forwarding of the judgment. During such consultation, the competent authority of the executing State may present the competent authority of the issuing State with a reasoned opinion, that enforcement of the sentence in the executing State would not serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into society. Where there has been no consultation, such an opinion may be presented without delay after the transmission of the judgment and the certificate. The competent authority of the issuing State shall consider such opinion and decide whether to withdraw the certificate or not.

The executing State may, on its own initiative, request the issuing State to forward the judgment together with the certificate. The sentenced person may also request the competent authorities of the issuing State or of the executing State to initiate a procedure for forwarding the judgment and the certificate under this Framework Decision. Requests made under this paragraph shall not create an obligation of the issuing State to forward the judgment together with the certificate.

While implementing this Framework Decision, Member States shall adopt measures, in particular taking into account the purpose of facilitating social rehabilitation of the sentenced person, constituting the basis on which their competent authorities have to take their decisions whether or not to consent to the forwarding of the judgment and the certificate in cases pursuant to the letter (c).

Each Member State may, either on adoption of this Framework Decision or later, notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, its prior consent under paragraph 1(c) is not required for the forwarding of the judgment and the certificate:

a) if the sentenced person lives in and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that State, and/or
b) if the sentenced person is a national of the executing State in cases other than those provided for in letters (a) and (b)

In cases referred to in point (a), permanent right of residence shall mean that the person concerned: has a right of permanent residence in the respective Member State in accordance with the national law implementing Community legislation adopted on the basis of Article 18, 40, 44 and 52 of the Treaty establishing the European Community, or possesses a valid residence permit, as a permanent or long-term resident, for the respective Member State, in accordance with the national law implementing Community legislation adopted on the basis of Article 63 of the Treaty establishing the European Community, as regards Member States to which such Community legislation is applicable, or in accordance with national law, as regards Member States to which it is not.

2. Forwarding of the judgment and the certificate

The judgment or a certified copy of it, together with the certificate, shall be forwarded pursuant to the Article 5 of the Framework decision, by the competent authority of the issuing State directly to the competent authority of 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 judgment, 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.

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

The issuing State shall forward the judgment together with the certificate to only one executing State at any one time.

If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the Contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA (9), in order to obtain the information from the executing State.

When an authority of the executing State which receives a judgment together with a certificate has no competence to recognise it and take the necessary measures for its enforcement, it shall, ex officio, forward the judgment together with the certificate to the competent authority of the executing State and inform the competent authority of the issuing State accordingly.

3. Opinion and notification of the sentenced person

A judgment together with a certificate may be forwarded according to the Art. 6 of the Framework decision to the executing State for the purpose of its recognition and

enforcement of the sentence only with the consent of the sentenced person in accordance with the law of the issuing State.

The consent of the sentenced person shall not be required where the judgment together with the certificate is forwarded:

a) to the Member State of nationality in which the sentenced person lives;
b) to the Member State to which the sentenced person will be deported once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure consequential to the judgment;
c) to the Member State to which the sentenced person has fled or otherwise returned in view of the criminal proceedings pending against him or her in the issuing State or following the conviction in that issuing State.

In all cases where the sentenced person is still in the issuing State, he or she shall be given an opportunity to state his or her opinion orally or in writing. Where the issuing State considers it necessary in view of the sentenced person's age or his or her physical or mental condition, that opportunity shall be given to his or her legal representative.

The opinion of the sentenced person shall be taken into account when deciding the issue of forwarding the judgement together with the certificate. Where the person has availed him or herself of the opportunity provided in this paragraph, the opinion of the sentenced person shall be forwarded to the executing State, in particular with a view to Article. If the sentenced person stated his or her opinion orally, the issuing State shall ensure that the written record of such statement is available to executing State.

The competent authority of the issuing State shall inform the sentenced person, in a language which he or she understands, that it has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Annex II. When the sentenced person is in the executing State at the time of that decision, that form shall be transmitted to the executing State which shall inform the sentenced person accordingly.

4. Double criminality

The following offences as listed in the Art. 7 of the Framework decision, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, 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 of the judgment and enforcement of the sentence imposed:

- 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.

For offences other than those covered above the executing State may make the recognition of the judgment and enforcement of the sentence subject to the condition that it relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

5. Recognition of the judgment and enforcement of the sentence

1. The competent authority of the executing State shall recognise a judgment which has been forwarded in accordance with Article 4 and following the procedure under Article 5, and shall forthwith take all the necessary measures for the enforcement of the sentence,

unless it decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9.

Where the sentence is incompatible with the law of the executing State in terms of its duration, the competent authority of the executing State may decide to adapt the sentence only where that sentence exceeds the maximum penalty provided for similar offences under its national law. The adapted sentence shall not be less than the maximum penalty provided for similar offences under the law of the executing State.

Where the sentence is incompatible with the law of the executing State in terms of its nature, the competent authority of the executing State may adapt it to the punishment or measure provided for under its own law for similar offences. Such a punishment or measure shall correspond as closely as possible to the sentence imposed in the issuing State and therefore the sentence shall not be converted into a pecuniary punishment.

The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration.

6. Grounds for non-recognition and non-enforcement

In accordance with the Article 9 of the Framework decision the competent authority of the executing State may refuse to recognise the judgment and enforce the sentence, if:

- the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a reasonable deadline set by the competent authority of the executing State;
- the criteria set forth in Article are not met; enforcement of the sentence would be contrary to the principle of ne bis in idem;
- in a case referred to in Article 7 and, where the executing State has made a declaration under Article 7, in a case referred to in Article 7, the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of a judgment may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;
- the enforcement of the sentence is statute-barred according to the law of the executing State; there is immunity under the law of the executing State, which makes it impossible to enforce the sentence;
- the sentence has been imposed on a person who, under the law of the executing State, owing to his or her age, could not have been held criminally liable for the acts in respect of which the judgment was issued;
- at the time the judgment was received by the competent authority of the executing State, less than six months of the sentence remain to be served;
- the judgment was rendered in absentia, unless the certificate states that the person was summoned personally or informed via a representative competent according to the national law of the issuing State of the time and place of the proceedings which resulted

in the judgment being rendered in absentia, or that the person has indicated to a competent authority that he or she does not contest the case;

- the executing State, before a decision is taken in accordance with Article 12, makes a request, in accordance with Article 18, and the issuing State does not consent, in accordance with Article 18, to the person concerned being prosecuted, sentenced or otherwise deprived of his or her liberty in the executing State for an offence committed prior to the transfer other than that for which the person was transferred;
- the sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which, notwithstanding Article 8(3), cannot be executed by the executing State in accordance with its legal or health care system; the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

Any decision in relation to offences committed partly within the territory of the executing State, or in a place equivalent to its territory, shall be taken by the competent authority of the executing State in exceptional circumstances and on a case-by-case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.

In the cases referred above before deciding not to recognise the judgment and enforce the sentence, the competent authority of the executing State shall consult the competent authority of the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay.

7. Partial recognition and enforcement

In compliance with the Article 10 of the Framework decision, if the competent authority of the executing State could consider recognition of the judgment and enforcement of the sentence in part, it may, before deciding to refuse recognition of the judgment and enforcement of the sentence in whole, consult the competent authority of the issuing State with a view to finding an agreement.

The competent authorities of the issuing and the executing States may agree, on a case-by-case basis, to the partial recognition and enforcement of a sentence in accordance with the conditions set out by them, provided such recognition and enforcement does not result in the aggravation of the duration of the sentence. In the absence of such agreement, the certificate shall be withdrawn.

The recognition of the judgment may be postponed in accordance with the Art. 11 of the Framework decision in the executing State where the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment, until such reasonable deadline set by the executing State for the certificate to be completed or corrected.

8. Decision on the enforcement of the sentence and time limits

The competent authority in the executing State shall decide as quickly as possible whether to recognise the judgment and enforce the sentence and shall inform the issuing State thereof, including of any decision to adapt the sentence in accordance with Article 8.

Unless a ground for postponement exists, the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 90 days of receipt of the judgment and the certificate.

As long as the enforcement of the sentence in the executing State has not begun according the Article 13 of the Framework decision, the issuing State may withdraw the certificate from that State, giving reasons for doing so. Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.

9. Provisional arrest

Where the sentenced person is in the executing State, the executing State may in compliance with the Art. 14 of the Framework decision, at the request of the issuing State, before the arrival of the judgment and the certificate, or before the decision to recognise the judgment and enforce the sentence, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise the judgment and enforce the sentence. The duration of the sentence shall not be aggravated as a result of any period spent in custody by reason of this provision.

As stipulated by the Article 15 of the Framework decision if the sentenced person is in the issuing State, he or she shall be transferred to the executing State at a time agreed between the competent authorities of the issuing and the executing States, and no later than 30 days after the final decision of the executing State on the recognition of the judgment and enforcement of the sentence has been taken.

If the transfer of the sentenced person within the period laid down in is prevented by unforeseen circumstances, the competent authorities of the issuing and executing States shall immediately contact each other. Transfer shall take place as soon as these circumstances cease to exist. The competent authority of the issuing State shall immediately inform the competent authority of the executing State and agree on a new transfer date. In that event, transfer shall take place within 10 days of the new date thus agreed.

10. Law governing enforcement

Under the Art. 17 of the Framework decision the enforcement of a sentence shall be governed by the law 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 early or conditional release. The competent authority of the executing State shall deduct the full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued from the total duration of the deprivation of liberty to be served. The competent authority of the executing State shall, upon request, inform the competent authority of the issuing State of the applicable provisions on possible early or conditional release. The issuing State may agree to

the application of such provisions or it may withdraw the certificate. Member States may provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time.

11. Speciality rule

A person transferred to the executing State pursuant to this Framework Decision shall not, subject, be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed before his or her transfer other than that for which he or she was transferred.
This shall not apply in the following cases:
- when the person having had an opportunity to leave the territory of the executing State has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it; when the offence is not punishable by a custodial sentence or detention order ;
- when the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
- when the sentenced person could be liable to a penalty or a measure not involving deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure in lieu may give rise to a restriction of his or her personal liberty; when the sentenced person consented to the transfer;
- when the sentenced person, after his or her transfer, has expressly renounced entitlement to the specialty rule with regard to specific offences preceding his or her transfer.
Renunciation shall be given before the competent judicial authorities of the executing State and shall be recorded in accordance with that State's national law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel; for cases other than those mentioned under points above, where the issuing State gives its consent in accordance with paragraph 3.
A request for consent shall be submitted to the competent authority of the issuing State, accompanied by the information mentioned in Article 8 of Framework Decision 2002/584/JHA and a translation as referred to in Article 8 thereof. Consent shall be given where there is an obligation to surrender the person under that Framework Decision. The decision shall be taken no later than 30 days after receipt of the request. For the situations mentioned in Article 5 of that Framework Decision, the executing State shall give the guarantees provided for therein.

11. Amnesty, pardon, review of judgment

As presumed by the Art. 19 of the Framework decision, an amnesty or pardon may be granted by the issuing State and also by the executing State. Only the issuing State may decide on applications for review of the judgment imposing the sentence to be enforced under this Framework Decision.
Article 20

12. Information to be given by 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: of the forwarding of the judgment and the certificate to the competent authority responsible for its execution in accordance with Article; of the fact that it is in practice impossible to enforce the sentence because after transmission of the judgment and the certificate to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case there shall be no obligation on the executing State to enforce the sentence of the final decision to recognise the judgment and enforce the sentence together with the date of the decision; of any decision not to recognise the judgment and enforce the sentence in accordance with Article 9, together with the reasons for the decision; of any decision to adapt the sentence in accordance with Article 8(2) or (3), together with the reasons for the decision ;of any decision not to enforce the sentence for the reasons referred to in Article 19(1) together with the reasons for the decision; of the beginning and the end of the period of conditional release, where so indicated in the certificate by the issuing of the sentenced person's escape from custody; State; of the enforcement of the sentence as soon as it has been completed.

13. Languages

The certificate shall be translated in accordance with the Article 23 of the Framework decision into the official language or one of the official languages of the executing State. Any Member State may, on adoption of this Framework Decision or later, 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 Union. No translation of the judgment shall be required. The decision on recognition of the judgment and enforcement of the sentence may be postponed until the translation has been transmitted by the issuing State to the executing State or, where the executing State decides to translate the judgment at its own expenses, until the translation has been obtained.

14. Enforcement of sentences following a European arrest warrant

As stipulated by the Art. 25 of the Framework decision and without prejudice to Framework Decision 2002/584/JHA on European arrest warrant, provisions of this Framework Decision shall apply, mutatis mutandis to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to the Article 4 of that Framework Decision, or where, acting under Article 5 of that Framework Decision, it has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned.

15. Relationship with other agreements and arrangements

Member States may continue as stipulated by the Article 26 of the Framework decision to apply bilateral or multilateral agreements or arrangements in force after 27 November 2008, in so far as they allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sentences.

Member States may conclude bilateral or multilateral agreements or arrangements after 5 December 2008 in so far as such agreements or arrangements allow the provisions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sentences.

Member States shall by 5 March 2009, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in paragraph 3, within three months of signing it.

16. Implementation

Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 5 December 2011.

VIII. Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order

A. General remarks

The main objective of this Directive according to the Article 1 sets out rules allowing a judicial or equivalent authority in a Member State, in which a protection measure has been adopted with a view to protecting a person against a criminal act by another person which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity, to issue a European protection order enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State, following criminal conduct, or alleged criminal conduct, in accordance with the national law of the issuing State.

For the purposes of this Directive the following definitions shall apply according to the Art 2:

(1) **'European protection order'** means a decision, taken by a judicial or equivalent authority of a Member State in relation to a protection measure, on the basis of which a judicial or equivalent authority of another Member State takes any appropriate measure or measures under its own national law with a view to continuing the protection of the protected person;

(2) **'protection measure'** means a decision in criminal matters adopted in the issuing State in accordance with its national law and procedures by which one or more of the prohibitions or restrictions referred to in Article 5 are imposed on a person causing danger in order to protect a protected person against a criminal act which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity;

(3) **'protected person'** means a natural person who is the object of the protection resulting from a protection measure adopted by the issuing State;

(4) **'person causing danger'** means the natural person on whom one or more of the prohibitions or restrictions referred to in Article 5 have been imposed;

(5) **'issuing State'** means the Member State in which a protection measure has been adopted that constitutes the basis for issuing a European protection order;

(6) **'executing State'** means the Member State to which a European protection order has been forwarded with a view to its recognition;

(7) **'State of supervision'** means the Member State to which a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has been transferred.

B. Recourse to a central authority

Each Member State may designate a central authority or, where its legal system so provides, more than one central authority, to assist its competent authorities. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority or authorities responsible for the administrative transmission and reception of any European protection order, as well as for all other official

correspondence relating thereto. As a consequence, all communications, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the designated central authority or authorities of the Member State concerned.

Under the Article 5 a European protection order may only be issued when a protection measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following prohibitions or restrictions:

(a) a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;

(b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or

(c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.

A European protection order may be issued under the Article 6 when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, inter alia, the length of the period or periods that the protected person intends to stay in the executing State and the seriousness of the need for protection.

A judicial or equivalent authority of the issuing State may issue a European protection order only at the request of the protected person and after verifying that the protection measure meets the requirements set out in Article 5.

The protected person may submit a request for the issuing of a European protection order either to the competent authority of the issuing State or to the competent authority of the executing State. If such a request is submitted in the executing State, its competent authority shall transfer this request as soon as possible to the competent authority of the issuing State.

Before issuing a European protection order, the person causing danger shall be given the right to be heard and the right to challenge the protection measure, if that person has not been granted these rights in the procedure leading to the adoption of the protection measure.

When a competent authority adopts a protection measure containing one or more of the prohibitions or restrictions, it shall inform the protected person in an appropriate way, in accordance with the procedures under its national law, about the possibility of requesting a European protection order in the case that that person decides to leave for another Member State, as well as of the basic conditions for such a request. The authority shall advise the protected person to submit an application before leaving the territory of the issuing State.

If the request to issue a European protection order is rejected, the competent authority of the issuing State shall inform the protected person of any applicable legal remedies that are available, under its national law, against such a decision.

Under the Article 7 the European protection order shall be issued in accordance with the form set out in Annex I to this Directive. **It shall, in particular, contain the following information:**

(a) the identity and nationality of the protected person, as well as the identity and nationality of the guardian or representative if the protected person is a minor or is legally incapacitated;

(b) the date from which the protected person intends to reside or stay in the executing State, and the period or periods of stay, if known;

(c) the name, address, telephone and fax numbers and e-mail address of the competent authority of the issuing State;

(d) identification (for example, through a number and date) of the legal act containing the protection measure on the basis of which the European protection order is issued;

(e) a summary of the facts and circumstances which have led to the adoption of the protection measure in the issuing State;

(f) the prohibitions or restrictions imposed, in the protection measure underlying the European protection order, on the person causing danger, their duration and the indication of the penalty, if any, in the event of the breach of any of the prohibitions or restrictions;

(g) the use of a technical device, if any, that has been provided to the protected person or to the person causing danger as a means of enforcing the protection measure;

(h) the identity and nationality of the person causing danger, as well as that person's contact details;

(i) where such information is known by the competent authority of the issuing State without requiring further inquiry, whether the protected person and/or the person causing danger has been granted free legal aid in the issuing State;

(j) a description, where appropriate, of other circumstances that could have an influence on the assessment of the danger that confronts the protected person;

(k) an express indication, where applicable, that a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has already been transferred to the State of supervision, when this is different from the State of execution of the European protection order, and the identification of the competent authority of that State for the enforcement of such a judgment or decision.

Article 8 establishes the obligation of the competent authority of the issuing State transmits the European protection order to the competent authority of the executing State, it shall do so by any means which leaves a written record so as to allow the competent authority of the executing State to establish its authenticity. All official communication shall also be made directly between those competent authorities. If the competent authority of either the executing State or the issuing State is not known to the competent authority of the other State, the latter authority shall make all the relevant enquiries, including via the contact points of the European Judicial Network referred to in Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (9), the

National Member of Eurojust or the National System for the coordination of Eurojust of its State, in order to obtain the necessary information. When an authority of the executing State which receives a European protection order has no competence to recognise it, that authority shall, ex officio, forward the European protection order to the competent authority and shall, without delay, inform the competent authority of the issuing State accordingly by any means which leaves a written record.

Upon receipt of a European protection order as stated in the Article 9, the competent authority of the executing State shall, without undue delay, recognise that order and take a decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person, unless it decides to invoke one of the grounds for non-recognition. The executing State may apply, in accordance with its national law, criminal, administrative or civil measures. The measure adopted by the competent authority of the executing State, as well as any other measure taken on the basis of a subsequent decision, shall, to the highest degree possible, correspond to the protection measure adopted in the issuing State. The competent authority of the executing State shall inform the person causing danger, the competent authority of the issuing State and the protected person of any measures adopted, as well as of the possible legal consequence of a breach of such measure provided for under national law. The address or other contact details of the protected person shall not be disclosed to the person causing danger unless such details are necessary in view of the enforcement of the measure adopted.

If the competent authority in the executing State considers that the information transmitted with the European protection order is incomplete, it shall without delay inform the competent authority of the issuing State by any means which leaves a written record, assigning a reasonable period for it to provide the missing information.

The competent authority of the executing State may refuse to recognise a European protection order under the Article 10 in the following circumstances:

(a) the European protection order is not complete or has not been completed within the time limit set by the competent authority of the executing State;

(b) when the criteria for the issue of the order are not met as given in the Article 5

(c) the protection measure relates to an act that does not constitute a criminal offence under the law of the executing State;

(d) the protection derives from the execution of a penalty or measure that, according to the law of the executing State, is covered by an amnesty and relates to an act or conduct which falls within its competence according to that law;

(e) there is immunity conferred under the law of the executing State on the person causing danger, which makes it impossible to adopt measures on the basis of a European protection order;

(f) criminal prosecution, against the person causing danger, for the act or the conduct in relation to which the protection measure has been adopted is statute-barred under the law

of the executing State, when the act or the conduct falls within its competence under its national law;

(g) recognition of the European protection order would contravene the ne bis in idem principle;

(h) under the law of the executing State, the person causing danger cannot, because of that person's age, be held criminally responsible for the act or the conduct in relation to which the protection measure has been adopted;

(i) the protection measure relates to a criminal offence which, under the law of the executing State, is regarded as having been committed, wholly or for a major or essential part, within its territory.

Where the competent authority of the executing State refuses to recognise a European protection order in application of one of the above mentioned ground, it shall:

(a) without undue delay, inform the issuing State and the protected person of this refusal and of the grounds relating thereto;

(b) where appropriate, inform the protected person about the possibility of requesting the adoption of a protection measure in accordance with its national law;

(c) inform the protected person of any applicable legal remedies that are available under its national law against such a decision.

According to the Article 11 the executing State shall be competent to adopt and to enforce measures in that State following the recognition of a European protection order. **The law of the executing State shall apply to the adoption and enforcement of the decision, including rules on legal remedies against decisions adopted in the executing State relating to the European protection order. In the event of a breach of one or more of the measures taken by the executing State following the recognition of a European protection order, the competent authority of the executing State shall, in accordance with paragraph 1, be competent to**:

(a) impose criminal penalties and take any other measure as a consequence of the breach, if that breach amounts to a criminal offence under the law of the executing State;

(b) take any non-criminal decisions related to the breach;

(c) take any urgent and provisional measure in order to put an end to the breach, pending, where appropriate, a subsequent decision by the issuing State.

If there is no available measure at national level in a similar case that could be taken in the executing State, the competent authority of the executing State shall report to the competent authority of the issuing State any breach of the protection measure described in the European protection order of which it is aware.

The competent authority of the executing State shall notify under the Article 12 the competent authority of the issuing State or of the State of supervision of any breach of the measure or measures taken on the basis of the European protection order. The competent authority of the issuing State shall have exclusive competence under the Article 13 to take decisions relating to:

(a) the renewal, review, modification, revocation and withdrawal of the protection measure and, consequently, of the European protection order;

(b) the imposition of a custodial measure as a consequence of revocation of the protection measure, provided that the protection measure has been applied on the basis of a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or on the basis of a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA;

When the protection measure is contained in a judgment which has been transferred or is transferred after the issuing of the European protection order to another Member State, and the competent authority of the State of supervision has made subsequent decisions affecting the obligations or instructions contained in the protection measure in accordance with Article 14 of that Framework Decision, the competent authority of the issuing State shall renew, review, modify, revoke or withdraw without delay the European protection order accordingly.

The competent authority of the executing State may discontinue the measures taken in execution of a European protection order under the Article 14:

(a) where there is clear indication that the protected person does not reside or stay in the territory of the executing State, or has definitively left that territory;

(b) where, according to its national law, the maximum term of duration of the measures adopted in execution of the European protection order has expired;

(c) in the case referred to in Article 13(b);

(d) where a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, is transferred to the executing State after the recognition of the European protection order.

Before discontinuing measures in accordance with point (b) the competent authority of the executing State may invite the competent authority of the issuing State to provide information as to whether the protection provided for by the European protection order is still needed in the circumstances of the case in question. The competent authority of the issuing State shall, without delay, reply to such an invitation.

A European protection order shall be recognized under the Article 15 with the same priority which would be applicable in a similar national case, taking into consideration any specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the executing State and, where possible, the degree of risk for the protected person.

issuing State.

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

A. General remarks

Under the Article 1 a European Investigation Order (EIO) is a judicial decision which has been issued or validated by a judicial authority of a Member State ('OG the issuing State') to have one or several specific investigative measure(s) carried out in another Member State ('the executing State') to obtain evidence in accordance with this Directive. The EIO may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State. Member States shall execute an EIO on the basis of the principle of mutual recognition and in accordance with this Directive. The issuing of an EIO may be requested by a suspected or accused person, or by a lawyer on his behalf, within the framework of applicable defence rights in conformity with national criminal procedure. This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.

For the purposes of this Directive the following definitions acc. the Article 2 apply:

(a) **'issuing State'** means the Member State in which the EIO is issued;

(b) **'executing State'** means the Member State executing the EIO, in which the investigative measure is to be carried out;

(c) **'issuing authority'** means:

a. **a judge, a court, an investigating judge or a public prosecutor competent in the case concerned**; or

b. any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. In addition, before it is transmitted to the executing authority the EIO shall be validated, after examination of its conformity with the conditions for issuing an EIO under this Directive, in particular the conditions set out in Article 6.1, by a judge, court, investigating judge or a public prosecutor in the issuing State. Where the EIO has been validated by a judicial authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the EIO;

(d) **'executing authority'** means an authority having competence to recognise an EIO and ensure its execution in accordance with this Directive and the procedures applicable in a similar domestic case. Such procedures may require a court authorisation in the executing State where provided by its national law.

The EIO shall cover pursuant to the Article 3 any investigative measure with the exception of the setting up of a joint investigation team and the gathering of evidence within such a team as provided in Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (14) ('the

Convention') and in Council Framework Decision 2002/465/JHA (15), other than for the purposes of applying, respectively, Article 13(8) of the Convention and Article 1(8) of the Framework Decision.

An EIO may be issued for the following types of proceeding as listed under the Article 4:

(a) with respect to criminal proceedings that are brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State;

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

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

(d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

The EIO in the form shall be completed, signed, and its content certified as accurate and correct by the issuing authority**. The EIO shall, in particular, contain the following information as listed under the Article 5**:

(a) data about the issuing authority and, where applicable, the validating authority;

(b) the object of and reasons for the EIO;

(c) the necessary information available on the person(s) concerned;

(d) a description of the criminal act, which is the subject of the investigation or proceedings, and the applicable provisions of the criminal law of the issuing State;

(e) a description of the investigative measures(s) requested and the evidence to be obtained.

Each Member State shall indicate the language(s) which, among the official languages of the institutions of the Union and in addition to the official language(s) of the Member State concerned, may be used for completing or translating the EIO when the Member State concerned is the executing State. The competent authority of the issuing State shall translate the EIO into an official language of the executing State or any other language indicated by the executing State.

B. Procedures and safeguards for the issuing state

The issuing authority may only issue an EIO where the conditions have under the Article 6 been met:

(a) the issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in Article 4 taking into account the rights of the suspected or accused person; and

(b) the investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case.

Where the executing authority has reason to believe that the conditions have not been met, it may consult the issuing authority on the importance of executing the EIO. After that consultation the issuing authority may decide to withdraw the EIO.

The EIO completed in accordance with Article 5 shall be transmitted under the Article 7 from the issuing authority to the executing authority by any means capable of producing a written record under conditions allowing the executing State to establish authenticity. Any further official communication shall be made directly between the issuing authority and the executing authority.

Each Member State may designate a central authority or, where its legal system so provides, more than one central authority, to assist the competent authorities. A Member State may, if necessary due to the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and receipt of EIOs, as well as for other official correspondence relating to EIOs.

C. Procedures and safeguards for the executing state

Under the Article 9 the executing authority shall recognize an EIO, transmitted in accordance with this Directive, without any further formality being required, and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement provided for in this Directive.

The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in this Directive and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State.

The issuing authority may request that one or more authorities of the issuing State assist in the execution of the EIO in support to the competent authorities of the executing State to the extent that the designated authorities of the issuing State would be able to assist in the execution of the investigative measures indicated in the EIO in a similar domestic case. The executing authority shall comply with this request provided that such assistance is not contrary to the fundamental principles of law of the executing State or does not harm its essential national security interests.

The authorities of the issuing State present in the executing State shall be bound by the law of the executing State during the execution of the EIO. They shall not have any law enforcement powers in the territory of the executing State, unless the execution of such powers in the territory of the executing State is in accordance with the law of the

executing State and to the extent agreed between the issuing authority and the executing authority.

The issuing authority and executing authority may consult each other, by any appropriate means, with a view to facilitating the efficient application of this Article.

The executing authority shall have under the Article 10, wherever possible, recourse to an investigative measure other than that provided for in the EIO where:

(a) the investigative measure indicated in the EIO does not exist under the law of the executing State; or

(b) the investigative measure indicated in the EIO would not be available in a similar domestic case.

Following investigative measures, which always have to be available under the law of the executing State but are not the grounds for the non-recognition or non-execution of the EIO:

(a) the obtaining of information or evidence which is already in the possession of the executing authority and the information or evidence could have been obtained, in accordance with the law of the executing State, in the framework of criminal proceedings or for the purposes of the EIO;

(b) the obtaining of information contained in databases held by police or judicial authorities and directly accessible by the executing authority in the framework of criminal proceedings;

(c) the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the executing State;

(d) any non-coercive investigative measure as defined under the law of the executing State;

(e) the identification of persons holding a subscription of a specified phone number or IP address.

The executing authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO.

Where the investigative measure indicated in the EIO does not exist under the law of the executing State or it would not be available in a similar domestic case and where there is no other investigative measure which would have the same result as the investigative measure requested, the executing authority shall notify the issuing authority that it has not been possible to provide the assistance requested.

The recognition or execution of an EIO may be refused in the executing under the Article 11 in the State where:

(a) there is an immunity or a privilege under the law of the executing State which makes it impossible to execute the EIO or there are rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which make it impossible to execute the EIO;

(b) in a specific case the execution of the EIO would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;
(c) the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the investigative measure would not be authorised under the law of the executing State in a similar domestic case;
(d) the execution of the EIO would be contrary to the principle of ne bis in idem;
(e) the EIO relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the EIO is issued is not an offence in the executing State;
(f) there are substantial grounds to believe that the execution of the investigative measure indicated in the EIO would be incompatible with the executing State's obligations in accordance with Article 6 TEU and the Charter;
(g) the conduct for which the EIO has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex D, as indicated by the issuing authority in the EIO, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years; or
(h) the use of the investigative measure indicated in the EIO is restricted under the law of the executing State to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the EIO.
Where the EIO concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.
Under the Article 12 the decision on the recognition or execution shall be taken and the investigative measure shall be carried out with the same celerity and priority as for a similar domestic case. Where the issuing authority has indicated in the EIO that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline than those provided in this Article is necessary, or if the issuing authority has indicated in the EIO that the investigative measure must be carried out on a specific date, the executing authority shall take as full account as possible of this requirement. The executing authority shall take the decision on the recognition or execution of the EIO as soon as possible and, no later than 30 days after the receipt of the EIO by the competent executing authority.
Unless grounds for postponement under Article 15 exist or evidence mentioned in the investigative measure covered by the EIO is already in the possession of the executing State, the executing authority shall carry out the investigative measure without delay and not later than 90 days.

The executing authority shall, without undue delay, transfer under the Article 13 the evidence obtained or already in the possession of the competent authorities of the executing State as a result of the execution of the EIO to the issuing State. Where requested in the EIO and if possible under the law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO. The transfer of the evidence may be suspended, pending a decision regarding a legal remedy, unless sufficient reasons are indicated in the EIO that an immediate transfer is essential for the proper conduct of its investigations or for the preservation of individual rights. However, the transfer of evidence shall be suspended if it would cause serious and irreversible damage to the person concerned.

When transferring the evidence obtained, the executing authority shall indicate whether it requires the evidence to be returned to the executing State as soon as it is no longer required in the issuing State.

Where the objects, documents, or data concerned are already relevant for other proceedings, the executing authority may, at the explicit request of and after consultations with the issuing authority, temporarily transfer the evidence on the condition that it be returned to the executing State as soon as it is no longer required in the issuing State or at any other time or occasion agreed between the competent authorities.

Member States shall ensure under the Article 14 that legal remedies equivalent to those available in a similar domestic case, are applicable to the investigative measures indicated in the EIO.

The substantive reasons for issuing the EIO may be challenged only in an action brought in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.

Where it would not undermine the need to ensure confidentiality of an investigation the issuing authority and the executing authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking the legal remedies when these become applicable and in due time to ensure that they can be exercised effectively.

Member States shall ensure that the time-limits for seeking a legal remedy shall be the same as those that are provided for in similar domestic cases and are applied in a way that guarantees the possibility of the effective exercise of these legal remedies for the parties concerned.

The issuing authority and the executing authority shall inform each other about the legal remedies sought against the issuing, the recognition or the execution of an EIO.

A legal challenge shall not suspend the execution of the investigative measure, unless it is provided in similar domestic cases.

The issuing State shall take into account a successful challenge against the recognition or execution of an EIO in accordance with its own national law. Without prejudice to national procedural rules Member States shall ensure that in criminal proceedings in the

issuing State the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the EIO

The recognition or execution of the EIO may be postponed in the executing State under following reasons as given by the Article 15 where:

(a) its execution might prejudice an on-going criminal investigation or prosecution, until such time as the executing State deems reasonable;

(b) the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose.

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

Each Member State is obliged under the Article 19 to take the necessary measures to ensure that in the execution of an EIO the issuing authority and the executing authority take due account of the confidentiality of the investigation.

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

D. Specific provisions for certain investigative measures

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

An EIO may be issued under the Article 22 for the temporary transfer of a person in custody in the executing State for the purpose of carrying out an investigative measure with a view to gathering evidence for which the presence of that person on the territory of the issuing State is required, provided that he shall be sent back within the period stipulated by the executing State If this is the case in addition to the grounds for non-recognition or non-execution of the EIO may also be refused if:

(a) the person in custody does not consent; or

(b) the transfer is liable to prolong the detention of the person in custody.

Where the executing State considers it necessary in view of the person's age or physical or mental condition, the opportunity to state the opinion on the temporary transfer shall be given to the legal representative of the person in custody.

The transferred person shall remain in custody in the territory of the issuing State and, where applicable, in the territory of the Member State of transit, for the acts or convictions for which he has been kept in custody in the executing State, unless the executing State applies for his release.

The period of custody in the territory of the issuing State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the executing State.

A transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the issuing State for acts committed or convictions handed down before his departure from the territory of the executing State and which are not specified in the EIO.

The immunity shall cease to exist if the transferred person, having had an opportunity to leave for a period of 15 consecutive days from the date when his presence is no longer required by the issuing authorities, has either:

(a) nevertheless remained in the territory; or

(b) having left it, has returned.

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

An EIO may be issued under the Article 23 for the temporary transfer of a person held in custody in the issuing State for the purpose of carrying out an investigative measure with a view to gathering evidence for which his presence on the territory of the executing State is required. The Article 22 is applicable mutatis mutandis to the temporary transfer under this Article.

3. Hearing by videoconference or other audiovisual transmission

Where a person is in the territory of the executing State and has to be heard as a witness or expert by the competent authorities of the issuing State, the issuing authority may issue an EIO under the Article 24 in order to hear the witness or expert by videoconference or other audiovisual transmission. The issuing authority may also issue an EIO for the purpose of hearing a suspected or accused person by videoconference or other audiovisual transmission.

In addition to the grounds for non-recognition or non-execution of an EIO may be refused if either:

(a) the suspected or accused person does not consent; or

(b) the execution of such an investigative measure in a particular case would be contrary to the fundamental principles of the law of the executing State.

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

(a) summon the witness or expert concerned, indicating the time and the venue of the hearing;

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

Where a hearing is held by videoconference or other audiovisual transmission, the following rules shall apply:
(a) the competent authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identity of the person to be heard and respect for the fundamental principles of the law of the executing State. If the executing authority is of the view that during the hearing the fundamental principles of the law of the executing State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;
(b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the issuing State and the executing State;
(c) the hearing shall be conducted directly by, or under the direction of, the competent authority of the issuing State in accordance with its own laws;
(d) at the request of the issuing State or the person to be heard, the executing State shall ensure that the person to be heard is assisted by an interpreter, if necessary;
(e) suspected or accused persons shall be informed in advance of the hearing of the procedural rights which would accrue to them, including the right not to testify, under the law of the executing State and the issuing State. Witnesses and experts may claim the right not to testify which would accrue to them under the law of either the executing or the issuing State and shall be informed about this right in advance of the hearing.

4. Hearing by telephone conference

If a person is in the territory of one Member State and has to be heard as a witness or expert by competent authorities of another Member State, the issuing authority of the latter Member State may, where it is not appropriate or possible for the person to be heard to appear in its territory in person, and after having examined other suitable means, issue an EIO under the Article 25 in order to hear a witness or expert by telephone conference The rules on videoconference or audiovisual transmission shall apply mutatis mutandis to hearings by telephone conference.

5. Information on bank and other financial accounts

An EIO may be issued under the Article 26 in order to determine whether any natural or legal person subject to the criminal proceedings concerned holds or controls one or more accounts, of whatever nature, in any bank located in the territory of the executing State, and if so, to obtain all the details of the identified accounts. Each Member State shall take the measures necessary to enable to provide the information

The information, if requested in the EIO, include accounts for which the person subject to the criminal proceedings concerned has powers of attorney. The obligation shall apply only to the extent that the information is in the possession of the bank keeping the account.

In the EIO the issuing authority shall indicate the reasons why it considers that the requested information is likely to be of substantial value for the purpose of the criminal proceedings concerned and on what grounds it presumes that banks in the executing State hold the account and, to the extent available, which banks may be involved. It shall also include in the EIO any information available which may facilitate its execution.

An EIO may also be issued to determine whether any natural or legal person subject to the criminal proceedings concerned holds one or more accounts, in any non-bank financial institution located on the territory of the executing State.

6. Information on banking and other financial operations

An EIO may be issued under the Article 27 in order to obtain the details of specified bank accounts and of banking operations which have been carried out during a defined period through one or more accounts specified therein, including the details of any sending or recipient account.

Each Member State shall take the measures necessary to enable it to provide the information referred to in paragraph 1 in accordance with the conditions under this Article.

The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank in which the account is held.

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

An EIO may also be issued with regard to the information with reference to the financial operations conducted by non-banking financial institutions.

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

When the EIO is issued for the purpose of executing an investigative measure requiring the gathering of evidence in real time, continuously and over a certain period of time under the Article 28, such as:

(a) the monitoring of banking or other financial operations that are being carried out through one or more specified accounts;

(b) the controlled deliveries on the territory of the executing State;

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

8. Covert investigations

An EIO may be issued under the Article 29 for the purpose of requesting the executing State to assist the issuing State in the conduct of investigations into crime by officers acting under covert or false identity ('covert investigations').

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

In addition to the grounds for non-recognition and non-execution, the executing authority may refuse to execute an EIO, where:

(a) the execution of the covert investigation would not be authorised in a similar domestic case; or

(b) it was not possible to reach an agreement on the arrangements for the covert investigations.

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

E. Interception of telecommunications

1. Interception of telecommunications with technical assistance of another Member State

An EIO may be issued under the Article 30 for the interception of telecommunications in the Member State from which technical assistance is needed. Where more than one Member State is in a position to provide the complete necessary technical assistance for the same interception of telecommunications, the EIO shall be sent only to one of them. Priority shall always be given to the Member State where the subject of the interception is or will be located.

An EIO shall also contain the following information:

(a) information for the purpose of identifying the subject of the interception;

(b) the desired duration of the interception; and

(c) sufficient technical data, in particular the target identifier, to ensure that the EIO can be executed.

The issuing authority shall indicate in the EIO the reasons why it considers the indicated investigative measure relevant for the purpose of the criminal proceedings concerned.

In addition to the grounds for non-recognition or non-execution, the execution of an EIO may also be refused where the investigative measure would not have been authorised in a

similar domestic case. The executing State may make its consent subject to any conditions which would be observed in a similar domestic case.

An EIO may be executed by:

(a) transmitting telecommunications immediately to the issuing State; or

(b) intercepting, recording and subsequently transmitting the outcome of interception of telecommunications to the issuing State.

The issuing authority and the executing authority shall consult each other with a view to agreeing on whether the interception is carried out in accordance with point (a) or (b).

When issuing an EIO or during the interception, the issuing authority may, where it has a particular reason to do so, also request a transcription, decoding or decrypting of the recording subject to the agreement of the executing authority.

1. Notification of the Member State where the subject of the interception is located from which no technical assistance is needed

Where, for the purpose of carrying out an investigative measure, the interception of telecommunications is authorized under the Article 31 by the competent authority of one Member State (the 'intercepting Member State') and the communication address of the subject of the interception specified in the interception order is being used on the territory of another Member State (the 'notified Member State') from which no technical assistance is needed to carry out the interception, the intercepting Member State shall notify the competent authority of the notified Member State of the interception:

(a) prior to the interception in cases where the competent authority of the intercepting Member State knows at the time of ordering the interception that the subject of the interception is or will be on the territory of the notified Member State;

(b) during the interception or after the interception has been carried out, immediately after it becomes aware that the subject of the interception is or has been during the interception, on the territory of the notified Member State.

The competent authority of the notified Member States may, in case where the interception would not be authorised in a similar domestic case, notify, without delay and at the latest within 96 hours after the receipt of the notification referred to in paragraph 1, the competent authority of the intercepting Member State:

(a) that the interception may not be carried out or shall be terminated; and

(b) where necessary, that any material already intercepted while the subject of the interception was on its territory may not be used, or may only be used under conditions which it shall specify. The competent authority of the notified Member State shall inform the competent authority of the intercepting Member State of reasons justifying those conditions.

2. Provision measures

The issuing authority may issue under the Article 32 an EIO in order to take any measure with a view to provisionally preventing the destruction, transformation, removal, transfer or disposal of an item that may be used as evidence. The executing authority shall decide

and communicate the decision on the provisional measure as soon as possible and, wherever practicable, within 24 hours of receipt of the EIO.

Where a provisional measure is requested the issuing authority shall indicate in the EIO whether the evidence is to be transferred to the issuing State or is to remain in the executing State. The executing authority shall recognise and execute the EIO and transfer the evidence in accordance with the procedures laid down in this Directive.

Where an EIO is accompanied by an instruction that the evidence shall remain in the executing State, the issuing authority shall indicate the date of lifting the provisional measure, or the estimated date for the submission of the request for the evidence to be transferred to the issuing State.

After consulting the issuing authority, the executing authority may, in accordance with its national law and practice, lay down appropriate conditions in light of the circumstances of the case to limit the period for which the provisional measure is to be maintained. If, in accordance with those conditions, it envisages lifting the provisional measure, the executing authority shall inform the issuing authority, which shall be given the opportunity to submit its comments.

X. Draft of the COUNCIL REGULATION on the establishment of the European Public Prosecutor's Office

A. General remarks

Material competence of the European Public Prosecutor's Office is drafted in the Article 17 as follows:

The European Public Prosecutor's Office shall be competent in respect of the criminal offences affecting the financial interests of the Union which are provided for in Directive 2015/xx/EU, as implemented by national law, including where the set of facts constituting such an offence constitutes as well, under national law, another type of offence.

The European Public Prosecutor's Office shall also be competent for those offences

a. that have been instrumental to the commission of the offences referred above, or

b. that have been committed with a view to ensuring impunity from an offence referred to under paragraph 1, or

c. that have been committed to conceal such an offence.

In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over their competence, the national authorities competent to decide on the attribution of competences concerning prosecution at national level shall decide who shall be competent for the offences.

Territorial and personal competence of the European Public Prosecutor's Office is determined by the Article 18. The European Public Prosecutor's Office shall be competent for the offences referred to in Article 17 where such offences

a) were committed in whole or in part within the territory of one or several Member States, or

b) were committed by a national of a Member State, or

c) were committed outside of these territories referred to in point a) of this Article by a person who was subject to the Staff Regulations of Officials or to the Conditions of Employment of Other Servants of the European Communities, at the time of the offence, provided that a Member State, according to its law, has jurisdiction for such offences when committed outside its territory.

Article 19 establishes general duty to cooperate with the European Public Prosecutor Office. The institutions, bodies, offices and agencies of the Union and the authorities of the Member States competent in accordance with applicable national law shall report without undue delay to the European Public Prosecutor's Office any criminal conduct which might constitute an offence within its competence. The report shall contain, as a minimum, a description of the facts, including an assessment of the damage caused or likely to be caused, the possible legal qualification and any available information about potential victims, suspects and any other involved persons.

2. Information provided to the European Public Prosecutor's Office shall be registered and verified in accordance with its Internal Rules of Procedure. The verification shall aim

to assess whether, on the basis of the information provided in accordance with paragraph 1, there are grounds to initiate an investigation.

3. Where upon verification, the European Public Prosecutor's Office decides to initiate an investigation, it shall without undue delay inform the authority that reported the criminal conduct.

4. Where upon verification the European Public Prosecutor's Office decides that there are no grounds to initiate an investigation, the reasons shall be noted in the Case Management System. It shall inform the authority that reported the criminal conduct and, if requested, crime victims and other persons who provided the information, thereof.

Where the information received by the European Public Prosecutor's Office reveals that a criminal offence outside of the scope of the competence of the Office may have been committed, it shall without undue delay inform the competent national authorities.

Where the criminal conduct caused or is likely to cause damage to the Union's financial interests of less than EUR [10 000/20 000], and neither has repercussions at Union level which require an investigation to be conducted by the Office nor involve a criminal offence that has been committed by officials or other servants of the European Union or members of the institutions, the information obligation of national competent authorities may be fulfilled every six months through a summary report.

The summary report shall group all relevant cases and shall contain for each case, as a minimum, the names of the implicated persons, the damage caused or likely to be caused and the possible legal qualification.

Based on such summary reports, the College may request national authorities to provide without delay additional information regarding offences matching a specific pattern likely to cause damage to the Union's financial interests of less than EUR [10 000/20 000] when committed in circumstances deemed to have repercussions at Union level.

Based on such summary reports, the College may, for future reports regarding offences of less than EUR [10 000/20 000] when committed in circumstances deemed to have no repercussions at Union level, determine specific modalities for the provision of information.

Information referred to in this Article shall be provided in a structured way, as established in the Internal Rules of Procedure.

The European Public Prosecutor's Office may request further information available to the institutions, bodies, offices and agencies of the Union and the authorities of the Member States that provided the information.

According to the Article 20 of the Draft European Public Prosecutor's Office shall exercise its competence by initiating an investigation. If the European Public Prosecutor's Office decides to exercise its competence, the national authorities shall not exercise their own competence in respect of the same set of facts. If the European Public Prosecutor's Office has become aware that national authorities intend to initiate or have already initiated an investigation in respect of the same set of facts for which the European Public Prosecutor's Office could be competent, the Office may take over the investigation by

exercising its right of evocation. The European Public Prosecutor’s Office shall take its decision to evoke as soon as possible but no later than 5 days after having received all relevant information from the national authorities, unless the European Chief Prosecutor in a specific case takes a reasoned decision to prolong the time frame of 5 days with a maximum prolongation of 5 days. During this time frame the national authorities shall refrain from taking any decision under national law which may have the effect of precluding the European Public Prosecutor’s Office from exercising its right of evocation, but shall take any urgent measures necessary, according to national law, to ensure effective investigation and prosecution.

If the European Public Prosecutor's Office becomes aware of the fact that an investigation in respect of a criminal offence for which it could be competent is already undertaken by the competent authorities of a Member State, it shall inform these authorities without delay, and shall take a decision on whether to exercise its right of evocation.

The European Public Prosecutor’s Office shall, where appropriate, consult competent authorities of the Member State concerned before deciding whether to exercise its right of evocation. Where the European Public Prosecutor's Office exercises its right of evocation, the competent authorities of the Member States shall transfer the proceedings to the Office and refrain from carrying out further acts of investigation in respect of the same offence except when acting on behalf of the European Public Prosecutor’s Office.

The right of evocation set out in this Article may be exercised by a European Delegated Prosecutor from any Member State whose competent authorities intend to initiate an investigation in respect of an offence falling under the its scope. Where a European Delegated Prosecutor considers not to exercise the right of evocation, he/she shall inform the competent Permanent Chamber through the European Prosecutor of his/her Member State with a view to enabling the Permanent Chamber to take the appropriate measures.

Where a criminal offence caused or is likely to cause damage to the Union's financial interests of less than EUR [10 000/20 000] the European Public Prosecutor’s Office shall refrain from exercising its competence, unless

a) a case has repercussions at Union level which require an investigation to be conducted by the Office, or

b) a case has been opened following suspicions that an offence has been committed by officials or other servants of the European Union, or members of the Institutions.

The Office shall, where appropriate, consult the competent national authorities or Union bodies in view of establishing whether the criteria of the cases defined in (a) and (b) in this provision are met.

Where the Office has refrained from exercising its right of evocation, it shall inform the competent national authorities without undue delay. The competent national authorities shall at any time in the course of the proceedings inform the Office of any new facts which could give the Office reasons to reconsider its previous decision.

The European Public Prosecutor's Office may exercise its right of evocation after receiving such information, provided that the national investigation has not already been finalised and that the facts have not yet been brought to judgment before a court.

Where an investigation initiated by the European Public Prosecutor's Office reveals that the facts subject to investigation do not constitute a criminal offence for which it has a competence, the competent Permanent Chamber shall decide to refer the case without undue delay to the competent national authorities.

Where an investigation initiated by the European Public Prosecutor's Office reveals that the specific conditions for the exercise of its competence are no longer met, the competent Permanent Chamber may decide to refer the case to the competent national authorities at any time before initiating prosecution before national courts.

Where the European Public Prosecutor's Office considers a dismissal and if the national authority so requires, the Permanent Chamber shall refer the case without delay to the latter.

If the national authority decides to open an investigation, the European Public Prosecutor's Office shall transfer the file to that national authority, refrain from taking further investigative or prosecutorial measures and close the case.

B. Rules on investigations

The Article 22 refers to the initiation of investigations and allocation of competences within the European Public Prosecutor's Office. Where, in accordance with the applicable national law, there are reasonable grounds to believe that an offence within the competence of the European Public Prosecutor's Office is being or has been committed, a European Delegated Prosecutor in a Member State which according to its national law has jurisdiction in the case shall, initiate an investigation and note this in the Case Management System.

The Permanent Chamber to which the case has been allocated shall instruct the European Delegated Prosecutor to initiate the investigation, where no investigation has been initiated by a European Delegated Prosecutor.

A case shall in principle be handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competences of the Office have been committed, the Member State where the bulk of the offences has been committed. A Permanent Chamber may only instruct a European Delegated Prosecutor of a different Member State to initiate an investigation where that Member State has jurisdiction for the case and where a deviation from the above mentioned principles is duly justified, taking into account the following criteria, in order of priority:

a) the place where the suspect or accused person has his/her habitual residence;

b) the nationality of the suspect or accused person;

c) the place where the main financial damage has occurred.

Until a decision to prosecute in accordance with Article 30 is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to:

d) reallocate a case to a European Delegated Prosecutor in another Member State;

e) merge or split cases and in each case choose the European Delegated Prosecutor handling the case; if such decisions are in the interest of the efficiency of investigations and in accordance with the criteria for the choice of the European Delegated Prosecutor handling the case set out in paragraph

Whenever the Permanent Chamber is taking a decision to reallocate, merge or split a case it shall take due account of the current state of the investigations.

The European Delegated Prosecutor handling the case may, in accordance with this Regulation and with national law, either undertake the investigation measures and other measures on his/her own or instruct the competent authorities in his Member State. These authorities shall, in accordance with national law, ensure that all instructions are followed and undertake the measures assigned to them. The European Delegated Prosecutor handling the case shall report through the competent European Prosecutor to the Permanent Chamber on significant developments in the case, in accordance with the rules laid down in the Internal Rules of Procedure.

At any time during the investigations conducted by the European Public Prosecutor's Office, the competent national authorities shall take urgent measures necessary to ensure effective investigations even where not specifically acting under an instruction given by the European Delegated Prosecutor handling the case. The national authorities shall without undue delay inform the handling European Delegated Prosecutor of the urgent measures taken.

The supervising European Prosecutor may propose to the competent Permanent Chamber to reallocate the case to another European Delegated Prosecutor in the same Member State when the European Delegated Prosecutor handling the case

a) cannot perform the investigation or prosecution, or

b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.

In exceptional cases, and after having obtained the approval of the competent Permanent Chamber, the supervising European Prosecutor may take a reasoned decision to conduct the investigation himself/herself, if this appears indispensable in the interest of the efficiency of the investigation or prosecution on the grounds of one or more of the following criteria:

a) the seriousness of the offence, in particular in view of its possible repercussions at Union level;

b) when the investigation concerns officials or other servants of the European Union or members of the Institutions;

c) in case of failure of the reallocation mechanism foreseen in paragraph 3.

When a European Prosecutor conducts the investigation himself/herself, he/she shall have all the powers, responsibilities and obligations of a European Delegated Prosecutor in accordance with this Regulation and national law.

The competent national authorities and the European Delegated Prosecutors concerned by the case shall be informed without delay of the decision taken under this paragraph.

Investigations carried out under the authority of the European Public Prosecutor's Office shall be protected by the rules concerning professional secrecy under the applicable Union legislation. Any person participating or assisting in carrying out the functions of the European Public Prosecutor's Office shall be bound to respect professional secrecy as provided under the applicable national law.] ?

Where the investigations of the European Public Prosecutor's Office involve persons protected by privileges or immunities under national law, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Chief Prosecutor shall make a reasoned written request for its lifting in accordance with the procedures laid down by that national law.

Where the investigations of the European Public Prosecutor's Office involve persons protected by privileges or immunities under the law of the European Union, in particular the Protocol on the privileges and immunities of the European Union, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Chief Prosecutor shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.

C. Rules on investigation measure and other measures

1. Investigation measures and other measures

1. At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least four years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request the following investigation measures:

a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;

b) obtain the production of any relevant object or document, or of stored computer data, including traffic data and banking account data, encrypted or decrypted, either in original or in some other specified form;

c) freeze instrumentalities or proceeds of crime, including freezing of assets, which are expected to be subject to confiscation by the trial court and where there is reason to believe that the owner, possessor or controller will seek to frustrate the judgement ordering confiscation;

d) intercept electronic communications to and from the suspected person, on any electronic communication connection that the suspected or accused person is using.

The European Delegated Prosecutors shall, in addition to the measures referred to in paragraph 1, be entitled to request or to order any other measures in their Member State which are available to prosecutors under national law in similar national cases.
The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 2 where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective.

2. Cross-border investigations

2.1. OPTION 1 in accordance with the Article 26

The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consult each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the European Delegated Prosecutor handling the case, the latter shall assign the measure to a European Delegated Prosecutor located in the Member State where that measure needs to be carried out.
The European Delegated Prosecutor handling the case may assign any measure in his or her competence in accordance with this Regulation or with national law of the Member State where he or she is located. The adoption and justification of such measures shall be governed by the law of the Member States of the European Delegated Prosecutor handling the case.
The assignment shall set out, in particular, a description of the measures(s) needed, and where necessary any specific formalities that have to be complied with, where available and relevant for the handling of the case, the evidence to be obtained, the description of the facts and the legal qualification of the criminal act which is the subject of the investigation. The assignment may call for the measure to be undertaken within a given time.
If a judicial authorisation for a measure foreseen in paragraph 1 is required, it can only be requested in the Member State of the assisting European Delegated Prosecutor by the latter.
If judicial authorisation for the assigned measure is refused, the European Delegated Prosecutor handling the case shall withdraw the assignment.
The assisting European Delegated Prosecutor shall undertake the assigned notified measure, or instruct the competent national authority to do so. The assisting European Delegated Prosecutor shall thereby comply with the formalities and procedures expressly indicated by the European Delegated Prosecutor handling the case, provided that such formalities and procedures are not contrary to fundamental principles of law .
Where the assisting European Delegated Prosecutor considers that:

a) the assignment is incomplete or contains a manifest relevant error,

b) the measure cannot be undertaken within the time limit set out in the assignment for justified and objective reasons,

c) an alternative measure would achieve the same results as the measure assigned, or

d) the assigned measure does not exist or would not be available in a similar domestic case under the law of his or her Member State,

he or she shall consult with the European Delegated Prosecutor handling the case in order to resolve the matter bilaterally.

If the European Delegated Prosecutors cannot resolve the matter within 7 working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.

The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then decide without undue delay whether and by when the measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision through the competent European Prosecutor.

2.2 OPTION 2 in accordance with the Article 26

The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consult each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the European Delegated Prosecutor handling the case, the latter shall decide on the adoption of the necessary measure.

The European Delegated Prosecutor handling the case may order or request any investigation measures, which are available to him/her in accordance with Article 25 and, where required under the law of his Member State, shall obtain the necessary judicial authorisation or court order. The law of the Member State where the European Delegated Prosecutor handling the case is located shall determine the conditions and applicable procedures for ordering or requesting such cross-border measures and govern their adoption and justification .

The European Delegated Prosecutor handling the case shall submit the order and, where applicable, the accompanying judicial authorisation to the assisting European Delegated Prosecutor.

The order shall set out, in particular, a description of the required measures, including, where possible, the evidence to be obtained, and, where necessary, specific formalities that have to be complied with, as well as a description of the facts and the legal qualification of the criminal act which is the subject of the investigation. The European Delegated Prosecutor handling the case may call for the measure to be undertaken within a given time frame.

The assisting European Delegated Prosecutor shall undertake the requested measure or ask the competent national authority in his/her Member State to do so and, where required under the law of his Member State, shall obtain the necessary judicial authorisation or court order. The court in the Member State of the assisting European Delegated

Prosecutor, where the measure is to be enforced, shall not review the grounds, justifications and substantive reasons for the ordered measure.

6. Where the assisting European Delegated Prosecutor considers that:

a) the assignment is incomplete or contains a manifest error,

b) the measure cannot be undertaken within the time frame set out in the assignment for justified and objective reasons,

c) an alternative measure would achieve the same results as the measure assigned, or

d) the assigned measure does not exist or would not be available in a similar domestic case under the law of his/her Member State

If the European Delegated Prosecutors cannot resolve the matter within 7 working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time frame set out in the assignment or within a reasonable time frame.

The competent Permanent Chamber shall, to the extent necessary, hear the European Delegated Prosecutors concerned by the case and then decide without undue delay whether and by when the measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor. This decision should be communicated through the competent European Prosecutor .

3. Enforcement of ordered measures

Within the drafted Article 27 the enforcement of the ordered measures shall be governed by the law of the Member State of the assisting European Delegated Prosecutor. Formalities and procedures expressly indicated by the handling European Delegated Prosecutor shall be complied with unless such formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor.

4. Pre-trial arrest and cross-border surrender

The European Delegated Prosecutors may order or request from the competent judicial authority the arrest or pre-trial detention of the suspected or accused person in accordance with national law.

Where the arrest and surrender of a person who is not present in the Member State in which the European Delegated Prosecutor handling the case is located is necessary, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States.

D. Rules on prosecution

1. Termination of the investigation

When the European Delegated Prosecutor handling the case considers the investigation to be completed, he/she shall submit a report to the supervising European Prosecutor, containing a summary of the case and a draft decision whether to prosecute before a national court or to consider an alternative to prosecution in accordance with Article 33 or 34. Where applicable, the report of the European Delegated Prosecutor shall also provide sufficient reasoning for bringing the case to judgment either at a court of the Member State where he/she is located, or at a court of a different Member State which has jurisdiction over the case. The supervising European Prosecutor shall forward those documents to the competent Permanent Chamber accompanied, if he/she considers it necessary, by his/her own assessment. When the Permanent Chamber, in accordance with Article 9(3), takes the decision as proposed by the European Delegated Prosecutor, he/she shall pursue the matter accordingly.

If the Chamber, based on the reports received, considers not to give its consent to the decision as proposed by the European Delegated Prosecutor, it shall, where necessary, undertake a full review of the case file before taking a final decision or giving further instructions to the European Delegated Prosecutor.

2. Prosecution before national courts

In complicne ?? with the drafted Article 29 When the competent Chamber, based on the report submitted in accordance with Article 29(1), gives its approval to the proposed decision to prosecute, the European Delegated Prosecutor shall pursue with the prosecution of the case at a competent court. The competent Permanent Chamber shall determine, in close consultation with the European Delegated Prosecutor submitting the case, the Member State in which the prosecution shall be brought. The Permanent Chamber shall in principle bring the prosecution in the Member State of the European Delegated Prosecutor handling the case.

When more than one Member State has jurisdiction over the case, the Permanent Chamber may, based on the report provided by the European Delegated Prosecutor handling the case in accordance with Article 29(1), decide to bring the prosecution to another Member State than the one of the European Delegated Prosecutor handling the case, if there are sufficiently justified grounds to do so, based on the criteria set out in Article 22(3).

Once a decision on the Member State in which the prosecution shall be brought has been taken, the competent national court within that Member State shall be determined on the basis of national law.

Where necessary for the purposes of recovery, administrative follow-up or monitoring, the Central Office shall notify the competent national authorities, the interested persons and the relevant Union institutions, bodies and agencies of the decision to prosecute.

Where, following a judgment of the court, the prosecution has to decide whether to lodge an appeal, the European Delegated Prosecutor shall submit a report including a draft decision to the competent Chamber and await its instructions. The same procedure shall

apply when, in the course of the court proceedings and in accordance with applicable national law, the European Delegated Prosecutor handling the case has to take a position which would have as a result the dismissal of the case.

3. Admissibility of evidence

In accordance with the drafted Article 31 evidence presented by the prosecutors of the European Public Prosecutor's Office to the trial court shall be considered admissible in accordance with the procedures and conditions provided for by the law of the State where the case is tried. It shall not be admissible where the court considers that its use as evidence would adversely affect the fairness of the procedure, the rights of defence, other rights as enshrined in the Charter of Fundamental Rights of the European Union, Member States' obligations under Article 6 TEU or other fundamental rights protected by national law. The trial court may, in accordance with applicable national law, assess freely the evidence presented by the prosecutors of the European Public Prosecutor's Office. However it shall not deny admission of or refrain from assessing evidence, presented by the prosecutors of the European Public Prosecutor's Office or the defendant, merely on the grounds that the evidence was gathered in another Member State.

4. Disposition of the confiscated assets

A stated in the drafted Article 32 where, in accordance with the requirements and procedures laid down by national law including the national law implementing Directive 2014/42 of the European Parliament an and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, the competent national court has decided by a final ruling to confiscate any property related to, or proceeds derived from, an offence within the competence of the European Public Prosecutor's Office, such assets or proceeds shall be disposed of in accordance with applicable national law. This disposition shall not negatively affect the rights of the Union or other victims to be compensated for their damage.

E. Rules on alternatives to prosecution

1. Dismissal of the case

The Permanent Chamber shall, based on a report provided by the European Delegated Prosecutor handling the case, decide to dismiss the case against a person where prosecution has become impossible, pursuant to the law of the Member State of the European Delegated Prosecutor handling the case, on account of any of the following grounds:

a) death of the suspect or accused person;

b) amnesty granted in the State which has jurisdiction in the case;

c) immunity granted to the suspect, unless it has been lifted;

d) expiry of the national statutory limitation to prosecute;

e) the suspect or accused person has already been finally acquitted or convicted of the same facts within the Union;

f) lack of relevant evidence.

A decision in accordance with paragraph 1 shall not bar further investigations on the basis of new facts which could not have been known to the European Public Prosecutor's Office at the time of the decision, and which become known thereafter and before expiry of applicable statutory limitation in the Member States where the case could be brought to judgment. The decision to reopen investigations on the basis of such new facts shall be taken by the competent Permanent Chamber .

3. Where the European Public Prosecutor's Office exercises its competence in accordance with Article 17(2), it shall dismiss a case only after consultation with the national authorities of the Member State referred to in Article 17(3). If applicable, the Permanent Chamber shall refer the case to the competent national authorities in accordance with Article 21 paragraphs 3 to 5.

F. Procedural safeguards

Article 35 establishes the extent and the scope of the rights of the suspects and accused persons. The activities of the European Public Prosecutor's Office shall be carried out in full compliance with the rights of suspected persons enshrined in the Charter of Fundamental Rights of the European Union, including the right to a fair trial and the rights of defence. Any suspect and accused person in the criminal proceedings of the European Public Prosecutor's Office shall, as a minimum, have the procedural rights as they are provided for in Union law, including directives concerning the rights of individuals in criminal procedures, such as:

(a) the right to interpretation and translation, as provided for in Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to translation and interpretation in criminal proceedings,

(b) the right to information and access to the case materials, as provided for in Directive 2012/13/EU of the European Parliament and of the Council of 22 Mai 2012 on the right to information in criminal proceedings,

(c) the right of access to a lawyer and the right to communicate with and have third persons informed in case of detention, as provided for in Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty,

(d) the right to remain silent and the right to be presumed innocent as provided for in Directive 201x/xx/EU of the European Parliament and of the Council to strengthen the presumption of innocence and the right to be present at trial in criminal proceedings,

(e) the right to legal aid as provided for in Directive 201x/xx/EU of the European Parliament and of the Council on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant.

Without prejudice to the rights provided in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the European Public Prosecutor's Office shall have all the procedural rights available to them under the applicable national law.

Chapter IV: EU Police cooperation

I. The Schengen cooperation in police and judicial matters

A. General remarks

Free movement is a distinctive principle of the European Union and the ability to move within the European Union without facing border checks at its internal borders is one of its most successful achievements. The territory where the free movement of persons is guaranteed represents the Schengen area founded on the Schengen Agreement of 1985.

The Schengen area is based on a body of rules called as the Schengen acquis which encompasses not only the abolition of border control at internal borders and common rules on the control of external borders but also a common visa policy, police and judicial cooperation, common rules on the return of irregular migrants and the establishment of common data-bases such as the Schengen Information System (SIS).The Schengen acquis, which was till year 1999 based on intergovernmental level only, has been incorporated into the European Union legal framework by the Treaty of Amsterdam of 1997. However, all countries participating in Schengen cooperation are not parties to the Schengen area. This is either because they do not wish to eliminate border controls or because they do not yet fulfil the required conditions for the application of the Schengen *acquis*.

Joining the Schengen area of each particular member state requires implementation of common adopted rules in order to achieve the same level of inter-state law enforcement cooperation and security. The very first idea of free movement in one common territory was incorporated in the Schengen agreement signed on 14 June 1985, which was followed by an implementation convention in 1990. They took effect in 1995, when checks on internal borders were abolished among the territory of France, Germany, Luxembourg, Belgium and the Netherlands. The right of free movement on one side opens the question of security on the other side and due to the fact of potential threat to national security and public order, to fundamental rights and freedom, to our lives and property in such open space, all member states are obliged to implement compensatory measures. As key elements of Schengen security following areas is considered as mandatory to be implemented:

1. Strengthened law enforcement cooperation,
2. Schengen information system,
3. Common visa policy,
4. Keeping of uniform border check rules,
5. Personal Data protection.

In dedicated above mentioned areas, Schengen Member States have to undergo periodic evaluations in order to control that they correctly apply the Schengen rules. Before joining the Schengen territory, each State has to pass evaluations in all areas, and then each five years repeatedly.

To ensure security within the border-free area, Schengen states exchange information to tackle organised cross-border crime and terrorism. They have increased law enforcement cooperation, in particular through hot pursuit, cross-border surveillance, the establishment of

joint police centres and teams, as well as the use of the Schengen Information System and many others.

B. The Schengen Information System

The Schengen Information System is one of the main Schengen compensatory measures that enables fast, effective and smooth communication on persons and objects which are in interest either of police or judicial authorities. The Schengen Information System as a large-scale information system contributes to maintaining a high level of security within the area of freedom, security and justice of the European Union by supporting operational cooperation between police authorities and judicial authorities in criminal matters, including the maintenance of public security and public policy and the safeguarding of security in the territories of the Member States, and to apply provisions relating to the movement of persons in their territories, using information communicated via this system.

The current system is the Schengen Information System of second generation set up under the provisions of Regulation (EC) No 1987/2006[1] and Council Decision 2007/533/JHA[2] on the establishment, operation and use of the second-generation Schengen Information System (SIS II). Together, these are known as the SIS II legal instruments and they contain many parallel provisions. In fact the existence of these two separate instruments does not affect the principle that SIS II constitutes one single information system. Essentially, the legal instruments were adopted before the Treaty of Lisbon abolished the EU's "pillar structure".

The scope of the Council Decision 2007/533/JHA (Decision) and of the Regulation (EC) No 1987/2006 (Regulation) is defined in theirs second Articles. While the objective of the Council Decision 2007/533/JHA is to establish conditions and procedures for the entry and processing in SIS II of alerts on persons and objects, the exchange of supplementary information and additional data for the purpose of police and judicial cooperation in criminal matters, Regulation (EC) No 1987/2006 establishes the conditions and procedures for the entry and processing in SIS II of alerts in respect of third country nationals, the exchange of supplementary information and additional data for the purpose of refusing entry into, or a stay in a Member State.

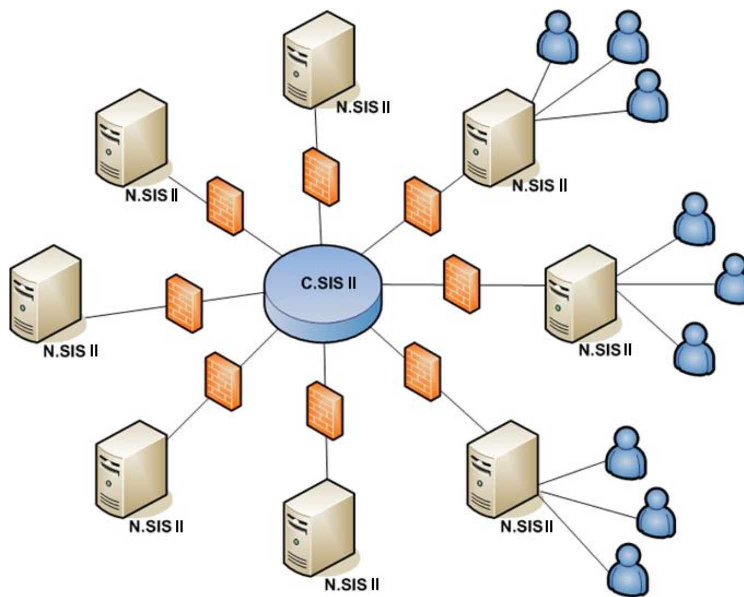
In both the Decision and Regulation are laid down provisions on the technical architecture of SIS II, the responsibilities of the Member States and of the management authority, general data processing, the rights of the persons concerned and liability, which constitute the same binding provisions, as they are identical for the system as an entire complex.

These instruments replace Title IV of the Convention implementing the Schengen Agreement (CISA), the part of the CISA which originally covered the first generation of the Schengen Information System. The first generation of the Schengen Information System began

[1]REGULATION (EC) No 1987/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II).
[2]COUNCIL DECISION 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II).

operating in 1995 (was extended in 2005 and 2007) and the second generation began operating in 2013.

The infrastructure of the SIS II consists of one central system - CSIS II located in Strasbourg and national systems– NSIS II in member states. Each national system is connected to the central system on the base of on-line connection. This means that by inserting an alert[3] into the national system in any member state, the alert is available in the central system in the same time and following, the central system sends the alert to all other national systems[4]. This kind of interconnection enables fast creating, updating and deleting of alerts in the SIS II, which ensures immediate availability of searching in all countries and guarantees high security of the Schengen area.



The Scheme of interconnection CSIS II and NSIS II

Currently the SIS II contains more than 60 million alerts and the tendency is still increasing due to the joining new Member States to the system on one hand, and on the other hand due to the needs of using new functionalities as the criminals practice new methods and forms of criminal activities.

The Statistics for 2014 year shows, that SIS II was queried during the year 2014 in 1 928 821 615 times[5], what means that 5 284 443 queries were performed daily by end users in all member states using the SIS II. This figure represents high utilization of the system by many authorities as police officers, judicial authorities, customs, authorities responsible for border controls and others in accordance with Decision and Regulation. It confirms that system serves as a main and wide-spread tool in the area of police and judicial cooperation in criminal matters, while giving the possibility to people to move freely in the Schengen area.

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[3]Alert means a set of data entered in SIS II allowing the competent authorities to identify a person or an object with a view to taking specific action.
[4] There is exceptions in some Member States that do not have own national copy and they make all processes in the central system directly.
[5] SIS II – 2014 Statistics (Report of EU-Lisa from March 2015).

C. The SIRENE Bureau

Very important part of the SIS II, which constitutes integrity of well operating system, represents SIRENE Bureaux. Each Member State using the SIS II shall designate an authority[6] which shall ensure the exchange of all supplementary information[7] and this authority is called SIRENE, an acronym of "Supplementary Information REquest at the National Entry". Article 20 of Decision and Regulation as well stipulates information which could be stored in the alert in the SIS II. There is an enumerating list of information, which shall be no more than surname(s) and forename(s), name(s) at birth and previously used names and any aliases which may be entered separately; any specific, objective, physical characteristics not subject to change; place and date of birth; sex; photographs; fingerprints; nationality(-ies); whether the person concerned is armed, violent or has escaped; reason for the alert; authority issuing the alert; a reference to the decision giving rise to the alert; action to be taken; link(s) to other alerts issued in SIS II; the type of offence. All other necessary supplementary information is provided via the SIRENE Bureaux on the bilateral or multilateral basis in accordance with the SIRENE Manual[8]usually in case of HIT[9]or in case of need in order to search out the person or object.

In practice, as an example, the competent judicial authority issues a European arrest warrant on person, on the base of which the alert is inserted into the SIS. The alert contains identification data of the person concerned, reason of the alert together with description of measures which should be taken and the copy of a warrant is attached to the alert as well. On base of such information, a user of the system (usually a police officer) is able to take an appropriate measure, in this case to arrest the person and to follow the procedures pursuant to the national law. The case is not finished, so SIRENE Bureaux involved deal with the exchange of other important information, as all necessary information is not stored in the SIS II.SIRENE Bureau can send required documents related to the case, if some problems occur with the identification of the person, SIRENE Bureau solves it by communication with competent authorities. They exchange also information before a HIT occurs as much intelligence can help to find a wanted person or object. There are set up rules for the exchange of supplementary information among SIRENE Bureaux. In order to achieve the target at the soonest, requests for supplementary information made by other Member States shall be answered as soon as possible and shall be used only for the purpose for which they were transmitted in order to meet personal data protection requirements.

The SIRENE Bureau is fully operational and is available on a non-stop 24/7 basis in order to be able to react within the time limit required by the SIRENE Manual. The SIRENE Bureau shall answer all requests for supplementary information on alerts and HIT procedures, made by the other member states via their SIRENE Bureaux, as soon as possible. In any event a

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[6] Art. 7, par. 2 oftheDecision and Regulation.

[7] Supplementary information means information not stored in SIS II, but connected to SIS II alerts, which is to be exchanged and is important to decision making procedure of competent authority in relevant Member State.

[8]COMMISSION IMPLEMENTING DECISION (EU) 2015/219 of 29 January 2015 replacing the Annex to Implementing Decision 2013/115/EU on the Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II).

[9] HIT means the situation, when a person/object in search is found out as a consequence of the querying the SIS II.

response shall be given within 12 hours. In order to fulfil the requirement to provide supplementary information, the SIRENE shall have direct or indirect access to all relevant national information and expert advice.

As regards the language used among SIRENE Bureaux, a language familiar to both parties shall be used. In cases of multilateral information exchange, the English is used as non-written rule.

Nowadays, as there are established many channels for the purposes of communication in criminal matters among responsible law enforcement authorities, Member States are encouraged to organise all national bodies responsible for international police/judicial cooperation, including SIRENE Bureaux, in a structured way so as to prevent conflicts of responsibility and duplication of work. This may lead to creating of integrated offices and workflow systems enhancing the effectivity of such communication.

If a SIRENE Bureau receives, from another SIRENE Bureau, a request falling outside its competence (legal responsibility) under national law, it should immediately forward this request to the competent authority. If necessary, it should provide support to the requesting SIRENE Bureau to facilitate communication.

The SIRENE Manual sets out inter alia the relationships between SIRENE Bureaux and Europol, Eurojust and Interpol. Among other matters the SIRENE Manual sets out detailed explanations of the role of the Bureaux, standards, communications, workflow management, knowledge, training, general procedures and specific procedures related to each of the categories of alert. The SIRENE Manual includes certain rules of a technical nature, since these have a direct impact on the work of users in the Member States, including the SIRENE Bureaux.

Moreover, SIRENE Bureaux serve also role as a coordinator of the verification of the quality of information entered in the SIS II and deal with data subject´s rights, in particular the right of access to data.

D. The categories of alerts in the SIS II

The main goal of the SIS II is to search for persons and objects wanted for the criminal proceedings or to help in performing other police tasks. During the years of development the SIS II, main categories of alerts were established and today they are regulated by the Decision and by the Regulation.

The list of alerts in SIS II is following:

- Alerts in respect of persons for arrest for surrender or extradition purposes (Alerts for arrest): Article 26 SIS II Decision;
- Alerts issued in respect of third-country nationals for the purposes of refusing entry and stay (Alerts for refusal of entry): Article 24 SIS II Regulation;
- Alerts on missing persons: Article 32 SIS II Decision;
- Alerts on persons sought to assist with a judicial procedure (Alerts on whereabouts): Article 34 SIS II Decision;

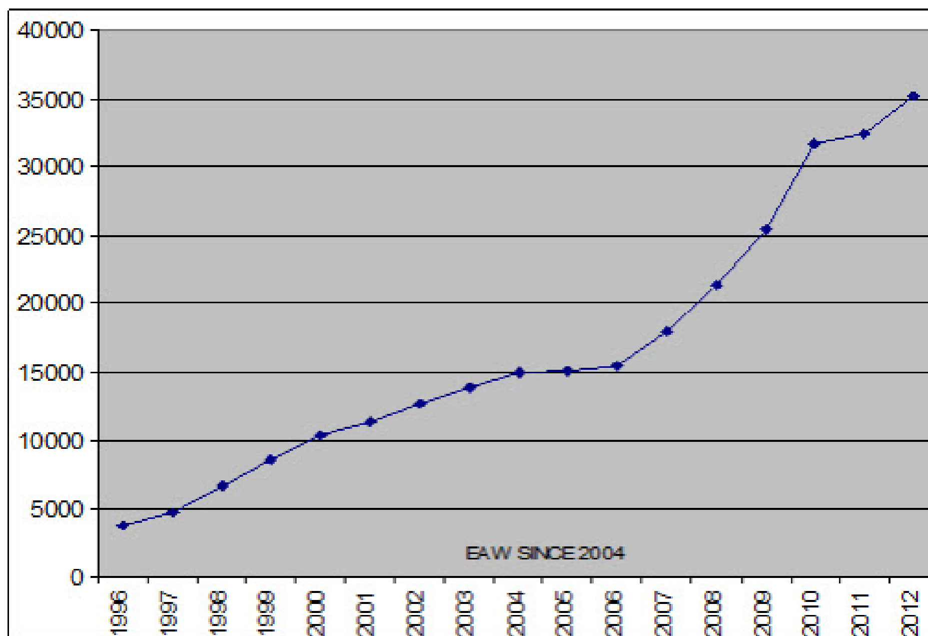
- Alerts on persons and objects for discreet checks or specific checks (Alerts for discreet or specific checks): Article 36 SIS II Decision;
- Alerts on objects for seizure or use as evidence in criminal proceedings (Object alerts): Article 38 SIS II Decision.

As in the SIS II, there are more than 60 million of alerts at present; there is always possibility, that request on a same person could be applied by more member states at the same time due to their own national interests. Often happens that these requests are not of the same character, so while one member state ask for arrest of the person, another member state applies for discreet check of the person. The rule is that only alerts which are compatible as concern their nature could exist together in the SIS II. In case of incompatible alerts, a Member State which enters a further alert shall reach agreement on the entry of the alert with the Member State which entered the first alert. The agreement shall be reached on the basis of the exchange of supplementary information[10] via SIRENE Bureaux involved. The detailed rules of alerts compatibility are regulated by the SIRENE Manual. In case of alerts incompatibility, SIRENE Manual sets out the priority order of the alerts that shall be applied during the consultation between member states.

1. Alerts in respect of persons for arrest for surrender or extradition purposes

The Decision regulates in its articles 26-31conditions for dealing with alerts created in respect of persons for arrest for surrender or extradition purposes. This kind of alerts has the highest priority among all categories of alerts in SIS II.

As regards the volume of alerts in SIS II created for the purposes of arrest for surrender or extradition, the figure ranges around 35 000 alerts currently. Counting the last decade the tendency was increasing due to the fact of joining the SIS II by more countries and due to the using the institute of EAW more frequently since its establishing in 2002 as well.



[10] Art. 49 par. 6 of the Decision, Art. 34 par. 6 of the Regulation.

Number of alerts in SIS II for the purposes of arresting the person[11]

In the year 2014, around 20 000 new EAWs and extradition requests were issued. The number 35 000 of alerts for the purposes of arrest for surrender or extradition oscillate currently, as new alerts are created, some alerts are executed and often happens, that against one person member state issues more EAWs during the existence of the alert in the SIS II.

Article 26 states that data on persons wanted for arrest for surrender purposes on the basis of the European Arrest Warrant (EAW) or wanted for arrest for extradition purposes shall be entered in SIS II at the request of the judicial authority of the issuing Member State. Article 31 of this Decision clarifies that alerts entered in SIS II in accordance with Article 26 in conjunction with the additional data referred to in Article 27 shall constitute and have the same effect as an EAW in Member States where the EAW Framework Decision[12] applies. The EAW Framework Decision contains the same provision also in its Article 9 par. 3. Article 27 of the Decision requires as an obligation of member state issuing the EAW to attach the copy of the original EAW to the alert in SIS II. This obligation ensures the availability of EAW for immediate disposal of competent judicial authority in the member state, where the person was arrested. The SIS II enables also attaching more copies of EAW, usually in cases, where translations to other languages were provided. The SIS II operates in such condition that if one member state issues on one person more EAW´s, because of national law, only one alert for the person is entered in the SIS II and more EAW´s will be attached to it. Regarding the technical access to EAW in the SIS II, there are various approaches in member states. Some member states allow to regular end-users (e.g. police officers) to access and to download the EAW directly, while other member states do not provide these copies of EAW to wide range of authorities and dedicate the right of access to judicial authorities solely.

The Decision counts also with situation, where the EAW Framework Decision does not apply (it means in associated countries mainly) to the alert in SIS II. In such case, an alert entered in SIS II in accordance with Article 26 and 29 of the Decision has the same legal force as a request for provisional arrest as indicated in Article 16 of the European Convention on Extradition of 13 December 1957.

After inserting the alert in the SIS II on the base of EAW, SIRENE Bureau of the issuing country shall communicate pursuant to art. 28 of the Decision to all other member states (including all Schengen countries) supplementary information which relates to particular EAW:

- the identity and nationality of the requested person;
- the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
- evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect;
- the nature and legal classification of the offence;

[11] https://www.cepol.europa.eu/

[12] The Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between member states (2002/584/JHA).

- a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
- the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;
- if possible, other consequences of the offence.

When inserting the alert for extradition purposes into the SIS II, which is without a copy of any relevant document, SIRENE Bureau shall communicate pursuant to Art. 29 of the Decision following supplementary information to all other member states:

- the authority which issued the request for arrest;
- whether there is an arrest warrant or a document having the same legal effect, or an enforceable judgment;
- the nature and legal classification of the offence;
- a description of the circumstances in which the offence was committed, including the time, place and the degree of participation in the offence by the person for whom the alert has been issued;
- in so far as possible, the consequences of the offence;
- any other information useful or necessary for the execution of the alert.

The supplementary information for this type of alert is circulated among the SIRENE Bureaux through the use of specific form, which contains sufficient information on the EAW or extradition request. Sometimes a Member State has several EAWs for the same person, in which case there is only one alert, as mentioned above. In this case the Member State has to provide the other Member State with several forms with supplementary information, one for each EAW.

The forms prepared in this way are intended to "complete" the SIS II alert in order to make it equivalent to an EAW, in advance of the executing judicial authority receiving the original EAW through the traditional channels.

Sending the supplementary information in advance the HIT serves also to one procedure called flagging. Pursuant to Art.24 of the Decision, where a Member State considers that to give effect to an alert entered in accordance with Article 26of the Decision (Article 32 and 36 as well), is incompatible with its national law, its international obligations or essential national interests, it may subsequently require that a flag be added to the alert to the effect that the action to be taken on the basis of the alert will not be taken in its territory. The flag shall be added by the SIRENE Bureau of the member state which entered the alert, as there is a rule that only member state can update or delete its own alerts. In case of competent authority decides on setting the flag to particular alert, the alert will be updated that the action to be taken will change. In case of alert pursuant to Art.26, the measure "arrest the person" will converse to measure "communicating the whereabouts".

In accordance with Art.25 of the Decision, where EAW Framework Decision applies, a flag preventing arrest shall only be added to an alert for arrest for surrender purposes where the competent judicial authority under national law for the execution of an EAW has refused its execution on the basis of a ground for non-execution and where the addition of the flag has been

required. In practise, each member state can set up its own mechanism how to deal with the procedure of flagging. At the behest of a competent judicial authority under national law, either on the basis of a general instruction or in a specific case, a flag may also be required to be added to an alert for arrest for surrender purposes if it is obvious that the execution of the European Arrest Warrant will have to be refused.

In the Slovak Republic and in other member states also, the general instruction of competent judicial authority is legislated usually. In particular in the Slovak Republic, after receiving the supplementary information from the member state issuing the alert on the basis of EAW (or on the basis of extradition request) SIRENE Bureau checks its compatibility with the national law mainly. Information to be evaluated whether they meet main criteria is following:

- the age of the person in time of committing the offence,
- the length of the custodial sentence or detention order which may be imposed for the offence,
- the length of the custodial sentence or detention order imposed and/or the remaining sentence to be served,
- double criminality of the offence.

In case of doubts that information does not meet criteria of national law, SIRENE Bureau sends the request to the competent judicial authority under national law. In the Slovak Republic pursuant to § 12 of the Act on EAW the General Prosecution Office has been designated for the process of preliminary examination of the alerts in respect of persons for arrest for surrender or extradition purposes in the SIS on the base of information delivered from abroad. Should the General Prosecution Office of the Slovak Republic identify any contradictions of the alert with the legal code, international commitments or important interests of the Slovak Republic, it instructs the SIRENE Bureau to set up a flag to particular alert. SIRENE Bureau shall ensure the setting up the flag immediately via communication with SIRENE Bureau of the member state issuing the alert. As a consequence of this decision; the alert will change on the territory of the Slovak Republic to the alert with measure "communicating the whereabouts", so the flag represents an obstacle to a person apprehension at all or till temporary time. In accordance with Art.24 par. 3 of the Decision, if in particularly urgent and serious cases, a member state issuing an alert requests the execution of the action, the member state executing the alert shall examine whether it is able to allow the flag added at its behest to be withdrawn. If the member state executing the alert is able to do so, it shall take the necessary steps to ensure that the action to be taken can be carried out immediately.

A member state may ask for the reason which led to a flag request of another country (although it should have been properly explained in a request for setting up the flag). This request should not delay the flag setting, and should be done promptly.

During a year 2014, 11 467 requests for setting up flags were exchanged among SIRENE Bureaux.[13] This statistical data show the number of requests in which countries ask for a flag to alerts in SIS II, what means also that one alert could be "flagged" by more countries. As an example from the practise, criminal offence of non-paying alimony pursuant to Penal Code of

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[13]SIS II 2014 Annual statistics(Report of EU-Lisa from March 2015).

the Slovak Republic is not a criminal offence in more countries, so request for adding a flag to one particular alert which was created on the base of Slovak EAW issued for such criminal offence was applied by more countries.

Furthermore the application of the EAW procedure significantly decreases the need for a prior validation, since the criteria for issuing an arrest warrant were standardised at European level for transmission, but of course there are still some minor divergences depending up a national penal law.

When issuing the alert in SIS II on the base of EAW or extradition request, SIRENE Bureaux in order to help in tracing the person as much as possible follow common steps:

- checking any available information related to person in sought in national databases;
- verifying data available for person´s correct identification to be included in the supplementary information such as passport/ID details, physical description, etc., possibly including any aliases;
- checking the EAW fields to be completed properly;
- detecting possible multiple alerts in SIS II;
- sending the supplementary information to other SIRENE Bureaux as soon as possible;
- adding a flag to corresponding alert in case any country apply for setting up a flag.

As a country receiving the supplementary information from the other country, the SIRENE Bureau of the receiving country performs following steps:

- evaluating possible national constraints for executing the action requested (which may result in a flag request based on national alert examination procedure);
- searching any possible resources to locate the wanted person (checks on national police/criminal databases, database of imprisoners, public registers, etc.);
- communication with competent authority (usually the police unit in charge) in order to make a physical check of the person in case there is presumption that person is staying somewhere in the territory.

In any event the lack of information in supplementary information received should not prevent the receiving SIRENE Bureau from carrying out the searches, pending a request for further clarification. These criteria should apply also to searches related to alerts whose supplementary information are not yet verified, as this operation may also result in a HIT.

After a HIT on a SIS II alert occurs, the follow-up procedures need to be respected. Procedures on foreign alerts require the executing SIRENE Bureau to focus on:

- promptly sending information on HIT with all circumstances;
- providing the issuing member state with the details about the authority competent for receiving the EAW or extradition request with full communication contact details, requested language of the EAW or extradition request, and time limit;
- sending further information for arranging surrender/extradition after the decision on execution the EAW/extradition request was taken;
- sending further information for arranging transit if necessary.

During the year 2014, around 9 000 HITs were performed on the base of alert in SIS II overall in the Schengen area[14]. In Slovakia, total number of HITs, on base of which the surrender or extradition was carried out was 201, while 143 escorts were done from abroad to Slovakia and 58 escorts were done from Slovakia to abroad.

2. Alerts on persons sought to assist with a judicial procedure

Article 34 of the Decision stipulates categories of persons who could be sought in order to assist with a judicial procedure via the SIS II:

- witnesses;
- persons summoned or persons sought to be summoned to appear before the judicial authorities in connection with criminal proceedings in order to account for acts for which they are being prosecuted;
- persons who are to be served with a criminal judgment or other documents in connection with criminal proceedings in order to account for acts for which they are being prosecuted;
- persons who are to be served with a summons to report in order to serve a penalty involving deprivation of liberty.

The main purpose of this kind of alerts is to establish the place of residence or domicile of person sought in order to deliver any documentation important in the criminal proceedings. In practise, there is still open question about the nature of measures which should be taken in case of HIT, as the Decision does not regulate directly this particularity. The approaches from the side of member states vary, as also national law in member states divers as regards the service of the documents to person for the purposes of criminal proceedings, as this is one of the most utilized reasons for using the SIS II.

A key point is that these alerts are used to allow criminal judicial procedures to make progress. Accordingly, they should not be used for administrative purposes.

When a HIT occurs, the whereabouts, residence or address of the person in sought should be obtained. The data concerning the whereabouts, residence or address should be obtained by the police in the field using all measures permitted by the national law of the member state where the person was found. Reporting of HIT should always cover the person's permanent address (specific address). Short-term addresses should not be used.

In practise, often happens that person in sought after multiple HITs in one or several countries still appear as recorded in the SIS II, while the rule is that alert is only kept in the SIS II for the time required to meet the purpose for which it was supplied[15], what means – to establish the place of residence or domicile. This is obviously done after the first check of the person in sought. Information on place of residence gathered at the spot is provided to SIRENE Bureau of the country in which the HIT occurs and via the SIRENE Bureau of the country issuing the alert it is forwarded to the requesting judicial authority. As a standard procedure after, requesting judicial authority sends the documentation important for the criminal

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[14]SIS II 2014 Annual statistics(Report of EU-Lisa from March 2015).
[15] SIRENE Manual, part 6.4.

proceedings to the address which was gathered during the HIT. Usually happens that documentation is not taken over by the person in sought, despite the fact that address was properly verified during the HIT. In such cases, judicial authority should consider using appropriate tolls of mutual judicial assistance instead of repeating the attempts for delivery via commercial mail services.

As regards the deletion of alerts in the SIS II for the purposes of assisting with a judicial procedure, according to the SIRENE Manual and best practice the alert should be deleted after the place of residence or domicile of person in sought was found out. In many countries rule applies that initiative of withdrawing the alert should come from the authority, which requested the creation of the alert. There are various views of competent authorities in member states as regards the moment of reaching the purpose of this kind of alerts and because of this fact the rule of withdrawing the alert from the SIS II after the first check of the person in sought is not followed usually. Flagging procedure is not possible for these types of alerts.

Article 34 of the Decision gives a possibility for initiating this kind of alerts in the SIS II to a competent authority, what differs from country to country. In some countries a competent judicial authority is represented by courts or prosecution exclusively, while in some countries it could be competent police service as well. This principle causes then variety in figures of alerts represented by individual countries depending on their national laws. Currently, there is around 100 000 alerts in the SIS II for the purposes of assisting with a judicial procedure and in the year 2014 there was recorded more than 31 000 HITs in this category of alerts in the Schengen area[16].

3. Alerts on objects for seizure or use as evidence in criminal proceedings

The organized crime with goods as firearms, vehicles, ID documents and others is still profitable illegal activity, as current situation shows us. Principally, the trafficking of firearms is still very big issue in our society and law enforcement authorities should pay special attention how to prevent, investigate and prosecute this criminality. Very important tools in combating with the crime are searching databases on firearms as SIS II represents also and which are currently under their development in order to make the searching more effective.

Article 38 of the SIS II Decision enables to search for following types of objects in the SIS II:

(a) Motor vehicles with a cylinder capacity exceeding 50cc, boats and aircrafts;

(b) Trailers with an unladen weight exceeding 750 kg, caravans, industrial equipment, outboard engines and containers;

(c) Firearms;

(d) Blank official documents which have been stolen, misappropriated or lost;

(e) Issued identity papers such as passports, identity cards, driving licenses, residence permits and travel documents which have been stolen, misappropriated, lost or invalidated;

(f) Vehicle registration certificates and vehicle number plates which have been stolen, misappropriated, lost or invalidated;

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[16]SIS II 2014 Annual statistics (Report of EU-Lisa from March 2015).

(g) Banknotes (registered notes);
(h) Securities and means of payment such as cheques, credit cards, bonds, stocks and shares which have been stolen, misappropriated, lost or invalidated.

This category of alerts in the SIS II enables 2 kinds of measures depending on the purpose of the record. The first objective is the standard situation, when the searched out object is recovered back to the legal owner of the thing, after the loss or theft was reported.

One of the mainly used measures is the seizure and following national procedure which results into decision on handing over of the object to a legal owner. The other purpose of the alert is the seizure for the law enforcement authorities when the object should serve as evidence in criminal proceedings.

In practice, national law which the Art. 39 par. 3 of the SIS II Decision is referring to is applied by the executing Member State when the object is located in its territory. National laws in Member States are individual and each case is solved ad hoc. There are more countries which national law requires the letter of rogatory after the object is seized (even the required measure is ordinary seizure without the need of handing over for the purpose of criminal proceedings), while for others the exchange of information on the level of police cooperation is sufficient in order to decide on handing over the object.

The majority of cases cover the category of vehicles, issued documents, banknotes and licence plates which are searched out. In the year 2014, there were 14 103 HITs recorded as regards the searched vehicles, 12 852 HITs on issued documents, 2 337 HITs on licence plates and 2 275 HITs on banknotes in whole Schengen area[17].

E. The future of the SIS II

Legal instruments regulating the SIS II in their articles 22 state that as soon as it becomes technically possible, fingerprints may also be used to identify a person on the basis of his/her biometric identifier. Legal framework counts with the necessity of identifying the person on the base of fingerprints, as these together with other personal identifiers as DNA, eye iris represent the most determinable identifier comparing to personal data as surname, name, date of birth etc.

The recent practise shows us, that perpetrators use many manners how to hidden their real identity. Often occur changing of identities either in unofficial or official way, by abusing lost or stolen identity documents or simply by changing their names officially. In some countries the national law does not obstruct procedure of changing names significantly and does not regulate this matter so strictly so people use this benefit very often and repeatedly just for purpose.

The main target in that connection is that person could be identified on the base of fingerprints, so in case of person´s check, he or she should provide his/her fingerprints and these fingerprints will be compared with the fingerprints stored in the SIS II. By this mechanism, problems with changed names, with too complicated names or with fictive identities should be eliminated.

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[17] SIS II 2014 Annual statistics (Report of EU-Lisa from March 2015).

Of course this concept requires fingerprints to be stored in the SIS II and to implement any searching mechanism. This functionality is to be expected in the operation since year 2018 in accordance with the current schedule of technical implementation. Before this functionality is implemented in the SIS II, the Commission shall present a report on the availability and readiness of the required technology, on which the European Parliament shall be consulted.

Pursuant to Art. 66 par. 5 of the Decision, three years after SIS II is brought into operation and every four years thereafter, the Commission shall produce an overall evaluation of Central SIS II and the bilateral and multilateral exchange of supplementary information between Member States. This overall evaluation shall include an examination of results achieved against objectives, and an assessment of the continuing validity of the underlying rationale, the application of this Decision in respect of Central SIS II, the security of Central SIS II and any implications for future operations. The Commission shall transmit the evaluation to the European Parliament and the Council.

Last security threats in Europe demonstrating the nature of terrorism confirm the absolute necessity of strengthened international cooperation of law enforcement authorities by means of various institutions and international databases. The attacks were an assault on the European values of freedom, democracy, human rights and the rule of law. This is not the first time that the European Union has been confronted with a major terrorist attack and important measures have already been decided. The Council underlines the importance of accelerating the implementation of all areas covered by the statement on counter-terrorism issued by the Members of the European Council.[18] Among others, Member States were called for maximum use of capabilities to improve the overall level of information exchange between counter-terrorism authorities in the EU. This is the significant way forward the Europe should follow in the area of information sharing. The SIS II should be used to its maximum potential and Member State will ensure that national authorities enter systematically data on suspected foreign terrorist fighters into the SIS II, carry out awareness raising and training on the use of the SIS II and define a common approach to the use of the SIS II data relating to foreign fighters.

There is a substantial reason to believe, that in forthcoming time the SIS II will focus on strengthening and utilization of the functionality combating with the terrorism and related issues and that present HIT/noHIT system will become more analytical tool.

F. The crossborder surveillance

The crossborder surveillance is one of frequently used institutes within the cooperation of the law enforcement authorities as regards the Schengen matters area. Article 40 of the Convention implementing the Schengen Agreement stipulates that officers of one of the Member States who are keeping a person under surveillance in their country as part of a criminal investigation into an extraditable criminal offence because he is suspected of involvement in an extraditable criminal offence or, as a necessary part of a criminal

[18] ST14406/15 Conclusions of the Council of the EU and of the Member States meeting within the Council on Counter-Terrorism – Council conclusions (20 November 2015).

investigation, because there is serious reason to believe that he can assist in identifying or tracing such a person, shall be authorised to continue their surveillance in the territory of another Member State where the latter has authorised crossborder surveillance in response to a request for assistance made in advance with supporting reasons. Conditions may be attached to the authorisation.[19]

Although this institute belongs to the police cooperation chapter in the Convention implementing the Schengen Agreement, implementation in Member States varies. Moreover Art. 40 states that the request for assistance must be sent to an authority designated by each of the Member State and empowered to grant or to pass on the requested authorisation.

There are Member States which are responsible to carry out requested surveillance only when the letter of rogatory is sent to the judicial authority and approved, while in many Member States the request of competent police authority is sufficient in order to authorize the crossborder surveillance on the territory of executing Member State.

The request for surveillance may have either ordinary or urgent character. In case, for particularly urgent reasons, prior authorisation cannot be requested from the other Member State, the officers carrying out the surveillance shall be authorised to continue beyond the border the surveillance of a person presumed to have committed criminal offences, if necessary conditions are met:

(a) the competent authority of the Member State, in whose territory the surveillance is to be continued, must be notified immediately, during the surveillance, that the border has been crossed;

(b) a request for assistance outlining the grounds for crossing the border without prior authorisation shall be submitted immediately.

Surveillance shall cease as soon as the Member State in whose territory it is taking place so requests, following the notification referred to in (a) or the request referred to in (b) or, where authorisation has not been obtained, five hours after the border was crossed.

The Convention implementing the Schengen Agreement sets out the main framework of the rules regulating the crossborder surveillance, while the bilateral (multilateral) agreement between Member States could specify more detailed provisions, on base of which the cooperation is carried out.

In connection with the crossborder surveillance operations, the Slovak Republic has arranged the bilateral agreements on police cooperation with Austria, Hungary and Poland. The operation of crossborder surveillance is included in them as institute of the police cooperation and competent authorities for giving the approval to carry out the surveillance on base of request of requesting Member State are competent authorities in the police structure of requested Member State. On the other hand, the crossborder surveillance as institute on base of judicial request is incorporated in the bilateral agreement between Slovakia and the Czech Republic on legal assistance, as the operation of surveillance as a police tool is not included in the national law of the Czech Republic.

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[19] CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

The national law of the Slovak Republic allows performing the surveillance according to the Act on Police Force and according to the Code of Criminal Proceedings as well, depending on the level of investigation of the particular case.

National law can cause gaps in execution of mutual crossborder surveillance, as there can occur situations, where one Member State which carries out the surveillance on the base of police request solely cannot request other Member State which national law allows performing the surveillance on the base of judicial request exclusively and vice versa.

The Convention implementing the Schengen Agreement in its Article 40, par. 3 regulates that crossborder surveillance shall be carried out only under the following general conditions:

(a) The officers carrying out the surveillance must comply with the provisions of Article 40 of the Convention implementing the Schengen Agreement and with the law of the Member State in whose territory they are operating; they must obey the instructions of the competent local authorities.

(b) Except in the situations of urgent nature, the officers shall, during the surveillance, carry a document certifying that authorisation has been granted.

(c) The officers carrying out the surveillance must at all times be able to prove that they are acting in an official capacity.

(d) The officers carrying out the surveillance may carry their service weapons during the surveillance save where specifically otherwise decided by the requested Member State; their use shall be prohibited save in cases of legitimate self-defence.

(e) Entry into private homes and places not accessible to the public shall be prohibited.

(f) The officers carrying out the surveillance may neither challenge nor arrest the person under surveillance.

(g) All operations shall be the subject of a report to the authorities of the Member State in whose territory they took place; the officers carrying out the surveillance may be required to appear in person.

(h) The authorities of the Member State from which the surveillance officers have come shall, when requested by the authorities of the Member State in whose territory the surveillance took place, assist the enquiry subsequent to the operation in which they took part, including judicial proceedings.

In practice, the operations of crossborder surveillance are usually of urgent nature, so for theirs communications, 24/7 information exchange channels should be arranged. This information exchange is in majority cases communicated via central offices for the international information exchange represented by SIRENE or Interpol Bureaux. As in particular cases, which require the communication in limited and secured way, the Europol channel is used usually. Information relevant to the case of surveillance is then provided predominantly in restricted or confidential level of security.

In connection with the issue of competency of responsible authority to deal with the particular request for the assistance in crossborder surveillance, each Member State depending on performing the tasks by individual police units regulates by national law this competency. So

in practice occur various modalities in the process beginning from the receipt of the request, through the process of its approval till the individual performing the surveillance in the territory of executing Member State.

In the present, operations of crossborder surveillance are routinely used institutes and usually performed between neighbouring countries, while there are no obstacles to carry out it in cooperation with other countries where common borders are not. These operations could be executed either by officers of requested country or by officers of requesting country and often are performed in mutual cooperation of both countries.

II.Europol

A. General remarks

In accordance with Article 87 of the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU only)[20], police cooperation among all the competent authorities (police, customs as well as other relevant bodies) is carried out in the form of:

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.

Measures related to above mentioned forms are adopted in ordinary legislative procedure where the European Parliament and the Council act accordingly.

Another form of police cooperation is **operational police cooperation** adopted in special legislative procedure when the Council acts unanimously after consultation of the European Parliament. Shall not be the case and unanimity has not been reached, a group of at least nine Member States may request so that the draft measure be submitted to the European Council and meanwhile, procedures at the Council are suspended. If the consensus has been achieved, the European Council returns back the draft to the Council for adoption within four months since the suspension.[21]

In case of failure to reach the consensus whereas at least nine Member States wish to adopt the draft on operational measure, they notify The European Parliament, the Council and the Commission of that fact. In accordance with Article 20 (2) of the Treaty o European Union and Article 329 (1) of this Treaty, authorisation to proceed is deemed to be granted.

B. Legal background, position, mission, role, tasks, organisation

The importance of efficient police cooperation within European Union has been confirmed also by establishing European Police Office - Europol which is a law enforcement agency of the European Union. Its establishment was agreed in the Treaty on European Union of 7 February 1992 and regulated in the Convention in accordance with Article K.3 of the Treaty on European Union, on establishment of European Police Office (hereinafter referred to as Europol Convention only).[22]

However, due to amendments to this Convention in the form of three Protocols requiring long process of ratification, the Convention has been replaced by the Council Decision of 6 April 2009 establishing the European Police Office (Europol) 2009/371/JHA (hereinafter referred to as Europol Decision only) . For purpose of simplified and improved Europol legal framework, Europol has been recognised as a legal entity of the European Union having its legal personality upon which it can acquire movable and immovable property and may act as a party to legal proceedings. For purpose of even closer cooperation in fight against all the crimes within the

[20] Treaty on the Functioning of the European Union OJ C 326/01, 26.10.2012.
[21] Article 87 (3) TFEU
[22] OJ C316, 27.11.1995, p. 1.

scope of Europol mandate as well as the other party to the agreement, Europol may conclude arrangements with the European Union and Community institutions, offices and agencies, as well as with the third States and organisations.

Europol´s mission is supporting the competent authorities of the Member States responsible for prevention and combat in the Member States in the area of combat against serious crime, e.g. organised forms of crime and terrorism.

In accordance with Article 5 of the of the Europol Decision, **the tasks of Europol** may be divided as follows:

a) **Principal tasks:**

- collection, storage, processing, analyses and exchange of information and intelligence;
- notification of the competent authorities of the Member States via the national unit of the information concerning them and of any connections between criminal offences;
- aiding investigations in the Member States especially by forwarding the information to the national units;
- asking the competent authorities of the Member States to conduct investigations and suggesting setting up joint investigation teams in specific cases;
- providing intelligence and analytical support to Member States regarding major international events;
- preparation of threat assessment, strategic analyses and general situation reports including organised crime threat assessments.

b) **Additional tasks:**

- developing specialist knowledge of the investigative procedures of the competent authorities of the Member States and providing advise on investigation;
- providing strategic intelligence on effective using of resources at both the national and EU level for operational activities and their support;
- providing support, advise and research in training for competent authorities;
- assisting in organisation and equipment of those authorities by providing technical support between the Member States;
- researching and advising in relation to crime prevention methods, as well as technical and forensic methods and analysis and investigative procedures.

Another task of Europol is linked with its function to act as the Central Office for combating euro counterfeiting pursuant to Council Decision 2005/511/JHA of 12 July 2005 on protecting the euro against counterfeiting.[23]

Finally, very significant role is participation in **Joint Investigation teams** in line with Article 1 of the Council Framework Decision 2002/465/JHA of 13 June 2002 on Joint Investigation teams[24], in accordance with Article 13 of the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union[25], or pursuant to Article 24 of the Convention of 18 December 1997 on mutual assistance and cooperation between

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[23] OJ L 185, 16.7.2005, p. 35.
[24] OJ L 162, 20.6.2002, p. 1.
[25] OJ C 197, 12.7.2000, p. 3.

customs administrations[26] provided the joint investigation teams investigate the offences within the competence of Europol.

The scope of the activities carried out by Europol has been regulated in Article 4 (1) of the Europol Decision in accordance with which Europol carries out the activities related to organised crime, terrorism and other forms of serious crime, the latter mentioned are listed in the Annex of the Europol Decision as follows:

a) unlawful drug trafficking,
b) illegal money-laundering,
c) crime connected with nuclear and radioactive substances,
d) illegal immigrant smuggling,
e) trafficking in human beings,
f) motor vehicle crime,
g) murder, grievous bodily injury,
h) illicit trade in human organs and tissue,
i) kidnapping, illegal restraint and hostage taking,
j) racism and xenophobia,
k) organised robbery,
l) illicit trafficking in cultural goods, including antiquities and works of art,
m) swindling and fraud,
n) racketeering and extortion,
o) counterfeiting and product piracy,
p) forgery of administrative documents and trafficking therein,
q) forgery of money and means of payment,
r) computer crime,
s) corruption,
t) illicit trafficking in arms, ammunition and explosives,
u) illicit trafficking in endangered animal species,
v) illicit trafficking in endangered plant species and varieties,
w) environmental crime,
x) illicit trafficking in hormonal substances and other growth promoters.

Apart from the above mentioned forms of crime within the competence of Europol, it shall also cover the criminal offences committed for purpose of procuring the means of perpetrating the acts within Europol competence, criminal offences committed for purpose of facilitating or carrying out acts within Europol competence and finally, the criminal offences committed to ensure impunity of the acts within Europol competence.

Europol activities are carried out at the following levels upon the mutual cooperation of the following:

a) Europol Headquarters
b) Liaison officers
c) Europol National Units

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[26] OJ C 24, 23.1.1998, p. 2.

Europol Headquarters are located in the Hague, the Netherlands, the number of its staff amounting to more than 900. The responsibility of the Europol staff is to gather, analyse, disseminate the information and coordinate the operations. For purpose of preparing analyses, around 100 criminal analysts are employed at the Europol Headquarters.

Europol may request the Member States to initiate, conduct or coordinate investigations in particular cases and the Member State is obliged to inform Europol if the investigation has been commenced. Member State must inform the Europol in case the investigation has not been commenced. The only exception is the case that the investigation would harm essential national security or, it would jeopardise the ongoing investigation or the safety of the individuals.

Europol staff, however, do not have any power to arrest in the territory of the Member States concerned. Originally, they come from various law enforcement agencies, e.g. police authorities, customs authorities, security services. Therefore, they may provide valuable input due to their previous professional background.

Each Europol National Unit seconds to the Europol Headquarters in the Hague at least one liaison officer (Slovak Republic has two liaison officers deployed at Europol in the Hague)[27]**.** Liaison officers are subject to national laws of the particular Member State and they represent the Europol National Unit which have seconded them. The scope of their activities comprises information exchange both from the Europol National unit to Europol as well as from Europol to the Europol National unit, they cooperate with the Europol staff as well as with other liaison officers from other seconding Members States.

Apart from the liaison officers from EU Member States, there are also liaison officers from Europol non-EU partners (partner states and organisations) seconded at Europol Headquarters, e.g. Canada, Australia, the USA, INTERPOL.

Activities of Europol at the level of a Member state are carried out at the **Europol National unit** (hereinafter referred to as ENU only) established in each Member State in accordance with national laws.[28]

ENU is a liaison body between Europol and competent national authorities and in line with the provision of the Article 8 of the Europol Decision its tasks are as follows:

a) forward to Europol the information and intelligence on their own initiative;
b) provide the information and intelligence to Europol upon Europol request;
c) assess the information and intelligence, keep them up to date and submit them to competent authorities;
d) supply the information to Europol for purpose of their storage in Europol databases;
e) ensure compliance of information exchange with the applicable national laws.

The information shall not be sent if any of the following cases applies:

a) essential national security would be endangered;
b) ongoing investigation or safety of individuals would be jeopardised;
c) information or intelligence related to State Security.

[27] See Article 5 and 6 of the Regulation of the Minister of Interior Nr. 4/2012 on international police cooperation carried out by Europol National Unit.

[28] In the Slovak Republic, activities of ENU Slovakia are regulated by the Regulation of the Minister of Interior Nr. 4/2012 on international police cooperation carried out by Europol National Unit.

To sum it up, the information flow is carried out among the Europol, Liaison bureaus, Liaison bureaus of the Third States and Organisations to national ENUs which supplies the information to national authorities. The traffic is, of course, carried out in both the directions. The ENUs cooperate with the competent national authorities in charge of the criminal activities within competence of Europol (terrorism, drug units, human trafficking units etc.)

Europol has two organs:

a) **The Management Board;**

b) **The Director.**

In the **Management Board**, there is one representative from each Member State, there is also one representative from the Commission, each of them has one vote. The Management Board takes the decisions by a majority of two-thirds, except for the special cases.

The responsibilities of **the Management Board** cover, among other tasks related to functioning of Europol, the following activities: adopting Europol strategy, overseeing the Director' s performance also in relation to implementation of the Management Board decisions, adopting financial regulation, adopting a general report on Europol activities and work programme for the future, these documents are submitted to the Council which forwards them to European Parliament for information, establishing the internal audit function, adopting a list of at least three candidates for the position of the Director and the Deputy Directors to be submitted to the Council, along with other tasks related to functioning of Europol.

The Director of Europol is its legal representative and is appointed by the Council upon qualified majority of the votes, from the list of the candidates prepared by the Management Board. The term of the office shall be four years, this period may be extended upon evaluation of the Management Board, by the Council.

The Director is accountable to the Management Board and has three Deputy Directors.

The Director' s responsibilites comprise, among others, performance of Europol tasks, daily administration, preparation and implementation of the Management Board' s decisions, elaborating a general report on Europol' s activities, regular informing the Management Board regarding implementation of the priorities defined by the Council and Europol' s external relations.

C. Europol expertise

The significant key moment of Europol activities is processing the information (including personal data) and intelligence for purpose of fulfilling its mission.

The tools maintained for this purpose are:

a) Europol Information System

b) Analysis work files

c) Information exchange network SIENA

1.Europol Information System

Europol Information System is used for processing and storage of the data which are necessary for execution of the Europol tasks and it contains the information on:

a) persons suspected of committing the criminal offence (suspects) or having committed the criminal offence (convicts) within competence of Europol;
b) persons who are reasonably believed that they will commit a criminal offence within competence of Europol.

The personal data on these subjects may only be the following: surname, maiden name, given names, alias or assumed name, date and place of birth, nationality, sex, place of residence, profession, whereabouts, social security numbers, driving licence, identification documents, passport data and if necessary, also the ID material such as dactyloscopic data and DNA profile.

Apart from the personal data, the Europol Information System may also include the information on criminal offences related to subjects registered in the Europol Information System, their modus operandi, means by which criminal offences have been committed, departments in charge of the case and their file number, suspected membership in a criminal organisation, any convictions regarding the criminal offences within Europol competence, party which made an input into the Europol Information System.

In case the subject on whom the data is stored in Europol Information system is acquitted or the proceedings are terminated, the data are deleted.

The power to input and retrieve the data directly in the Europol Information System have been conferred upon National Units, liaison officers, the Director, the Deputy Directors and also duly authorized Europol staff. The party which has made an input, has also the right to modify, correct and delete such data, it may also do it upon the information from another party if the latter deems the particular information incorrect or in need to be supplemented. In that case, the inputting party examines such information and makes any necessary corrections or modifications.

The access to consult the Europol Information System may be granted also to competent authorities of the Member States. The outcome of such a query would be the information whether the data are available or not. For detailed information, the ENU would have to be contacted.

Therefore, as it can be seen, the Europol Information System is a valuable database and a tool for establishing if the information is available at Europol or in any of the Europol Member States.

2.Analysis work files

Another efficient Europol tool are Analysis work files (hereinafter referred to as AWF only) which contain the analyses information. This information may be used as a support for an investigation by the competent authorities of Europol Member States.

AWFs are regulated in the Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files.

The information which is forwarded to Europol for analysis purposes, is sent either by the ENU or, it may be be sent also by the competent national authorities in case of e.g. urgency.

The Member State informs Europol of the purpose of the information submitted as well as of any restriction on the use of this information, access or deletion.

Europol decides as soon as applicable, after receipt of this information, whether it will be inserted in a particular file.

Analysis work files may be either a) **general or strategic,** the purpose of which is the analysis of the information concerning any concrete problem or developing or improving the initiatives of the relevant authorities, or b) **operational files** linked with a case, person or organisation for purpose of initiating or assisting the investigation, bilateral or multilateral of international nature in case two or more Member States are concerned.

The information stored in AWFs are related to criminal offences, to related criminal offences, as well as the information on the following categories of persons:

a) suspects and convicts of the criminal offences within comptence of Europol;
b) persons who are reasonably believed that they will commit the criminal offences in competence of Europol;

For the above mentioned categories of persons, the following personal data as well as associated administrative data may be processed:

- Personal details: present and former surnames, present and former forenames, maiden name, father' s name, mother' s name, sex, date of birth, place of birth, nationality, marital status, alias, nickname, assumed or false name, present and former residence and/or domicile;
- Physical description: physical description, distinguishing features (marks, scars, tattoo etc.);
- Identification means: identity documents/driving licence, national identity card/ passport numbers, national identification number/social security number if applicable, visual images, information on appearance, forensic identification information e.g. fingerprints, DNA profile, voice profile, blood group, dental information;
- Occupation and skills: present employment and occupation, former employment and occupation, education, qualifications, skills and other fields of knowledge e.g. language;
- Economic and financial information: financial data (bank accounts, codes, credit cards etc.), cash assets, share holdings/other assets, property data, links with companies, bank and credit contacts, tax position, other information revealing personal management of their financial affairs;
- Behavioural data: lifestyle, routine, movements, places frequented, weapons and other dangerous instruments, danger rating, specific risks e.g. probability of escape, connections with law enforcement authorities, criminal-related traits and profiles, drug abuse;
- Contacts and associates;
- Means of communication used e.g. telephone, fax, pager, internet connections;
- Means of transport, including registration numbers;
- Information related to criminal activities within competence of Europol: previous convictions, suspected involvement in criminal activities, modus operandi, means which were or may be used to prepare/commit crimes, membership of criminal

groups/organizations and the position and role therein, geographical range of criminal activities, material obtained in the course of an investigation e.g. video records;

- References to other databases in which the information on the person is stored: Europol, police, customs agencies, other law enforcement agencies, international organizations, public entities, private entities;
- Information on legal persons (related to above mentioned economic and financial information and information related to criminal activities): designation of a legal person, location, date and place of establishment, administrative registration number, legal form, capital, area of activity, national and international subsidiaries, directors, links with banks.

c) victims of the criminal offences or persons which are reasonably believed to be victims of the criminal offences

For the above mentioned category, the following data may be stored:

- Personal details: present and former surnames, present and former forenames, maiden name, father' s name, mother' s name, sex, date of birth, place of birth, nationality, marital status, alias, nickname, assumed or false name, present and former residence and/or domicile;
- Physical description: physical description, distinguishing features (marks, scars, tattoo etc.);
- Identification means: identity documents/driving licence, national identity card/ passport numbers, national identification number/social security number if applicable;
- Victim identification data;
- Reason for victimization;
- Damage (physical, financial, psychological, other);
- The fact whether anonymity is to be guaranteed;
- The fact whether participation in a court hearing is possible;
- Crime related information provided by or through persons who have been the victims or who could be victims on their relationship with other persons and if necessary, to identify the suspects, convicts or persons who are reasonably believed that they will commit criminal offences

d) persons who might be witnesses in the relevant criminal investigations;

For the above mentioned category, the following data may be stored:

- Personal details: present and former surnames, present and former forenames, maiden name, father' s name, mother' s name, sex, date of birth, place of birth, nationality, marital status, alias, nickname, assumed or false name, present and former residence and/or domicile;
- Physical description: physical description, distinguishing features (marks, scars, tattoo etc.);
- Identification means: identity documents/driving licence, national identity card/ passport numbers, national identification number/social security number if applicable;

- Crime-related information submitted by these persons, the information on their relationship with other persons in AWF, information whether anonymity is guaranteed, the information on any protection guarantee, new identity, information on possibility to take part in court hearings.

e) contacts and associates;

f) persons who can provide the information on the criminal offences

For the above mentioned category, the following data may be stored:

- Personal details: present and former surnames, present and former forenames, maiden name, father' s name, mother' s name, sex, date of birth, place of birth, nationality, marital status, alias, nickname, assumed or false name, present and former residence and/or domicile;
- Physical description: physical description, distinguishing features (marks, scars, tattoo etc.);
- Identification means: identity documents/driving licence, national identity card/ passport numbers, national identification number/social security number if applicable
- Coded personal details, type of information supplied, the information on guarantee of anonymity and protection, new identity, the information on possibility to participate in court hearings, negative experiences, any rewards given.

The AWF contains only the information required for analysis, the one, which is not required for this purpose, is deleted.

The information related to racial or ethnic origin, political opinion, religious or philosophical beliefs or membership in trade unions, health or sex life may only be processed in case of strict necessity for purpose of a particular investigation.

AWFs are opened for analysis purposes and the analyst group is entailed as well, the members of which are: analysts and other Europol staff, liaison officers and/or experts from the Member States. All the members of the analyst group may retrieve the data from the particular AWF, however, the input and modification may be done only by the analysts.

ENUs may, upon their own initiative or upon a request from Europol, provide the information which is required for a certain AWF. In that case, the particular Member State will decide in relation to sensitivity of the data provided, as well as conditions on handling the data and operational use of the provided data. In case this cannot be determined by the Member State, it will be participants of the analysis, who will decide on this matter.

For purpose of consulting and checking if any specific information is contained in a particular AWF, **the index function** has been created. The authorized subjects to consult the AWF via index function are the Director, the Deputy Directors, authorized Europol staff, liaison officers and authorized ENU members.

The query via index function only determines if the concrete piece of information can be found in a particular AWF, no other linked information and connections are available.

The AWF is opened upon an order of the Director whereas the order comprises the following information:

a) The file name;

b) The purpose of the file;
c) The groups of persons in relation to which the data are stored;
d) The nature of the data which are to be stored, in case of the information regarding racial ethnic origin, political opinions, religious, philosophical beliefs, trade union membership, health or sex life only if strictly necessary;
e) The general context related to a decision to open the file;
f) Participants of the analyst group at the time of opening the file;
g) The conditions related to further communication of the personal data stored in the file, procedure of the communication and the recipients;
h) The time limits regarding the storage and examination of the stored data;
i) The method of establishing audit log.

The storage of the information in the AWF is limited to maximum three years, before expiry of this period, the continuation of the data storage may be reviewed and if strictly necessary, the Director may order extension of the storage period for another three years. In that case, the Management Board and the Joint Supervisory Board must be immediatelly informed by the Director.

Upon instruction of the Management Board, the Director shall amend opening order, or to close the AWF, the date of effect of these is decided by the Management Board.

To sum up, AWFs are individual databases which contain the data on criminal offences falling under the competence of Europol and the links among them. Each AWF is an individual file, divided from other AWFs as well as from the Europol Information System. The data submitted into AWFs are up-to-date, they are subject to analysis in the competent analyst group, the outcome of the analysis is forwaded to competent authorities for assistance in particular investigation.

3. Information processing.

Europol informs the particular Member State, or their liaison officer of any information related to the Member State in respect of the criminal offences within competence of Europol, as well as other information and intelligence regarding a serious criminal offence.

Europol, along with the Member States, creates a control mechanism regarding retrievals of the information from the automated data files. The personal data from the Europol files may be retrieved only by the competent authorities and for the designated purpose. However, the data may be used for other purpose subject to prior consultation with the relevant Member State which trasmitted the data, always in accordance with national laws.

The data in Europol automated files shall be stored for any period of time necessary for performance of Europol tasks. The data are reviewed after three years after their input into the system. The data stored in Europol Information System shall be reviewed and deleted by inputting unit. The data stored in Europol data files are reviewed and deleted by Europol.

4. Data protection.

Europol follows the rules related to data protection stipulated in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and of Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987. However, specific provisions of the Europol Decision are not prejudiced.

For purpose of safeguarding relevant data protection, Data Protection Officer is appointed by the Management Board, upon a proposal of the Director.

5. Data security.

Both Europol and Member States are responsible for ensuring data security in relation to automated data processing and in this respect they take measures aimed at:

a) Denial unauthorized persons access to data-processing equipment;
b) Prevention the unauthorized reading, copying, modification or removal of data media;
c) Prevention the unauthorized input of data and the unauthorized inspection, modification or deletion of stored data;
d) Prevention the use of automated data-processing systems by unauthorized persons using data-communication equipment;
e) Ensuring that the authorized persons have access only to authorized data;
f) Ensuring possibility to verify the recipient of the personal data;
g) Ensuring possibility to verify the subject who have made an input of personal data into the automated data-processing system and to verify which personal data have been inserted;
h) Prevention of the unauthorized reading, copying, modification or deletion of personal data during transfer of personal data or during the transport of data media;
i) Ensuring immediate restoration of the systems in case of their interruption;
j) Ensuring correct functioning of the systems and in case of any malfunctions, immediate report of the situation.

6. Confidentiality.

The information which is obtained or exchanged by Europol in accordance with the Europol Decision and which is subject to confidentiality must be protected.

This issue of confidentiality has been regulated by the Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information (hereinafter referred to as Council Decision on confidentiality only) which provides for the security measures which must be taken in relation to the information processed by or through Europol.

In line with Article 10 (1) of the Council Decision on confidentiality, all information processed by or through Europol must have basic protection level, apart from the public information.

Choice of classification level is left upon the Member State which has supplied the information to Europol. In case Europol determines that the classification level should be altered, it contacts the Member State to advise accordingly for purpose of reaching an agreement on the proper level.

The classification level chosen by the Member State may be, at any time, changed by the Member State and in that case, it informs Europol and requests the change to be done.

The classification levels used by Europol:

a) **RESTREINT UE/EU RESTRICTED**
b) **CONFIDENTIEL UE/EU CONFIDENTIAL**
c) **SECRET UE/EU SECRET**
d) **TRÈS SECRET UE/EU TOP SECRET**

The persons which are in charge of data processing at Europol and at the ENUs in the Member States must have undergone special training and security screening.

In this connection, obligation of discretion and confidentiality has been conferred upon the Management Board members, the Director, the Deputy Directors, Europol employees and liaison officers as well as other persons having this obligation.

In case of infringement of the said obligation, each Member State addresses this action as breach of obligation imposed by national law on official or professional secrets or provisions concerning the protection of classified material.

7. Liability.

The provisions of the Europol Decision regarding liability distinguishes **liability for unathorized or incorrect data processing**, **other liability** and **liability regarding Europol' s participation in Joint Investigation teams**.

In case a Member State causes damage to an individual due to legal or factual errors in the data stored or processed, it is liable for this action and the injured party may file an action at a court in jurisdiction of the Member State concerned for purpose of compensation.

If the mentioned errors have been caused due to action of more Member States or Europol, the latter reimburses the Member State which paid the compensation to the injured party.

Europol is also liable for any damage caused in relation to performance of its organs or staff.

If any damage has been caused by Europol staff being a member of the Joint Investigation team in a territory of the particular Member State, it is the latter which will compensate the individual for the damage. Depending on the agreement prepared in relation to operation of the Joint Investigation team, and if not agreed otherwise, Europol reimburss the Member State which paid the compensation to the injured party or entitled person.

Any disputes regarding this matter are settled by the Management Board.

D. Europol role in international police cooperation

Activities of Europol in all the areas of its mandate have been carried out not only among the Europol Member States.[29]

Pursuant to Article 22(1) of the Europol Decision, Europol may establish and maintain cooperative relations with EU bodies[30] in relation to performance of its activitities.

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[29] Europol Member States are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

[30] E.g.: Eurojust, European Anti-Fraud Office (OLAF), Frontex, CEPOL, European Central Bank.

The agreements concluded between Europol and other EU bodies, agencies or institutions can be either operational (these enable the exchange of personal data)[31] or strategic agreements (exchange of personal data is not allowed)[32].

Apart from EU bodies, Europol may, in accordance with Article 23 (1) of the Europol Decision establish and maintain cooperative relations with the third parties if necessary for performance of its tasks. The third parties are the third States and Organisations. The list of the third States and organisations with which Europol shall conclude agreements has been mentioned in the annex of the Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol' s relations with partners, including the exchange of personal data and classified information.[33]

The cooperation between Europol and other entities has been based upon exchange of information, which can be operational, strategic, technical information including personal data and classified information.

The exchange of the information within international police cooperation is carried out either among the ENUs of Europol member states, Europol Headquarters and competent police as well as INTERPOL.

One of the practical examples of the cooperation among the EU Member States as well sa third States are **Joint Investigation Teams** (hereinafter referred to as JIT only).

JIT is an investigation team set up upon an agreement between two or more Member States and/or other parties for limited period of time, the purpose of which is specific.

Legal framework upon which JITs are set up is the following:

a) Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, adopted by the EU Council of Ministers on 29 May 2000 in accordance with article 34 of the Treaty on European Union[34] especially the articles 13, 15, 16 (hereinafter referred to as 2000 MLA Convention)
b) Framework Decision 2002/465/JHA on Joint Investigation Teams of 13 June 2002 (hereinafter referred to as Framework decision on JITs) transposed into legal order of the Slovak Republic by the Act Nr. 301/ 2005 Coll. Code of Criminal procedure in provisions of article 10 par. 9

Each Member State have implemented the Framework decision on JITs in different ways; some States refer to direct applicability of the 2000 MLA Convention in their legal order, some have adopted specific provisions in their relevant laws (i.e. Criminal Code or Code of Criminal procedure).

JITs can be set up not only by the EU Member States but also between the countries outside the European Union in case of existence of legal basis which could be an international legal instrument, bilateral or multilateral agreement or provisions of the national legislation.

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[31] Eurojust

[32] E.g.: OLAF, CEPOL, Frontex

[33] Third States are e.g.: Albania, Australia, Bosnia and Hercegovina, Canada, Colombia, former Yugoslav Republic of Macedonia, Iceland, Moldova, Montenegro, Norway, Russia, Serbia, Switzerland, Turkey, Ukraine, United States of America. The Organisations are: ICPO-INTERPOL, United Nations Office on Drugs and Crime, World Customs Organisation.

[34] Published in the Collection of laws under Nr. 572/2006 Coll.

The legal instruments which are available are the following:

a) The Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (Article 20)35
b) UN Convention against Transnational organised Crime, 15 November 2000 (esp. Article 19)
c) The Convention on mutual assistance and cooperation between customs administrations (Naples II Convention) of 18 December 1997 (esp. Article 24)
d) Police Cooperation Convention for Southeast Europe of 5 May 2006 (Article 27)
e) Agreement on Mutual Legal Assistance between the European Union and the United States of America (Article 5 and its national implementation)

JITs have been an efficient method to tackle serious cross-border organised crime being on increase.

Advantages of JITs may be summarized in the following items:

a) Ability to share information directly between JIT members, no formal request is requested;
b) Ability to request any investigative measures (corecive measures included) to be taken between the team members directly without any need to forward Letter Rogatory;
c) Team members may be present at house searches, interviews also for reasons like language barriers;
d) Possibility for informal exchange of knowledge;
e) Possibility to coordinate the most suitable strategies within the investigation;
f) Europol and Eurojust may also be present and can provide support and assistance;
g) Possibilty of EU, Europol and Eurojust funding.

In line with article 13 par. 1 of the 2000 MLA Convention and article 1 of the Framework decision on JITs, decision on setting up the JIT depends not such much on seriousness of a crime but on its cross-border dimension where joint action is necessary and the most efficient tool.

Suitability to set up a JIT must be considered in each particular case, taking into account individual circumstances, seriousness threshold and other criteria and proposal to create a JIT may be initiated by a Member State, Eurojust or Europol.

The JIT is set up in a Member State where the investigations are expected to be carried out predominantly. The team has its leader and it can be a public prosecutor, a judge or a senior police or customs officer, depending on a particular national legislation.

The basis of a JIT is an Agreement on the Establishment of a Joint Investigation Team and it regulates the following issues:

a) Definition of the parties to the agreement;
b) Purpose of the JIT specifying circumstances of a crime;
c) Operational Action Plan;
d) Period of duration of a JIT, the date of expiry may be extended;

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[35] Published in the Collection of laws under Nr. 165/2005 Coll., esp. the articles 20 – 22. The Slovak Republic, however, excluded by reservation, use of these provisions in relation to JITs.

e) Member States in which the JIT will operate;
f) JIT leader(s) and its members and participants;
g) Evidence;
h) Other: general conditions of the agreement, amendments, internal evaluation, specific arrangements of the agreement.

Both Europol and Eurojust can participate in JITs in accordance with Article 1 (12) of the Framework decision on JITs and also the provisions in the 2000 MLA Convention.

III. INTERPOL

A. General remarks

One of the most significant channels via which police cooperation is carried out, is the channel of the world´s largest international police organization – INTERPOL. Its headquarters - General Secretariat of INTERPOL is located in Lyon, France.

The role of INTERPOL is to provide cooperation between police authorities in member countries for purpose of fight against crime, even in the countries which have not diplomatic relations. It has 190 member countries. Taking into consideration this fact, it must be also noted that police cooperation is executed strictly in accordance with all the existing valid laws of the particular member countries and in the spirit of Universal Declaration of Human Rights. Pursuant to the basic legal document of INTERPOL, the Constitution, "any intervention or activities of a political, military, religious or racial character are strictly prohibited"[36].

INTERPOL has the following priorities and objectives:

a) secure global police information system;
b) 24/7 support and assistance to all 190 member countries provided by the Command and Coordination Centre;
c) innovation, research and capacity building for purpose of increasing the standard of daily work, an example being a new Interpol Global Complex for Innovation in Singapore;
d) INTERPOL databases, which are a unique source of the information assisting in the location and arrest of criminals, in the exchange of the information related to criminal proceedings in member countries, and in criminal analysis work related to domestic and cross-border crimes, are as follows:

- nominal database containing the information on the persons´ criminal history, on the persons who are wanted for purpose of their arrest or location, on the missing persons
- forensic databases, i.e the database of DNA profiles and the database of fingerprints
- database of lost, stolen and forged travel documents
- database of stolen property including stolen vehicles, vessels and works of art
- tools related to the information on firearms and dangerous materials

B. Legal backround

INTERPOL has the status of an international organization recognized by the United Nations and its activities are carried out pursuant to international law.

All its aims are mentioned in the Interpol main legal document which is the Constitution of the International Criminal Police Organization - INTERPOL (hereinafter referred to as Constitution only). The Constitution is an international agreement adopted at 25th General Assembly in 1956 in Vienne by the governments of the then member countries. Membership to this Organisation is

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[36] Available at <http:/www.interpol.int/About-INTERPOL/Legal-materials/The-Constitution>

open to any country which can delegate its official police authority to carry out activities of international police cooperation. The application of a particular country shall be a subject of approval of two-thirds of the voting delegates at the General Assembly of INTERPOL.

In accordance with article 2 paragraph 1 of the Constitution, the aim of this Organization is to "ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of Universal Declaration of Human Rights."[37] Safeguarding the human rights is stressed out in the provision of the article 3 of the Constitution – so called neutrality clause, strictly forbidding any action on INTERPOL side in relation to activities of political, military, religious or racial character. Neutrality clause is applied especially in cases of the diffusions and notices whereby facts of the case are assessed with a view of this condition.

Any amendments of the Constitution are the subject to approval of two-thirds majority of the General Assembly.

Apart from the Constitution, the following fundamental texts are in force regarding INTERPOL work:

a) The General Regulations;
b) Rules of the Procedure of the General Assembly;
c) Rules of the Procedure of the Executive Committee;
d) Financial regulations;
e) Rules governing the processing of information;
f) Rules on the Control of Information and access to INTERPOL ´s Files

C. Role of INTERPOL in international police cooperation

The role of INTERPOL as a significant efficient channel of international police cooperation is carried out by the following tools:

a) 24/7 secure communication, information and data sharing
b) 24/7 access to Interpol databases

The effective tool providing secure and rapid communication is the I-24/7 global police communication system (hereinafter referred to as I-24/7 only). It is both the communication system as well as the network enabling access to INTERPOL databases. The I-24/7 has been installed at all 190 National Central Bureaus and it is being extended to other law enforcement authorities in member countries especially at border crossing points and airports. Thus, authorized law enforcement authorities have an access to the following databases:

a) nominal database;
b) database of stolen motor vehicles;
c) database of lost/stolen travel documents

In case of a positive hit in relation to either wanted person, stolen vehicle or lost/stolen travel document, the concerned INTERPOL country is notified without any delay and further necessary measures are taken depending on the case.

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[37] Available at < http://www.interpol.int/About-INTERPOL/Legal-materials

Apart from these actvities, I-24/7 is used for everyday communication and exchange of messages regarding the cases as well as for accessing the databases which contain millions of records of member countries. The data are available in real time.

Very frequently used is **the database of nominals**. This database contains the records of the persons who are subjects of the diffusions or notices, or who are subjects linked with criminal investigation, or missing persons and dead bodies. It also involves the personal data and criminal history of persons who have been a subject to request within the international police cooperation.

In case it is necessary to initiate the search for wanted persons, the National central Bureau of INTERPOL of the relevant member country does so either in the form of a **diffusion** or in the form of a **notice**.

INTERPOL notices are a very effective tool related to search measures, they serve as an alert when a subject of a notice is being checked in any member country and are issued upon a request of a requesting member country by the General Secretariat of INTERPOL.

The system of INTERPOL notices is a colour-coded system depending on the purpose for which a particular notice is published and is as follows:

a) **Red Notice** – it is issued to seek the location and arrest of a wanted subject with a view of extradition
b) **Green Notice** – it is issued for purpose of warning and intelligence about the persons who have committed criminal offences and are likely to repeat the crimes in other countries
c) **Blue Notice** – it is issued for purpose of collecting any additional information about a person´s identity, location or crime-related activities
d) **Yellow Notice** – it is issued for purpose of location of missing persons or persons who are not able to identify themselves
e) **Black Notice** – this notice is issued for purpose of receiving information on non identified dead bodies
f) **Orange Notice** – serves as a warning of an event, or an object or a process representing serious threat to public safety
g) **Interpol-United Nations Security Council Special Notice** – it is issued for groups and individuals who are the targets of UN Security Council Sancions Committee
h) **Purple Notice** – seeks or provides an information on modus operandi, objects, devices and concealment methods used by criminals

As already mentioned, INTERPOL notices are issued and published upon a request from a requesting member state if all the conditions for processing the information are met. In case a requesting member state requests the General Secretariat so that a notice be issued and published in relation to crime of political, military, religious or racial character which would be contrary to article 3 of the Constitution, the General Secretariat does not issue the requested notice because it would mean violation of the mentioned article 3 of the Constitution. The management of mechanism of requesting, checking and publishing the notices has been regulated in detail in the document INTERPOL ´s Rules on the Processing of Data (hereinafter

referred to as RPD only) so that legality, quality and efficiency of the information as well as protection of personal data are secured.

In line with article 1 paragraph 13 of RPD "Notice means any request for international cooperation or any international alert published by the Organization at the request of a National Central Bureau or an international entity, or at the initiative of the General Secretariat and sent to all Organization´s member countries".[38]

Notices are published by the General Secretariat on behalf of the Organization and it is the General Secretariat which is responsible for:

a) checking the compliance of the information mentioned in the notices with the RPD;
b) recording the published notice in a system so that it is available to the National Central Bureaus and other authorized entities;
c) translating the notice into the official Organization´s languages, assisting the National Central Bureau in case of a positive hit;
d) and safeguarding so that the issued notices comply with the conditions set.

The Genaral Secretariat may not publish the Notice, if determined that the conditions for publishing the relevant Notice are not met, if the Notice would not be of interest of international police cooperation and if publication of such a Notice could prejudice the Organization´s or Member Country´s interest.

On the other hand, the requesting National Central Bureau is responsible and obliged to carry out the following steps:

a) to forward the request for publishing the notice in one of the Organization´s official languages;
b) to ensure quality and lawfulness of the provided data;
c) to ensure so that the data in the request are relevant to international police cooperation;
d) to safeguard compliance with articles 2 and 3 of the Constitution.

After the Notice is published, the National Central Bureaus of the INTERPOL member countries are informed and the data are directly accessible via the relevant system by the authorized entities.

The notice may be withdrawn upon a request of the requesting National Central Bureau or it may be cancelled by the General Secretariat upon a conditions stipulated in article 81 of RPD.[39]

One of the most frequently used type of notice is the Red Notice. It is a tool which is issued for purpose of location and arrest of a wanted subject with a view of extradition and therefore, measures related to restriction of a personal liberty are usually taken depending on the national laws of the country where the subject has been located.

In accordance with article 83 of RPD the Red Notice may be published if the following cumulative conditions are met regarding the minimum criteria:

a) the criminal offence concerned must be a serious ordinary-law crime (it may not be published in relation to the crimes of e.g. controversial nature regarding behavioral or

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[38] Available at < http://www.interpol.int/About-INTERPOL/Legal-materials

[39] Available at < http://www.interpol.int/About-INTERPOL/Legal-materials. The reasons for cancellation of the notice are e.g. the purpose of the notice has been achieved, or NCB does not want to maintain the notice.

cultural norms, the crimes related to family matters, or the crimes of administrative character or private disputes, the list of these offences is non exhaustive)

b) the condition of penalty threshold – if a subject is wanted for purpose of criminal proceedings, the conduct constituting an offence must be punishable by 2 years penalty minimum; in case a subject is wanted for purpose of serving already imposed sentence of imprisonment, its length must be at least 6 months

c) the request for publishing the Red Notice must be of interest of international police cooperation

and the minimum data:

a) on identity particulars and on
b) judicial data, including summary of the facts, charges, laws covering an offence, maximum penalty possible, sentence imposed if applicable, or sentence remaining to be served, reference to valid arrest warrant or any relevant judicial decision

Concerning the later condition mentioned, it must be taken into consideration that a Red Notice may only be requested to be published in case of existence of a national arrest/international arrest warrant warrant or any relevant judicial decision.

In relation to the request of a National Central Bureau for publishing a Red Notice, requesting National Central Bureau must provide the following assurances:

a) the judicial authority which has issued the arrest warrant has the necessary power to do so;
b) the relevant authority responsible for extradition matters has been contacted and it has provided assurances that in case of location and arrest of the subject, extradition will be sought;
c) if the arrest warrant has not been issued by the judicial authority, the laws of the relevant country allows for an appeal before the relevant judicial authority.

In case the subject of the Red Notice is located, the following measures will be taken:

a) the country where the subject has been located immediatelly informs the requesting National Central Bureau and the General Secretariat and carries out all the measures in accordance with domestic laws for purpose of avoiding the escape, e.g. provisional arrest;
b) the requesting National Central Bureau acts without any delay after receiving the information on location of the wanted subject, especially it transmits any necessary data and the documents requested by the country where the wanted subject has been located;
c) the General Secretariat provides any necessary assistance to the requesting National Central Bureau, e.g. provide for transmitting the requested documents if any problems occur at the side of the requesting National Central Bureau

Another tool of INTERPOL related to search for a subject is the **INTERPOL diffusion** which is a standardized request for cooperation for either of the following purposes:

a) arrest or detention of a convict or a suspect;
b) location of a subject;
c) obtaining the information on a subject;

d) identification purpose;
e) warning about a persons´s criminal actvities;
f) information purpose.

Diffusions are used if the request does not meet the requested criteria for publishing a notice or if the request for cooperation is to be limited to selected National Central Bureaus.

D. Role of INTERPOL in EU police cooperation

Role of INTERPOL within the agenda of European criminal law is related to the following areas:

a) European arrest warrant;
b) Exchange of the information;
c) Assistance in relation to Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentence or measures involving deprivation of liberty for the purpose of their enforcement in the European Union – in the Slovak Republic.

1. European Arrest Warrant

Taking into consideration the agenda of **European arrest warrant,** in accordance with **article 10 par. 3 of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between the Member States** (hereinafter referred to as Framework decision on European arrest warrant only), in case Schengen Information System may not be used, European arrest warrant **may be transmitted also via the channel of INTERPOL.**

The distribution of competences among Interpol and Sirene in the area of European arrest warrant has been left upon a decision of a particular country.[40]

INTERPOL channel is used for transmitting the European arrest warrant in the EU non-Schengen countries. At present, these countries are Cyprus, Ireland and Croatia.[41]

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[40] In the Slovak Republic, the distribution of the competences between INTERPOL and Sirene has been regulated by the Order of the Director of the Bureau of International Police Cooperation of the Presidium of the Police Force Nr. 3/2009 on the distribution of the agenda in relation to European arrest warrant and to the exchange of the information between the National Central Bureau of INTERPOL of the Bureau of International Police Cooperation of the Presidium of the Police Force and the National Sirene office of the Bureau of International Police Cooperation of the Presidium of the Police Force and unified procedures regarding assistance provided by the police attaches, and it is regulated as follows:
INTERPOL: EU member countries not belonging to Schengen area (Cyprus, Ireland, Croatia) and non EU member countries (Switzerland, Norway, Iceland, Liechtenstein) – after confirmation of the record in SIS
Sirene: EU member countries belonging to Schengen area (Austria, Germany, Sweden, Finland, Denmark, the Netherlands, Belgium, Luxembourg, Poland, Slovakia, Czech Republic, Hungary, Portugal, Spain, France, Italy, Latvia, Lithuania, Estonia, Malta, Slovenia, Greece, United Kingdom, Romania, Bulgaria) and non EU member countries (Switzerland, Norway, Iceland, Liechtenstein) – record in SIS only

[41] In the Slovak Republic, the activities of the National Central Bureau of INTERPOL are regulated in the Regulation of the Minister of Interior Nr. 51/2009 on international police cooperation carried out via National Central Bureau of INTERPOL.

Before the European arrest warrant is transmitted to a respective country, search for a wanted subject is commenced either in the form of a diffusion or a notice in the INTERPOL system in the recipient countries which do not belong to Schengen area.

The most important mandatory information which must be inserted for purpose of search is the following:

a) name and surname
b) date of birth
c) facts of the case
d) either maximum penalty which might be imposed in case of a suspect or sentence imposed in case of a convict
e) legal qualification of the act
f) information regarding the issued European arrest warrant, i.e. number of the European arrest warrant, issuing judicial authority, date and place of issuance

After the necessary administrative compliance checks carried out at INTERPOL General Secretariat, the data on the wanted subject are immediatelly visible in INTERPOL system and they are accessible to recipient INTERPOL member countries, i.e. to National Central Bureau of INTERPOL of a particular country and if access has been granted also to other competent authorities (police, immigration service) this information is available in real time.

In case of location of the subject in the Slovak Republic against whom European arrest warrant has been issued, necessary measures are adopted and procedures are taken in accordance with the relevant provisions of the Act Nr. 154/2010 on European arrest warrant as amended.

In case of location of the subject abroad against whom European arrest warrant has been issued by the competent judicial authority in the Slovak Republic, National Central Bureau of INTERPOL Bratislava is contacted.

After the proceedings on decision on execution of the European arrest warrant are terminated and the final decision on execution of the European arrest warrant is taken, the practical issues related to handing over of the subject are agreed via INTERPOL channel and INTERPOL staff also personally take part in the procedure of handing over.

2. Exchange of the information

INTERPOL channel is used for purpose of exchange of criminal information among police and judicial authorities within criminal proceedings. Upon the outcomes of this information exchange, European arrest warrant might be issued.

3. Assistance in relation to Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentence or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (hereinafter referred to as Framework Decision on mutual recognition to judgements only)

The purpose of the Framework Decision on mutual recognition to judgements is to establish the rules in accordance with which a Member State is to recognize a judgement and enforce a sentence for purpose of social rehabilitation of a sentenced person.

The Member State where the judgement has been delivered is the issuing State and the Member State to which the judgement is sent for purpose of its recognition and enforcement of the sentence is the executing State. The sentence is either custodial sentence or a measure involving deprivation of liberty.

In the Slovak Republic, the Framework Decision on mutual recognition to judgements has been transposed in the Act N 549/2011 Coll. on recognition and execution of judgements in criminal matters imposing cusiodial sentence in the European Union and on amendment of Act N 221/2006 Coll. on execution of custody as amended (hereinafter referred to as Act on recognition and execution of judgements only) .

In accordance with article 24 par. 1 of the mentioned Act on recognition and execution of judgements in case the sentenced person is in the territory of the Slovak Republic, he or she must be handed over to the executing State no later than 30 days after the final decision of the executing State on the recognition and execution of the judgement has been taken; on behalf of the Slovak Republic the details of the handing over shall be arranged by the National Central Bureau of INTERPOL.

In practice, National Central Bureau of INTERPOL receives the necessary documents from the competent judicial authority in the Slovak Republic and immediatelly contacts its partner in a particular Member State for purpose of arranging the date and place of handing over. After all the necessary practical and logistical issues have been settled, the sentenced person is handed over to competent authorities from the executing State.