



STATUTORY INSTRUMENTS.

S.I. No. 38 of 2022



EUROPEAN UNION (CRIMINAL JUSTICE (MUTUAL ASSISTANCE)
ACT 2008) (AMENDMENT) REGULATIONS 2022

S.I. No. 38 of 2022

EUROPEAN UNION (CRIMINAL JUSTICE (MUTUAL ASSISTANCE)
ACT 2008) (AMENDMENT) REGULATIONS 2022

I, HELEN MCENTEE, Minister for Justice, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Titles VIII and XI of Part Three of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, done at Brussels and London on 30 December 2020¹, hereby make the following regulations:

1. (1) These Regulations may be cited as the European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022.

(2) These Regulations shall come into operation on the 31st day of January 2022.

2. In these Regulations, “Act of 2008” means the Criminal Justice (Mutual Assistance) Act 2008 (No. 7 of 2008).

3. Section 2 of the Act of 2008 is amended -

(a) in subsection (1) -

(i) in the definition of “international instrument”, by the insertion of the following paragraph after paragraph (ge):

“(gf) Titles VIII and XI of Part Three of the Trade and Cooperation Agreement”,

(ii) in the definition of “offence”, by the substitution of the following paragraph for paragraph (c):

“(c) does not, other than in relation to a request for mutual assistance made under Title XI of Part Three of the Trade and Cooperation Agreement, include a political offence;”, and

(iii) by the insertion of the following definition:

“ ‘Trade and Cooperation Agreement’ means the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of

¹ OJ No. L 444, 31.12.2020, p. 14

the other part, done at Brussels and London on 30 December 2020¹,”

and

- (b) in subsection (6), by the insertion of the following paragraph after paragraph (gc):

“(gd) Schedule 7D sets out the English text of Titles VIII and XI of Part Three of the Trade and Cooperation Agreement.”.

4. Section 15(2)(c) of the Act of 2008 is amended by the substitution of the following subparagraph for subparagraph (iv):

“(iv) in the case of request from a designated state other than the United Kingdom, the maximum period of imprisonment under the law of the designated state by which the offence is punishable; and”.

5. Section 31 of the Act of 2008 is amended, in the definition of “external freezing order”, by the substitution of the following paragraph for paragraph (a):

“(a) taken provisionally by a competent judicial authority of -
(i) a designated state in criminal proceedings, or
(ii) the United Kingdom in a criminal investigation,
to prevent the destruction, transformation, moving, transfer, disposal or use of specified property in the State that could be subject to confiscation or be evidence in those proceedings, and”.

6. Section 35 of the Act of 2008 is amended by the insertion of the following subsection after subsection (3):

“(3A) An application for the enforcement of an external freezing order from the United Kingdom shall be dealt with -

- (a) as soon as possible, and
(b) where the designated state informs the Central Authority that there are legitimate grounds to believe that the property specified in the order will be immediately removed or destroyed, where practicable, within 96 hours of receipt of the order, the statement referred to in section 34(2)(b) and any other information required by Title XI of Part Three of the Trade and Cooperation Agreement.”.

7. Section 46(1)(e) of the Act of 2008 is amended by the substitution of “a member state or the United Kingdom” for “a member state”.

8. Section 51B of the Act of 2008 is amended -

(a) in subsection (1) -

(i) in paragraph (b), by the substitution of “where the designated state concerned is a state other than the United Kingdom, there is immunity or privilege” for “there is immunity or privilege”, and

(ii) in paragraph (e), by the substitution of “where the designated state concerned is a state other than the United Kingdom, the criminal conduct concerned” for “the criminal conduct concerned”,

and

(b) in subsection (3), by the substitution of, “Where the designated state concerned is a state other than the United Kingdom, the High Court” for “The High Court”.

9. Section 51D of the Act of 2008 is amended by the insertion of the following subsection after subsection (3):

“(4) Where the external confiscation order was made in the United Kingdom, the substantive grounds for making the external confiscation order may be reviewed only by a judicial authority in that state.”.

10. Section 52 of the Act of 2008 is amended -

(a) in subsection (5), by the substitution of “with a confiscation co-operation order in respect of an external confiscation order transmitted by or on behalf of a court in a designated state other than the United Kingdom” for “with a confiscation co-operation order”, and

(b) by the insertion of the following subsection after subsection (5):

“(5A) A defendant shall not be imprisoned for non-compliance with a confiscation co-operation order in respect of an external confiscation order transmitted by or on behalf of a court in the United Kingdom unless the competent authority in United Kingdom consents to such imprisonment.”.

11. Section 53(8) of the Act of 2008 is amended by the substitution of “that is a member state or the United Kingdom” for “that is a member state”.

12. The Act of 2008 is amended by the insertion after Schedule 7C of Schedule 7D as set out in the Schedule to these Regulations.

Schedule

“SCHEDULE 7D

Text of Titles VIII and XI of Part Three of the Trade and Cooperation Agreement

TITLE VIII
MUTUAL ASSISTANCE

Article 633

Objective

1. The objective of this Title is to supplement the provisions, and facilitate the application between Member States, on the one side, and the United Kingdom, on the other side, of:

- (a) the European Convention on Mutual Assistance in Criminal Matters, done at Strasbourg on 20 April 1959 (the "European Mutual Assistance Convention");
- (b) the Additional Protocol to the European Mutual Assistance Convention, done at Strasbourg on 17 March 1978; and
- (c) the Second Additional Protocol to the European Mutual Assistance Convention, done at Strasbourg on 8 November 2001.

2. This Title is without prejudice to the provisions of Title IX, which takes precedence over this Title.

Article 634

Definition of competent authority

For the purposes of this Title, "competent authority" means any authority which is competent to send or receive requests for mutual assistance in accordance with the provisions of the European Mutual Assistance Convention and its Protocols and as defined by States in their respective declarations addressed to the Secretary General of the Council of Europe. "Competent authority" also includes Union bodies notified in accordance with point (d) of Article 690; with regard to such Union bodies, the provisions of this Title apply accordingly.

*Article 635***Form for a request for mutual assistance**

1. The Specialised Committee on Law Enforcement and Judicial Cooperation shall undertake to establish a standard form for requests for mutual assistance by adopting an annex to this Agreement.
2. If the Specialised Committee on Law Enforcement and Judicial Cooperation has adopted a decision in accordance with paragraph 1, requests for mutual assistance shall be made using the standard form.
3. The Specialised Committee on Law Enforcement and Judicial Cooperation may amend the standard form for requests for mutual assistance as may be necessary.

*Article 636***Conditions for a request for mutual assistance**

1. The competent authority of the requesting State may only make a request for mutual assistance if it is satisfied that the following conditions are met:
 - (a) the request is necessary and proportionate for the purpose of the proceedings, taking into account the rights of the suspected or accused person; and
 - (b) the investigative measure or investigative measures indicated in the request could have been ordered under the same conditions in a similar domestic case.
2. The requested State may consult the requesting State if the competent authority of the requested State is of the view that the conditions in paragraph 1 are not met. After the consultation, the competent authority of the requesting State may decide to withdraw the request for mutual assistance.

*Article 637***Recourse to a different type of investigative measure**

1. Wherever possible, the competent authority of the requested State shall consider recourse to an investigative measure other than the measure indicated in the request for mutual assistance if:
 - (a) the investigative measure indicated in the request does not exist under the law of the requested State; or
 - (b) the investigative measure indicated in the request would not be available in a similar domestic case.
2. Without prejudice to the grounds for refusal available under the European Mutual Assistance Convention and its Protocols and under Article 639, paragraph 1 of this Article does not apply to the following investigative measures, which shall always be available under the law of the requested State:

- (a) the obtaining of information contained in databases held by police or judicial authorities that is directly accessible by the competent authority of the requested State in the framework of criminal proceedings;
- (b) the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the requested State;
- (c) any non-coercive investigative measure as defined under the law of the requested State; and
- (d) the identification of persons holding a subscription to a specified phone number or IP address.

3. The competent authority of the requested State may also have recourse to an investigative measure other than the measure indicated in the request for mutual assistance if the investigative measure selected by the competent authority of the requested State would achieve the same result by less intrusive means than the investigative measure indicated in the request.

4. If the competent authority of the requested State decides to have recourse to a measure other than that indicated in the request for mutual assistance as referred to in paragraph 1 or 3, it shall first inform the competent authority of the requesting State, which may decide to withdraw or supplement the request.

5. If the investigative measure indicated in the request does not exist under the law of the requested State or would not be available in a similar domestic case, and there is no other investigative measure which would have the same result as the investigative measure requested, the competent authority of the requested State shall inform the competent authority of the requesting State that it is not possible to provide the assistance requested.

Article 638

Obligation to inform

The competent authority of the requested State shall inform the competent authority of the requesting State by any means and without undue delay if:

- (a) it is impossible to execute the request for mutual assistance due to the fact that the request is incomplete or manifestly incorrect; or
- (b) the competent authority of the requested State, in the course of the execution of the request for mutual assistance, considers without further enquiries that it may be appropriate to carry out investigative measures not initially foreseen, or which could not be specified when the request for mutual assistance was made, in order to enable the competent authority of the requesting State to take further action in the specific case.

*Article 639***Ne bis in idem**

Mutual assistance may be refused, in addition to the grounds for refusal provided for under the European Mutual Assistance Convention and its Protocols, on the ground that the person in respect of whom the assistance is requested and who is subject to criminal investigations, prosecutions or other proceedings, including judicial proceedings, in the requesting State, has been finally judged by another State in respect of the same acts, provided that, if a penalty has been imposed, it has been enforced, is in the process of being enforced or can no longer be enforced under the law of the sentencing State.

*Article 640***Time limits**

1. The requested State shall decide whether to execute the request for mutual assistance as soon as possible and in any event no later than 45 days after the receipt of the request and shall inform the requesting State of its decision.
2. A request for mutual assistance shall be executed as soon as possible and in any event no later than 90 days after the decision referred to in paragraph 1 of this Article or after the consultation referred to in Article 636(2) has taken place.
3. If it is indicated in the request for mutual assistance that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter time limit than that provided for in paragraph 1 or 2 is necessary, or if it is indicated in the request that a measure for mutual assistance is to be carried out on a specific date, the requested State shall take as full account as possible of that requirement.
4. If a request for mutual assistance is made to take provisional measures pursuant to Article 24 of the Second Additional Protocol to the European Mutual Assistance Convention, the competent authority of the requested State shall decide on the provisional measure, and shall communicate that decision to the competent authority of the requesting State, as soon as possible after the receipt of the request. Before lifting any provisional measure taken pursuant to this Article, the competent authority of the requested State, wherever possible, shall give the competent authority of the requesting State an opportunity to present its reasons in favour of continuing the measure.
5. If in a specific case, the time limit provided for in paragraph 1 or 2, or the time limit or specific date referred to in paragraph 3 cannot be met, or the decision on taking provisional measures in accordance with paragraph 4 is delayed, the competent authority of the requested State shall, without delay, inform the competent authority of the requesting State by any means, giving the reasons for the delay, and shall consult with the competent authority of the requesting State on the appropriate timing to execute the request for mutual assistance.
6. The time limits referred to in this Article do not apply if the request for mutual assistance is made in relation to any of the following offences and

infringements that fall within scope of the European Mutual Assistance Convention and its Protocols, as defined in the law of the requesting State:

- (a) speeding, if no injury or death was caused to another person and if the excess speed was not significant;
- (b) failure to wear a seatbelt;
- (c) failure to stop at a red light or other mandatory stop signal;
- (d) failure to wear a safety helmet; or
- (e) using a forbidden lane (such as the forbidden use of an emergency lane, a lane reserved for public transport, or a lane closed down for road works).

7. The Specialised Committee on Law Enforcement and Judicial Cooperation shall keep the operation of paragraph 6 under review. It shall undertake to set time limits for the requests to which paragraph 6 applies within three years of the entry into force of this Agreement, taking into account the volume of requests. It may also decide that paragraph 6 shall no longer apply.

Article 641

Transmission of requests for mutual assistance

1. In addition to the channels of communication provided for under the European Mutual Assistance Convention and its Protocols, if direct transmission is provided for under their respective provisions, requests for mutual assistance may also be transmitted directly by public prosecutors in the United Kingdom to competent authorities of the Member States.

2. In addition to the channels of communication provided for under the European Mutual Assistance Convention and its Protocols, in urgent cases, any request for mutual assistance, as well as spontaneous information, may be transmitted via Europol or Eurojust, in line with the provisions in the respective Titles of this Agreement.

Article 642

Joint Investigation Teams

If the competent authorities of States set up a Joint Investigation Team, the relationship between Member States within the Joint Investigation Team shall be governed by Union law, notwithstanding the legal basis referred to in the Agreement on the setting up of the Joint Investigation Team.

TITLE XI
FREEZING AND CONFISCATION

Article 656

Objective and principles of cooperation

1. The objective of this Title is to provide for cooperation between the United Kingdom, on the one side, and the Member States, on the other side, to the widest extent possible for the purposes of investigations and proceedings aimed at the freezing of property with a view to subsequent confiscation thereof and investigations and proceedings aimed at the confiscation of property within the framework of proceedings in criminal matters. This does not preclude other cooperation pursuant to Article 665(5) and (6). This Title also provides for cooperation with Union bodies designated by the Union for the purposes of this Title.
2. Each State shall comply, under the conditions provided for in this Title, with requests from another State:
 - (a) for the confiscation of specific items of property, as well as for the confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;
 - (b) for investigative assistance and provisional measures with a view to either form of confiscation referred to in point (a).
3. Investigative assistance and provisional measures sought under point (b) of paragraph 2 shall be carried out as permitted by and in accordance with the domestic law of the requested State. Where the request concerning one of these measures specifies formalities or procedures which are necessary under the domestic law of the requesting State, even if unfamiliar to the requested State, the latter shall comply with such requests to the extent that the action sought is not contrary to the fundamental principles of its domestic law.
4. The requested State shall ensure that the requests coming from another State to identify, trace, freeze or seize the proceeds and instrumentalities, receive the same priority as those made in the framework of domestic procedures.
5. When requesting confiscation, investigative assistance and provisional measures for the purposes of confiscation, the requesting State shall ensure that the principles of necessity and proportionality are respected.
6. The provisions of this Title apply in place of the "international cooperation" Chapters of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, done at Warsaw on 16 May 2005 (the "2005 Convention") and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg on 8 November 1990 (the "1990 Convention"). Article 657 of this Agreement replaces the corresponding definitions in Article 1 of the 2005 Convention and Article 1 of the 1990 Convention. The provisions of this Title do not affect the States'

obligations under the other provisions of the 2005 Convention and the 1990 Convention.

Article 657

Definitions

For the purposes of this Title, the following definitions apply:

- (a) "confiscation" means a penalty or a measure ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of property;
- (b) "freezing" or "seizure" means temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- (c) "instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;
- (d) "judicial authority" means an authority that is, under domestic law, a judge, a court or a public prosecutor; a public prosecutor is considered a judicial authority only to the extent that domestic law so provides;
- (e) "proceeds" means any economic benefit, derived from or obtained, directly or indirectly, from criminal offences, or an amount of money equivalent to that economic benefit; it may consist of any property as defined in this Article;
- (f) "property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property, which the requesting State considers to be:
 - (i) the proceeds of a criminal offence, or its equivalent, whether the full amount of the value of such proceeds or only part of the value of such proceeds;
 - (ii) the instrumentalities of a criminal offence, or the value of such instrumentalities;
 - (iii) subject to confiscation under any other provisions relating to powers of confiscation under the law of the requesting State, following proceedings in relation to a criminal offence, including third party confiscation, extended confiscation and confiscation without final conviction.

*Article 658***Obligation to assist**

The States shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of those instrumentalities, proceeds or other property.

*Article 659***Requests for information on bank accounts and safe deposit boxes**

1. The requested State shall, under the conditions set out in this Article, take the measures necessary to determine, in answer to a request sent by another State, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the details of the identified accounts. These details shall in particular include the name of the customer account holder and the IBAN number, and, in the case of safe deposit boxes, the name of the lessee or a unique identification number.
2. The obligation set out in paragraph 1 applies only to the extent that the information is in the possession of the bank keeping the account.
3. In addition to the requirements of Article 680, the requesting State shall, in the request:
 - (a) indicate why it considers that the requested information is likely to be of substantial value for the purposes of the criminal investigation into the offence;
 - (b) state on what grounds it presumes that banks in the requested State hold the account and specify, to the widest extent possible, which banks and accounts may be involved; and
 - (c) include any additional information available which may facilitate the execution of the request.
4. The United Kingdom and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that this Article will be extended to accounts held in non-bank financial institutions. Such notifications may be made subject to the principle of reciprocity.

*Article 660***Requests for information on banking transactions**

1. On request by another State, the requested State shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.

2. The obligation set out in paragraph 1 applies only to the extent that the information is in the possession of the bank keeping the account.

3. In addition to the requirements of Article 680, the requesting State shall indicate in its request why it considers the requested information relevant for the purposes of the criminal investigation into the offence.

4. The requested State may make the execution of such a request dependent on the same conditions as it applies in respect of requests for search and seizure.

5. The United Kingdom and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that this Article will be extended to accounts held in non-bank financial institutions. Such notifications may be made subject to the principle of reciprocity.

Article 661

Requests for the monitoring of banking transactions

1. The requested State shall ensure that, at the request of another State, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and to communicate the results of the monitoring to the requesting State.

2. In addition to the requirements of Article 680, the requesting State shall indicate in its request why it considers the requested information relevant for the purposes of the criminal investigation into the offence.

3. The decision to monitor shall be taken in each individual case by the competent authorities of the requested State, in accordance with its domestic law.

4. The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested States.

5. The United Kingdom and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that this Article will be extended to accounts held in non-bank financial institutions. Such notifications may be made subject to the principle of reciprocity.

Article 662

Spontaneous information

Without prejudice to its own investigations or proceedings, a State may without prior request forward to another State information on instrumentalities, proceeds and other property liable to confiscation, where it considers that the disclosure of such information might assist the receiving State in initiating or carrying out investigations or proceedings or might lead to a request by that State under this Title.

*Article 663***Obligation to take provisional measures**

1. At the request of another State which has instituted a criminal investigation or proceedings, or an investigation or proceedings for the purposes of confiscation, the requested State shall take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might satisfy the request.
2. A State which has received a request for confiscation pursuant to Article 665 shall, if so requested, take the measures referred to in paragraph 1 of this Article in respect of any property which is the subject of the request or which might satisfy the request.
3. Where a request is received under this Article, the requested State shall take all necessary measures to comply with the request without delay and with the same speed and priority as for a similar domestic case and send confirmation without delay and by any means of producing a written record to the requesting State.
4. Where the requesting State states that immediate freezing is necessary since there are legitimate grounds to believe that the property in question will immediately be removed or destroyed, the requested State shall take all necessary measures to comply with the request within 96 hours of receiving the request and send confirmation to the requesting State by any means of producing a written record and without delay.
5. Where the requested State is unable to comply with the time limits under paragraph 4, the requested State shall immediately inform the requesting State, and consult with the requesting State on the appropriate next steps.
6. Any expiration of the time limits under paragraph 4 does not extinguish the requirements placed on the requested State by this Article.

*Article 664***Execution of provisional measures**

1. After the execution of the provisional measures requested in conformity with Article 663(1), the requesting State shall provide spontaneously and as soon as possible to the requested State all information which may question or modify the extent of those measures. The requesting State shall also provide without delay all complementary information required by the requested State and which is necessary for the implementation of and the follow-up to the provisional measures.
2. Before lifting any provisional measure taken pursuant to Article 663, the requested State shall, wherever possible, give the requesting State an opportunity to present its reasons in favour of continuing the measure.

*Article 665***Obligation to confiscate**

1. The State which has received a request for confiscation of property situated in its territory shall:

- (a) enforce a confiscation order made by a court of the requesting State in relation to such property; or
- (b) submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, enforce it.

2. For the purposes of point (b) of paragraph 1, the States shall, whenever necessary, have competence to institute confiscation proceedings under their own domestic law.

3. Paragraph 1 also applies to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property against which the confiscation can be enforced is located in the requested State. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested State shall, if payment is not obtained, realise the claim on any property available for that purpose.

4. If a request for confiscation concerns a specific item of property, the requesting State and requested State may agree that the requested State may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.

5. A State shall cooperate to the widest extent possible under its domestic law with a State requesting the execution of measures equivalent to confiscation of property, where the request has not been issued in the framework of proceedings in criminal matters, in so far as such measures are ordered by a judicial authority of the requesting State in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or:

- (a) other property into which the proceeds have been transformed or converted;
- (b) property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds; or
- (c) income or other benefit derived from the proceeds, from property into which proceeds of crime have been transformed or converted or from property with which the proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds.

6. The measures referred to in paragraph 5 include measures which allow the seizure, detention and forfeiture of property and assets by means of applications to civil courts.

7. The requested State shall take the decision on the execution of the confiscation order without delay, and, without prejudice to paragraph 8 of this Article, no later than 45 days after receiving the request. The requested State shall send confirmation to the requesting State by any means of producing a written record and without delay. Unless grounds for postponement under

Article 672 exist, the requested State shall take the concrete measures necessary to execute the confiscation order without delay and, at least, with the same speed and priority as for a similar domestic case.

8. Where the requested State is unable to comply with the time limit under paragraph 7, the requested State shall immediately inform the requesting State, and consult with the requesting State on the appropriate next steps.

9. Any expiration of the time limit under paragraph 7 does not extinguish the requirements placed on the requested State by this Article.

Article 666

Execution of confiscation

1. The procedures for obtaining and enforcing the confiscation under Article 665 shall be governed by the domestic law of the requested State.

2. The requested State shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision issued by a court of the requesting State or in so far as such conviction or judicial decision is implicitly based on them.

3. If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested State shall convert the amount thereof into the currency of that State at the rate of exchange applicable at the time when the decision to enforce the confiscation is taken.

Article 667

Confiscated property

1. Subject to paragraphs 2 and 3 of this Article, property confiscated pursuant to Articles 665 and 666 shall be disposed of by the requested State in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State pursuant to Article 665, the requested State shall, to the extent permitted by its domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting State so that it can give compensation to the victims of the crime or return such property to their legitimate owners.

3. Where acting on the request made by another State in accordance with Article 665, and after having taken into account the right of a victim to restitution or compensation of property pursuant to paragraph 2 of this Article, the requested State shall dispose of the money obtained as a result of the execution of a confiscation order as follows:

(a) if the amount is equal to or less than EUR 10 000, the amount shall accrue to the requested State; or

(b) if the amount is greater than EUR 10 000, the requested State shall transfer 50 % of the amount recovered to the requesting State.

4. Notwithstanding paragraph 3, the requesting State and requested State may, on a case-by-case basis, give special consideration to concluding other

such agreements or arrangements on disposal of property as they deem appropriate.

Article 668

Right of enforcement and maximum amount of confiscation

1. A request for confiscation made under Article 665 does not affect the right of the requesting State to enforce the confiscation order itself.
2. Nothing in this Title shall be interpreted as permitting the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a State finds that this might occur, the States concerned shall enter into consultations to avoid such an effect.

Article 669

Imprisonment in default

The requested State shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 665 without the consent of the requesting State.

Article 670

Grounds for refusal

1. Cooperation under this Title may be refused if:
 - (a) the requested State considers that executing the request would be contrary to the principle of *ne bis in idem*; or
 - (b) the offence to which the request relates does not constitute an offence under the domestic law of the requested State if committed within its jurisdiction; however, this ground for refusal applies to cooperation under Articles 658 to 662 only in so far as the assistance sought involves coercive action.
2. The United Kingdom and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that, on the basis of reciprocity, the condition of double criminality referred to in point (b) of paragraph 1 of this Article will not be applied provided that the offence giving rise to the request is:
 - (a) one of the offences listed in Article 599(5), as defined by the law of the requesting State; and
 - (b) punishable by the requesting State by a custodial sentence or a detention order for a maximum period of at least three years.
3. Cooperation under Articles 658 to 662, in so far as the assistance sought involves coercive action, and under Articles 663 and 664 may also be refused if the measures sought could not be taken under the domestic law of the requested State for the purposes of investigations or proceedings in a similar domestic case.

4. Where the domestic law of the requested State so requires, cooperation under Articles 658 to 662, in so far as the assistance sought involves coercive action, and under Articles 663 and 664 may also be refused if the measures sought or any other measures having similar effects would not be permitted under the domestic law of the requesting State, or, as regards the competent authorities of the requesting State, if the request is not authorised by a judicial authority acting in relation to criminal offences.
5. Cooperation under Articles 665 to 669 may also be refused if:
 - (a) under the domestic law of the requested State, confiscation is not provided for in respect of the type of offence to which the request relates;
 - (b) without prejudice to the obligation pursuant to Article 665(3), it would be contrary to the principles of the domestic law of the requested State concerning the limits of confiscation in respect of the relationship between an offence and:
 - (i) an economic advantage that might be qualified as its proceeds; or
 - (ii) property that might be qualified as its instrumentalities;
 - (c) under the domestic law of the requested State, confiscation may no longer be imposed or enforced because of the lapse of time;
 - (d) without prejudice to Article 665(5) and (6), the request does not relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed, on the basis of which the confiscation has been ordered or is sought;
 - (e) confiscation is either not enforceable in the requesting State, or it is still subject to ordinary means of appeal; or
 - (f) the request relates to a confiscation order resulting from a decision rendered in absentia of the person against whom the order was issued and, in the opinion of the requested State, the proceedings conducted by the requesting State leading to such decision did not satisfy the minimum rights of defence recognised as due to everyone against whom a criminal charge is made.
6. For the purposes of point (f) of paragraph 5 a decision is not considered to have been rendered in absentia if:
 - (a) it has been confirmed or pronounced after opposition by the person concerned; or
 - (b) it has been rendered on appeal, provided that the appeal was lodged by the person concerned.

7. When considering, for the purposes of point (f) of paragraph 5, whether the minimum rights of defence have been satisfied, the requested State shall take into account the fact that the person concerned has deliberately sought to evade justice or the fact that that person, having had the possibility of lodging a legal remedy against the decision made in absentia, elected not to do so. The same applies where the person concerned, having been duly served with the summons to appear, elected not to do so nor to ask for adjournment.

8. The States shall not invoke bank secrecy as a ground to refuse any cooperation under this Title. Where its domestic law so requires, a requested State may require that a request for cooperation which would involve the lifting of bank secrecy be authorised by a judicial authority acting in relation to criminal offences.

9. The requested State shall not invoke the fact that:

- (a) the person under investigation or subject to a confiscation order by the authorities of the requesting State is a legal person as an obstacle to affording any cooperation under this Title;
- (b) the natural person against whom an order of confiscation of proceeds has been issued has died or a legal person against whom an order of confiscation of proceeds has been issued has subsequently been dissolved as an obstacle to affording assistance in accordance with point (a) of Article 665(1); or
- (c) the person under investigation or subject to a confiscation order by the authorities of the requesting State is mentioned in the request both as the author of the underlying criminal offence and of the offence of money laundering as an obstacle to affording any cooperation under this Title.

Article 671

Consultation and information

Where there are substantial grounds for believing that the execution of a freezing or confiscation order would entail a real risk for the protection of fundamental rights, the requested State shall, before it decides on the execution of the freezing or confiscation order, consult the requesting State and may require any necessary information to be provided.

Article 672

Postponement

The requested State may postpone action on a request if such action would prejudice investigations or proceedings by its authorities.

Article 673

Partial or conditional granting of a request

Before refusing or postponing cooperation under this Title, the requested State shall, where appropriate after having consulted the requesting State, consider

whether the request may be granted partially or subject to such conditions as it deems necessary.

Article 674

Notification of documents

1. The States shall afford each other the widest measure of mutual assistance in the serving of judicial documents to persons affected by provisional measures and confiscation.
2. Nothing in this Article is intended to interfere with:
 - (a) the possibility of sending judicial documents, by postal channels, directly to persons abroad; and
 - (b) the possibility for judicial officers, officials or other competent authorities of the State of origin to effect service of judicial documents directly through the consular authorities of that State or through the judicial authorities, including judicial officers and officials, or other competent authorities of the State of destination.
3. When serving judicial documents to persons abroad affected by provisional measures or confiscation orders issued in the sending State, that State shall indicate what legal remedies are available under its domestic law to such persons.

Article 675

Recognition of foreign decisions

1. When dealing with a request for cooperation under Articles 663 to 669 the requested State shall recognise any decision issued by a judicial authority taken in the requesting State regarding rights claimed by third parties.
2. Recognition may be refused if:
 - (a) third parties did not have adequate opportunity to assert their rights;
 - (b) the decision is incompatible with a decision already taken in the requested State on the same matter;
 - (c) it is incompatible with the *ordre public* of the requested State; or
 - (d) the decision was taken contrary to provisions on exclusive jurisdiction provided for by the domestic law of the requested State.

Article 676

Authorities

1. Each State shall designate a central authority to be responsible for sending and answering requests made under this Title, the execution of such requests or their transmission to the authorities competent for their execution.

2. The Union may designate a Union body which may, in addition to the competent authorities of the Member States, make and, if appropriate, execute requests under this Title. Any such request is to be treated for the purposes of this Title as a request by a Member State. The Union may also designate that Union body as the central authority responsible for the purpose of sending and answering requests made under this Title by, or to, that body.

Article 677

Direct communication

1. The central authorities shall communicate directly with one another.
2. In urgent cases, requests or communications under this Title may be sent directly by the judicial authorities of the requesting State to judicial authorities of the requested State. In such cases, a copy shall be sent at the same time to the central authority of the requested State through the central authority of the requesting State.
3. Where a request is made pursuant to paragraph 2 and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and shall directly inform the requesting State that it has done so.
4. Requests or communications under Articles 658 to 662, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting State to the competent authorities of the requested State.
5. Draft requests or communications under this Title may be sent directly by the judicial authorities of the requesting State to the judicial authorities of the requested State prior to a formal request to ensure that the formal request can be dealt with efficiently upon receipt and that it contains sufficient information and supporting documentation for it to meet the requirements of the law of the requested State.

Article 678

Form of request and languages

1. All requests under this Title shall be made in writing. They may be transmitted electronically, or by any other means of telecommunication, provided that the requesting State is prepared, upon request, to produce a written record of such communication and the original at any time.
2. Requests under paragraph 1 shall be made in one of the official languages of the requested State or in any other language notified by or on behalf of the requested State in accordance with paragraph 3.
3. The United Kingdom and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation of the language or languages which, in addition to the official language or languages of that State, may be used for making requests under this Title.
4. Requests under Article 663 for provisional measures shall be made using the prescribed form at Annex 46.

5. Requests under Article 665 for confiscation shall be made using the prescribed form at Annex 46.

6. The Specialised Committee on Law Enforcement and Judicial Cooperation may amend the forms referred to in paragraphs 4 and 5 as may be necessary.

7. The United Kingdom and the Union, acting on behalf of any of its Member States may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that it requires the translation of any supporting documents into one of the official languages of the requested State or any other language indicated in accordance with paragraph 3 of this Article. In the case of requests pursuant to Article 663(4), such translation of supporting documents may be provided to the requested State within 48 hours after transmitting the request, without prejudice to the time limits provided for in Article 663(4).

Article 679

Legalisation

Documents transmitted in application of this Title shall be exempt from all legalisation formalities.

Article 680

Content of request

1. Any request for cooperation under this Title shall specify:
 - (a) the authority making the request and the authority carrying out the investigations or proceedings;
 - (b) the object of and the reason for the request;
 - (c) the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;
 - (d) insofar as the cooperation involves coercive action:
 - (i) the text of the statutory provisions or, where that is not possible, a statement of the relevant applicable law; and
 - (ii) an indication that the measure sought or any other measures having similar effects could be taken in the territory of the requesting State under its own domestic law;
 - (e) where necessary and in so far as possible:
 - (i) details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and
 - (ii) the property in relation to which cooperation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any

available information about other persons, interests in the property; and

- (f) any particular procedure the requesting State wishes to be followed.

2. A request for provisional measures under Article 663 in relation to seizure of property on which a confiscation order consisting of the requirement to pay a sum of money may be realised shall also indicate a maximum amount for which recovery is sought in that property.

3. In addition to the information referred to in paragraph 1 of this Article, any request under Article 665 shall contain:

- (a) in the case of point (a) of Article 665(1):
 - (i) a certified true copy of the confiscation order made by the court in the requesting State and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;
 - (ii) an attestation by the competent authority of the requesting State that the confiscation order is enforceable and not subject to ordinary means of appeal;
 - (iii) information as to the extent to which the enforcement of the order is requested; and
 - (iv) information as to the necessity of taking any provisional measures;
- (b) in the case of point (b) of Article 665(1), a statement of the facts relied upon by the requesting State sufficient to enable the requested State to seek the order under its domestic law;
- (c) where third parties have had the opportunity to claim rights, documents demonstrating that this has been the case.

Article 681

Defective requests

1. If a request does not comply with the provisions of this Title or the information supplied is not sufficient to enable the requested State to deal with the request, that State may ask the requesting State to amend the request or to complete it with additional information.

2. The requested State may set a time limit for the receipt of such amendments or information.

3. Pending receipt of the requested amendments or information in relation to a request under Article 665, the requested State may take any of the measures referred to in Articles 658 to 664.

Article 682

Plurality of requests

1. Where the requested State receives more than one request under Article 663 or Article 665 in respect of the same person or property, the

plurality of requests shall not prevent that State from dealing with the requests involving the taking of provisional measures.

2. In the case of a plurality of requests under Article 665, the requested State shall consider consulting the requesting States.

Article 683

Obligation to give reasons

The requested State shall give reasons for any decision to refuse, postpone or make conditional any cooperation under this Title.

Article 684

Information

1. The requested State shall promptly inform the requesting State of:
 - (a) the action initiated on the basis of a request under this Title;
 - (b) the final result of the action carried out on the basis of a request under this Title;
 - (c) a decision to refuse, postpone or make conditional, in whole or in part, any cooperation under this Title;
 - (d) any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly; and
 - (e) in the event of provisional measures taken pursuant to a request under Articles 658 to Article 663, such provisions of its domestic law as would automatically lead to the lifting of the provisional measure.
2. The requesting State shall promptly inform the requested State of:
 - (a) any review, decision or any other fact by reason of which the confiscation order ceases to be wholly or partially enforceable; and
 - (b) any development, factual or legal, by reason of which any action under this Title is no longer justified.
3. Where a State, on the basis of the same confiscation order, requests confiscation in more than one State, it shall inform all States which are affected by the enforcement of the order about the request.

Article 685

Restriction of use

1. The requested State may make the execution of a request dependent on the condition that the information or evidence obtained is not, without its prior consent, to be used or transmitted by the authorities of the requesting State for investigations or proceedings other than those specified in the request.

2. Without the prior consent of the requested State, information or evidence provided by it under this Title shall not be used or transmitted by the authorities of the requesting State in investigations or proceedings other than those specified in the request.

3. Personal data communicated under this Title may be used by the State to which they have been transferred:

- (a) for the purposes of proceedings to which this Title applies;
- (b) for other judicial and administrative proceedings directly related to proceedings referred to in point (a);
- (c) for preventing an immediate and serious threat to public security; or
- (d) for any other purpose, only with the prior consent of the communicating State, unless the State concerned has obtained the consent of the data subject.

4. This Article shall also apply to personal data not communicated but obtained otherwise under this Title.

5. This Article does not apply to personal data obtained by the United Kingdom or a Member State under this Title and originating from that State.

Article 686

Confidentiality

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

2. The requesting State shall, if not contrary to basic principles of its domestic law and if so requested, keep confidential any evidence and information provided by the requested State, except to the extent that its disclosure is necessary for the investigations or proceedings described in the request.

3. Subject to the provisions of its domestic law, a State which has received spontaneous information under Article 662 shall comply with any requirement of confidentiality as required by the State which supplies the information. If the receiving State cannot comply with such a requirement, it shall promptly inform the transmitting State.

Article 687

Costs

The ordinary costs of complying with a request shall be borne by the requested State. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the requesting and requested States shall consult in order to agree the conditions on which the request is to be executed and how the costs will be borne.

Article 688

Damages

1. Where legal action on liability for damages resulting from an act or omission in relation to cooperation under this Title has been initiated by a person, the States concerned shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.
2. A State which has become the subject of litigation for damages shall endeavour to inform the other State of such litigation if that State might have an interest in the case.

Article 689

Legal remedies

1. Each State shall ensure that persons affected by measures under Articles 663 to 666 have effective legal remedies in order to preserve their rights.
2. The substantive reasons for requested measures under Articles 663 to 666 shall not be challenged before a court in the requested State.”



GIVEN under my Official Seal,
27 January, 2022.

HELEN MCENTEE,
Minister for Justice.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
CILL MHAIGHNEANN,
BAILE ÁTHA CLIATH 8,
D08 XAO6

Tel: 046 942 3100
r-phost: publications@opw.ie

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
MOUNTSHANNON ROAD,
KILMAINHAM, DUBLIN 8,
D08 XAO6

Tel: 046 942 3100
E-mail: publications@opw.ie

€ 6.50

