

Subsidiary Legislation made under s. 49 of the Mutual Legal Assistance (European Union) Act 2005 as read with section 23(g)(i) and (ii) and section 27 of the Interpretation and General Clauses Act and all other enabling powers, and for the purpose of transposing, Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

EUROPEAN INVESTIGATION ORDER REGULATIONS 2017

(LN. 2017/154)

<i>Commencement</i>	1-51, 54-57, 59-Sch.4 52, 53 and 58(h) 66, 68	22.5.2017 <i>Not in Force</i> 27.7.2017
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Arrangement of regulations

Regulation.

1. Title
2. Commencement.
3. Interpretation.
4. EIO.
5. Authorities within Gibraltar for the EIO.
6. Types of proceedings for which the EIO can be issued.
7. Content and form of the EIO.

Procedures and Safeguards when Issuing

8. Conditions for issuing and transmitting an EIO.
9. Transmission of the EIO.
10. Supplementary EIO.

Procedures and Safeguards when Executing

11. Recognition and execution.
12. Assistance in execution.
13. Type of EIO
14. Recourse to a different type of investigative measure.

15. Grounds for non-recognition or non-execution.
16. Time Limits for recognition or execution.
17. Transfer of evidence.
18. Legal remedies.
19. Grounds for postponement of recognition or execution.
20. Obligation to inform.
21. Request by an authority of the issuing State to assist in the execution of a EIO.
22. Duty to reimburse participating State for compensation paid.
23. Confidentiality.
24. Bank - confidentiality.
25. Protection of personal data.
26. Costs.

Specific Provisions for Certain Investigative Measures

27. Transfer of Gibraltar prisoner to assist Member State's investigation or to participate in proceedings - Gibraltar executing authority.
28. Transfer of EU prisoner to Gibraltar to assist participating State's investigation - Gibraltar issuing authority.
29. Transfer of Gibraltar prisoner to participating State to assist Gibraltar investigation.
30. Transfer of EU prisoner to Gibraltar to assist Gibraltar investigation or proceedings.
31. Prisoner transfer warrants.
32. Transit through Gibraltar.
33. Duty to deduct time spent in participating Member State.
34. Speciality.
35. Costs for temporary transfers of people in custody.
36. Hearing by videoconference or other audiovisual transmission - Gibraltar executing authority.
37. Hearing by videoconference or other audiovisual transmission - Gibraltar issuing authority.
38. Hearing by telephone conference - Gibraltar executing authority.
39. Hearing by telephone conference - Gibraltar issuing authority.
40. Information on bank accounts - Gibraltar executing authority.
41. Information on bank accounts - Gibraltar issuing authority.
42. Information on non-bank accounts - Gibraltar executing authority.
43. Information on non-bank accounts - Gibraltar issuing authority.
44. Information on banking operations - Gibraltar executing authority.
45. Information on banking operations - Gibraltar issuing authority.
46. Information on financial operations - Gibraltar executing authority.
47. Information on financial operations - Gibraltar issuing authority.
48. Evidence gathering in real time, continuously and over a certain period of time - Gibraltar executing authority.

49. Evidence gathering in real time, continuously and over a certain period of time - Gibraltar issuing authority.
50. Covert Investigations - Gibraltar executing authority.
51. Covert Investigations - Gibraltar issuing authority.

Interception of Telecommunications

52. *Interception of telecommunications - Gibraltar executing authority.*
53. *Interception of telecommunications - Gibraltar issuing authority.*
54. Notification to Member State when an interception EIO subject is located in the territory of that Member State.
55. Notification to Gibraltar when an interception EIO subject is located in Gibraltar.

Provisional Measures

56. Provisional measures - Gibraltar executing authority.
57. Provisional measures - Gibraltar issuing authority.

Transitional & Miscellaneous

58. Nomination of a court.
59. Search warrants and production orders.
60. Service.
61. Protection of material.
62. Offence.
63. Rules of court.
64. Language.
65. Transitional provisions.
66. Amendment to the Mutual Legal Assistance (European Union) Act 2005.
67. Amendment to the Drugs (Misuse) Regulations 2005.
68. Amendment to the European Freezing and Confiscation Orders Regulations 2014.

Schedules

SCHEDULE 1

EUROPEAN INVESTIGATION ORDER (EIO)

SCHEDULE 2

CONFIRMATION OF THE RECEIPT OF A EUROPEAN
INVESTIGATION ORDER (EIO)

2004-03

Mutual Legal Assistance (European Union)

EUROPEAN INVESTIGATION ORDER REGULATIONS

2017

**Subsidiary
2017/154**

**SCHEDULE 3
NOTIFICATION**

**SCHEDULE 4
THE CATEGORIES OF OFFENCES REFERRED TO IN ARTICLE 11**

In exercise of the powers conferred upon him by section 49 of the Mutual Legal Assistance (European Union) Act 2005 as read with section 23(g)(i) and (ii) and section 27 of the Interpretation and General Clauses Act and all other enabling powers, and for the purpose of transposing, Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, the Minister has made the following Regulations—

Title.

1. These Regulations may be cited as the European Investigation Order Regulations 2017.

Commencement.

2.(1) Subject to subregulations (2) and (3), these Regulations shall be deemed to have come into operation on 22 May 2017.

(2) Regulations 52, 53 and 58(h) come into operation on the day appointed by the Minister by notice in the Gazette.

(3) Regulations 66 and 68 come into operation on the day of publication.

Interpretation.

3. In these Regulations-

“Directive” means Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, as may be amended from time to time;

“EIO” means a European Investigation Order;

“EJN” means the European Judicial Network, as set up by Council Joint Action 98/428/JHA, as may be amended from time to time;

“EU prisoner” means a person who is detained in custody in a Member State-

(a) by virtue of a sentence or order of a court exercising criminal jurisdiction there; or

(b) in consequence of-

- (i) having been transferred there, or responsibility for that person's detention and release having been transferred there, from Gibraltar under-
 - (A) Transfer of Sentenced Persons Act 2002;
 - (B) Transfer of Sentenced Persons (European Union) Regulations 2014;
- (ii) having been transferred there, or responsibility for that person's detention and release having been transferred there, under any similar provision or arrangement from any other country or territory;

“excluded material” has the meaning attributed to it in section 15 of the Criminal Procedure and Evidence Act 2011;

“executing authority” means an authority having competence to recognise an EIO and ensure its execution in accordance with the 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;

“executing State” means the Member State executing the EIO, in which the investigative measure is to be carried out;

“Gibraltar executing authority” means an executing authority located within Gibraltar and who has competence under regulation 5;

“Gibraltar issuing authority” means an issuing authority located within Gibraltar and who has competence under regulation 5;

“issuing authority” means-

- (a) a judge, a court, an investigating judge or a public prosecutor competent in the case concerned in the issuing State; 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 the Directive, in particular the conditions set out in article 6(1) of the Directive, 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;

“issuing State” means the Member State in which the EIO is issued;

“judicial authorities” for the purposes of regulations 27, 28, 29 and 30 means a judge or justice of the peace;

“Member State” means all the Member States of the European Union with the exception of Ireland and Denmark;

“non-bank” means a non-banking financial institution which does not hold a full banking licence or is not supervised by the Financial Services Commission, including insurance firms, pawn shops, cashier’s cheque issuers, payday lending, currency exchanges and microloan organisations;

“prisoner” in relation to a transfer from Gibraltar to a Member State means a person-

- (a) serving a sentence in prison;
- (b) in custody awaiting trial or sentence; or
- (c) committed to prison for default in paying a fine;

“special procedure material” has the meaning attributed to it in section 18 of the Criminal Procedure and Evidence Act 2011; and

“youth” means a person under the age of 18 years.

EIO.

4.(1) An EIO is a judicial decision which has been issued or validated by a judicial authority of an issuing State-

- (a) to have one or several specific investigative measures carried out in an executing Member State to obtain evidence; or
- (b) for obtaining evidence that is already in the possession of the competent authorities of the executing State,

in accordance with the Directive.

(2) An EIO received in Gibraltar must be executed on the basis of the principle of mutual recognition and in accordance with these Regulations.

(3) The issuing of an EIO may be requested by a suspected or accused person, or his legal representative on his behalf.

(4) These Regulations shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in article 6 of the Treaty on European Union, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.

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

Authorities within Gibraltar for the EIO.

5.(1) This regulation sets out the competent authorities in Gibraltar which are the responsible Gibraltar executing authorities and Gibraltar issuing authorities for the purposes of the Directive.

(2) A judicial authority within Gibraltar for the purpose of the Directive is any of the following and they are the responsible issuing authorities for the purposes of the Directive-

- (a) “justice” or “justice of the peace” as defined in section 2(1) of the Magistrates’ Court Act;
- (b) judge of the Supreme Court;
- (c) the Attorney General;
- (d) a Crown Counsel; or
- (e) a police officer with the consent of a Crown Counsel.

(3) An executing authority within Gibraltar for the purposes of the Directive is-

- (a) a judicial authority within Gibraltar, as set out in subregulation (2);

- (b) the Commissioner of the Royal Gibraltar Police;
- (c) the Collector of Customs;
- (d) the Chief Executive Officer of the Borders and Coastguard Agency;
- (e) the Commissioner for Income Tax; or
- (f) such other Gibraltar authority which is competent in the circumstances and is acting in its capacity as an investigating authority in criminal proceedings to order the gathering of evidence.

(4) The central authority within Gibraltar for the purposes of the Directive is the Attorney General.

(5) Subject to regulation 9(2), the central authority referred to in subregulation (4) shall be responsible for the administrative transmission and receipt of an EIO, as well as for other official correspondence relating to an EIO.

(6) In this regulation “Attorney General” includes any Crown Counsel.

Types of proceedings for which the EIO can be issued.

6. An EIO may be issued in Gibraltar-

- (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 law;
- (b) in proceedings brought by administrative authorities in respect of acts which are punishable under law 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 law 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 paragraphs (a), (b) and (c) which relate to offences or infringements for which a legal person may be held liable or punished in law.

Content and form of the EIO.

7.(1) An EIO in the form set out in Schedule 1 must be completed, signed, and its content certified as accurate and correct by an issuing authority.

(2) The EIO must, in particular, contain the following information-

- (a) data about the issuing authority;
- (b) where applicable, data about the validating authority;
- (c) the object and reasons for the EIO;
- (d) the necessary information available on the person concerned;
- (e) 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; and
- (f) a description of the investigative measure requested and the evidence to be obtained.

(3) The issuing State must translate an EIO into an official language of the executing State or any other language indicated by the executing State.

Procedures and Safeguards when Issuing

Conditions for issuing and transmitting an EIO.

8.(1) A Gibraltar issuing authority may only issue an EIO where the following conditions have been met-

- (a) the issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in regulation 6 taking into account the rights of the suspected or accused person; and
- (b) the investigative measures indicated in the EIO could have been ordered under the same conditions in a similar domestic case.

(2) The conditions referred to in subregulation (1) must be assessed by the Gibraltar issuing authority in each case.

(3) Where the Gibraltar issuing authority transmits an EIO and the executing authority who received the EIO has reason to believe that the conditions referred to in subregulation (1) have not been met, the executing authority may consult the Gibraltar issuing authority on the importance of executing the EIO.

(4) After the consultation referred to in subregulation (3) the Gibraltar issuing authority may decide to withdraw the EIO.

(5) Where the Gibraltar executing authority receives an EIO from an issuing authority of a Member State and the Gibraltar executing authority has reason to believe that the conditions referred to in subregulation (1) have not been met, it may consult the issuing authority on the importance of executing the EIO.

(6) Where after the consultation referred to in subregulation (5) the issuing authority withdraws the EIO, the Gibraltar executing authority must not proceed on the basis of the EIO.

Transmission of the EIO.

9.(1) An EIO completed in accordance with regulation 7 must be transmitted from the Gibraltar issuing authority to the executing authority of a Member State by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.

(2) Further official communications shall be made directly between the issuing authority and the executing authority.

(3) The Gibraltar issuing authority or Gibraltar executing authority may transmit and receive an EIO via the telecommunications system of the EJM.

(4) Where the Gibraltar issuing authority is not aware of the identity of the executing authority of a Member State, it must make all necessary enquiries, including via the EJM contact points, in order to obtain the information from the executing State.

(5) Where an authority in Gibraltar receives an EIO for execution but has no competence to recognise the EIO or to take the necessary measures for its execution, it shall, *ex officio*, transmit the EIO to the Gibraltar executing authority and inform the issuing authority of this.

(6) A difficulty concerning the transmission or authenticity of a document needed for the execution of the EIO must be dealt with by direct contacts

between the issuing authority and the executing authority involved or, if appropriate, with the involvement of the Central Authority.

Supplementary EIO.

10.(1) Where the Gibraltar issuing authority issues an EIO which supplements an earlier EIO, it shall indicate this fact in the supplementary EIO, in section D of the form set out in Schedule 1.

(2) Where the Gibraltar issuing authority assists in the execution of the EIO in the executing State, in accordance with regulation 12, it may, without prejudice to notifications made under article 33(1)(c) of the Directive, address an EIO which supplements an earlier EIO directly to the executing authority, while present in that State.

(3) The EIO which supplements an earlier EIO shall be certified in accordance with the regulation 7(2), and, where applicable, be validated by a judicial authority.

*Procedures and Safeguards when Executing***Recognition and execution.**

11.(1) Subject to subregulation (2), the Gibraltar executing authority must recognise an EIO, transmitted in accordance with the 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 a Gibraltar authority.

(2) Subregulation (1) shall not apply where the Gibraltar executing authority invokes one of the grounds for non-recognition or non-execution or one of the grounds for postponement provided for in the Directive.

(3) Subject to subregulation (4), the Gibraltar executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority.

(4) Subregulation (3) shall not apply where-

- (a) the Directive provides otherwise; or
- (b) such formalities and procedures are contrary to the fundamental principles of Gibraltar law.

(5) Where the Gibraltar executing authority receives an EIO which has not been issued by an issuing authority as specified in article 2(c) of the

Directive, the Gibraltar executing authority must return the EIO to the issuing State.

Assistance in execution.

12.(1) Subject to subregulation (2), where the Gibraltar executing authority receives a request for assistance for one or more authorities of the issuing State to assist in the execution of an EIO in support to the Gibraltar competent authorities the Gibraltar executing authority shall comply with the request.

(2) Subregulation (1) shall not apply where such a request for assistance is-

- (a) contrary to the fundamental principles of law; or
- (b) may harm the security interests of Gibraltar.

(3) The authorities designated in the EIO by an issuing State may not assist further than the extent that they would be able to assist in the execution of the investigative measures indicated in the EIO in a similar domestic case.

(4) Subject to subregulation (5), the Gibraltar issuing authority may request that one or more Gibraltar authorities assist in the execution of the EIO in support to the competent authorities of the executing State.

(5) The Gibraltar authorities may assist in the execution of the investigative measures indicated in the EIO to the extent they would be able to assist in a similar domestic case.

(6) The authorities of the issuing State present in Gibraltar by virtue of subregulation (1) shall-

- (a) be bound by Gibraltar law during the execution of the EIO; and
- (b) not have any law enforcement powers within Gibraltar.

(7) The Gibraltar issuing authority or Gibraltar executing authority may consult the executing State or issuing State, as appropriate, with a view to facilitating the efficient application of this regulation and regulation 11.

Type of EIO

13. Subject to regulation 15, the following types of EIO must always be available where Gibraltar is the executing authority-

- (a) the obtaining of information or evidence which is already in the possession of a Gibraltar executing authority and the information or evidence could have been obtained, in accordance with Gibraltar law, 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 Gibraltar executing authority in the framework of criminal proceedings;
- (c) the hearing of a witness, expert, victim, suspected or accused person or third party in Gibraltar;
- (d) any non-coercive investigative measure as defined under Gibraltar law;
- (e) the identification of persons holding a subscription of a specified phone number or IP address.

Recourse to a different type of investigative measure.

14.(1) The Gibraltar executing authority shall have, wherever possible, recourse to an investigative measure other than that provided for in the EIO received from an issuing State where-

- (a) the investigative measure indicated in the EIO does not exist under Gibraltar law; or
- (b) the investigative measure indicated in the EIO would not be available in a similar domestic case.

(2) The Gibraltar executing authority may also have recourse to an investigative measure other than that indicated in the EIO received from an issuing State where the investigative measure selected by the Gibraltar executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO.

(3) Where the Gibraltar executing authority wishes to avail itself of the options referred to in subregulations (1) and (2), it shall first inform the issuing authority, which may decide to withdraw or supplement the EIO.

(4) Where, as referred to in subregulation (1), the investigative measure indicated in the EIO does not exist under Gibraltar law 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 Gibraltar executing authority shall notify the issuing authority that it has not been possible to provide the assistance requested.

Grounds for non-recognition or non-execution.

15.(1) Without prejudice to regulation 4(4), recognition or execution of an EIO may be refused by the Gibraltar executing authority where-

- (a) there is an immunity or a privilege under Gibraltar law 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 security interests of Gibraltar, 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 regulations 6(b) and 6(c) and the investigative measure would not be authorised under Gibraltar law 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 in Gibraltar, and the conduct in connection with which the EIO is issued is not an offence in Gibraltar;
- (f) there are substantial grounds to believe that the execution of the investigative measure indicated in the EIO would be incompatible with Gibraltar's obligations in accordance with article 6 of the Treaty on European Union and the Charter;
- (g) the conduct for which the EIO has been issued does not constitute an offence under Gibraltar law, unless it concerns an offence listed within the categories of offences set out in Schedule 4, 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 Gibraltar law to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the EIO.

(2) Subregulation (1)(g) and (1)(h) shall not apply to investigative measures referred to in regulation 13.

(3) The Gibraltar executing authority must not refuse recognition or execution in relation to an EIO concerning an offence in connection with taxes or duties, customs and exchange, on the ground that Gibraltar law does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

(4) Prior to deciding not to recognise or not to execute, either in whole or in part, an EIO under subregulation (1)(a), (b), (d), (e) and (f), received from an issuing State, the Gibraltar executing authority must consult the issuing authority, by any appropriate means, and must, where appropriate, request the issuing authority supply any necessary information without delay.

(5) Where the Gibraltar executing authority is not able to recognise or execute an EIO due to subregulation (1)(a) and where power to waive the privilege or immunity lies with a Gibraltar authority, the Gibraltar executing authority shall request the authority to exercise the power to waive the privilege or immunity forthwith.

(6) Where the Gibraltar executing authority is not able to recognise or execute an EIO due to subregulation (1)(a) and where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.

(7) Where the Gibraltar issuing authority has transmitted an EIO and the executing State is not able to recognise or execute the EIO due to an immunity or privilege and the power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the Gibraltar issuing authority to request the authority concerned to exercise that power.

Time Limits for recognition or execution.

16.(1) The decision on the recognition or execution of an EIO must be taken and the investigative measure must be carried out with the same celerity and priority as for a similar domestic case and, in any case, within the time limits provided in this regulation.

(2) The Gibraltar executing authority must take as full account as possible of a request from the issuing authority, indicated on the EIO, that due to-

- (a) procedural deadlines;
- (b) the seriousness of the offence; or
- (c) other particularly urgent circumstances,

a shorter deadline than those provided in this regulation is necessary, or if the issuing authority has indicated in the EIO that the investigative measure must be carried out on a specific date.

(3) Subject to subregulation (5), the Gibraltar executing authority must 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 Gibraltar executing authority.

(4) Subject to subregulation (5), unless grounds for postponement under regulation 19 exist or evidence mentioned in the investigative measure covered by the EIO is already in the possession of the Gibraltar executing authority, the executing authority shall carry out the investigative measure, without delay, no later than 90 days following the taking of the decision referred to in subregulation (3).

(5) Where it is not practicable in a specific case for the Gibraltar executing authority to meet the time limit set out in subregulation (3) or the specific date set out in subregulation (2), it shall, without delay, inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time necessary for the decision to be taken.

(6) In a case such as that referred to in subregulation (5), the time limit laid down in subregulation (3) may be extended by a maximum of 30 days.

(7) Where it is not practicable in a specific case for the Gibraltar executing authority to meet the time limit set out in subregulation (4), it shall, without delay, inform the competent authority of the issuing State by any means, giving the reasons for the delay and it shall consult with the issuing authority on the appropriate timing to carry out the investigative measure.

Transfer of evidence.

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

(2) Where requested in an EIO received by the Gibraltar executing authority and if possible under Gibraltar law, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO in accordance with regulation 12(1).

(3) Subject to subregulation (4), the transfer of the evidence from the Gibraltar executing authority to the issuing State 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.

(4) Where, the transfer of evidence from the Gibraltar executing authority to the issuing State would cause serious and irreversible damage to the person concerned it must be suspended.

(5) The Gibraltar executing authority must indicate when it transfers the evidence obtained to the issuing State, whether it requires the evidence to be returned to it as soon as the evidence is no longer required in the issuing State.

(6) The Gibraltar executing authority may temporarily transfer objects, documents, or data concerned that are already relevant for other proceedings, at the explicit request of and after consultations with the issuing State, on the condition that it be returned to the Gibraltar executing authority as soon as it is no longer required in the issuing State or at any other time or occasion agreed between the competent authorities.

Legal remedies.

18.(1) The legal remedies available in relation to an EIO are equivalent to those investigative measures available in a domestic case.

(2) Where an EIO is issued in Gibraltar the substantive grounds for issuing the EIO may be challenged in court against the Gibraltar issuing authority.

(3) Without prejudice to a person's constitutional rights, where an EIO is executed in Gibraltar the EIO may not be challenged in Gibraltar, it may be challenged in the issuing State.

(4) Subject to subregulation (5), when issuing or executing an EIO the Gibraltar authority shall ensure the appropriate measures are in place to provide information about the possibilities under Gibraltar law for seeking the legal remedies, when these become applicable, and in due time to ensure that they can be exercised effectively.

(5) The Gibraltar authority shall not provide information referred to in subregulation (4) where provision of it would undermine the confidentiality of an investigation under regulation 23(1).

(6) Any time limit for any legal remedy may be read as amended to give effective redress to an EIO.

(7) The Gibraltar authority who has executed or issued an EIO shall inform the relevant issuing authority or executing authority about any legal remedy sought against the issuing, the recognition or the execution of an EIO.

(8) Unless provided for in a similar domestic case, a legal challenge against the issuing, the recognition or the execution of an EIO shall not suspend the execution of the investigative measure.

(9) Where the EIO is issued by the Gibraltar issuing authority, the Gibraltar issuing authority shall take into account a successful challenge against the recognition or execution of an EIO in the executing State in accordance with Gibraltar law.

(10) Without prejudice to procedural rules, where the Gibraltar issuing authority issued the EIO, a court dealing with the matter shall ensure in criminal proceedings that the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the EIO.

Grounds for postponement of recognition or execution.

19.(1) The recognition or execution of an EIO may be postponed by the Gibraltar executing authority where-

- (a) its execution might prejudice an on-going criminal investigation or prosecution, until such time as the executing State deems reasonable;
- (b) the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose.

(2) Where the ground for postponement, referred to in subregulation (1), has ceased to exist, the Gibraltar executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing State by any means capable of producing a written record of such.

Obligation to inform.

20.(1) Where-

- (a) the Gibraltar executing authority;
- (b) the Central Authority within Gibraltar,

receive an EIO, or

- (c) an authority in Gibraltar receives an EIO for execution but has no competence to recognise the EIO or to take the necessary measures for its execution and forwards the EIO under regulation 9(5);

they shall, without delay, and within a week of receiving an EIO, acknowledge reception of the EIO by completing and sending the form set out in Schedule 2 to the issuing State.

(2) Without prejudice to regulations 14(3) and 14(4) the Gibraltar executing authority shall inform the issuing authority immediately, by any means-

- (a) if it is impossible for the Gibraltar executing authority to take a decision on the recognition or execution due to the fact that the form provided for in Schedule 1 is incomplete or manifestly incorrect;
- (b) if the Gibraltar executing authority, in the course of the execution of the EIO, considers without further enquiries that it may be appropriate to carry out investigative measures not initially foreseen, or which could not be specified when the EIO was issued, in order to enable the issuing authority to take further action in the specific case; or
- (c) if the Gibraltar executing authority establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority in accordance with regulations 11 or 12.

(3) Where the Gibraltar executing authority, receives a request from the issuing authority for information in relation to this regulation, the information shall be confirmed without delay by any means capable of producing a written record.

(4) Without prejudice to regulations 14(3) and 14(4) the Gibraltar executing authority shall inform the issuing authority without delay by any means capable of producing a written record-

- (a) of any decision taken pursuant to regulations 13, 14 or 15;
- (b) of any decision to postpone the execution or recognition of the EIO, the reasons for the postponement and, if possible, the expected duration of the postponement.

Request by an authority of the issuing State to assist in the execution of a EIO.

21.(1) This regulation applies where-

- (a) a EIO contains a request for an authority of the issuing State to assist in the execution of the EIO, pursuant to article 9(4) of the Directive; and
- (b) the Gibraltar executing authority decides to recognise and execute the order, or the part of the order to which the request to assist relates under regulation 12.

(2) In the case of a person (“P”) authorised under this regulation to assist in the execution of a EIO by Gibraltar executing authority-

- (a) section 41 the Police Act 2006 has effect as if references to every member of the Force included references to P when assisting in the execution of the EIO; and
- (b) sections 62 and 63 of the Police Act 2006 have effect as if any unlawful conduct in the execution or purported execution of a EIO by P were unlawful conduct of a constable under the direction and control of the Commissioner of Police.

Duty to reimburse participating State for compensation paid.

22. If-

- (a) a police officer of the Royal Gibraltar Police assists, in the territory of an executing State, in the execution of a EIO made under these Regulations;
- (b) whilst assisting in the execution of the EIO, that police officer causes damage to any person; and

- (c) the executing State or any authority of that State (“the compensator”) is required, in accordance with the Directive, to pay compensation to any person for such damage,

the Royal Gibraltar Police must pay to the compensator, on request and on the provision of satisfactory evidence, an amount equivalent to the sum paid by the compensator in respect of that damage.

Confidentiality.

23.(1) In the execution of an EIO the issuing authority and the executing authority shall take due account of the confidentiality of the investigation.

(2) Except to the extent necessary to execute the investigative measure, the Gibraltar executing authority, in accordance with Gibraltar law, shall guarantee the confidentiality of the facts and the substance of the EIO.

(3) If the Gibraltar executing authority cannot comply with the requirement of confidentiality, referred to in subregulation (2), it shall notify the issuing authority without delay.

(4) Subject to subregulation (6), the Gibraltar issuing authority, in accordance with Gibraltar law and subject to being otherwise informed by the executing authority, shall not disclose any evidence or information provided by the executing authority.

(5) The disclosure referred to in subregulation (4) is permitted where such disclosure is necessary for the investigations or proceedings described in the EIO.

Bank - confidentiality.

24.(1) A Gibraltar executing authority may issue a direction to a banking institution under these Regulations if a person who holds a bank account with the banking institution is the subject of an EIO.

(2) In this regulation-

“banking institution” has the definition attributed to “credit” or “financial institution” in section 6 of the Counter-Terrorism Act 2010; and

“supervisory authority” has the definition attributed to it under section 7(1) of the Proceeds of Crime Act 2015.

(3) A direction, as referred to in subregulation (1), shall comprise of the obligation for the banking institution not to disclose to the bank customer

concerned or to a third person that information has been transmitted to the issuing State in accordance with regulations 40, 42, 44 and 46 of these Regulations or that an investigation is being carried out.

(4) A person who fails to comply with a requirement imposed by a direction under this regulation commits an offence, subject to the following provisions.

(5) No offence is committed if the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(6) In deciding whether a person has committed an offence under this regulation the court must consider whether the person followed any relevant guidance that was at the time issued by the Minister or a supervisory authority.

(7) A person who commits an offence under this regulation is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.

Protection of personal data.

25.(1) Personal data processed under these Regulations shall be protected and may only be processed in accordance with Data Protection (Police and Judicial Cooperation in Criminal Matters) Regulations 2014 and the principles of the Council of Europe Convention for the protection of Individuals with regard to the Automatic Processing of Personal Data of 28 January 1981 and its Additional Protocol.

(2) Subject to subregulation (3), only authorised persons may have access to such data.

(3) Access shall not be restricted to the data subject in relation to his rights under the Data Protection (Police and Judicial Cooperation in Criminal Matters) Regulations 2014.

(4) “authorised persons” for the purposes of this regulation means a Gibraltar executing authority, the Gibraltar issuing authority and the Central Authority within Gibraltar and the respective authorities in the State issuing or executing the EIO.

Costs.

26.(1) Subject to as otherwise provided in these Regulations, where Gibraltar is the executing State it shall bear all costs undertaken in Gibraltar which are related to the execution of the EIO.

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

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

(4) In exceptional circumstances, where no agreement can be reached with regard to the costs referred to in subregulation (2), the Gibraltar executing authority shall wait to hear from the issuing authority as to whether they decide to-

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

(5) Subject to as otherwise provided in these Regulations, where Gibraltar is the issuing State it shall bear no costs undertaken in the executing State related to the execution of the EIO.

(6) Where the Gibraltar issuing authority receives a notification from the executing State that the costs for the execution of the EIO may be deemed exceptionally high, including detailed specifications of the part of the costs deemed exceptionally high, it may consult with the executing authority on whether and how the costs could be shared or the EIO modified.

(7) In exceptional circumstances, where no agreement can be reached with regard to the costs referred to in subregulation (6), the Gibraltar issuing authority may decide to-

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

Specific Provisions for Certain Investigative Measures

Transfer of Gibraltar prisoner to assist Member State's investigation or to participate in proceedings - Gibraltar executing authority.

27.(1) This regulation applies where the Minister receives from the issuing authority of an issuing State an EIO for the temporary transfer of a prisoner to the issuing State for the purpose of-

- (a) giving evidence or otherwise participating there in criminal proceedings to which the EIO relates; or
- (b) assisting there in the investigation of conduct to which the EIO relates.

(2) If satisfied that the requirement in subregulation (3) is met, the Minister may give effect to the EIO by issuing a warrant under this regulation for the transfer of the prisoner, and shall stipulate to the issuing State the period by which the prisoner shall be sent back to Gibraltar.

(3) The requirement is that-

- (a) the prisoner; or
- (b) in the circumstances mentioned in subregulation (4), a person appearing to the Minister to be an appropriate person to act on the prisoner's behalf,

has made a written statement consenting to be transferred for the purpose mentioned in paragraph (1)(a), or as the case may be, paragraph (1)(b).

(4) The circumstances are those in which it appears to the Minister to be inappropriate for the prisoner to act on his own behalf, by reason of his physical or mental condition or youth.

(5) The consent referred to in subregulation (3) may not be withdrawn after the issue of the warrant.

(6) If satisfied that-

- (a) the requirement in subregulation (3) is met;
- (b) none of the grounds for refusal in regulation 15 are met;
- (c) the full dual criminality requirement is met;

- (d) the transfer is not liable to prolong the detention of the prisoner in custody;
- (e) in any case where the purpose of the transfer is for the prisoner to give evidence in criminal proceedings in the issuing State, it is possible neither for the prisoner to give that evidence before a court in Gibraltar in accordance with a nomination under regulation 38, nor by live-television link in accordance with a nomination made under regulation 36, and either-
 - (i) the prisoner is unwilling to provide that evidence in an alternative form; or
 - (ii) the prisoner is willing to provide that evidence in an alternative form, but the competent authority of the issuing State does not agree to receive the evidence in that form;
- (f) in any case where the purpose of the transfer is for the prisoner to participate in criminal proceedings in the issuing State (other than to give evidence), it is not possible for the prisoner to participate by video-link; and
- (g) the practical arrangements set out in subregulation (12) are met,

the Minister shall give effect to the EIO by issuing a warrant under this regulation for the transfer of the prisoner.

(7) A warrant under this regulation authorises-

- (a) the taking of the prisoner to a place in Gibraltar and the delivery of that prisoner at a place of departure from Gibraltar into the custody of a person representing the appropriate authority of the issuing State; and
- (b) the bringing of the prisoner back to Gibraltar and that prisoner's transfer in custody to the place where the prisoner is liable to be detained under the sentence or order to which the prisoner is subject.

(8) Where a warrant has been issued in respect of a prisoner under this regulation he shall be deemed to be in legal custody at any time when, being in Gibraltar or on board a Gibraltar registered ship he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(9) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a police officer of the Royal Gibraltar Police.

(10) If the prisoner escapes or is unlawfully at large, he may be arrested without a warrant by a police officer and taken to any place to which he may be taken under the warrant issued under this regulation.

(11) In this regulation “evidence in an alternative form” means-

- (a) evidence in the form of a witness statement or other document;
- (b) evidence in the form of a record of an interview with the person concerned;
- (c) evidence in any other form mutually agreed upon between the Central Authority, the competent authority of the issuing State and the person from whom the evidence is to be received.

(12) The Gibraltar executing authority shall agree the practical arrangements with the issuing State including-

- (a) the details of the person’s custody conditions in the issuing State;
- (b) the date the person is to be transferred to the issuing State from Gibraltar;
- (c) the date the person is to be returned to Gibraltar from the issuing State;
- (d) the level of security required in the issuing State,

and shall ensure during the period which the person is in the issuing State and during the transfer of the person from Gibraltar to the issuing State and during his return, his physical and mental condition are not affected.

(13) In this regulation “appropriate person” means a legal representative of the prisoner.

Transfer of EU prisoner to Gibraltar to assist participating State’s investigation - Gibraltar issuing authority.

28.(1) This regulation applies where the Minister issues an EIO for the temporary transfer of an EU prisoner to Gibraltar for the purpose of assisting in the investigation of conduct to which the EIO relates.

(2) If satisfied that the requirement in subregulation (3) is met, the Minister may give effect to the EIO by issuing a warrant under this regulation for the transfer of the EU prisoner.

(3) The requirement is that the Gibraltar issuing authority has provided a written statement made by the EU prisoner or the legal representative of the EU prisoner consenting to be transferred for the purpose mentioned in subregulation (1).

(4) The consent referred to in subregulation (3) may not be withdrawn after the issue of the warrant.

(5) If satisfied that-

- (a) the requirement in subregulation (3) is met;
- (b) none of the grounds for refusal in regulation 15 apply; and
- (c) the full dual criminality requirement is met;

the Minister must give effect to the EIO and issue a warrant under this regulation for the transfer of the EU prisoner.

(6) A warrant under this regulation authorises-

- (a) the bringing of the EU prisoner into Gibraltar;
- (b) the taking of the EU prisoner to, and detention in custody at, any place or places in Gibraltar specified in the warrant;
- (c) the returning of the EU prisoner to the issuing State.

(7) Where a warrant has been issued in respect of a prisoner under this regulation he shall be deemed to be in legal custody at any time when, being in Gibraltar or on board a Gibraltar registered ship he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(8) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a police officer of the Royal Gibraltar Police.

(9) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a police officer and taken to any place to which he may be taken under the warrant issued under this regulation.

(10) Subject to subregulation (11), a person is not subject to the Immigration, Asylum and Refugee Act in respect of his entry into or presence in Gibraltar pursuant to a warrant under this regulation.

(11) Where a warrant ceases to have effect while that person is still in Gibraltar-

- (a) that person is to be treated for the purposes of that Act as having then illegally entered Gibraltar;
- (b) the provisions of the Immigration, Asylum and Refugee Act shall apply to that person; and
- (c) the Carriers' Liability Act 2002 shall not have effect in relation to directions for the person's removal and the related costs given by virtue of this subregulation.

(12) The Gibraltar issuing authority shall agree the practical arrangements with the executing State including-

- (a) the details of the person's custody conditions in Gibraltar;
- (b) the date the person is to be transferred from the executing State to Gibraltar;
- (c) the date the person is to be returned to the executing State from Gibraltar;
- (d) the level of security required in Gibraltar,

and shall agree to ensure during the period which the person is in Gibraltar and during the transfer of the person from the executing State to Gibraltar and during his return, his physical and mental condition are not affected.

(13) A warrant issued under this regulation must be forwarded to a judicial authority for validation under regulation 31.

Transfer of Gibraltar prisoner to participating State to assist Gibraltar investigation.

29.(1) The Minister may issue a warrant for a prisoner to be transferred to a participating State for the purpose of assisting there in the investigation of an offence.

(2) The offence must be an offence which was or may have been committed in Gibraltar.

(3) A warrant may be issued in respect of a prisoner under subregulation (1) only if-

- (a) the requirement in subregulation (4) is met; and
- (b) it appears to the Minister that it is necessary and proportionate for the prisoner to be present in the participating State to assist there in investigation of the offence.

(4) The requirement is that-

- (a) the prisoner; or
- (b) in the circumstances mentioned in subregulation (5), a person appearing to the Minister to be an appropriate persons to act on the prisoner's behalf,

has made a written statement consenting to be transferred for the purpose mentioned in subregulation (1).

(5) The circumstances are those in which it appears to the Minister to be inappropriate for the prisoner to act on his own behalf, by reason of his physical or mental condition or youth.

(6) The consent referred to in subregulation (4) may not be withdrawn after the issue of the warrant.

(7) A warrant under this regulation authorises-

- (a) the taking of the prisoner to a place in Gibraltar and delivery of that prisoner at a place of departure from Gibraltar into the custody of a person representing the appropriate authority of the Member State to which the prisoner is to be transferred; and
- (b) the bringing of the prisoner back to Gibraltar and that prisoner's transfer in custody to the place where the prisoner is liable to be detained under the sentence or order to which the prisoner is subject.

(8) Where a warrant has been issued in respect of a prisoner under this regulation he shall be deemed to be in legal custody at any time when, being in Gibraltar or on board a Gibraltar registered ship he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(9) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a police officer of the Royal Gibraltar Police.

(10) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a police officer and taken to any place to which he may be taken under the warrant issued under this regulation.

(11) A warrant issued under this regulation must be forwarded to a judicial authority for validation under regulation 31.

(12) In this regulation “appropriate person” means a legal representative of the prisoner.

Transfer of EU prisoner to Gibraltar to assist Gibraltar investigation or proceedings.

30.(1) The Minister may issue a warrant for a EU prisoner to be transferred to Gibraltar for the purpose-

- (a) of giving of evidence in criminal proceedings; or
- (b) of otherwise participating in such proceedings or assisting in the investigation of an offence.

(2) A warrant may be issued in respect of an EU prisoner under paragraph (1) only if the conditions in paragraphs (3) to (6) are satisfied.

(3) The condition is that, where the EU prisoner is to be transferred for the purpose in paragraph (1)(a), a witness order has been made, or a witness summons or citation issued, in criminal proceedings in Gibraltar, in respect of the EU prisoner.

(4) The condition is that the Minister is satisfied that the competent authority in the participating State where the EU prisoner is detained will make arrangements for that person to come to Gibraltar to give evidence pursuant to the witness order, witness summons or citation or as the case may be for the purpose mentioned in paragraph (1)(b).

(5) The condition is that the competent authority has provided a written statement made by the EU prisoner consenting to be transferred for the purpose mentioned in paragraph (1)(a), or as the case may be, paragraph (1)(b).

(6) The condition is that it appears to the Minister to be necessary and proportionate for the EU prisoner to be present in Gibraltar for the purpose mentioned in paragraph (1)(a), or as the case may be, paragraph (1)(b).

(7) Such consent cannot be withdrawn after the issue of the warrant.

(8) A warrant under this regulation authorises-

- (a) the bringing of the EU prisoner to Gibraltar;
- (b) the taking of the EU prisoner to, and detention in custody at, any place or places in Gibraltar specified in the warrant;
- (c) the returning of the EU prisoner to the issuing State.

(9) Where a warrant has been issued in respect of a prisoner under this regulation he shall be deemed to be in legal custody at any time when, being in Gibraltar or on board a Gibraltar registered ship he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(10) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a police officer of the Royal Gibraltar Police.

(11) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a police officer and taken to any place to which he may be taken under the warrant issued under this regulation.

(12) Subject to subregulation (13), a person is not subject to the Immigration, Asylum and Refugee Act in respect of his entry into or presence in Gibraltar pursuant to a warrant under this regulation.

(13) Where a warrant ceases to have effect while that person is still in Gibraltar-

- (a) that person is to be treated for the purposes of that Act as having then illegally entered Gibraltar;
- (b) the provisions of the Immigration, Asylum and Refugee Act shall apply to that person; and

- (c) the Carriers' Liability Act 2002 shall not have effect in relation to directions for the person's removal and the related costs given by virtue of this subregulation.

(14) A warrant issued under this regulation must be forwarded to a judicial authority for validation under regulation 31.

Prisoner transfer warrants.

31.(1) This regulation applies if a judicial authority receives from the Minister a warrant issued under regulation 28, 29 or 30.

(2) If the judicial authority is satisfied-

- (a) in relation to a warrant issued under regulation 29, that it is necessary and proportionate for the prisoner to be present in the territory of the participating State to assist there in investigation of the offence;
- (b) in relation to a warrant issued under regulation 30, that it is necessary and proportionate for the EU prisoner to be present in Gibraltar for the purpose mentioned in regulation 30(1)(a) or, as the case may be, regulation 30(1)(b);
- (c) in relation to a warrant issued under regulation 28, that it is necessary and proportionate for the EU prisoner to be present in Gibraltar for the purposes set out in the EIO,

the judicial authority must make an order for the transfer of the prisoner or the EU prisoner.

(3) An order under this regulation is referred to in the rest of this part as an EIO.

(4) An EIO must be in a specified form and contain the specified information.

(5) A judicial authority which makes an EIO must transmit to the competent authority of the executing State-

- (a) a copy of the form containing the EIO; and
- (b) a copy of the form translated into-

- (i) the official language, or one of the official languages, of the executing State; or
- (ii) an official language of the EU if the executing State has declared under article 33 of the Directive that it will accept a translation in that language.

Transit through Gibraltar.

32.(1) Subject to subregulation (2), transit through Gibraltar of a person being conveyed from an executing State to an issuing State, pursuant to an EIO, shall be permitted where the Central Authority receives a request in that behalf from the issuing State and where the issuing State provides the Central Authority with the following information—

- (a) the identity and nationality of the person to whom the EIO applies;
- (b) the authority in the issuing State making the request;
- (c) information showing that an EIO has been issued by the issuing State in respect of the person;
- (d) the nature and legal classification under the law of the issuing State of the offence to which the EIO relates; and
- (e) the circumstances in which the offence specified in the EIO was committed or is alleged to have been committed, including the date and place of its commission.

(2) The Central Authority may—

- (a) refuse the transit through Gibraltar of a Gibraltarian or a person who is a resident of Gibraltar when the transit of that person is requested for the purpose of the execution of a custodial sentence or detention order under EIO; or
- (b) allow transit through Gibraltar of a Gibraltarian or a person who is a resident of Gibraltar on the condition that the requested person, after being heard in the issuing State, is returned to Gibraltar to serve the any custodial sentence or detention order passed against him in the issuing State.

(3) A transit request through Gibraltar and the information set out in subregulation (1) may be addressed to the Central Authority by any means capable of producing a written record.

(4) When responding to a transit request the Central Authority must notify its decision by the same procedure as the request received in subregulation (3).

(5) The transit of a person through Gibraltar shall be supervised by a police officer if the Central Authority considers it appropriate, and where a person's transit is so supervised the person shall be deemed to be in the custody of a police officer who accompanies him.

(6) The person being transited through Gibraltar shall remain in custody for the acts or convictions for which he has been kept in custody in the issuing or executing State during his transit through Gibraltar, unless the issuing or executing State apply for his release.

(7) Where an aircraft that has taken off from a place (other than Gibraltar International Airport) and that is scheduled to land in a place (other than Gibraltar International Airport) and on board which there is a person who is being conveyed to an issuing State pursuant to an EIO-

- (a) lands (for whatever reason) in Gibraltar, the issuing State shall, upon its landing or as soon as may be after it lands, provide the Central Authority with the information referred to in subsection (1); and
- (b) while the aircraft remains in Gibraltar, the person being conveyed on board that aircraft shall be deemed to be in transit through Gibraltar and subsection (5) shall apply accordingly.

Duty to deduct time spent in participating Member State.

33. The period of custody in the territory of the issuing State shall be deducted from the period of detention the prisoner concerned is or will be obliged to undergo in the territory of the executing State.

Speciality.

34.(1) Subject to subregulation (2), where a person is transferred to the Gibraltar authorities pursuant to an EIO, he shall not be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his personal freedom, for an offence committed before his transfer other than the offence specified in the EIO or an offence disclosed by the same facts as the offence specified in that EIO.

(2) Subregulation (1) does not apply when the person having had the opportunity to leave Gibraltar has not done so within 15 days from the date

when his presence is no longer required by the authorities, or has returned to Gibraltar after leaving Gibraltar.

Costs for temporary transfers of people in custody.

35. The costs of the transfer of the person in custody-

- (a) to and from the issuing State which shall be borne by the issuing State; and
- (b) to and from the executing state which shall be borne by the issuing State.

Hearing by videoconference or other audiovisual transmission - Gibraltar executing authority.

36.(1) This regulation applies where a Gibraltar executing authority receives from the issuing authority of an issuing State an EIO for the hearing of-

- (a) a witness or expert witness;
- (b) a person suspected of having committed an offence; or
- (c) a person accused of having committed an offence,

by the issuing State by videoconference or other audiovisual transmission in accordance with subregulations (5) to (8).

(2) If satisfied that the requirements in subregulation (3) are met, the competent authority within Gibraltar shall give effect to the EIO.

(3) The requirements are-

- (a) that the person named in the EIO has made a written statement consenting to hearing by videoconference or other audio visual transmission;
- (b) none of the grounds for refusal in regulation 15 are met;
- (c) that the execution of such an investigative measure in a particular measure in the issuing State is not contrary to the fundamental principles of Gibraltar law.

(4) The Gibraltar executing authority shall agree the practical arrangements with the issuing State and the Gibraltar executing authority shall undertake to-

- (a) summon the witness or expert witness and set out the time, the date and the venue at which the person is to appear for the hearing by videoconference or other audiovisual transmission; or
- (b) summon the suspected or accused person to appear for the hearing, by videoconference or other audiovisual transmission, in accordance with Gibraltar law 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; and

the Gibraltar executing authority shall ensure the person to be heard is the person named on the EIO.

(5) The following rules shall apply where a hearing is held by videoconference or other audiovisual transmission-

- (a) the Gibraltar executing authority shall be present during the hearing, where necessary assisted by an interpreter, and shall be responsible for ensuring the identity of the person to be heard and that the fundamental principles of law are respected;
- (b) where the Gibraltar executing authority is of the view that during the hearing the fundamental principles of Gibraltar law are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;
- (c) measures for the protection of the person to be heard in accordance with the EIO shall be agreed, where necessary, between the Gibraltar executing authority and the competent authority of the issuing State;
- (d) the hearing shall be conducted directly by, or under the direction of, the competent authority of the issuing State in accordance with the laws of the issuing State;
- (e) at the request of the issuing State or the person to be heard, the Gibraltar executing authority shall ensure the person to be heard is assisted by an interpreter, if necessary;

- (f) in advance of the hearing, suspected or accused persons shall be informed of the procedural rights which would accrue to them, including the right not to testify, under the law of the issuing State and under Gibraltar law;
- (g) in advance of the hearing, witnesses or expert witnesses may claim the right not to testify which would accrue to them under the law of the issuing State or under Gibraltar law.

(6) Without prejudice to any measures which may have been introduced under subregulation (5)(c), on the conclusion of the hearing the Gibraltar executing authority shall draw up minutes indicating-

- (a) the date and place of the hearing;
- (b) the identity of the person heard;
- (c) the identities and functions of all other persons in Gibraltar participating in the hearing;
- (d) any oaths taken; and
- (e) the technical conditions under which the hearing took place.

(7) The Gibraltar executing authority shall forward the minutes referred to in subregulation (6) to the issuing authority in the issuing State.

(8) Where a person is heard in accordance with this regulation and that person refuses to give evidence when under an obligation to give evidence or commits an offence under section 457 or 459 of the Crimes Act 2011 or under the law of the issuing State, the Gibraltar executing authority shall apply Gibraltar law as if the hearing had taken place in Gibraltar.

Hearing by videoconference or other audiovisual transmission - Gibraltar issuing authority.

37.(1) This regulation applies where a person is in the territory of a Member State and a Gibraltar issuing authority issues an EIO to the competent authority of that executing State for the hearing of-

- (a) a witness or expert witness;
- (b) a person suspected of having committed an offence; or
- (c) a person accused of having committed an offence,

by videoconference or other audiovisual transmission in accordance with subregulation (5).

(2) If satisfied that the requirements in subregulation (3) are met, the Gibraltar issuing authority may issue the EIO.

(3) The requirements are-

- (a) that the person named in the EIO has made a written statement consenting to hearing by videoconference or other audio visual transmission;
- (b) none of the grounds for refusal in regulation 15 are met;
- (c) that the execution of such an investigative measure is not contrary to the fundamental principles of Gibraltar law.

(4) The Gibraltar issuing authority shall agree the practical arrangements with the executing State and that the executing authority shall undertake to-

- (a) summon the witness or expert witness and set out the time, the date and the venue at which the person is to appear for the hearing by videoconference or other audiovisual transmission; or
- (b) summon the suspected or accused person to appear for the hearing, by videoconference or other audiovisual transmission, in accordance with the rules laid down in the executing State and inform such persons about their rights under Gibraltar law, in such a time as to allow them to exercise their rights of defence effectively; and

the executing State shall ensure the person to be heard is the person named on the EIO.

(5) The following rules shall apply where a hearing is held by videoconference or other audiovisual transmission-

- (a) the executing authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall be responsible for ensuring the identity of the person to be heard and that the fundamental principles of law are respected;
- (b) where the executing authority of the executing State is of the view that during the hearing the fundamental principles of 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;

- (c) measures for the protection of the person to be heard in accordance with the EIO shall be agreed, where necessary, between the Gibraltar issuing authority and the competent authority of the executing State;
- (d) the hearing shall be conducted directly by, or under the direction of, the Gibraltar issuing authority in accordance with Gibraltar law;
- (e) at the request of the Gibraltar issuing authority or the person to be heard, the executing authority in the executing State shall ensure the person to be heard is assisted by an interpreter, if necessary;
- (f) in advance of the hearing, suspected or accused persons shall be informed of the procedural rights which would accrue to them, including the right not to testify, under the law of the executing State and under Gibraltar law;
- (g) in advance of the hearing, witnesses or expert witnesses may claim the right not to testify which would accrue to them under the law of the executing State or under Gibraltar law.

Hearing by telephone conference - Gibraltar executing authority.

38.(1) This regulation applies where the Gibraltar executing authority receives from the issuing authority of an issuing State an EIO for the hearing of a witness or expert witness by the issuing State by telephone conference.

(2) The Gibraltar executing authority and the issuing State may reach an agreement on how to conduct the telephone conference, if no such agreement is reached or lieu of such agreement subregulation (3) shall apply.

(3) If satisfied that the requirements in subregulation (4) are met, the Gibraltar executing authority shall give effect to the EIO in accordance with subregulations (5) to (9).

(4) The requirements are-

- (a) that it is not appropriate or possible for the person to be heard to appear in the issuing State; and
 - (b) that other suitable means have been examined as alternatives to the telephone conference.
- (5) The Gibraltar executing authority shall agree the practical arrangements with the issuing State and the Gibraltar executing authority shall undertake to-
- (a) summon the witness or expert witness and set out the time, the date and the venue at which the person is to appear for the hearing by telephone conference; and
 - (b) ensure the person to be heard is the person named on the EIO.
- (6) The following rules shall apply where a hearing is held by telephone conference-
- (a) the Gibraltar executing authority shall be present during the hearing, where necessary assisted by an interpreter, and shall be responsible for ensuring the identity of the person to be heard and that the fundamental principles of law are respected;
 - (b) where the Gibraltar executing authority is of the view that during the hearing the fundamental principles of Gibraltar law are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;
 - (c) measures for the protection of the person to be heard in accordance with the EIO shall be agreed, where necessary, between the Gibraltar executing authority and the competent authority of the issuing State;
 - (d) the hearing shall be conducted directly by, or under the direction of, the competent authority of the issuing State in accordance with the laws of the issuing State;
 - (e) at the request of the issuing State or the person to be heard, the Gibraltar executing authority shall ensure the person to be heard is assisted by an interpreter, if necessary;
 - (f) in advance of the hearing, witnesses or expert witnesses may claim the right not to testify which would accrue to them under the law of the issuing State or under Gibraltar law.

(7) Without prejudice to any measures which may have been introduced under subregulation (6)(c), on the conclusion of the hearing the Gibraltar executing authority shall draw up minutes indicating-

- (a) the date and place of the hearing;
- (b) the identity of the person heard;
- (c) the identities and functions of all other persons in Gibraltar participating in the hearing;
- (d) any oaths taken; and
- (e) the technical conditions under which the hearing took place.

(8) The Gibraltar executing authority shall forward the minutes referred to in subregulation (7) to the issuing authority in the issuing State.

(9) Where a person is heard in accordance with this regulation and that person refuses to give evidence when under an obligation to give evidence or commits an offence under sections 457 or 459 of the Crimes Act 2011 or under the law of the issuing State, the Gibraltar executing authority shall apply Gibraltar law as if the hearing had taken place in Gibraltar.

Hearing by telephone conference - Gibraltar issuing authority.

39.(1) This regulation applies where a person is in the territory of a Member State and a Gibraltar issuing authority issues an EIO to the competent authority of that executing State for the hearing of a witness or expert witness by the Gibraltar issuing authority by telephone conference in accordance with subregulation (6).

(2) The Gibraltar issuing authority and the executing State may reach an agreement on how to conduct the telephone conference, if no such agreement is reached or lieu of such agreement subregulation (3) shall apply.

(3) If satisfied that the requirements in subregulation (4) are met, the Gibraltar issuing authority may issue the EIO.

(4) The requirements are-

- (a) that it is not appropriate or possible for the person to be heard to appear in Gibraltar; and

- (b) that other suitable means have been examined as alternatives to the telephone conference.
- (5) The Gibraltar issuing authority shall agree the practical arrangements with the executing State and the competent authority in the executing State shall undertake to-
- (a) summon the witness or expert witness and set out the time, the date and the venue at which the person is to appear for the hearing by telephone conference; and
 - (b) ensure the person to be heard is the person named on the EIO.
- (6) The following rules shall apply where a hearing is held by telephone conference-
- (a) the executing authority shall be present during the hearing, where necessary assisted by an interpreter, and shall be responsible for ensuring the identity of the person to be heard and that the fundamental principles of law are respected;
 - (b) where 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;
 - (c) measures for the protection of the person to be heard in accordance with the EIO shall be agreed, where necessary, between the Gibraltar issuing authority and the competent authority of the executing State;
 - (d) the hearing shall be conducted directly by, or under the direction of, the Gibraltar issuing authority in accordance with Gibraltar law;
 - (e) at the request of the Gibraltar issuing authority or the person to be heard, the competent authority of the executing State shall ensure the person to be heard is assisted by an interpreter, if necessary;
 - (f) in advance of the hearing, witnesses or expert witnesses may claim the right not to testify which would accrue to them under the law of the executing State or under Gibraltar law.

Information on bank accounts - Gibraltar executing authority.

40.(1) This regulation applies where the Gibraltar executing authority receives from the issuing authority of an issuing State an EIO to determine whether a person, either suspected or accused of an offence-

- (a) holds or controls one or more accounts, of whatever nature, in a bank located within Gibraltar; or
- (b) has a power of attorney in relation to one or more accounts, of whatever nature, in a bank located within Gibraltar,

and if so, to obtain all the details of the identified accounts.

(2) If satisfied that the requirements in subregulation (3) are met, the Gibraltar executing authority shall give effect to the EIO and issue the relevant bank with an order to disclose the relevant information to the competent authority within Gibraltar and with a regulation 24 direction for confidentiality.

(3) The requirements are that the EIO received from the issuing authority indicates-

- (a) the reasons why the issuing authority considers that the requested information is likely to be of substantial value for the purpose of the criminal proceedings;
- (b) the grounds on which the issuing authority believe that a bank in Gibraltar holds an account, and to the extent available, which bank may be involved;
- (c) any information available which may facilitate the execution of the EIO.

(4) Where a bank located in Gibraltar receives a production order to disclose information under subregulation (2) the bank shall disclose the information it holds on that person and that person's accounts which it has in its possession to the competent authority which sent the bank the order.

Information on bank accounts - Gibraltar issuing authority.

41.(1) This regulation applies where a Gibraltar issuing authority issues an EIO to the competent authority of an executing State for EIO in order to determine whether a person, either suspected or accused of an offence-

- (a) holds or controls one or more accounts, of whatever nature, in a bank located within that State; or

- (b) has a power of attorney in relation to one or more accounts, of whatever nature, in a bank located within that State,

and if so, to obtain all the details of the identified accounts.

(2) If satisfied that the requirements in subregulation (3) are met, the competent authority within Gibraltar may issue the EIO.

(3) The requirements are that the EIO sent by the Gibraltar issuing authority indicates-

- (a) the reasons why the Gibraltar issuing authority considers that the requested information is likely to be of substantial value for the purpose of the criminal proceedings;
- (b) the grounds on which the Gibraltar issuing authority believes that a bank in that State holds an account, and to the extent available, which bank may be involved;
- (c) any information available which may facilitate the execution of the EIO.

Information on non-bank accounts - Gibraltar executing authority.

42.(1) This regulation applies where the Gibraltar executing authority receives from the issuing authority of an issuing State an EIO to determine whether a person, either suspected or accused of an offence-

- (a) holds or controls one or more accounts, of whatever nature, in a non-bank located within Gibraltar; or
- (b) has a power of attorney in relation to one or more accounts, of whatever nature, in a non-bank located within Gibraltar,

and if so, to obtain all the details of the identified accounts.

(2) If satisfied that the requirements in subregulations (3) and (4) are met, the Gibraltar executing authority shall give effect to the EIO and issue the relevant non-bank with an order to disclose the relevant information to the Gibraltar executing authority and with a regulation 24 direction for confidentiality.

(3) The requirements are-

- (a) that the execution of such an investigative measure in a particular measure in the issuing State is permitted under a similar provision in Gibraltar law; and
- (b) none of the grounds for refusal in regulation 15 are met.

(4) The requirements are that the EIO received from the issuing authority indicates-

- (a) the reasons why the issuing authority considers that the requested information is likely to be of substantial value for the purpose of the criminal proceedings;
- (b) the grounds on which the issuing authority believe that a non-bank in Gibraltar holds an account, and to the extent available, which non-bank may be involved;
- (c) any information available which may facilitate the execution of the EIO.

(5) Where a non-bank located in Gibraltar receives a production order to disclose information under subregulation (2) the non-bank shall disclose the information it holds on that person and that person's accounts which it has in its possession to the competent authority which sent the non-bank the order.

Information on non-bank accounts - Gibraltar issuing authority.

43.(1) This regulation applies where a Gibraltar issuing authority issues an EIO to the competent authority of an executing State for an EIO in order to determine whether a person, either suspected or accused of an offence-

- (a) holds or controls one or more accounts, of whatever nature, in a non-bank located within that State; or
- (b) has a power of attorney in relation to one or more accounts, of whatever nature, in a non-bank located within that State,

and if so, to obtain all the details of the identified accounts.

(2) If satisfied that the requirements in subregulation (3) are met, the Gibraltar issuing authority may issue the EIO.

(3) The requirements are-

- (a) that the execution of such an investigative measure is permitted under a similar provision in the law of the executing State; and
 - (b) none of the grounds for refusal in regulation 15 are met.
- (4) The requirements are that the EIO sent by the Gibraltar issuing authority indicates-
- (a) the reasons why the Gibraltar issuing authority considers that the requested information is likely to be of substantial value for the purpose of the criminal proceedings;
 - (b) the grounds on which the Gibraltar issuing authority believes that a non-bank in that State holds an account, and to the extent available, which non-bank may be involved;
 - (c) any information available which may facilitate the execution of the EIO.

Information on banking operations - Gibraltar executing authority.

44.(1) This regulation applies where the Gibraltar executing authority receives from the issuing authority of an issuing State an EIO which requests the authority obtain the details of specified bank accounts and of banking operations which have been carried out during a defined period through one or more accounts specified therein, including the details of any sending or recipient account.

(2) If satisfied that the requirement in subregulation (3) is met, the Gibraltar executing authority must give effect to the EIO and issue the relevant bank with an order to disclose the relevant information to the competent authority within Gibraltar and with a regulation 24 direction for confidentiality.

(3) The requirement is that the EIO received from the issuing authority indicates the reasons why the issuing authority considers that the requested information relevant for the purpose of the criminal proceedings.

(4) Where a bank located in Gibraltar receives a production order to disclose information under subregulation (2) the bank shall disclose the information it holds on 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 which it has in its possession to the competent authority which sent the bank the production order.

Information on banking operations - Gibraltar issuing authority.

45.(1) This regulation applies where a Gibraltar issuing authority issues an EIO to the competent authority in an executing State requesting the authority obtain the details of specified bank accounts and of banking operations which have been carried out during a defined period through one or more accounts specified therein, including the details of any sending or recipient account.

(2) If satisfied that the requirement in subregulation (3) is met, the Gibraltar issuing authority may issue the EIO.

(3) The requirement is that the EIO sent by Gibraltar issuing authority indicates the reasons why the Gibraltar issuing authority considers that the requested information is relevant for the purpose of the criminal proceedings.

Information on financial operations - Gibraltar executing authority.

46.(1) This regulation applies where the Gibraltar executing authority receives from the issuing authority of an issuing State an EIO which requests the authority obtain the details of specified accounts and of financial operations, of relevant non-banking financial institution, which have been carried out during a defined period through one or more accounts specified therein, including the details of any sending or recipient account.

(2) If satisfied that the requirements in subregulations (3) and (4) are met, the Gibraltar executing authority must give effect to the EIO and issue the relevant non-banking financial institution with a production order to disclose the relevant information to the competent authority within Gibraltar and with a regulation 24 direction for confidentiality.

(3) The requirements are-

(a) that the execution of such an investigative measure in a particular measure in the issuing State is permitted under a similar provision in Gibraltar law; and

(b) none of the grounds for refusal in regulation 15 are met.

(4) The requirement is that the EIO received from the issuing authority indicates the reasons why the issuing authority considers that the requested information is relevant for the purpose of the criminal proceedings.

(5) Where a non-banking financial institution located in Gibraltar receives a production order to disclose information under subregulation (2) the non-

banking financial institution shall disclose the information it holds on details of specified bank accounts and of financial 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 which it has in its possession to the competent authority which sent the non-banking financial institution the production order.

Information on financial operations - Gibraltar issuing authority.

47.(1) This regulation applies where a Gibraltar issuing authority issues an EIO to the competent authority of an executing State which requests the authority obtain the details of specified accounts and of financial operations, of relevant non-banking financial institution, which have been carried out during a defined period through one or more accounts specified therein, including the details of any sending or recipient account.

(2) If satisfied that the requirements in subregulations (3) and (4) are met, the Gibraltar issuing authority may issue the EIO.

(3) The requirements are-

- (a) that the execution of such an investigative measure is permitted under a similar provision in the law of the executing State; and
- (b) none of the grounds for refusal in regulation 15 are met.

(4) The requirement is that the EIO sent by Gibraltar issuing authority indicates the reasons why the Gibraltar issuing authority considers that the requested information is relevant for the purpose of the criminal proceedings.

Evidence gathering in real time, continuously and over a certain period of time - Gibraltar executing authority.

48.(1) This regulation applies where the Gibraltar executing authority receives from the issuing authority of an issuing State an EIO for the purpose of executing an investigative measure requiring the gathering of evidence in real time, continuously or over a period of time, relating to-

- (a) the monitoring of banking or other financial operations that are being carried out through one or more specified accounts; or
- (b) controlled deliveries in Gibraltar.

(2) If satisfied that the requirements in subregulations (3) and (4) are met, the Gibraltar executing authority must give effect to the EIO.

- (3) The requirements are-
- (a) that the execution of such an investigative measure in a particular measure in the issuing State is permitted under a similar provision in Gibraltar law; and
 - (b) none of the grounds for refusal in regulation 15 are met.

(4) The requirement is that the EIO received from the issuing authority indicates the reasons why the issuing authority considers that the requested information is relevant for the purpose of the criminal proceedings.

(5) The practical arrangements relating to regulation (1)(b) must be agreed between the competent authority in Gibraltar and the issuing authority of the issuing State and regulation 31A of the Drugs (Misuse) Regulations 2005 shall apply to controlled deliveries under this regulation.

Evidence gathering in real time, continuously and over a certain period of time - Gibraltar issuing authority.

49.(1) This regulation applies where a Gibraltar issuing authority issues an EIO to the competent authority of an executing State for the purpose of executing an investigative measure requiring the gathering of evidence in real time, continuously or over a period of time, relating to-

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

(2) If satisfied that the requirements in subregulations (3) and (4) are met, the Gibraltar issuing authority may issue the EIO.

- (3) The requirements are-
- (a) that the execution of such an investigative measure is permitted under a similar provision in the law of the executing State; and
 - (b) none of the grounds for refusal in regulation 15 are met.

(4) The requirement is that the EIO sent by the Gibraltar issuing authority indicates the reasons why the Gibraltar issuing authority considers that the requested information is relevant for the purpose of the criminal proceedings.

(5) The practical arrangements relating to regulation (1)(b) must be agreed between the competent authority in Gibraltar and the executing authority of the executing State and regulation 31A of the Drugs (Misuse) Regulations 2005 shall apply to controlled deliveries under this regulation.

Covert Investigations - Gibraltar executing authority.

50.(1) This regulation applies where the Gibraltar executing authority receives from the issuing authority of an issuing State an EIO for assistance in executing an investigation into crime by officers acting under covert or false identities.

(2) If satisfied that the requirements in subregulations (3), (4) and (5) are met, the Gibraltar executing authority must give effect to the EIO.

(3) The requirements are-

- (a) that the execution of such a covert investigation measure is permitted under a similar provision in Gibraltar law;
- (b) none of the grounds for refusal in regulation 15 are met; and
- (c) an agreement under subregulation (6) is reached between the Gibraltar executing authority and the issuing authority.

(4) The requirement is that the EIO received from the issuing authority indicates the reasons why the issuing authority considers that the requested information is likely to be relevant for the purpose of the criminal proceedings.

(5) The decision on the recognition and execution of an EIO issued under article 29 of the Directive shall be taken on a case by case basis by the Gibraltar executing authority with due regard to Gibraltar law.

(6) The Gibraltar executing authority shall agree the following with the issuing authority of the issuing State, having due regard to both their national laws and procedures-

- (a) where the covert investigation is to take place in Gibraltar-
 - (i) the covert investigation shall be carried out in accordance with Gibraltar law;
 - (ii) the Gibraltar executing authority shall act, direct and control the operation related to the covert investigation;

- (b) where the covert investigation is to take place in the issuing State-
 - (i) the covert investigation shall be carried out in accordance with the law of the issuing State;
 - (ii) the Gibraltar executing authority shall act, direct and control the operation related to the covert investigation;
- (c) duration of the covert operation;
- (d) the detailed conditions of the covert operation;
- (e) the legal status of the officers concerned during the covert operation.

Covert Investigations - Gibraltar issuing authority.

51.(1) This regulation applies where a Gibraltar issuing authority issues an EIO to the competent authority of an executing State for assistance in executing an investigation into crime by officers acting under covert or false identities.

(2) If satisfied that the requirements in subregulations (3) and (4) are met, the Gibraltar issuing authority may issue the EIO.

(3) The requirements are-

- (a) that the execution of such a covert investigation measure is permitted under a similar provision in the law of the executing State;
- (b) none of the grounds for refusal in regulation 15 are met; and
- (c) an agreement under subregulation (5) is reached between the Gibraltar issuing authority and the executing authority.

(4) The requirements are that the EIO sent by Gibraltar issuing authority indicates the reasons why the Gibraltar issuing authority considers that the requested information is likely to be relevant for the purpose of the criminal proceedings.

(5) The Gibraltar issuing authority shall agree the following with the executing authority of the executing State, having due regard to both their national laws and procedures-

- (a) where the covert investigation is to take place in Gibraltar-
 - (i) the covert investigation shall be carried out in accordance with Gibraltar law;
 - (ii) the executing authority of the executing State shall act, direct and control the operation related to the covert investigation;
- (b) where the covert investigation is to take place in the executing State-
 - (i) the covert investigation shall be carried out in accordance with the law of the executing State;
 - (ii) the Gibraltar issuing authority shall act, direct and control the operation related to the covert investigation;
- (c) duration of the covert operation;
- (d) the detailed conditions of the covert operation;
- (e) the legal status of the officers concerned during the covert operation.

Interception of Telecommunications

Interception of telecommunications - Gibraltar executing authority.

52.(1) *This regulation applies where the Gibraltar executing authority receives from the issuing authority of an issuing State, which requires technical assistance, an EIO for the interception of telecommunications.*

(2) *If satisfied that the requirements in subregulations (3), (4) and (5) are met, the Gibraltar executing authority must give effect to the EIO.*

(3) *The requirements are-*

- (a) *none of the grounds for refusal in regulation 15 are met;*
- (b) *that the execution of such an interception of communications is permitted under a similar provision in Gibraltar law; and*
- (c) *the EIO received must contain the information set out at subregulation (6).*

(4) *The requirement is that the EIO received from the issuing authority indicates the reasons why the issuing authority considers that the investigative measure requested is relevant for the purpose of the criminal proceedings.*

(5) *The Gibraltar executing authority may attach any conditions to the execution of the EIO for an interception of communications which may be attached under Gibraltar law in a domestic case.*

(6) *The issuing authority must supply the following information to the Gibraltar executing authority-*

- (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.*

(7) *The Gibraltar executing authority shall consult and agree with the issuing authority of the issuing State whether the EIO is executed in accordance with paragraph (a) or (b)-*

- (a) *transmitting telecommunications immediately to the issuing authority; or*
- (b) *intercepting, recording and subsequently transmitting the outcome of interception of telecommunications to the issuing State.*

(8) *Where the Gibraltar executing authority receives a request, including the particular reason for the request, from the issuing authority, upon receipt of the EIO or during the period of interception, for a transcription, decoding or decrypting of the recording subject, the Gibraltar executing authority may agree the request.*

(9) *Where the Gibraltar executing authority agrees a request under subregulation (8) the issuing State shall bear all costs arising from the transcription, decoding and decrypting of intercepted communications.*

Interception of telecommunications - Gibraltar issuing authority.

53.(1) *This regulation applies where a Gibraltar issuing authority issues an EIO, requesting technical assistance, to the competent authority of an executing State for the interception of telecommunications.*

(2) *If more than one Member State is in a position to provide the complete necessary technical assistance for the same interception of telecommunications, the Gibraltar issuing authority must send an EIO to only one Member State, priority must be given to the Member State where the interception is or will be located.*

(3) *If satisfied that the requirements in subregulations (4), (5) and (6) are met, the Gibraltar issuing authority may issue the EIO.*

(4) *The requirements are-*

- (a) *none of the grounds for refusal in regulation 15 are met;*
- (b) *that the execution of such an interception of communications is permitted under a similar provision in the law of the executing State; and*
- (c) *the EIO sent must contain the information set out at subregulation (6).*

(5) *The requirements are that the EIO sent by Gibraltar issuing authority indicates the reasons why the Gibraltar issuing authority considers that the investigative measure requested is relevant for the purpose of the criminal proceedings.*

(6) *The Gibraltar issuing authority must supply the following information to the executing authority-*

- (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.*

(7) *The Gibraltar issuing authority shall consult and agree with the executing authority of the executing State whether the EIO is executed in accordance with paragraph (a) or (b)-*

- (a) *transmitting telecommunications immediately to the issuing authority; or*

(b) *intercepting, recording and subsequently transmitting the outcome of interception of telecommunications to the issuing State.*

(8) *The Gibraltar issuing authority may request, upon issuing the EIO or during the period of interception, that the executing authority in the executing State provide in relation to the EIO transcription, decoding or decrypting of the recording subject, in requesting such the Gibraltar issuing authority shall include the particular reason for the request.*

(9) *Where the Gibraltar issuing authority requests decoding or decrypting of the recording subject under subregulation (8) the Gibraltar issuing authority shall bear all costs arising from the transcription, decoding and decrypting of intercepted communications.*

Notification to Member State when an interception EIO subject is located in the territory of that Member State.

54.(1) This regulation applies where the Gibraltar issuing authority sends a notification to a Member State on whose territory a person subject to an interception of telecommunications order under an EIO is or is expected to be present and no technical assistance is required from that Member State.

(2) If satisfied that the requirements in subregulations (3) and (4) are met, the Gibraltar issuing authority may send a notification to the notified Member State.

(3) The requirement is that notification must be made-

(a) prior to the interception in cases where the Gibraltar issuing authority knows at the time of ordering the interception under the EIO 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 the Gibraltar issuing authority becomes aware that the subject of the interception is or has been during the interception, on the territory of the notified Member State.

(4) The Gibraltar issuing authority must use the form set out at Schedule 3 of the Directive to notify the notified Member State.

(5) Where the Gibraltar issuing authority receives from the competent authority of the notified Member State a notification stating that the interception-

- (a) may not be carried out or shall be terminated; and
- (b) any material already intercepted while the subject of the interception was on its territory may not be used; or
- (c) any material already intercepted while the subject of the interception was on its territory may be used under conditions specified by the notified Member State,

the Gibraltar issuing authority shall comply with this notice.

(6) In this regulation and in regulation 55-

“intercepting Member State” means the executing State;

“notified Member State” means a Member State on whose territory a person subject to an interception of telecommunications under an EIO is or is expected to be present.

Notification to Gibraltar when an interception EIO subject is located in Gibraltar.

55.(1) This regulation applies where the Gibraltar executing authority receives a notification from an intercepting Member State and a person subject to an interception of telecommunications order under an EIO is or is expected to be present in Gibraltar and no technical assistance is required from Gibraltar.

(2) If satisfied that the requirements in subregulations (3), (4) and (5) are met, the Gibraltar executing authority may accept a notification from the intercepting Member State.

(3) The requirements are that notification must be made-

- (a) prior to the interception in cases where the intercepting Member State knows at the time of ordering the interception under the EIO that the subject of the interception is or will be in Gibraltar;
- (b) during the interception or after the interception has been carried out, immediately after the intercepting Member State becomes aware that the subject of the interception is or has been during the interception, in Gibraltar.

(4) The requirement is that the Gibraltar executing authority must receive the notification in the form set out at Annex C of the Directive from the intercepting Member State.

(5) The requirement is that the execution of such an interception of communications is permitted under a similar provision of Gibraltar law.

(6) Where the Gibraltar executing authority receives from an intercepting Member State a notification which falls under the description of this regulation and the Gibraltar executing authority is not permitted to accept such a notification, it must without delay, and at the latest within 96 hours of receipt, notify the intercepting Member State that the interception-

- (a) may not be carried out or shall be terminated; and
- (b) any material already intercepted while the subject of the interception was in Gibraltar may not be used; or
- (c) any material already intercepted while the subject of the interception was in Gibraltar may be used under conditions specified by the Gibraltar executing authority.

(7) The Gibraltar executing authority shall inform the competent authority of the intercepting Member State of the reasons justifying the specified conditions in subregulation (6)(c).

Provisional Measures

Provisional measures - Gibraltar executing authority.

56.(1) This regulation applies where the Gibraltar executing authority receives from the issuing authority of an issuing State an EIO to take any measure with a view to provisionally preventing the destruction, transformation, removal, transfer or disposal of an item that may be used in evidence in criminal proceedings.

(2) If satisfied that the requirements in subregulations (3) and (4) are met, the Gibraltar executing authority must give effect to the EIO and shall communicate the decision as soon as possible and, wherever practicable, within 24 hours of receipt of the EIO.

(3) The requirements are that the issuing State shall indicate in the EIO whether the evidence is to-

- (a) be transferred to the issuing State; or

(b) remain in Gibraltar.

(4) The requirements are, where the issuing State has indicated in the EIO that the evidence is to remain in Gibraltar the issuing State shall indicate-

(a) the date of lifting the provisional measure referred to in subregulation (1); or

(b) the estimated date for the submission of the request for the evidence to be transferred to the issuing State.

(5) The Gibraltar executing authority shall recognise and execute the EIO and transfer the evidence in accordance with the procedures laid down in the Directive.

(6) Following consultation with the issuing authority the Gibraltar executing authority may, in accordance with Gibraltar law and practice, lay down appropriate conditions in light of the circumstances of the case to limit the period for which the provisional measure referred to in this regulation is to be maintained.

(7) Where in accordance with the conditions referred to in subregulation (6) the Gibraltar executing authority envisages lifting the provisional measure, it shall inform the issuing authority and give the issuing authority an opportunity to submit its comments.

(8) Where the Gibraltar executing authority is notified by the issuing authority that the provisional measure is lifted it may cease to prevent the destruction, transformation, removal, transfer or disposal of an item that may be used in evidence in a criminal procedure.

Provisional measures - Gibraltar issuing authority.

57.(1) This regulation applies where a Gibraltar issuing authority issues to the executing State an EIO for the implementation of a measure with a view to provisionally preventing the destruction, transformation, removal, transfer or disposal of an item that may be used in evidence in a criminal procedure.

(2) If satisfied that the requirements in subregulations (3) and (4) are met, the Gibraltar issuing authority may give effect to the EIO.

(3) The requirements are that the Gibraltar issuing authority shall indicate in the EIO whether the evidence is to-

(a) be transferred to Gibraltar; or

(b) remain in the executing State.

(4) The requirements are, where the Gibraltar issuing authority indicates in the EIO that the evidence is to remain in the executing State, the Gibraltar issuing authority shall indicate-

(a) the date of lifting the provisional measure referred to in subregulation (1); or

(b) the estimated date for the submission of the request for the evidence to be transferred to Gibraltar.

(5) The Gibraltar issuing authority shall notify the executing authority when the provisional measure has been lifted.

Transitional & Miscellaneous

Nomination of a court.

58.(1) This regulation and regulation 59 apply where an EIO contains a request for-

(a) a person in Gibraltar to be heard as a witness, expert witness, victim, suspect, accused person or third party for the purpose of receiving evidence from them, either under regulations 36 or 38 or otherwise;

(b) information on a bank account, either under regulation 40 or otherwise;

(c) information on a non-bank account, either under regulation 42 or otherwise;

(d) information on banking operation, either under regulation 44 or otherwise;

(e) information on financial operations, either under regulation 46 or otherwise;

(f) evidence gathering, either under regulation 48 or otherwise;

(g) covert investigations, either under regulation 50 or otherwise;
or

(h) *interception of telecommunications, either under regulation 52 or otherwise.*

(2) The Central Authority may by notice nominate a court to receive an EIO for the purpose of carrying out a request contained in the EIO.

(3) Where it appears to the Central Authority that in order to give effect to the EIO it will be necessary for a court to issue a warrant, or as the case may be, make a production order, the Central Authority may by notice nominate a court to receive an EIO for the purpose of carrying out the request contained in the EIO and to issue said warrant or production order.

Search warrants and production orders.

59.(1) The nominated court must give effect to the EIO by issuing a warrant authorising a police officer-

- (a) to enter premises to which the EIO relates and search the premises to the extent reasonably required for the purpose of discovering any evidence to which the order relates; and
- (b) to seize and retain any evidence for which that police officer is authorised to search.

(2) A court nominated under these Regulations, either in accordance with this regulation or otherwise, must give effect to the EIO before the end of the time limits set in regulation 16 or any other period as may be agreed between the nominated court, the Central Authority and the issuing authority.

(3) A “production order” is an order for the person who appears to the court to be in possession of material to which the order relates to produce it to a police officer before the end of the period of 7 days beginning with the date on which the order is made, or such longer period as the order may specify.

(4) Before giving effect to the EIO, the nominated court must give the Commissioner of Police or as the case may be a Crown Counsel an opportunity to be heard.

(5) The nominated court may postpone giving effect to the EIO-

- (a) if to do so might prejudice a criminal investigation or criminal proceedings taking place in Gibraltar; or

- (b) if, under an order made by a court in criminal proceedings in Gibraltar, the information must not be removed from Gibraltar.

(6) Subject to subregulation (10), in so far as the EIO relates to excluded material or special procedure material, the court must give effect to the EIO by making a production order.

(7) The nominated court may issue a warrant under paragraph (1) in respect of excluded material or special procedure material only where-

- (a) a person has failed to comply with a production order made in respect of the same material (whether or not the court also deals with the matter as a contempt of court); or
- (b) it appears that one or more of the conditions in subregulation (8) is satisfied.

(8) The conditions are that-

- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;
- (c) the material consists of information which-
 - (i) is subject to a restriction on disclosure or obligation of secrecy under the law of the issuing State; and
 - (ii) is likely to be disclosed in breach of it if a warrant is not issued;
- (d) the making of a production order may seriously prejudice the investigation or proceedings to which the EIO relates.

(9) A police officer may take away any material produced to him under a production order, and the material is to be treated for the purposes of section 27 of the Criminal Proceedings and Evidence Act 2011 (access and copying) as if it has been seized by the police officer.

(10) A court must not issue a warrant under subregulation (1) in respect of any evidence unless the court has reasonable grounds for believing that it does not consist of or include items subject to legal privilege, excluded material or special procedural material.

(11) Subregulation (10) does not prevent a warrant being issued by virtue of subregulation (7) in respect of excluded material or special procedure material.

(12) A police officer must retain any evidence seized or produced to him under these regulations until it is transferred to issuing State.

(13) On an application by-

- (a) the Commissioner of Police;
- (b) the police officer retaining the evidence; or
- (c) any other person affected by the order,

the nominated court may-

- (d) vary or revoke a warrant issued or production order made by it; or
- (e) authorise the release of any evidence retained by a police officer under these regulations.

(14) The nominated court may only exercise its power under subregulation (13) if, or to the extent that-

- (a) it is of the opinion that the execution of the EIO would be contrary to the principle of *ne bis in idem*;
- (b) there are substantial grounds for believing that executing the EIO would be incompatible with the rights afforded by the Gibraltar Constitution Order 2006;
- (c) it appears to the nominated court that the EIO has been withdrawn or no longer has effect in the issuing State.

Service

60.(1) Notice of an application for a production order may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter.

(2) Such a notice may be served on—

- (a) a corporate body - by serving it on the body's secretary or clerk or other similar officer; and
 - (b) a partnership - by serving it on one of the partners.
- (3) For the purposes of this regulation the proper address of a person is–
- (a) in the case of secretary or clerk or other similar officer of a corporate body – that of the registered or principal office of that body;
 - (b) in the case of a partner of a firm - that of the principal office of the firm;
 - (c) in any other case - the last known address of the person to be served.

Protection of material.

61. If notice of an application for a production order under regulation 60 has been served on a person, he must not conceal, destroy, alter or dispose of the material to which the application relates except with–

- (a) the leave of a judge or magistrate; or
- (b) the written permission of a police officer,

until–

- (i) the application is dismissed or abandoned; or
- (ii) he has complied with a production order made on the application.

Offence.

62.(1) If a person fails to comply with a production order or contravenes regulation 61, a judge may deal with him as if he had committed a contempt of the Supreme Court.

(2) Any enactment relating to contempt of the Supreme Court has effect in relation to such a failure as if it were such a contempt.

Rules of court.

63. The Chief Justice may make provision by rules of court as to the practice and procedure to be followed in connection with proceedings under these Regulations.

Language.

64. Requests for assistance should be made in English or accompanied by a certified translation into English and any supporting documentation, if not in English, shall be accompanied by a certified translation into English.

Transitional provisions.

65.(1) Subject to subregulation (2), a mutual legal assistance request issued by a competent authority of a Member State, by the Central Authority, a competent authority or judicial authority within Gibraltar prior to 27 July 2017 shall continue to be governed under the Mutual Legal Assistance (European Union) Act 2005 or the European Freezing and Confiscation Orders Regulations 2014.

(2) Regulation 10 shall apply to any supplementary EIO where the original freezing order request for assistance was prior to 27 July 2017 and therefore under the European Freezing and Confiscation Orders Regulations 2014.

Amendment to the Mutual Legal Assistance (European Union) Act 2005.

66.(1) The Mutual Legal Assistance (European Union) Act 2005 (“the Act”) is amended in accordance with this regulation.

(2) In section 2 of the Act delete “not being the United Kingdom” from the definition of ““State” and “Schengen State””.

(3) Delete section 23 of the Act.

(4) After section 2 of the Act insert the following section-

“Application.

2A.(1) Subject to subsection (2), the sections listed in Schedule 3 shall not apply to a Member State.

(2) The sections listed in Schedule 3 shall continue to apply to Ireland and Denmark.”.

(5) After Schedule 2 of the Act insert the following Schedule-

“SCHEDULE 3

Section 2A

The sections of Part II of this Act which shall not apply to the Member States of the European Union, with the exception of Ireland and Denmark, are-

- section 3(1)(a)
- section 3(1)(b)
- section 3(1A)(a)
- section 3(1A)(b).”.

Amendment to the Drugs (Misuse) Regulations 2005.

67.(1) The Drugs (Misuse) Regulations 2005 (“the Regulations) are amended in accordance with this regulation.

(2) In the heading of regulation 31A of the Regulations insert “**or EIO.**” after “**Schengen**”.

(3) In regulation 31A(2) of the Regulations insert “or article 28 of the EIO” after “Agreement”.

(4) In regulation 31A(3) of the Regulations-

- (a) delete the first instance of the word “Schengen”; and
- (b) insert “or article 28 of the EIO” after “Agreement”.

(5) In regulation 31A(7) of the Regulations substitute the following for the current subregulation-

“(7) In this regulation-

- (a) “Directive 2014/41/EU” means Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters;
- (b) “EIO” means a European Investigation Order under Directive 2014/41/EU; and
- (c) “State” means a State party to the Schengen Agreement or a Member State of the European Union to which Directive 2014/41/EU applies.”.

Amendment to the European Freezing and Confiscation Orders Regulations 2014.

68.(1) The European Freezing and Confiscation Orders Regulations 2014 (“the Regulations”) are amended in accordance with this regulation.

(2) After regulation 1 of the Regulations insert the following regulation-

“Application.

1A.(1) Subject to subsection (2), the regulations listed in the Schedule shall not apply to a Member State.

(2) The sections listed in the Schedule shall continue to apply to Ireland and Denmark.”.

(3) In regulation 2 of the Regulations substitute “Unless otherwise stated, these” for “These”.

(4) After regulation 25 of the Regulations insert the following Schedule-

“SCHEDULE

Section 1A

The regulations of these Regulations which shall not apply to the Member States of the European Union, with the exception of Ireland and Denmark, are-

- regulation 3
- regulation 4
- regulation 5
- regulation 6
- regulation 7
- regulation 8
- regulation 9.”.

SCHEDULE 1

EUROPEAN INVESTIGATION ORDER (EIO)

(regulation 7(1) and 10(1))

This EIO has been issued by a competent authority. The issuing authority certifies that the issuing of this EIO is necessary and proportionate for the purpose of the proceedings specified within it taking into account the rights of the suspected or accused person and that the investigative measures requested could have been ordered under the same conditions in a similar domestic case. I request that the investigative measure or measures specified below be carried out taking due account of the confidentiality of the investigation and that the evidence obtained as a result of the execution of the EIO be transferred.

SECTION A	
Issuing	State:
.....	
Executing	State:
.....	
SECTION B	
Please indicate if there is any urgency due to	
<input type="checkbox"/> Evidence being concealed or destroyed	
<input type="checkbox"/> Imminent trial date	
<input type="checkbox"/> Any other reason	
Please specify below:	
Time limits for execution of the EIO are laid down in Directive 2014/41/EU. However, if a shorter or specific time limit is necessary, please provide the date and explain the reason for this:	
.....	
.....	
.....	
.....	
.....	

SECTION C: Investigative measure(s) to be carried out
Describe the assistance/investigative measure(s) required AND indicate, if applicable, if it is one of the following investigative measures:

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

- Obtaining information or evidence which is already in the possession of the executing authority
- Obtaining information contained in databases held by police or judicial authorities
- Hearing
 - witness
 - expert
 - suspected or accused person
 - victim
 - third party
- Identification of persons holding a subscription of a specified phone number or IP address
- Temporary transfer of a person held in custody to the issuing State
- Temporary transfer of a person held in custody to the executing State
- Hearing by videoconference or other audiovisual transmission
 - witness
 - expert
 - suspected or accused person

- Hearing by telephone conference
 - witness
 - expert
- Information on bank and other financial accounts
- Information on banking and other financial operations
- Investigative measure implying the gathering of evidence in real time, continuously and over a certain period of time
 - monitoring of banking or other financial operations
 - controlled deliveries
 - other
- Covert investigation
- Interception of telecommunications
- Provisional measure(s) to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence

SECTION D: Relation to an earlier EIO

Indicate whether this EIO supplements an earlier EIO. If applicable, provide information relevant to identify the previous EIO (the date of issue of the EIO, the authority to which it was transmitted and, if available, the date of transmission of the EIO, and reference numbers given by the issuing and executing authorities):

.....
.....

If relevant please indicate if an EIO has already been addressed to another Member State in the same case:

.....

SECTION E: Identity of the person concerned

1. State all information, as far as known, regarding the identity of the (i) natural or (ii) legal person(s) concerned by the investigative measure (if more than one person is concerned, please provide the information for each person):

(i) In the case of natural person(s)

Name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number:

Type and number of the identity document(s) (ID card, passport), if available:

.....

Date of birth:

Place of birth:

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

.....

Language(s) which the person understands:

.....

.....

(ii) In the case of legal person(s)
Name:
Form of legal person:
Shortened name, commonly used name or trading name, if applicable:
.....
Registered seat:
Registration number:
Address of the legal person:
Name of the legal person's representative:
Please describe the position the concerned person currently holds in the proceedings:
 suspected or accused person
 victim
 witness
 expert
 third party
 other (please specify)
2. If different from the address above, please give the location where investigative measure is to be carried out:
.....
.....
3. Provide any other information that will assist with the execution of the EIO:
.....
.....

SECTION F: Type of proceedings for which the EIO is issued:

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

SECTION G: Grounds for issuing the EIO

1. Summary of the facts

Set out the reasons why the EIO is issued, including a summary of the underlying facts, a description of offences charged or under investigation, the stage the investigation has reached, the reasons for any risk factors and any other relevant information.

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

2. Nature and legal classification of the offence(s) for which the EIO is issued and the applicable statutory provision/code:

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

3. Is the offence for which the EIO is issued punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years as defined by the law of the issuing State and included in the list of offences set out below? (please tick the relevant box)

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

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

SECTION H: Additional requirements for certain measures
 Fill out the sections relevant to the investigative measure(s) requested:

SECTION H1: Transfer of a person held in custody
 (1) If a temporary transfer to the issuing State of a person held in custody for the purpose of the investigation is requested, please indicate whether the person consented to this measure:
 Yes No I request that the person’s consent is sought
 (2) If a temporary transfer to the executing State of a person held in custody for the purpose of investigation is requested, please indicate whether the person consented to this measure:
 Yes No

SECTION H2: Video or telephone conference or other audiovisual transmission
 If hearing by videoconference or telephone conference or other audiovisual transmission is requested:
 Please indicate the name of the authority that will conduct the hearing (contact details/language):

 Please indicate reasons for requesting this measure:

 (a) hearing by videoconference or other audiovisual transmission:
 the suspected or accused person has given his/her consent

(b) hearing by telephone conference
<p>SECTION H3: Provisional measures</p> <p>If a provisional measure to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence, is requested, please indicate whether:</p> <p style="padding-left: 40px;">the item is to be transferred to the issuing State</p> <p style="padding-left: 40px;">the item is to remain in the executing State; please indicate an estimated date:</p> <p>for lifting of provisional measure:</p> <p>for the submission of a subsequent request concerning the item:</p>
<p>SECTION H4: Information on bank and other financial accounts</p> <p>(1) If information on bank accounts or other financial accounts that the person holds or controls is requested, please indicate, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings and on what grounds you presume that banks in the executing State hold the account:</p> <p style="padding-left: 40px;">information on bank accounts that the person holds or in respect of which he or she has the power of attorney</p> <p style="padding-left: 40px;">information on other financial accounts that the person holds or in respect of which he or she has the power of attorney</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>(2) If information on banking operations or other financial operations is requested, please indicate, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings:</p> <p style="padding-left: 40px;">information on banking operations</p> <p style="padding-left: 40px;">information on other financial operations</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>Indicate the relevant period of time and the related accounts:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>SECTION H5: Investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time</p> <p>If such investigative measure is requested please indicate the reasons why you consider the requested information relevant for the purpose of the</p>

criminal proceedings:

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

SECTION H6: Covert investigations

If covert investigation is requested please indicate the reasons why you consider the investigative measure likely to be relevant for the purpose of the criminal proceedings:

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

SECTION H7: Interception of telecommunications

(1) If interception of telecommunications is requested please indicate the reasons why you consider the investigative measure relevant for the purpose of the criminal proceedings:

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

(2) Please provide following information:

(a) information for the purpose of identifying the subject of the interception:

.....

(b) the desired duration of the interception:

.....

(c) technical data (in particular the target identifier — such as mobile telephone, landline telephone, email address, internet connection), to ensure that the EIO can be executed:

.....

(3) Please indicate your preference concerning the method of execution:

- immediate transmission
- recording and subsequent transmission

Please indicate if you also require transcription, decoding or decrypting of the intercepted material*:

.....
.....

* Please be aware that the costs of any transcription, decoding or decrypting

must be met by the issuing State.

SECTION I: Formalities and procedures requested for the execution

1. Tick and complete, if applicable

It is requested that the executing authority comply with the following formalities and procedures (...):

.....

2. Tick and complete, if applicable

It is requested that one or several officials of the issuing State assist in the execution of the EIO in support of the competent authorities of the executing State.

Contact details of the officials:

.....

.....

Languages that may be used for communication:

.....

.....

SECTION J: Legal remedies

1. Please indicate if a legal remedy has already been sought against the issuing of an EIO, and if so please provide further details (description of the legal remedy, including necessary steps to take and deadlines):

.....

.....

2. Authority in the issuing State which can supply further information on procedures for seeking legal remedies in the issuing State and on whether legal assistance and interpretation and translation is available:

Name:

Contact person (if applicable):

.....

Address:

.....

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

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

E-mail:

SECTION K: Details of the authority which issued the EIO

Tick the type of authority which issued the EIO:

judicial authority

*any other competent authority as defined by the law of the issuing State

* Please also complete section (L)

Name of authority:

.....

Name of representative/contact point:

.....

File No:

.....

Address:

.....

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

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

E-mail:

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

.....

If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the transfer of evidence:

Name/Title/Organisation:

Address:

.....

E-mail/Contact Phone No:

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

Name:

Post held (title/grade):

Date:

Official stamp (if available):

SECTION L Details of the judicial authority which validated the EIO

Please indicate the type of judicial authority which has validated this EIO:

- (a) judge or court
- (b) investigating judge
- (c) public prosecutor

Official name of the validating authority:

.....

Name of its representative:

.....

Post held (title/grade):

.....

File no:

.....

Address:

.....

.....

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

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

E-mail:.....

Languages in which it is possible to communicate with the validating authority:

.....

.....

Please indicate if the main contact point for the executing authority should be the:

- issuing authority
- validating authority

Signature and details of the validating authority

Name:

Mutual Legal Assistance (European Union)

2004-03

EUROPEAN INVESTIGATION ORDER REGULATIONS

2017

**Subsidiary
2017/154**

Post held (title/grade):
Date:
Official stamp (if available):

SCHEDULE 2

CONFIRMATION OF THE RECEIPT OF A EUROPEAN
INVESTIGATION ORDER (EIO)

(regulation 20(1))

This form has to be completed by the authority of the executing State which received the EIO referred to below.

(A) THE EIO CONCERNED					
Authority which issued the EIO:					
.....					
.....					
File				reference:	
.....					
Date		of		issuing:	
.....					
Date		of		receipt:	
.....					
(B) THE AUTHORITY WHICH RECEIVED THE EIO ⁽¹⁾					
Official name of the competent authority:					
.....					
.....					
Name of its representative:					
.....					
.....					
Post held (title/grade):					
.....					
.....					
Address:					
.....					
.....					
.....					
.....					
Tel.	No:	(country	code)	(area/city	code)
.....					
Fax	No:	(country	code)	(area/city	code)
.....					
.....					

¹This section is to be completed by each authority which received the EIO. This obligation falls upon the authority competent to recognise and execute the EIO and, where applicable, upon the central authority or the authority which transmitted the EIO to the competent authority.

E-mail:	
File	reference:
Languages in which it is possible to communicate with the authority:	
(C) (WHERE APPLICABLE) THE COMPETENT AUTHORITY TO WHOM THE EIO IS TRANSMITTED BY THE AUTHORITY UNDER (B) Official name of the authority:	
Name of its representative:	
Post held (title/grade):	
Address:	
Tel.	No: (country code) (area/city code)
.....	
Fax	No: (country code) (area/city code)
.....	
E-mail:	
Date	of transmission:
File	reference:
Language(s) that may be used for communication:	
(D) ANY OTHER INFORMATION WHICH MAY BE RELEVANT FOR THE ISSUING AUTHORITY:	

2004-03

Mutual Legal Assistance (European Union)

EUROPEAN INVESTIGATION ORDER REGULATIONS

2017

**Subsidiary
2017/154**

.....
(E) SIGNATURE AND DATE Signature: Date:
Official stamp (if available):

SCHEDULE 3

NOTIFICATION

(regulation 54(4))

This form is used in order to notify a Member State about the interception of telecommunication that will be, is or has been carried out on its territory without its technical assistance. I hereby inform(notified Member State) of the interception.

(A)¹ THE COMPETENT AUTHORITY

Official name of the competent authority of intercepting Member State:
.....
.....

Name of its representative:
.....
.....

Post held (title/grade):
.....
.....

Address:
.....
.....
.....
.....

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

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

E-mail:
.....

File reference:
.....

Date of issuing:
.....

Languages in which it is possible to communicate with the authority:
.....
.....

(B) INFORMATION CONCERNING THE INTERCEPTION

(I) Information about state of play: This notification takes place (please tick)

 prior to the interception

 during the interception

 after the interception

(II) The (anticipated) duration of the interception (as known to the issuing authority):

....., starting from

.....

(III) Target of the interception: (telephone number, IP number or e-mail)

.....

.....

(IV) Identity of the persons concerned

State all information, as far as they are known, regarding the identity of the (i) natural or (ii) legal person(s) against whom the proceedings are/may be/is taking place:

(i) In the case of natural person(s)

 Name:

.....

 First name(s):

.....

 Other relevant name(s), if applicable:

.....

 Aliases, if applicable:

.....

 Sex:

.....

 Nationality:

.....

 Identity number or social security number:

.....

 Date of birth:

.....

 Place of birth:

.....

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

.....

 Language(s) which the person understands:

.....

.....

(ii) In the case of legal person(s)
 Name:

 Form of legal person:

 Shortened name, commonly used name or trading name,
 if applicable:

 Registered seat

 Registration number:

 Address of the legal person:

 .
 Name and contact details of the representative of the legal
 person:

 (V) Information regarding the purpose of this interception:
 State all information necessary, including a description of the
 case, legal classification of the offence(s) and the applicable
 statutory provision/code, in order to enable the notified authority
 to assess the following:
 whether the interception would be authorised in a similar
 domestic case; and whether the material obtained can be
 used in legal proceedings
 where the interception has already occurred, whether that
 material can be used in legal proceedings

 Please note that any objection to the interception or the use of
 already intercepted material must be made no later than 96 hours
 after the reception of this notification.

(C) SIGNATURE AND DATE

2004-03

Mutual Legal Assistance (European Union)

EUROPEAN INVESTIGATION ORDER REGULATIONS

2017

**Subsidiary
2017/154**

Signature: Date: Official stamp (if available):
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SCHEDULE 4

THE CATEGORIES OF OFFENCES REFERRED TO IN ARTICLE 11

(regulation 15(1)(g))

The following offences, if they are punishable in the issuing 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 State, shall give rise to the execution of a EIO-

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