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Explanatory Memorandum

Number 49 *of* 2001

EXTRADITION (EUROPEAN UNION CONVENTIONS) ACT, 2001

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done at Brussels on 10 March 1995

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done at Brussels on 27 September 1996

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ACTS REFERRED TO

Criminal Evidence Act, 1992	1992, No. 12
Criminal Justice Act, 1999	1999, No. 10
Extradition Act, 1965	1965, No. 17
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Extradition (Amendment) Act, 1994	1994, No. 6
Extradition (European Convention on the Suppression of Terrorism) Act, 1987	1987, No. 1

Number 49 *of* 2001

EXTRADITION (EUROPEAN UNION CONVENTIONS) ACT, 2001

AN ACT TO GIVE EFFECT TO THE CONVENTION ON SIMPLIFIED EXTRADITION PROCEDURES BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION DRAWN UP ON THE BASIS OF ARTICLE K.3 OF THE TREATY ON EUROPEAN UNION BY COUNCIL ACT DONE AT BRUSSELS ON 10 MARCH 1995; TO GIVE EFFECT TO THE CONVENTION RELATING TO EXTRADITION BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION DRAWN UP ON THE BASIS OF THE SAID ARTICLE K.3 BY COUNCIL ACT DONE AT BRUSSELS ON 27 SEPTEMBER 1996; AND FOR THOSE AND OTHER PURPOSES TO AMEND THE EXTRADITION ACT, 1965; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH. [19*th December*, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

Short title, collective citation, construction and commencement.

1.—(1) This Act may be cited as the Extradition (European Union Conventions) Act, 2001.

(2) The Extradition Acts, 1965 to 1994, and this Act may be cited together as the Extradition Acts, 1965 to 2001, and shall be construed together as one Act.

(3) This Act shall come into operation on such day or days as the Minister may, by order or orders, appoint either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.

Interpretation.

2.—(1) In this Act—

''Act of 1987'' means the Extradition (European Convention on the Suppression of Terrorism) Act, 1987;

''Act of 1994'' means the Extradition (Amendment) Act, 1994;

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''Convention of 1995'' means the Convention on simplified extradition between the Member States of the European Union drawn up on the basis of Article K.3 of the Treaty on European Union, by Council Act done at Brussels on 10 March, 1995[1], the text of which—

(*a*) in the English language, is set out in *Part A* of *Schedule 1* to this Act, and

(*b*) in the Irish language, is set out in *Part B* of that Schedule;

''Convention of 1996'' means the Convention relating to extradition between the Member States of the European Union drawn up on the basis of the said Article K.3, by Council Act done at Brussels on 27 September, 1996[2], the text of which—

(*a*) in the English language, is set out in *Part A* of *Schedule 2* to this Act, and

(*b*) in the Irish language, is set out in *Part B* of that Schedule;

''Principal Act'' means the Extradition Act, 1965.

(2) The amendments effected by this Act apply, except where otherwise provided, in relation to an offence, whether committed or alleged to have been committed before or after the passing of this Act, other than an offence committed or alleged to have been committed before the commencement of *section 13* of this Act by a person in whose case a court has found that the offence was a revenue offence.

PART 2

Convention of 1995

Amendment of section 3 of Principal Act.

3.—Section 3 of the Principal Act is hereby amended by the insertion of the following subsection:

''(1A) For the purposes of the amendments to this Act effected by *Part 2* of the *Extradition (European Union Conventions) Act, 2001*, 'Convention country' means a country designated under *section 4(1)* of that Act.''.

Convention countries.

4.—(1) The Minister for Foreign Affairs may by order designate a country that has adopted the Convention of 1995.

(2) The Minister for Foreign Affairs may, by order, amend or revoke an order under this section, including an order under this subsection.

(3) An order under this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

Provisional arrest.

5.—Section 27 of the Principal Act is hereby amended by the insertion of the following subsections:

[1] OJ No. C78 of 30.3.95, p.1
[2] OJ No. C313 of 23.10.96, p.11

''(2A) A request for the provisional arrest of a person made on behalf of a requesting country that is a Convention country shall—

(*a*) state that one of the documents mentioned in paragraph (*a*) of section 25(1) exists in respect of that person,

(*b*) be accompanied by a statement of the offences to which the request relates specifying the nature and description under the law of the requesting country of the offences concerned,

(*c*) specify the circumstances in which the offences were committed or alleged to have been committed including the time and place of their commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person to whom the request relates in their commission or alleged commission, and

(*d*) specify the penalties to which that person would be liable if convicted of the offences concerned or, where he has been convicted of those offences, the penalties that have been imposed or, where he has been convicted of those offences but not yet sentenced, the penalties to which he is liable,

hereafter in this section referred to as 'information furnished under subsection (2A)'.

(2B) A member of the Garda Síochána not below the rank of inspector shall provide a person, who is provisionally arrested pursuant to a warrant issued on foot of a request to which subsection (2A) applies, with the information furnished under subsection (2A) and shall inform him of his right to consent to his surrender under section 29A(1) (inserted by *section 6(b)* of the *Extradition (European Union Conventions) Act, 2001*) and inquire of him whether he wishes to so consent.''.

Consent to surrender.

6.—The Principal Act is hereby amended by—

(*a*) the substitution of the following section for section 14:

''14.—Extradition shall not be granted where a person claimed is a citizen of Ireland, unless the relevant extradition provisions or this Act otherwise provide.'',

and

(*b*) the insertion of the following section:

''29A.—(1) Where a person is brought before the High Court—

(*a*) under section 26, pursuant to a request from a Convention country for his extradition, or

(*b*) under section 27, pursuant to a request from a Convention country for his provisional arrest,

he may consent to his being surrendered to the Convention country concerned.

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(2) Notwithstanding section 29, where a person is brought before the High Court under section 27, pursuant to a request from a Convention country to which this Part applies for the provisional arrest of that person, and the court is satisfied that—

(*a*) there has been compliance with subsection (2A) of the said section 27 (inserted by *section 5* of the *Extradition (European Union Conventions) Act, 2001*),

(*b*) it is intended that a request will be made by or on behalf of the Convention country for the person's extradition, unless he consents to being surrendered,

(*c*) the person consents voluntarily to his being surrendered to the Convention country and is aware of the consequences of his so consenting,

(*d*) extradition of the person claimed is not prohibited by this Part or by the relevant extradition provisions,

(*e*) where the person claimed is a citizen of Ireland, the Minister consents to the person being surrendered to the Convention country concerned,

the court shall make an order committing that person to a prison (or, if he is not more than 21 years of age, to a remand institution) there to await the order of the Minister for his extradition.

(3) Notwithstanding section 29, where a person is brought before the High Court under section 26, pursuant to a request from a Convention country for the extradition of that person, and the court is satisfied that—

(*a*) the extradition of that person has been duly requested,

(*b*) this Part applies in relation to that Convention country,

(*c*) extradition of the person claimed is not prohibited by this Part or by the relevant extradition provisions,

(*d*) the documents required to support a request for extradition under section 25 have been produced,

(*e*) the person consents voluntarily to his being surrendered to the Convention country and is aware of the consequences of his so consenting, and

(*f*) where the person is a citizen of Ireland, the Minister consents to the person being surrendered to the Convention country concerned,

the court shall make an order committing that person to a prison (or, if he is not more than 21 years of age, to a remand institution) there to await the order of the Minister for his extradition.

(4) Where a person consents to his being surrendered under subsection (1), the High Court shall record in writing the giving of such consent and shall cause a copy thereof to be sent forthwith to the Minister.

(5) (*a*) If a person arrested under section 27 consents under subsection (1) to his being surrendered to the Convention country concerned, the Minister shall so inform that country not later than 10 days after the person is so arrested.

(*b*) Where a person arrested under section 27 does not consent under the said subsection to his being surrendered to the Convention country concerned, the Minister shall so inform that country not later than 10 days after the person is so arrested.

(6) A person who has consented under subsection (1) to his being surrendered to the Convention country concerned may, at any time thereafter but before the making of an order by the Minister under section 33, withdraw his consent and, if he withdraws his consent, the period between the giving of such consent before the High Court and the withdrawal of such consent by him shall not be taken into account for the purpose of calculating the period of 18 days specified in section 27(7).

(7) Where a person in respect of whom the High Court has made an order of committal under subsection (2) withdraws his consent to being surrendered to the Convention country concerned, he shall, as soon as may be after a request for his extradition has been received by the Minister from that Convention country, be brought before the High Court and the court shall affirm the said order of committal provided that, in relation to that request, there has been compliance with this Act.

(8) Subsection (2) of section 29 (inserted by section 9 of the Act of 1994) and subsections (4) and (6) of that section shall apply for the purposes of this section, subject to the modification that references in subsection (4) to subsection (1) shall be construed as references to subsection (2) or (3) of this section.''.

Waiver of rule of specialty.

7.—The Principal Act is hereby amended by—

(*a*) the substitution in section 20(1)(*a*) of the following subparagraph for subparagraph (i):

''(i) subject to section 20A (inserted by *section 7(b)* of the *Extradition (European Union Conventions) Act, 2001*), with the consent of the Minister, or'',

and

(*b*) the insertion of the following section:

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"20A.—(1) The Minister may, where a person whose extradition is sought by a Convention country consents—

(*a*) under section 29A to his being surrendered to that country, and

(*b*) voluntarily before the High Court to the Minister giving his consent under section 20(1)(*a*)(i), and is aware of the consequences of the Minister so doing,

give his consent under the said section 20(1)(*a*)(i).

(2) A person who has consented in accordance with subsection (1) to the Minister giving his consent under section 20(1)(*a*)(i) may at any time thereafter, but before the giving of such consent by the Minister, withdraw his consent, and if the person so withdraws his consent the Minister shall not give his consent under section 20(1)(*a*)(i).

(3) The Minister shall not give his consent under section 20(1)(*a*)(i) in accordance with this section on a day that is before the day on which he makes an order under section 33 in respect of the person concerned.".

Surrender.

8.—The Principal Act is hereby amended by the insertion of the following section:

"33A.—(1) Where the High Court makes an order under section 29A (inserted by *section 6(b)* of the *Extradition (European Union Conventions) Act, 2001*) in relation to a person whose surrender is sought by a Convention country, the Minister shall, not later than 20 days after the giving by that person of his consent to being surrendered to that country before that Court, so notify the Convention country in writing.

(2) Subject to subsection (3), the Minister shall make an order under section 33 in respect of a person to whom subsection (1) applies not later than 20 days after the giving of notification to the Convention country concerned under the said subsection (1).

(3) Where, for reasons beyond the control of the Minister, the Minister is unable to comply with subsection (2), he shall so notify the Convention country concerned and shall make an order under the said section 33 on such day as may be agreed by the Minister and that country.

(4) Where a day for the making of an order under section 33 is agreed in accordance with subsection (3), the person whose surrender is sought shall be surrendered to the Convention country concerned not later than 20 days after such day and if surrender is not effected before the expiration of such period of 20 days the person shall be released.

(5) Subsections (1), (2), (3) and (4) shall not apply where the Minister proposes to postpone the surrender of a person claimed in accordance with section 32.".

PART 3

CONVENTION OF 1996

Amendment of section 3 of Principal Act.

9.—Section 3 of the Principal Act is hereby amended by the insertion of the following subsections:

''(1B) For the purposes of the amendments to this Act effected by *Part 3* of the *Extradition (European Union Conventions) Act, 2001,* 'Convention country' means a country designated under *section 10(1)* of that Act.

(1C) For the purposes of this Act and the Convention of 1996, the Central Authority in the State shall be the Minister.''.

Convention countries.

10.—(1) The Minister for Foreign Affairs may by order designate a country that has adopted the Convention of 1996.

(2) The Minister for Foreign Affairs may, by order, amend or revoke an order under this section, including an order under this subsection.

(3) An order under this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

Extraditable offences.

11.—Section 10 of the Principal Act is hereby amended by—

(*a*) the insertion of the following subsection:

''(1A) Subject to subsection (2A), extradition to a requesting country that is a Convention country shall be granted only in respect of an offence that is punishable—

(*a*) under the laws of that country, by imprisonment or detention for a maximum period of not less than one year or by a more severe penalty, and

(*b*) under the laws of the State, by imprisonment or detention for a maximum period of not less than 6 months or by a more severe penalty,

and for which, if there has been a conviction and sentence in the requesting country, imprisonment for a period of not less than 4 months or a more severe penalty has been imposed.'',

(*b*) the insertion of the following subsection:

''(2A) If a request is made by a Convention country for extradition for—

(*a*) an offence to which subsection (1A) applies, and

(*b*) an offence punishable under the laws of that country and of the State in respect of which there is a failure to comply with subsection (1A),

extradition may, subject to this Part, be granted in respect of the second-mentioned offence, but where extradition is refused for the first-mentioned offence it shall be refused for the second-mentioned offence also.'',

(*c*) the substitution for subsection (3) of the following:

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''(3) In this section 'an offence punishable under the laws of the State' means—

(*a*) an act that, if committed in the State on the day on which the request for extradition is made, would constitute an offence, or

(*b*) in the case of an offence under the law of a requesting country consisting of the commission of one or more acts including any act committed in the State (in this paragraph referred to as 'the act concerned'), such one or more acts, being acts that, if committed in the State on the day on which the act concerned was committed or alleged to have been committed would constitute an offence,

and cognate words shall be construed accordingly.'',

and

(*d*) the insertion of the following subsection:

''(4) In this section 'an offence punishable under the laws of the requesting country' means an offence punishable under the laws of the requesting country on—

(*a*) the day on which the offence was committed or is alleged to have been committed, and

(*b*) the day on which the request for extradition is made,

and cognate words shall be construed accordingly.''.

Political offences.

12.—Section 3 of the Act of 1987 is hereby amended by the insertion in subsection (2) of the following paragraph:

''(*aa*) the purposes of Part II of the Act of 1965 in relation to any request for the surrender of a person made after the passing of the *Extradition (European Union Conventions) Act, 2001*, by any country that—

(i) has adopted the Convention of 1996, and

(ii) is a country to which the said Part II applies.''.

Revenue offences.

13.—The Principal Act is hereby amended by—

(*a*) the substitution, in section 3(1), of the following definition for the definition of ''revenue offence'' (inserted by section 3(*a*) of the Act of 1994):

'' 'revenue offence', in relation to any country or place outside the State, means an offence in connection with taxes, duties, customs or exchange control but does not include an offence involving the use or threat of force or perjury or the forging of a document issued under statutory authority or an offence alleged to have been committed by an officer of the revenue of that country or place in his capacity as such officer or an offence within the

scope of Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances done at Vienna on the 20th day of December, 1988;'',

(*b*) the substitution of the following section for section 13:

''13.—Extradition shall not be granted for revenue offences unless the relevant extradition provisions otherwise provide.'',

(*c*) the deletion, in subsection (2) of section 44, of—

(i) ''or'' in paragraph (*b*), and

(ii) paragraph (*c*),

and

(*d*) the deletion, in subsection (2)(*a*) of section 50, of subparagraph (iii).

Pardon or amnesty.

14.—The Principal Act is hereby amended by the insertion of the following section:

''18A.—(1) Extradition shall not be granted where the person claimed has been granted a pardon under Article 13.6 of the Constitution in respect of an offence consisting of an act that constitutes in whole or in part the offence under the law of the requesting country in respect of which extradition is sought.

(2) Extradition shall not be granted where the person claimed has, in accordance with the law of the requesting country, become immune, by virtue of any amnesty or pardon, from prosecution or punishment for the offence concerned.

(3) Extradition shall not be granted where the person claimed has, by virtue of any Act of the Oireachtas, become immune from prosecution or punishment for any offence consisting of an act that constitutes in whole or in part the offence under the law of the requesting country in respect of which extradition is sought.''.

Rule of specialty.

15.—Section 20 of the Principal Act is hereby amended by—

(*a*) the substitution in subsection (1) of ''Subject to subsection (1A) (inserted by *section 15(b)* of the *Extradition (European Union Conventions) Act, 2001*), extradition shall not be granted unless provision is made by the law of the requesting country or by the extradition agreement—'' for ''Extradition shall not be granted unless provision is made by the law of the requesting country or by the extradition agreement—'', and

(*b*) the insertion of the following subsection:

''(1A) Extradition to a Convention country of a person claimed shall not be refused on the grounds only that it is intended—

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(*a*) to proceed against him in that country for an offence alleged to have been committed by him before his surrender (other than an offence to which the request for extradition relates) provided that—

(i) upon conviction he is not liable to a term of imprisonment or detention, or

(ii) in circumstances where upon conviction he is liable to a term of imprisonment or detention and such other penalty as does not involve a restriction of his personal liberty, the High Court is satisfied that the said other penalty only will be imposed should he be convicted of the offence concerned,

(*b*) to impose in the Convention country concerned a penalty (other than a penalty consisting of the restriction of the person's liberty) including a financial penalty in respect of an offence—

(i) of which the person claimed has been convicted,

(ii) that was committed before his surrender, and

(iii) that is not an offence to which the request relates,

notwithstanding that where such person fails or refuses to pay the penalty concerned (or, in the case of a penalty that is not a financial penalty, fails or refuses to submit to any measure or comply with any requirements of which the penalty consists), he may under the law of that Convention country be detained or otherwise deprived of his personal liberty, or

(*c*) to proceed against or detain him in the Convention country concerned for the purpose of executing a sentence or order of detention in respect of an offence—

(i) of which the person claimed has been convicted,

(ii) that was committed before his surrender, and

(iii) that is not an offence to which the request relates,

or otherwise restrict his personal liberty as a consequence of being convicted of such offence, provided that—

(I) after his surrender he consents to such execution or to his personal liberty being

so restricted and, in the case of an Irish citizen, the Minister so consents also, and

(II) under the law of the Convention country, such consent shall be given before the competent judicial authority in that country and be recorded in accordance with the law of that country.''.

Application of rule of specialty in State.

16.—Section 39 of the Principal Act is hereby amended by—

(*a*) the substitution, in subsection (2), of ''Subject to subsection (2A) (inserted by *section 16(b)* of the *Extradition (European Union Conventions) Act, 2001*), a person to whom this section applies shall not be proceeded against, sentenced or imprisoned or otherwise restricted in his personal freedom for any offence committed before his surrender other than that for which he was surrendered, except in the following cases—'' for ''He shall not be proceeded against, sentenced or imprisoned or otherwise restricted in his personal freedom for any offence committed prior to his surrender other than that for which he was surrendered, except in the following cases—'', and

(*b*) the insertion of the following subsection:

''(2A) A person to whom this section applies, who has been surrendered to the State by a Convention country pursuant to a request for his extradition from the Central Authority in the State, may—

(*a*) be proceeded against for an offence alleged to have been committed by him before his surrender (other than that for which he has been surrendered) provided that—

(i) upon conviction he is not liable to a term of imprisonment or detention,

(ii) in circumstances where, upon conviction, he would be liable to a term of imprisonment or detention or such penalty as does not involve a restriction of his personal liberty, the said other penalty only shall be imposed should he be convicted of the offence concerned,

(*b*) be subjected to a penalty (other than a penalty consisting of the restriction of his personal liberty) including a financial penalty, where apart from this section the law so provides in respect of an offence—

(i) of which he has been convicted,

(ii) that was committed before his surrender, and

(iii) that is not an offence for which he has been surrendered,

notwithstanding that where such person fails or refuses to pay the penalty concerned (or, in the case of a penalty that is not a financial penalty, fails or refuses to comply with the order of the court by which the penalty has been imposed), he may in accordance with law and apart from this section be detained or otherwise deprived of his personal liberty, or

(*c*) be proceeded against or, where apart from this section the law so provides, be detained for the purpose of executing a sentence of imprisonment or detention in respect of an offence—

(i) of which he has been convicted,

(ii) that was committed before his surrender, and

(iii) that is not an offence for which he has been surrendered,

or, where apart from this section the law so provides, be otherwise restricted in his personal liberty as a consequence of being convicted of such offence, provided that he has consented to such execution or his personal liberty being so restricted before the High Court which shall, upon being satisfied that the person so consents voluntarily and is aware of the consequences of his so consenting, record that consent.''.

Authentication.

17.—The Principal Act is hereby amended by—

(*a*) the insertion of the following subsection in section 25:

''(2) For the purposes of a request for extradition from a Convention country, a document shall be deemed to be an authenticated copy if it has been certified as a true copy by the judicial authority that issued the original or by an officer of the Central Authority of the Convention country concerned duly authorised to so do.'',

and that part of the said section 25 that is in existence immediately before the commencement of this section is hereby designated as subsection (1) of section 25,

(*b*) the substitution of the following section for section 37:

''37.—(1) In proceedings to which this Part applies, a document supporting a request for extradition from a requesting country (other than a Convention country) shall be received in evidence without further proof if it purports—

(*a*) to be signed by a judge, magistrate or officer of the requesting country, and

(*b*) to be certified by being sealed with the seal of a minister of state, ministry, department of state

or such other person as performs in that country functions the same as or similar to those performed by the Minister under this Act, as may be appropriate, and judicial notice shall be taken of such seal.

(2) In proceedings to which this Part applies, a document purporting to be a copy of a document supporting a request for extradition from a Convention country shall, subject to subsection (3), be received in evidence without further proof.

(3) In proceedings to which this Part applies, a document that purports to be certified by—

(*a*) the judicial authority in a Convention country that issued the original, or

(*b*) an officer of the Central Authority of such a country duly authorised to so do,

to be a true copy of a conviction and sentence or detention order immediately enforceable or, as the case may be, the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of that country, shall be received in evidence without further proof, and where the seal of the judicial authority or Central Authority concerned has been affixed to the document, judicial notice shall be taken of that seal.''.

Facsimile transmission of documents.

18.—The Principal Act is hereby amended by the insertion of the following section:

''23A.—(1) For the purposes of a request for extradition from a Convention country, a facsimile copy of a document to which paragraph (*a*), (*b*), (*c*), (*d*) or (*e*) of section 25(1) applies may be transmitted by the Central Authority of the Convention country concerned to the Central Authority in the State by means of the use of a facsimile machine fitted with a cryptographic device that is in operation during the transmission.

(2) The facsimile copy of a document transmitted in accordance with subsection (1) shall include—

(*a*) a copy of a certificate of the Central Authority of the Convention country concerned stating that the copy of the document so transmitted corresponds to the original document,

(*b*) a description of the pagination of that document, and

(*c*) a statement that the cryptographic device fitted to the facsimile machine that was used to transmit that facsimile copy was in operation during the transmission concerned.

(3) If the Central Authority in the State is not satisfied that the facsimile copy of a document transmitted to him in accordance with subsection (1) corresponds to the document of which it purports to be a facsimile copy, he may require the Central

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Authority of the requesting country to cause the original document or a true copy thereof to be provided to him by—

(*a*) a diplomatic agent of the requesting country, accredited to the State, or

(*b*) any other means agreed by the Central Authority in the State and the Central Authority of the Convention country concerned,

within such period as he may specify.''.

Transit.

19.—Section 40 of the Principal Act is hereby amended by—

(*a*) the substitution of the following subsection for subsection (1):

''(1) Transit through the State of a person being conveyed from one country to another upon his surrender pursuant to an agreement in the nature of an extradition agreement may, subject to—

(*a*) any relevant extradition provisions,

(*b*) such conditions, if any, as the Minister thinks proper, and

(*c*) in circumstances where the country to which he is being conveyed is a Convention country, compliance with subsection (1A) (inserted by *section 19(b)* of the *Extradition (European Union Conventions) Act, 2001*),

be granted by the Minister upon a request to that effect by the country to which he is being conveyed.'',

(*b*) the insertion of the following subsection:

''(1A) Where a request to which subsection (1) applies is made by a Convention country, the following information shall be provided by or on behalf of the Central Authority in that country in writing to the Central Authority in the State, that is to say:

(*a*) such information as will enable the person to be identified by the Central Authority in the State,

(*b*) whether—

(i) there exists an arrest warrant or other document having the same effect as an arrest warrant under the law of the Convention country issued by a judicial authority in that country in respect of the person, or

(ii) the person has been convicted in the Convention country of an offence in respect of which he has been surrendered,

(*c*) the nature, and description under the law of the Convention country, of the offence in respect of which the person has been surrendered, and

(*d*) a description of the circumstances in which the offence—

(i) was committed, or

(ii) where the person has not yet been convicted of the offence concerned, is alleged to have been committed,

and the date and place of its commission or alleged commission, as may be appropriate.'',

and

(*c*) the insertion of the following subsection:

''(2A) (*a*) This subsection applies to an aircraft that has taken off from a place (other than the State) and that is scheduled to land in a place (other than the State) and on board which there is a person who is being conveyed to a Convention country upon his surrender to that country pursuant to an agreement in the nature of an extradition agreement.

(*b*) Where an aircraft to which this subsection applies, for whatever reason, lands in the State, the Central Authority of the Convention country referred to in paragraph (*a*) shall, upon its landing or as soon as may be after it lands, comply with subsection (1A) and the said subsection (1A) shall apply subject to any necessary modifications.

(*c*) While an aircraft to which this subsection applies is in the State, a person referred to in paragraph (*a*) who is on board that aircraft shall be deemed to be in transit through the State and subsection (2) shall apply accordingly.''.

PART 4

Miscellaneous Provisions

Proceedings under Principal Act to be heard before High Court.

20.—(1) The Principal Act is hereby amended by—

(*a*) the substitution of ''High Court'' for ''District Court'' in each place that it occurs,

(*b*) the substitution of ''judge of the High Court'' for ''judge of the District Court assigned to the Dublin Metropolitan District'' in each place that it occurs,

(*c*) the deletion, in section 3, of the definition of ''judge of the District Court assigned to the Dublin Metropolitan District'' (inserted by section 3(*b*) of the Act of 1994 and amended by the Criminal Justice Act, 1999),

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(*d*) the substitution, in section 27, of the following subsection for subsection (6) (inserted by section 8(*b*) of the Act of 1994):

''(6) A person arrested under a warrant issued under this section shall, unless the warrant is cancelled under subsection (5), be brought as soon as may be before a judge of the High Court and the judge shall remand the said person in custody or on bail pending—

(*a*) the receipt by him of a certificate of the Minister under section 26(1)(*a*) (inserted by section 7(*a*) of the Act of 1994) stating that the request for extradition has been duly made, or

(*b*) (in circumstances where the person is remanded in custody) the release of that person under section 35,

and for those purposes the judge shall have the same powers of remand as if that person were brought before him charged with an indictable offence.'',

(*e*) the substitution in section 48 of the following subsection for subsection (2):

''(2) If during the period of 15 days referred to in subsection (1) an application is made by or on behalf of a person to whom that subsection applies for an order of *habeas corpus*, he shall not be delivered up while the application is pending.'',

(*f*) the substitution in section 29 of the following subsection for subsection (5):

''(5) No appeal shall lie to the Supreme Court from an order of the High Court under this section, except on a point of law.'',

and

(*g*) the substitution in section 47 of the following subsection for subsection (5):

''(5) No appeal shall lie to the Supreme Court from an order of the High Court under this section, except on a point of law.''.

(2) For the avoidance of doubt, references in the Principal Act to extradition provisions shall include references to the Convention of 1995 and the Convention of 1996.

(3) The amendments effected by *subsection (1)* shall not operate to affect proceedings brought under the Extradition Acts, 1965 to 1994, before the commencement of this section, and accordingly the District Court shall, in relation to any such proceedings, have the same jurisdiction after such commencement that it had immediately before such commencement.

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Laying of orders before Houses of Oireachtas.

21.—The Principal Act is hereby amended by the substitution of the following section for section 4:

"4.—Every order made by the Government under this Act after the commencement of the *Extradition (European Union Conventions) Act, 2001*, shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House sits after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.".

Evidence by affidavit.

22.—The Principal Act is hereby amended by the insertion of the following section:

"7B.—(1) In proceedings under this Act, evidence as to any matter to which such proceedings relate may be given by affidavit or by a statement in writing that purports to have been sworn—

(*a*) by the deponent in a place other than the State, and

(*b*) in the presence of a person duly authorised under the law of the place concerned to attest to the swearing of such a statement by a deponent,

howsoever such a statement is described under the law of that place.

(2) In proceedings referred to in subsection (1), the High Court may, if it considers that the interests of justice so require, direct that oral evidence of the matters described in the affidavit or statement concerned be given, and the court may, for the purpose of receiving oral evidence, adjourn the proceedings to a later date.".

Amendment of section 8 of Principal Act.

23.—Section 8 of the Principal Act is hereby amended by—

(*a*) the insertion of the following subsection:

"(1A) Where at any time after the making of an order under subsection (1) a country becomes a party to an extradition agreement to which that order applies, the Government may by order so declare and this Part shall upon the making of the second-mentioned order apply to that country.",

(*b*) the substitution of the following subsection for subsection (3):

"(3) An order relating to an extradition agreement (other than an order under subsection (1A) (inserted by *section 23(a)* of the *Extradition (European Union Conventions) Act, 2001*)) shall recite or embody the terms of the agreement and shall be evidence of the making of the agreement and of its terms.

(3A) An order under subsection (1A) shall in relation to the extradition agreement concerned recite or embody

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the terms of any reservation or declaration entered to that agreement by a country to which the order applies, and shall be evidence of the reservation or declaration (if any) and of its terms.

(3B) An order under subsection (2) shall recite or embody the terms of the amendment and shall be evidence of the making of the arrangement amending the extradition agreement concerned and of the terms of the amendment.'',

and

(*c*) the substitution of the following subsection for subsection (8):

''(8) A notice of the making of each order under this section shall be published in *Iris Oifigiúil* as soon as may be after it is made.''.

Evidence through television link by person outside State.

24.—Section 29 of the Criminal Evidence Act, 1992, is hereby amended by the substitution of the following subsection for subsection (1):

''(1) Without prejudice to section 13(1), in any criminal proceedings or proceedings under the *Extradition Acts, 1965 to 2001*, a person other than the accused or the person whose extradition is being sought, as the case may be, may, with the leave of the court, give evidence through a live television link.''.

Foreign seals.

25.—The Principal Act is hereby amended by—

(*a*) the substitution in subsection (3) of section 21 of the following paragraph for paragraph (*a*):

''(*a*) with the consent of the requested country signified under the seal of a minister of state, ministry or department of state of that country or such other person as performs in that country functions the same as or similar to those performed by the Minister under this Act, as may be appropriate, which seal shall be judicially noticed, or'',

and

(*b*) the substitution in paragraph (*a*) of section 39(2) of ''a minister of state, ministry or department of state of that country or such other person as performs in that country functions the same as or similar to those performed by the Minister under this Act, as may be appropriate,'' for ''minister of state of that country''.

Corresponding offence.

26.—The Principal Act is hereby amended by the insertion in section 42 of the following subsections:

''(2) For the purposes of this Part an offence under the law of a place to which this Part applies corresponds to an offence under the law of the State where the act constituting the offence under the law of that place would, if done in the State, constitute an offence under the law of the State punishable—

(*a*) on indictment, or

(*b*) on summary conviction by imprisonment for a maximum term of not less than 6 months or by a more severe penalty. Pt.4 S.26

(3) For the purposes of this Part, an offence specified in a warrant corresponds with an offence under the law of the State if—

(*a*) the act constituting the offence so specified would, if done in the State on the day the warrant is produced under section 43(1)(*b*), constitute an offence under the law of the State, or

(*b*) in the case of an offence so specified consisting of one or more acts including any act committed in the State, such act constituted an offence under the law of the State on the day on which it was committed or alleged to have been committed.''.

Amendment of section 3 of Act of 1987.

27.—Section 3 of the Act of 1987 is hereby amended by the insertion in subsection (3)(*a*) of the following subparagraphs:

''(ii*a*) an offence within the scope of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva on the 12th day of August, 1949,

(ii*b*) an offence within the scope of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, done at Geneva on the 12th day of August, 1949,

(ii*c*) an offence within the scope of the Geneva Convention Relative to the Treatment of Prisoners of War done at Geneva on the 12th day of August, 1949,

(ii*d*) an offence within the scope of the Geneva Convention Relative to the Protection of Civilian Persons in time of War done at Geneva on the 12th day of August, 1949,''.

SCHEDULE 1

Part A

Text in the English Language of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on Simplified Extradition Procedures between the Member States of the European Union
done at Brussels on 10 March 1995

(CONVENTION)

drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Council Act of 9 March 1995,

DESIRING to improve judicial cooperation between the Member States in criminal matters, with regard both to proceedings and the execution of sentences,

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RECOGNIZING the importance of extradition in judicial cooperation in order to achieve these objectives,

CONVINCED of the need to simplify extradition procedures to the extent that this is compatible with their fundamental legal principles, including the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

NOTING that, in a large number of extradition proceedings, the person claimed consents to his surrender,

NOTING that it is desirable to reduce to a minimum, in such cases, the time necessary for the extradition and any period of detention for extradition purposes,

CONSIDERING that, as a result, application of the European Convention on Extradition of 13 December 1957 should be made easier by simplifying and improving extradition procedures,

CONSIDERING that the provisions of the European Convention on Extradition remain applicable for all matters not covered by this Convention,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

General provisions

1. The aim of this Convention is to facilitate the application, between the Member States of the European Union, of the European Convention on Extradition, by supplementing its provisions.

2. Paragraph 1 shall not affect the application of more favourable provisions in the bilateral and multilateral agreements in force between Member States.

Article 2

Obligation to surrender persons

Member States undertake to surrender to each other under simplified procedures as provided for by this Convention persons sought for the purpose of extradition, subject to consent of such persons and the agreement of the requested State given in accordance with this Convention.

Article 3

Conditions for surrender

1. Pursuant to Article 2, any person who is the subject of a request for provisional arrest in accordance with Article 16 of the European Convention on Extradition shall be surrendered in accordance with Articles 4 to 11 and Article 12 (1) of the present Convention.

2. The surrender referred to in paragraph 1 shall not be subject to submission of a request for extradition or the documents required by Article 12 of the European Convention on Extradition.

Article 4

Information to be provided

1. The following information from the requesting State shall be

regarded as adequate for the information of the arrested person for the purpose of applying Articles 6 and 7 and for the competent authority referred to in Article 5 (2):

(*a*) the identity of the person sought;

(*b*) the authority requesting the arrest;

(*c*) the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment;

(*d*) the nature and legal description of the offence;

(*e*) a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought;

(*f*) in so far as possible, the consequences of the offence.

2. Notwithstanding paragraph 1, further information may be requested if the information provided for in the said paragraph is insufficient to allow the competent authority of the requested State to give agreement to the surrender.

Article 5

Consent and agreement

1. The consent of the arrested person shall be given in accordance with Articles 6 and 7.

2. The competent authority of the requested State shall give its agreement in accordance with its national procedures.

Article 6

Information to be given to the person

Where a person wanted for the purpose of extradition is arrested on the territory of another Member State, the competent authority shall inform that person, in accordance with its national law, of the request relating to him and of the possibility of his consent to his surrender to the requesting State under the simplified procedure.

Article 7

Establishing consent

1. The consent of the arrested person and, if appropriate, his express renunciation of entitlement to the speciality rule, shall be given before a competent judicial authority of the requested State in accordance with the national law of that State.

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

3. Consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be recorded; the recording procedure shall be in accordance with the national law of the requested State.

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4. Consent and, where appropriate, renunciation, as referred to in paragraph 1, may not be revoked. Upon deposit of their instruments of ratification, acceptance, approval or accession, Member States may indicate, in a declaration, that consent and, where appropriate, renunciation may be revoked, in accordance with the rules applicable under national law. In this case, the period between the notification of consent and that of its revocation shall not be taken into consideration in establishing the periods provided for in Article 16 (4) of the European Convention on Extradition.

Article 8

Notification of consent

1. The requested State shall immediately notify the requesting State of the consent of the person. So that the requesting State may submit, where applicable, a request for extradition, the requested State shall notify it, no later than 10 days after provisional arrest, whether or not the person has given his consent.

2. Notification referred to in paragraph 1 shall be made directly between the competent authorities.

Article 9

Renunciation of entitlement to the speciality rule

Each Member State may declare, upon deposit of its instrument of ratification, acceptance, approval or accession, or at any other time, that the rules laid down in Article 14 of the European Convention on Extradition do not apply where the person, in accordance with Article 7 of the present Convention:

(*a*) consents to extradition; or

(*b*) consents to extradition and expressly renounces his entitlement to the speciality rule.

Article 10

Notification of the extradition decision

1. Notwithstanding the rules laid down in Article 18 (1) of the European Convention on Extradition, the extradition decision taken pursuant to the simplified procedure and the information concerning the simplified extradition procedure shall be notified directly between the competent authority of the requested State and the authority of the requesting State which has requested provisional arrest.

2. The decision referred to in paragraph 1 shall be notified at the latest within 20 days of the date on which the person consented.

Article 11

Deadline for surrender

1. Surrender shall take place within 20 days of the date on which the extradition decision was notified under the conditions laid down in Article 10 (2).

2. After the deadline laid down in paragraph 1, if the person is being held, he shall be released on the territory of the requested State.

3. Should surrender of the person within the deadline laid down in paragraph 1 be prevented by circumstances beyond its control, the authority concerned referred to in Article 10 (1) shall so inform the other authority. The two authorities shall agree on a new surrender date. In that event, surrender will take place within 20 days of the new date thus agreed. If the person in question is still being held after expiry of this period, he shall be released.

4. Paragraphs 1, 2 and 3 of this Article shall not apply in cases where the requested State wishes to make use of Article 19 of the European Convention on Extradition.

Article 12

Consent given after expiry of the deadline laid down in Article 8 or in other circumstances

1. Where an arrested person has given his consent after expiry of the deadline of 10 days laid down in Article 8, the requested State:

— shall implement the simplified procedure as provided for in this Convention if a request for extradition within the meaning of Article 12 of the European Convention on Extradition has not yet been received by it,

— may use this simplified procedure if a request for extradition within the meaning of Article 12 of the European Convention on Extradition has reached it in the meantime.

2. Where no request for provisional arrest has been made, and where consent has been given after receipt of a request for extradition, the requested State may avail itself of the simplified procedure as provided for in this Convention.

3. Upon deposit of its instrument of ratification, acceptance, approval or accession, each Member State shall state whether it intends to apply paragraph 1, second indent, and paragraph 2 and, if so, under what conditions.

Article 13

Re-extradition to another Member State

Where the speciality rule has not been applied to the person extradited, in accordance with the declaration of the Member State provided for in Article 9 of this Convention, Article 15 of the European Convention on Extradition shall not apply to the re-extradition of this person to another Member State, unless the aforementioned declaration provides otherwise.

Article 14

Transit

In the event of transit under the conditions laid down in Article 21 of the European Convention on Extradition, where extradition under the simplified procedure is concerned, the following provisions shall apply:

(*a*) in an emergency, an application containing the information required in Article 4 may be made to the State of transit by any method which leaves a written record. The State of transit may make its decision known using the same method;

SCH.1

(*b*) the information referred to in Article 4 must be sufficient to enable the competent authority of the State of transit to ascertain whether extradition is under the simplified extradition procedure and to take the constraint measures needed for execution of the transit vis-à-vis the extradited person.

Article 15

Determining the competent authorities

Upon deposit of its instrument of ratification, acceptance, approval or accession, each Member State shall indicate in a statement which authorities are competent within the meaning of Articles 4 to 8, 10 and 14.

Article 16

Entry into force

1. This Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the General Secretariat of the Council of the European Union. The Secretary-General of the Council shall notify all Member States of such deposit.

2. This Convention shall enter into force 90 days after the date of deposit of the instrument of ratification, acceptance or approval by the last Member State to carry out this formality.

3. Until this Convention enters into force, any Member State may, when depositing its instrument of ratification, acceptance or approval, or at any other date, declare that the Convention shall apply to it in its relations with Member States that have made the same declaration 90 days after the date of deposit of its declaration.

4. Any declaration made pursuant to Article 9 shall take effect 30 days after deposit thereof, but no earlier than the date of the entry into force of this Convention or of the application thereof of the Member State concerned.

5. This Convention shall apply only to requests submitted after the date on which it enters into force or is applied between the requested State and the requesting State.

Article 17

Accession

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the General Secretariat of the Council of the European Union and approved by all the Member States, shall be equally authentic with the other authentic texts. The Secretary-General shall transmit a certified true copy of the text to each Member State.

3. The instruments of accession shall be deposited with the General Secretariat of the Council of the European Union.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of

accession or the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period of 90 days. SCH.1

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 16 (3) shall apply to acceding Member States.

PART B

Text in the Irish Language of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on Simplified Extradition Procedures between the Member States of the European Union
done at Brussels on 10 March 1995

(COINBHINSIÚN)

arna tharraingt suas ar bhonn Airteagal K.3 den Chonradh ar an Aontas Eorpach maidir le nós imeachta simplithe eiseachadta idir Bhallstáit an Aontais Eorpaigh

TÁ NA hARDPHÁIRTITHE CONARTHACHA sa Choinbhinsiún seo, Ballstáit an Aontais Eorpaigh,

AG TAGAIRT DÓIBH do Ghníomh ón gComhairle an 9 Márta 1995,

ÓS É A MIANGAS an comhar breithiúnach in ábhair choiriúla idir na Ballstáit a fheabhsú a mhéad a bhaineann le himeachtaí agus le forghníomhú pianbhreitheanna,

Á AITHINT DÓIBH a thábhachtaí atá an t-eiseachadadh i réimse an chomhair bhreithiúnaigh d'fhonn na cuspóirí sin a ghnóthú,

AR BHEITH DEIMHIN DÓIBH gur gá na nósanna imeachta eiseachadta a shimpliú , a mhéad atá sin ag luí lena mbunphrionsabail dlí, lena n-áirítear prionsabail an Choinbhinsiúin Eorpaigh chun Cearta an Duine agus Saoirsí Bunúsacha a Chosaint,

AG TABHAIRT DÁ nAIRE gurb amhlaidh, i mórchuid nósanna imeachta eiseachadta, go dtoilíonn an duine a mbaineann an iarraidh leis lena thabhairt suas,

AG TABHAIRT DÁ nAIRE gurb inmhianta an t-am is gá don eiseachadadh agus gach tréimhse choinneála chun críocha eiseachadta a laghdú a mhéad is féidir sna cásanna sin,

DE BHRÍ nach foláir dá thoradh sin cur i bhfeidhm Choinbhinsiún Eorpach an 13 Nollaig 1957 um Eiseachadadh a éascú trí na nósanna imeachta Eiseachadta a shimpliú agus a fheabhsú,

DE BHRÍ go leanann forálacha an Choinbhinsiúin Eorpaigh um Eiseachadadh de bheith infheidhme ar gach ábhar nach ndéileáiltear leis sa Choinbhinsiún seo,

TAR ÉIS COMHAONTÚ MAR A LEANAS:

Airteagal 1

Forálacha ginearálta

1. Is é aidhm an Choinbhinsiúin seo cur i bhfeidhm an Choinbhinsiúin Eorpaigh um Eiseachadadh idir Bhallstáit an Aontais Eorpaigh a éascú trína chuid forálacha a fhorlíonadh.

SCH.1

2. Ní dhéanfaidh mír 1 difear d'fhorálacha is fabhraí sna comhaontuithe déthaobhacha nó iltaobhacha atá i bhfeidhm idir Bhallstáit a chur i bhfeidhm.

Airteagal 2

Oibleagáid duine a thabhairt suas

Gabhann na Ballstáit orthu féin daoine a bhfuil lorg orthu chun críocha eiseachadta a thabhairt suas dá chéile faoi na nósanna imeachta simplithe dá bhforáiltear sa Choinbhinsiún seo, faoi réir thoiliú na ndaoine sin agus chomhaontú an Stáit iarrtha arna dtabhairt i gcomhréir leis an gCoinbhinsiún seo.

Airteagal 3

Coinníollacha don tabhairt suas

1. De bhun Airteagal 2, déanfar aon duine a bhfuil iarraidh ar ghabháil shealadach déanta ina leith i gcomhréir le hAirteagal 16 den Choinbhinsiún Eorpach um Eiseachadadh a thabhairt suas i gcomhréir le hAirteagail 4 go 11 agus 12 (1) den Choinbhinsiún seo.

2. Ní bheidh an tabhairt suas dá dtagraí tear i mír 1 faoi réir iarraidh ar eiseachadadh ná na cáipéisí is gá de bhun Airteagal 12 den Choinbhinsiún Eorpach um Eiseachadadh a thíolacadh.

Airteagal 4

Faisnéis atá le cur ar fáil

1. D'fhonn an duine atá gafa a chur ar an eolas chun Airteagail 6 agus 7 a chur i bhfeidhm agus an t-údarás inniúil dá dtagraítear in Airteagal 5 (2) a chur ar an eolas, measfar gur leor an fhaisnéis seo a leanas ón Stát iarrthach:

(*a*) aithne an duine atáthar a lorg;

(*b*) an t-údarás atá ag iarraidh na gabhála;

(*c*) barántas gabhála nó cáipéis eile a bhfuil an éifeacht dhlíthiúil chéanna aici nó breithiúnas infhorghníomhaithe a bheith ar marthain;

(*d*) cineál agus tuairisc dhlíthiúil an chiona;

(*e*) tuairisc ar na himthosca ina ndearnadh an cion, lena n-áirítear an t-am, an áit agus a mhéad a bhí an duine atáthar a lorg páirteach ann;

(*f*) a mhéad is féidir, iarmhairtí an chiona.

2. D'ainneoin mhír 1, féadfar faisnéis bhreise a iarraidh más amhlaidh nach leor an fhaisné 22 is dá bhforáiltear sa mhír sin chun gur féidir le húdarás inniúil an Stáit iarrtha comhaontú don tabhairt suas.

Airteagal 5

Toiliú agus comhaontú

1. Tabharfar toiliú an duine ghafa i gcomhréir le hAirteagail 6 agus 7.

2. Tabharfaidh údarás inniúil an Stáit iarrtha a chomhaontú i gcomhréir lena nósanna imeachta náisiúnta. SCH.1

Airteagal 6

Faisnéis atá le tabhairt don duine

Nuair a ghabhtar ar chríoch Bhallstáit eile duine atáthar a lorg chun críocha eiseachadta, cuirfidh an t-údarás inniúil an duine sin ar an eolas i gcomhréir lena dhlí náisiúnta faoin iarraidh a bhaineann leis agus faoin gcaoi atá aige toiliú go dtabharfar suas é don Stát iarrthach faoin nós imeachta simplithe.

Airteagal 7

An toiliú a shuíomh

1. Tabharfar toiliú an duine ghafa agus, más iomchuí, tréigean sainráite a theidil aige chun riail na speisialtachta os comhair údará is bhreithiúnaigh inniúil de chuid an Stáit iarrtha i gcomhréir le dlí náisiúnta an Stáit sin.

2. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go bhfuil an toiliú agus, más iomchuí, an tréigean dá dtagraítear i mír 1 suite ar dhóigh a léiríonn gur nocht an duine dá dheoin féin iad agus é lánfheasach ar a n-iarmhairtí. Chuige sin, beidh de cheart ag an duine gafa comhairle dlí odóra a fháil.

3. Taifeadfar an toiliú agus, más iomchuí, an tréigean dá dtagraítear i mír 1; beidh an nós imeachta taifeadta i gcomhréir le dlí náisiúnta an Stáit iarrtha.

4. Ní fhéadfar an toiliú agus, más iomchuí, an tréigean dá dtagraítear i mír 1 a chúlghairm. Féadfaidh na Ballstáit, agus a n-ionstraimí daingniúcháin, glactha, formheasta nó aontachais á dtaisceadh acu, a chur i bhfios i ndearbhú go bhféadfar an toiliú agus, más iomchuí, an tréigean a chúlghairm i gcomhréir leis na rialacha is infheidhme faoin dlí náisiúnta. Sa chás sin, ní chuirfear an tréimhse idir an toiliú a chur in iúl agus an chú lghairm a chur in iúl san áireamh d'fhonn na tréimhsí dá bhforáiltear in Airteagal 16 (4) den Choinbhinsiún Eorpach um Eiseachadadh a shuíomh.

Airteagal 8

An toiliú a chur in iúl

1. Cuirfidh an Stát iarrtha toiliú an duine in iúl láithreach don Stát iarrthach. Chun go bhféadfaidh an Stát iarrthach iarraidh ar eiseachadadh a thíolacadh má s iomchuí, cuirfidh an Stát iarrtha in iúl dó tráth nach déanaí ná deich lá tar éis na gabhála sealadaí ar thug nó nár thug an duine i dtrácht a thoiliú.

2. Is go díreach idir na húdaráis inniúla a dhéanfar an cur in iúl dá dtagraítear i mír 1.

Airteagal 9

An teideal chun riail na speisialtachta a thréigean

Féadfaidh gach Ballstát a dhearbhú, agus a ionstraim dhaingniúcháin, glactha, formheasta nó aontachais á taisceadh aige nó tráth ar bith eile, nach bhfuil na rialacha atá leagtha síos in Airteagal 14 den

SCH.1

Choinbhinsiún Eorpach um Eiseachadadh infheidhme má thoilíonn an duine, i gcomhréir le hAirteagal 7 den Choinbhinsiún seo:

(*a*) leis an eiseachadadh, nó

(*b*) leis an eiseachadadh agus a theideal chun riail na speisialtachta a thréigean go sainráite.

Airteagal 10

An cinneadh eiseachadta a chur in iúl

1. D'ainneoin na rialacha atá leagtha sí os in Airteagal 18 (1) den Choinbhinsiún Eorpach um Eiseachadadh, is go díreach idir an t-údarás inniúil sa Stát iarrtha agus an t-údarás sa Stát iarrthach a rinne an iarraidh ar ghabháil shealadach a chuirfear in iúl an cinneadh maidir leis an eiseachadadh arna ghlacadh de bhun an nós imeachta simplithe agus an fhaisnéis maidir leis an nós imeachta simplithe eiseachadta.

2. Cuirfear an cinneadh dá dtagraítear i mír 1 in iúl faoi cheann fiche lá ar a dhéanaí amhail ón dáta ar thug an duine a thoiliú.

Airteagal 11

Tréimhse don tabhairt suas

1. Déanfar an duine a thabhairt suas faoi cheann fiche lá ón dáta a ndearnadh an cinneadh maidir le heiseachadadh a chur in iúl faoi na coinníollacha atá leagtha s íos in Airteagal 10 (2).

2. Ar an tréimhse dá bhforáiltear i mír 1 a dhul in éag, má tá an duine fós faoi choinneáil, scaoilfear saor é ar chríoch an Stáit iarrtha.

3. Má chuireann imthosca nach bhfuil neart ag an údarás inniúil dá dtagraítear in Airteagal 10 (1) orthu bac ar thabhairt suas an duine sa tréimhse dá bhforáiltear i mír 1, cuirfidh an t-údarás sin an t-údarás eile ar an eolas faoi. Tiocfaidh an dá údarás ar comhaontú maidir le dáta nua don tabhairt suas. Sa chás sin, déanfar an tabhairt suas faoi cheann fiche lá ón dáta nua a comhaontaíodh amhlaidh. Má tá an duine i dtrácht á choinneáil fós tar éis don tréimhse sin a dhul in éag, scaoilfear saor é.

4. Ní bheidh míreanna 1, 2 agus 3 den Airteagal seo infheidhme i gcásanna ina dteastaíonn ón mBallstát iarrtha úsáid a bhaint as Airteagal 19 den Choinbhinsiún Eorpach um Eiseachadadh.

Airteagal 12

Toiliú arna thabhairt tar éis don tréimhse dá bhforáiltear in Airteagal 8 a dhul in éag nó in imthosca eile

1. Nuair a thugann duine a thoiliú tar éis don tréimhse deich lá dá bhforá iltear in Airteagal 8 a dhul in éag

— cuirfidh an Stát iarrtha an nós imeachta simplithe dá bhforáiltear sa Choinbhinsiún seo chun feidhme mura mbeidh iarraidh ar eiseachadadh de réir bhrí Airteagal 12 den Choinbhinsiún Eorpach um Eiseachadadh faighte aige fós;

— féadfaidh an Stát iarrtha úsáid a bhaint as an nós imeachta simplithe sin má tá iarraidh ar eiseachadadh de réir bhrí Airteagal 12 den Choinbhinsiún Eorpach um Eiseachadadh faighte aige san idirlinn. SCH.1

2. Mura mbeidh iarraidh ar ghabháil shealadach déanta agus go bhfuil toiliú tugtha tar éis iarraidh ar eiseachadadh a fháil, féadfaidh an Stát iarrtha leas a bhaint as an nós imeachta simplithe dá bhforáiltear sa Choinbhinsiún seo.

3. Agus a ionstraim dhaingniúcháin, glactha, formheasta nó aontachais á taisceadh aige, dearbhóidh gach Ballstát an bhfuil sé d'intinn aige an dara fleasc de mhír 1 agus mír 2 a chur i bhfeidhm agus cad iad na coinníollacha faoina ndéanfaidh sé sin.

Airteagal 13

Atheiseachadadh go Ballstát eile

Mura gcuirfear riail na speisialtachta i bhfeidhm ar an duine a eiseachadadh i gcomhréir leis an dearbhú ón mBallstát dá bhforáiltear in Airteagal 9 den Choinbhinsiún seo, ní bheidh Airteagal 15 den Choinbhinsiún Eorpach um Eiseachadadh infheidhme ar atheiseachadadh an duine sin go Ballstát eile mura bhforáiltear a mhalairt sa dearbhú thuasluaite.

Airteagal 14

Idirthuras

I gcás idirthurais faoi na coinníollacha atá leagtha síos in Airteagal 21 den Choinbhinsiún Eorpach um Eiseachadadh, nuair is eiseachadadh de réir an nós imeachta simplithe atá i gceist, beidh na forálacha seo a leanas infheidhme:

(*a*) i gcás práinne, féadfar an t-iarratas, maille leis an bhfaisnéis is gá de bhun Airteagal 4, a sheoladh chuig an Stát idirthurais trí mhodh ar bith a fhágann taifead scríofa. Féadfaidh an Stát idirthurais a chinneadh a chur in iúl tríd an modh céanna;

(*b*) caithfidh gur leor an fhaisnéis dá dtagraítear in Airteagal 4 chun go mbeidh a fhios ag údarás inniúil an Stáit idirthurais gur eiseachadadh faoin nós imeachta simplithe é agus chun gur féidir leis na bearta srianta is gá a ghlacadh d'fhonn an t-idirthuras a fhorghníomhú maidir leis an duine a eiseachadadh.

Airteagal 15

Na húdaráis inniúla a chinneadh

Agus a ionstraim dhaingniúcháin, glactha, formheasta nó aontachais á taisceadh aige, cuirfidh gach Ballstát i bhfios, i ndearbhú, cé hiad na húdaráis inniúla de réir bhrí Airteagail 4 go 8, 10 agus 14.

Airteagal 16

Teacht i bhfeidhm

1. Beidh an Coinbhinsiún seo faoi réir a dhaingnithe, a ghlactha nó a fhormheasta. Déanfar na hionstraimí daingniúcháin, glactha nó formheasta a thaisceadh le hArdrúnaíocht Chomhairle an Aontais

SCH.1

Eorpaigh. Cuirfidh Ardrúnaí na Comhairle an taisceadh sin in iúl do na Ballstáit uile.

2. Tiocfaidh an Coinbhinsi ún seo i bhfeidhm nócha lá tar éis dháta na hionstraime daingniúcháin, glactha nó formheasta a thaisceadh ag an mBallstát is déanaí a dhéanfaidh an beart sin.

3. Go dtí go dtiocfaidh an Coinbhinsiún seo i bhfeidhm, féadfaidh gach Ballstát, tráth a ionstraime daingniúcháin, glactha nó formheasta a thaisceadh nó ar aon dáta eile, a dhearbhú go mbeidh an Coinbhinsiún seo infheidhme ina leith ina chaidreamh leis na Ballstá it a mbeidh an dearbhú céanna déanta acu nócha lá tar éis dáta a dhearbhaithe a thaisceadh.

4. Gabhfaidh éifeacht le gach dearbhú arna dhéanamh de bhun Airteagal 9 tríocha lá tar éis dh áta a thaiscthe agus tráth nach luaithe ná dáta an Choinbhinsiúin seo a theacht i bhfeidhm nó a chur i bhfeidhm i leith an Bhallstáit i dtrácht.

5. Ní bheidh an Coinbhinsiún infheidhme ach ar iarrataí a dhéantar tar éis an dáta ar a dtiocfaidh sé i bhfeidhm nó ar a gcuirtear i bhfeidhm é idir an Stát iarrtha agus an Stát iarrthach.

Airteagal 17

Aontachas

1. Beidh an Coinbhinsiún seo ar oscailt d'aontachas aon Stáit a aontaigh chun bheith ina bhall den Aontas Eorpach.

2. Beidh comhúdarás ag téacs an Choinbhinsiúin i dteanga an Stáit aontaigh, arna tharraingt suas ag Ardrúnaíocht Chomhairle an Aontais Eorpaigh agus arna fhormheas ag na Ballstáit uile, leis na téacsanna barántúla eile. Seolfaidh an tArdrúnaí cóip dhílis dheimhnithe chuig gach Ballstát.

3. Déanfar na hionstraimí aontachais a thaisceadh le hArdrúnaíocht Chomhairle an Aontais Eorpaigh.

4. Tiocfaidh an Coinbhinsi ún seo i bhfeidhm i leith aon Bhallstáit a aontaíonn dó nócha lá tar éis dó a ionstraim aontachais a thaisceadh nó ar dháta an Choinbhinsiúin a theacht i bhfeidhm, mura mbeidh sé tagtha i bhfeidhm cheana tr áth na tréimhse nócha lá sin a dhul in éag.

5. I gcás nach mbeidh an Coinbhinsiún seo tagtha i bhfeidhm fós tráth a n-ionstraimí aontachais a thaisceadh, beidh forálacha Airteagal 16(3) infheidhme ar na Ballstáit aontacha.

SCHEDULE 2

PART A

Text in the English Language of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to Extradition between the Member States of the European Union done at Brussels on 27 September 1996

(CONVENTION)

drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 27 September 1996, SCH.2

DESIRING to improve judicial cooperation between the Member States in criminal matters, with regard both to prosecution and to the execution of sentences,

RECOGNIZING the importance of extradition in judicial cooperation for the achievement of these objectives,

STRESSING that Member States have an interest in ensuring that extradition procedures operate efficiently and rapidly in so far as their systems of government are based on democratic principles and they comply with the obligations laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950,

EXPRESSING their confidence in the structure and operation of their judicial systems and in the ability of all Member States to ensure a fair trial,

BEARING IN MIND that by Act of 10 March 1995 the Council drew up the Convention on simplified extradition procedure between the Member States of the European Union,

TAKING ACCOUNT of the interest in concluding a Convention between the Member States of the European Union supplementing the European Convention on Extradition of 13 December 1957 and the other Conventions in force on the matter,

CONSIDERING that the provisions of those Conventions remain applicable for all matters not covered by this Convention,

HAVE AGREED AS FOLLOWS:

Article 1

General provisions

1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union:

— of the European Convention on Extradition of 13 December 1957 (hereinafter referred to as the 'European Convention on Extradition'),

— the European Convention on the Suppression of Terrorism of 27 January 1977 (hereinafter referred to as the 'European Convention on the Suppression of Terrorism'),

— the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders in relations between the Member States which are party to that Convention, and

— the first chapter of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand-Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1962, as amended by the Protocol of 11 May 1974 (hereinafter referred to as the 'Benelux Treaty') in relations between the Member States of the Benelux Economic Union.

SCH.2

2. Paragraph 1 shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States, nor, as provided for in Article 28 (3) of the European Convention on Extradition, shall it affect extradition arrangements agreed on the basis of uniform or reciprocal laws providing for the execution in the territory of a Member State of warrants of arrest issued in the territory of another Member State.

Article 2

Extraditable offences

1. Extradition shall be granted in respect of offences which are punishable under the law of the requesting Member State by deprivation of liberty or a detention order for a maximum period of at least 12 months and under the law of the requested Member State by deprivation of liberty or a detention order for a maximum period of at least six months.

2. Extradition may not be refused on the grounds that the law of the requested Member State does not provide for the same type of detention order as the law of the requesting Member State.

3. Article 2 (2) of the European Convention on Extradition and Article 2 (2) of the Benelux Treaty shall also apply where certain offences are punishable by pecuniary penalties.

Article 3

Conspiracy and association to commit offences

1. Where the offence for which extradition is requested is classified by the law of the requesting Member State as a conspiracy or an association to commit offences and is punishable by a maximum term of deprivation of liberty or a detention order of at least 12 months, extradition shall not be refused on the ground that the law of the requested Member State does not provide for the same facts to be an offence, provided the conspiracy or the association is to commit:

(*a*) one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism; or

(*b*) any other offence punishable by deprivation of liberty or a detention order of a maximum of at least 12 months in the field of drug trafficking and other forms of organized crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons.

2. For the purpose of determining whether the conspiracy or the association is to commit one of the offences indicated under paragraph 1 (*a*) or (*b*) of this Article, the requested Member State shall take into consideration the information contained in the warrant of arrest or order having the same legal effect or in the conviction of the person whose extradition is requested as well as in the statement of the offences envisaged in Article 12 (2) (*b*) of the European Convention on Extradition or in Article 11 (2) (*b*) of the Benelux Treaty.

3. When giving the notification referred to in Article 18 (2), any Member State may declare that it reserves the right not to apply paragraph 1 or to apply it under certain specified conditions.

4. Any Member State which has entered a reservation under paragraph 3 shall make extraditable under the terms of Article 2 (1) the behaviour of any person which contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism as in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, drug trafficking and other forms of organized crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons, punishable by deprivation of liberty or a detention order of a maximum of at least 12 months, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution shall be intentional and made having knowledge either of the purpose and the general criminal activity of the group or of the intention of the group to commit the offence or offences concerned.

Article 4

Order for deprivation of liberty in a place other than a penitentiary institution

Extradition for the purpose of prosecution shall not be refused on the ground that the request is supported, pursuant to Article 12 (2) (*a*) of the European Convention on Extradition or Article 11 (2) (*a*) of the Benelux Treaty, by an order of the judicial authorities of the requesting Member State to deprive the person of his liberty in a place other than a penitentiary institution.

Article 5

Political offences

1. For the purposes of applying this Convention, no offence may be regarded by the requested Member State as a political offence, as an offence connected with a political offence or an offence inspired by political motives.

2. Each Member State may, when giving the notification referred to in Article 18 (2), declare that it will apply paragraph 1 only in relation to:

(*a*) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;

and

(*b*) offences of conspiracy or association — which correspond to the description of behaviour referred to in Article 3 (4) — to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

3. The provisions of Article 3 (2) of the European Convention on Extradition and of Article 5 of the European Convention on the Suppression of Terrorism remain unaffected.

4. Reservations made pursuant to Article 13 of the European Convention on the Suppression of Terrorism shall not apply to extradition between Member States.

Article 6

Fiscal offences

1. With regard to taxes, duties, customs and exchange, extradition

SCH.2

shall also be granted under the terms of this Convention, the European Convention on Extradition and the Benelux Treaty in respect of offences which correspond under the law of the requested Member State to a similar offence.

2. Extradition may not be refused on the ground that the law of the requested Member State does not impose the same type of taxes or duties or does not have the same type of provisions in connection with taxes, duties, customs and exchange as the law of the requesting Member State.

3. When giving the notification referred to in Article 18 (2), any Member State may declare that it will grant extradition in connection with a fiscal offence only for acts or omissions which may constitute an offence in connection with excise, value-added tax or customs.

Article 7

Extradition of nationals

1. Extradition may not be refused on the ground that the person claimed is a national of the requested Member State within the meaning of Article 6 of the European Convention on Extradition.

2. When giving the notification referred to in Article 18 (2), any Member State may declare that it will not grant extradition of its nationals or will authorize it only under certain specified conditions.

3. Reservations referred to in paragraph 2 shall be valid for five years from the first day of application of this Convention by the Member State concerned. However, such reservations may be renewed for successive periods of the same duration.

Twelve months before the date of expiry of the reservation, the depositary shall give notice of that expiry to the Member State concerned.

No later than three months before the expiry of each five-year period, the Member State shall notify the depositary either that it is upholding its reservation, that it is amending it to ease the conditions for extradition or that it is withdrawing it.

In the absence of the notification referred to in the preceding subparagraph, the depositary shall inform the Member State concerned that its reservation is considered to have been extended automatically for a period of six months, before the expiry of which the Member State must give notification. On expiry of that period, failure to notify shall cause the reservation to lapse.

Article 8

Lapse of time

1. Extradition may not be refused on the ground that the prosecution or punishment of the person would be statute-barred according to the law of the requested Member State.

2. The requested Member State shall have the option of not applying paragraph 1 where the request for extradition is based on offences for which that Member State has jurisdiction under its own criminal law.

Article 9 SCH.2

Amnesty

Extradition shall not be granted in respect of an offence covered by amnesty in the requested Member State where that State was competent to prosecute the offence under its own criminal law.

Article 10

Offences other than those upon which the request for extradition is based

1. A person who has been extradited may, in respect of offences committed before his surrender other than those upon which the request for extradition was based, without it being necessary to obtain the consent of the requested Member State:

(*a*) be prosecuted or tried where the offences are not punishable by deprivation of liberty;

(*b*) be prosecuted or tried in so far as the criminal proceedings do not give rise to the application of a measure restricting his personal liberty;

(*c*) be subjected to a penalty or a measure not involving the deprivation of liberty, including a financial penalty, or a measure in lieu thereof, even if it may restrict his personal liberty;

(*d*) be prosecuted, tried, detained with a view to the execution of a sentence or of a detention order or subjected to any other restriction of his personal liberty if after his surrender he has expressly waived the benefit of the rule of speciality with regard to specific offences preceding his surrender.

2. Waiver on the part of the person extradited as referred to in paragraph 1 (*d*) shall be given before the competent judicial authorities of the requesting Member State and shall be recorded in accordance with that Member State's national law.

3. Each Member State shall adopt the measures necessary to ensure that the waiver referred to in paragraph 1 (*d*) is established in such a way as to show that the person has given it voluntarily and in full awareness of the consequences. To that end, the person extradited shall have the right to legal counsel.

4. When the requested Member State has made a declaration pursuant to Article 6 (3), paragraph 1 (*a*), (*b*) and (*c*) of this Article shall not apply to fiscal offences except those referred to in Article 6 (3).

Article 11

Presumption of consent of the requested Member State

Each Member State, when giving the notification referred to in Article 18 (2) or at any time, may declare that, in its relations with other Member States that have made the same declaration, consent for the purposes of Article 14 (1) (*a*) of the European Convention on Extradition and Article 13 (1) (*a*) of the Benelux Treaty is presumed to have been given, unless it indicates otherwise when granting extradition in a particular case.

SCH.2

Where in a particular case the Member State has indicated that its consent should not be deemed to have been given, Article 10 (1) still applies.

Article 12

Re-extradition to another Member State

1. Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty shall not apply to requests for re-extradition from one Member State to another.

2. When giving the notification referred to in Article 18 (2), a Member State may declare that Article 15 of the European Convention on Extradition and Article 14 (1) of the Benelux Treaty shall continue to apply except where Article 13 of the Convention on simplified extradition procedure between the Member States of the European Union (1) provides otherwise or where the person concerned consents to be re-extradited to another Member State.

Article 13

Central authority and transmission of documents by facsimile

1. Each Member State shall designate a central authority or, where its constitutional system so requires, central authorities responsible for transmitting and receiving extradition requests and the necessary supporting documents, as well as any other official correspondence relating to extradition requests, unless otherwise provided for in this Convention.

2. When giving the notification referred to in Article 18 (2) each Member State shall indicate the authority or authorities which it has designated pursuant to paragraph 1 of this Article. It shall inform the depositary of any change concerning the designation.

3. The extradition request and the documents referred to in paragraph 1 may be sent by facsimile transmission. Each central authority shall be equipped with a facsimile machine for transmitting and receiving such documents and shall ensure that it is kept in proper working order.

4. In order to ensure the authenticity and confidentiality of the transmission, a cryptographic device fitted to the facsimile machine possessed by the central authority shall be in operation when the equipment is being used to apply this Article.

Member States shall consult each other on the practical arrangements for applying this Article.

5. In order to guarantee the authenticity of extradition documents, the central authority of the requesting Member State shall state in its request that it certifies that the documents transmitted in support of that request correspond to the originals and shall describe the pagination. Where the requested Member State disputes that the documents correspond to the originals, its central authority shall be entitled to require the central authority of the requesting Member State to produce the original documents or a true copy thereof within a reasonable period through either diplomatic channels or any other mutually agreed channel.

Supplementary information

When giving the notification referred to in Article 18 (2), or at any other time, any Member State may declare that, in its relations with other Member States which have made the same declaration, the judicial authorities or other competent authorities of those Member States may, where appropriate, make requests directly to its judicial authorities or other competent authorities responsible for criminal proceedings against the person whose extradition is requested for supplementary information in accordance with Article 13 of the European Convention on Extradition or Article 12 of the Benelux Treaty.

In making such a declaration, a Member State shall specify its judicial authorities or other competent authorities authorized to communicate and receive such supplementary information.

Article 15

Authentication

Any document or any copy of documents transmitted for the purposes of extradition shall be exempted from authentication or any other formality unless expressly required by the provisions of this Convention, the European Convention on Extradition or the Benelux Treaty. In the latter case, copies of documents shall be considered to be authenticated when they have been certified true copies by the judicial authorities that issued the original or by the central authority referred to in Article 13.

Article 16

Transit

In the case of transit, under the conditions laid down in Article 21 of the European Convention on Extradition and Article 21 of the Benelux Treaty, through the territory of one Member State to another Member State, the following provisions shall apply:

(*a*) any request for transit must contain sufficient information to enable the Member State of transit to assess the request and to take the constraint measures needed for execution of the transit vis-à-vis the extradited person.

To that end, the following information shall be sufficient:

— the identity of the person extradited,

— the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment,

— the nature and the legal description of the offence,

— a description of the circumstances in which the offence was committed, including the date and place;

(*b*) the request for transit and the information provided for in point (*a*) may be sent to the Member State of transit by any means leaving a written record. The Member State of transit shall make its decision known by the same method;

SCH.2

(*c*) in the case of transport by air without a scheduled stopover, if an unscheduled landing occurs, the requesting Member State shall provide the transit Member State concerned with the information provided for in point (*a*);

(*d*) subject to the provisions of this Convention, in particular Articles 3, 5 and 7, the provisions of Article 21 (1), (2), (5) and (6) of the European Convention on Extradition and Article 21 (1) of the Benelux Treaty shall continue to apply.

Article 17

Reservations

No reservations may be entered in respect of this Convention other than those for which it makes express provision.

Article 18

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Convention.

3. This Convention shall enter into force 90 days after the notification referred to in paragraph 2 by the State, Member of the European Union at the time of adoption by the Council of the Act drawing up this Convention, which is last to complete that formality.

4. Until this Convention enters into force, any Member State may, when giving the notification referred to in paragraph 2, or at any other time, declare that as far as it is concerned this Convention shall apply to its relations with Member States that have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.

5. This Convention shall apply only to requests submitted after the date on which it enters into force or is applied as between the requested Member State and the requesting Member State.

Article 19

Accession of new Member States

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. The instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Convention if it

has not already entered into force at the time of expiry of the said period 90 days. SCH.2

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 18 (4) shall apply to acceding Member States.

Article 20

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

2. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

Done in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to each of the Member States.

ANNEX

Joint Declaration on the right of asylum

The Member States declare that this Convention is without prejudice either to the right of asylum to the extent to which it is recognized by their respective constitutions or to the application by the Member States of the provisions of the Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the Convention relating to the Status of Stateless Persons of 28 September 1954 and by the Protocol relating to the Status of Refugees of 31 January 1967.

———

Declaration by Denmark, Finland and Sweden concerning Article 7 of this Convention

Denmark, Finland and Sweden confirm that — as indicated during their negotiations on accession to the Schengen agreements — they will not invoke, in relation to other Member States which ensure equal treatment, their declarations under Article 6 (1) of the European Convention on Extradition as a ground for refusal of extradition of residents from non-Nordic States.

———

Declaration on the concept of 'nationals'

The Council takes note of the Member States' undertaking to apply the Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons in respect of the nationals of each Member State within the meaning of Article 3 (4) of the said Convention.

SCH.2

The Member States' undertaking mentioned in the first paragraph is without prejudice to the application of Article 7 (2) of this Convention.

———

Declaration by Greece re Article 5

Greece interprets Article 5 from the standpoint of paragraph 3 thereof. This interpretation ensures compliance with the conditions of the Greek constitution, which:

— expressly prohibits extradition of a foreigner pursued for activities in defence of freedom,

and

— distinguishes between political and so-called mixed offences, for which the rules are not the same as for political offences.

———

Declaration by Portugal on extradition requested for an offence punishable by a life sentence or detention order

Having entered a reservation in respect of the European Convention on Extradition of 1957 to the effect that it will not grant extradition of persons wanted for an offence punishable by a life sentence or detention order, Portugal states that where extradition is sought for an offence punishable by a life sentence or detention order, it will grant extradition, in compliance with the relevant provisions of the Constitution of the Portuguese Republic, as interpreted by its Constitutional Court, only if it regards as sufficient the assurances given by the requesting Member State that it will encourage, in accordance with its law and practice regarding the carrying out of sentences, the application of any measures of clemency to which the person whose extradition is requested might be entitled.

Portugal reaffirms the validity of undertakings entered into in existing international agreements to which it is party, in particular in Article 5 of the Convention on Portuguese accession to the Convention Applying the Schengen Agreement.

———

Council declaration on the follow up to the Convention

The Council declares:

(*a*) that it considers that there should be a periodic review, on the basis of information supplied by the Member States, of:

— the implementation of this Convention,

— the functioning of this Convention after its entry into force,

— the possibility for Member States to amend the reservations entered in the framework of this Convention with a view to easing the conditions for extradition or withdrawing its reservations,

— the general functioning of extradition procedures between the Member States; SCH.2

(*b*) that it will consider, one year after entry into force of this Convention, whether jurisdiction should be given to the Court of Justice of the European Communities.

PART B

Text in the Irish Language of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to Extradition between the Member States of the European Union done at Brussels on 27 September 1996

(COINBHINSIÚN)

arna dhréachtú ar bhonn Airteagal K.3 den Chonradh ar an Aontas Eorpach, a bhaineann leis an eiseachadadh idir Bhallstáit an Aontais Eorpaigh

TÁ NA hARDPHÁIRTITHE CONARTHACHA sa Choinbhinsiún seo, Ballstáit an Aontais Eorpaigh,

AG TAGAIRT DÓIBH do Ghníomh ón gComhairle an Aontais Eorpaigh an 27 Meán Fómhair 1996,

ÓS É A MIANGAS an comhar breithiúnach in ábhair choiriúla idir na Ballstáit a fheabhsú a mhéad a bhaineann le hionchúiseamh agus le forghníomhú pianbhreitheanna,

Á AITHINT DÓIBH a thábhachtaí atá an t-eiseachadadh i réimse an chomhair bhreithiúnaigh d'fhonn na cuspóirí sin a ghn óthú,

AG CUR I bhFIOS GO LÁIDIR gurb é leas na mBallstát a áirithiú go n-oibreoidh na nósanna imeachta eiseachadta go héifeachtúil sciobtha a mhéad atá a gcórais rialtais bunaithe ar phrionsabail an daonlathais agus a chomhallann na Ballstáit na hoibleag áidí atá leagtha sí os sa Choinbhinsiún chun Cearta an Duine agus Saoirsí Bunúsacha a Chosaint a síníodh sa Róimh ar an 4 Samhain 1950;

AG CUR FRIOTAIL ar a n-iontaoibh as struchtúr agus oibriú a gcóras breithiúnach agus ábaltacht na mBallstát uile triail chóir a á irithiú;

AG MEABHRÚ DÓIBH gur dhréacht an Chomhairle an Coinbhinsiún maidir le nós imeachta simplithe eiseachadta idir Bhallstáit an Aontais Eorpaigh le Gníomh an 10 Márta 1995;

Á CHUR SAN ÁIREAMH gurb é a leas Coinbhinsiún a thabhairt i gcrích idir Bhallstáit an Aontais Eorpaigh a fhorlíonfaidh Coinbhinsiún Eorpach an 13 Nollaig 1957 um Eiseachadadh agus na Coinbhinsiúin eile ar an ábhar sin atá i bhfeidhm;

DE BHRÍ go leanfaidh forálacha na gCoinbhinsiún sin de bheith infheidhme maidir le gach ábhar nach bhfuil folaithe sa Choinbhinsiún seo,

TAR ÉIS COMHAONTÚ MAR A LEANAS:

Airteagal 1

Forálacha ginearálta

1. Is é is aidhm don Choinbhinsiún seo na forálacha seo a leanas a fhorlíonadh agus a gcur i bhfeidhm idir Bhallstáit an Aontais Eorpaigh a éascú:

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— forálacha Choinbhinsiún Eorpach an 13 Nollaig 1957 um Eiseachadadh, dá ngairtear 'an Coinbhinsiún Eorpach um Eiseachadadh' anseo feasta,

— forálacha Choinbhinsiún Eorpach an 27 Eanáir 1977 chun Sceimhliú a Dhíchur, dá ngairtear 'an Coinbhinsiún Eorpach chun Sceimhliú a Dhíchur' anseo feasta,

— forálacha Choinbhinsiún an 19 Meitheamh 1990 chun Comhaontú Schengen an 14 Meitheamh 1985 maidir le seiceálacha ag na comhtheorainneacha a dhíothú de réir a chéile a chur i bhfeidhm sa chaidreamh idir na Ballstáit is páirtithe sa Choinbhinsiún sin, agus

— forálacha Chaibidil I de Chonradh an 27 Meitheamh 1962 maidir le hEiseachadadh agus Cúnamh Frithpháirteach in Ábhair Choiriúla idir Ríocht na Beilge, Ard-Diúcacht Lucsamburg agus Ríocht na hÍsiltíre, mar atá arna leasú le Prótacal an Bealtaine 1974, dá ngairtear 'Conradh Benelux' anseo feasta, sa chaidreamh idir na Ballstáit is comhaltaí d'Aontas Eacnamaíoch Benelux.

2. Ní dhéanfaidh mír 1 difear do chur i bhfeidhm forálacha is fabhraí de chomhaontuithe déthaobhacha nó iltaobhacha idir Bhallstáit ná, mar a fhoráiltear in Airteagal 28 (3) den Choinbhinsiún Eorpach um Eiseachadadh, do shocruithe um eiseachadadh arna mbunú ar dhlíthe comhionanna nó cómhalartacha maidir le barántais ghabhála arna n-eisiúint ar chríoch Bhallstáit a fhorghníomhú ar chríoch Bhallstáit eile.

Airteagal 2

Cionta ineiseachadta

1. Deonófar eiseachadadh i leith cionta is inphionóis faoi dhlí an Bhallstáit iarrthaigh le cailleadh saoirse nó ordú coinneála go ceann uastréimhse dhá mhí dhéag ar a laghad agus faoi dhlí an Bhallstáit iarrtha le cailleadh saoirse nó ordú coinneála go ceann uastréimhse sé mhí ar a laghad.

2. Ní fhéadfar eiseachadadh a dhiúltú ar an bhforas nach bhforáiltear i ndlí an Bhallstáit iarrtha d'ordú coinneála den saghas céanna dá bhforáiltear i ndlí an Bhallstáit iarrthaigh.

3. Beidh Airteagal 2 (2) den Choinbhinsiún Eorpach um Eiseachadadh agus Airteagal 2 (2) de Chonradh Benelux infheidhme freisin nuair atá cionta áirithe inphionóis le pionóis airgid.

Airteagal 3

Comhcheilg agus comhlachas chun cionta a dhéanamh

1. Nuair a rangaítear an cion a n-iarrtar eiseachadadh ina leith i ndlí an Bhallstáit iarrthaigh mar chomhcheilg nó comhlachas chun cionta a dhéanamh agus gurb inphionóis an cion sin le cailleadh saoirse nó ordú coinneála go ceann uastréimhse dhá mhí dhéag ar a laghad, ní fhéadfar an t-eiseachadadh a dhiúltú ar an bhforas nach bhforáiltear i ndlí an Bhallstáit iarrtha gur cion iad na fíorais chéanna, ar chuntar gur comhcheilg nó comhlachas é:

(*a*) chun cion nó cionta a dhéanamh dá dtagraítear in Airteagail 1 agus 2 den Choinbhinsiún Eorpach chun Sceimhliú a Dhíchur;

nó

(*b*) chun aon chion eile a dhéanamh is inphionóis le cailleadh saoirse nó ordú coinneála go ceann uastréimhse dhá mhí dhéag ar a laghad i dtaca le gáinneáil drugaí agus saghsanna eile coirpeachta eagraithe nó gníomhartha eile foréigin in aghaidh beatha, iomláine coirp nó saoirse duine, nó is údar le contúirt chomhchoiteann do dhaoine. SCH.2

2. D'fhonn a chinneadh gur comhcheilg nó comhlachas é chun ceann de na cionta dá dtagraítear i bpointe (*a*) nó (*b*) de mhír 1 den Airteagal seo a dhéanamh, cuirfidh an Ballstát iarrtha san áireamh an fhaisnéis atá sa bharántas gabhála nó in ordú a bhfuil an éifeacht dhlíthiúil chéanna aige nó i gciontú an duine a n-iarrtar a eiseachadadh agus sa ráiteas faoi na cionta dá bhforáiltear in Airteagal 12 (2), pointe (*b*), den Choinbhinsiún Eorpach um Eiseachadadh nó in Airteagal 11 (2), pointe (*b*), de Chonradh Benelux.

3. Féadfaidh gach Ballstát, agus an fógra dá dtagraítear in Airteagal 18 (2) á thabhairt aige, a dhearbhú go bhforchoimeádann sé an ceart gan mír 1 a chur i bhfeidhm nó í a chur i bhfeidhm faoi choinní ollacha sonraithe áirithe.

4. Aon Bhallstát a bhfuil forchoimeádas déanta aige faoi mhír 3, déanfaidh sé socrú gur cion ineiseachadta é, de réir bhrí Airteagal 2 (1), iompar aon duine a rannchuidíonn le grúpa daoine ag gníomhú dóibh le comhchuspóir do dhéanamh ciona nó cionta i réimse na sceimhlitheoireachta dá dtagraítear in Airteagail 1 agus 2 den Choinbhinsiún Eorpach chun Sceimhliú a Dhíchur, i dtaca le gáinneáil drugaí agus saghsanna eile coirpeachta eagraithe nó gníomhartha eile foréigin in aghaidh beatha, iomláine coirp nó saoirse duine, nó is údar le contúirt chomhchoiteann do dhaoine, is inphionóis le cailleadh saoirse nó ordú coinneála go ceann uastréimhse dhá mhí dhéag ar a laghad, fiú nuair nach nglacann an duine sin páirt i ndéanamh iarbhír an chiona nó na gcionta i dtrácht; beidh an rannchuidiú déanta go hintinneach agus le heolas ar chuspóir agus gníomhaíocht choiriúil ghinearálta an ghrúpa nó ar intinn an ghrúpa chun an cion nó na cionta i dtrácht a dhéanamh.

Airteagal 4

Ordú maidir le cailleadh saoirse in ionad seachas príosún

Ní dhiúltófar eiseachadadh chun críocha ionchúisimh ar an bhforas go bhfuil mar thaca leis an iarraidh, de bhun Airteagal 12 (2), pointe (*a*), den Choinbhinsiún Eorpach um Eiseachadadh nó Airteagal 11 (2), pointe (*a*), de Chonradh Benelux, ordú ó údaráis bhreithiúnacha an Bhallstáit iarrthaigh chun a shaoirse a bhaint den duine trína choinneáil in ionad seachas príosún.

Airteagal 5

Cionta polaitiúla

1. Chun an Coinbhinsiún seo a chur i bhfeidhm, ní bhreathnóidh an Ballstát iarrtha ar aon chion mar chion polaiti úil, mar chion a bhfuil baint aige le cion polaitiúil nó mar chion a bhfuil tucaidí polaitiúla leis.

2. Féadfaidh gach Ballstát, agus an fógra dá dtagraítear in Airteagal 18 (2) á thabhairt aige, a dhearbhú nach gcuirfidh sé mír 1 i bhfeidhm ach i leith na gcionta seo a leanas:

(*a*) cionta dá dtagraítear in Airteagail 1 agus 2 den Choinbhinsiún Eorpach chun Sceimhliú a Dhíchur;

agus

SCH.2

(*b*) cionta comhcheilge nó comhlachais — a fhreagraíonn don tuairisc ar iompar dá dtagraítear in Airteagal 3 (4) — chun ceann amháin nó níos mó de na cionta dá dtagraítear in Airteagail 1 agus 2 den Choinbhinsiún Eorpach chun Sceimhliú a Dhíchur a dhéanamh.

3. Ní dhéantar difear d'fhorálacha Airteagal 3 (2) den Choinbhinsiún Eorpach um Eiseachadadh ná Airteagal 5 den Choinbhinsiún Eorpach chun Sceimhliú a Dhíchur.

4. Ní bheidh na forchoimeádais arna ndéanamh faoi Airteagal 13 den Choinbhinsiún Eorpach chun Sceimhliú a Dhíchur infheidhme ar an eiseachadadh idir Bhallstáit.

Airteagal 6

Cionta fioscacha

1. Maidir le cánacha, dleachtanna, custam agus malairt, deonófar eiseachadadh freisin de réir fhorálacha an Choinbhinsiúin seo, an Choinbhinsiúin Eorpaigh um Eiseachadadh agus Chonradh Benelux, i leith cionta a fhreagraíonn faoi dhlí an Bhallstáit iarrtha do chion den chineál céanna.

2. Ní fhéadfar eiseachadadh a dhiúltú ar an bhforas nach bhforchuireann dlí an Bhallstáit iarrtha an cineál céanna cánacha nó dleachtanna nó nach bhfuil forálacha den chineál céanna ann maidir le cánacha, dleachtanna, custam agus malairt atá i ndlí an Bhallstáit iarrthaigh.

3. Féadfaidh gach Ballstát, agus an fógra dá dtagraítear in Airteagal 18 (2) á thabhairt aige, a dhearbhú nach ndeonóidh sé eiseachadadh i ndáil le cion fioscach ach i leith gníomhartha nó neamhghníomhartha a fhéadfaidh a bheith ina gcion i ndáil le mál, cáin bhreisluacha nó custam.

Airteagal 7

Náisiúnaigh a eiseachadadh

1. Ní fhéadfar eiseachadadh a dhiúltú ar an bhforas gur náisiúnach de chuid an Bhallstáit iarrtha de réir bhrí Airteagal 6 den Choinbhinsiún Eorpach um Eiseachadadh an duine a éilítear.

2. Féadfaidh gach Ballstát, agus an fógra dá dtagra ítear in Airteagal 18 (2) á thabhairt aige, a dhearbhú nach ndeonóidh sé eiseachadadh a náisiúnach nó nach n-údaróidh sé é ach faoi choinníollacha sonraithe áirithe.

3. Beidh na forchoimeádais dá dtagraítear i mír 2 bailí go ceann cúig bliana amhail ón gcéad lá a bheidh an Coinbhinsiún seo á chur i bhfeidhm ag an mBallstát i dtrácht. Féadfar, áfach, na forchoimeádais sin a athnuachan go ceann tréimhsí leanúnacha den fhad céanna.

Dhá mhí dhéag roimh dháta dul in éag an fhorchoimeádais, cuirfidh an taiscí fógra maidir leis an dul in éag sin chuig an mBallstát i dtrácht.

Tráth nach déanaí ná trí mhí roimh dhul in éag do gach tréimhse cúig bliana, cuirfidh an Ballstát in iúl don taiscí go bhfuil a fhorchoimeádas á choimeád ar bun aige, go bhfuil sé á leasú chun na coinníollacha eiseachadta a éascú nó go bhfuil sé á tharraingt siar.

Mura dtabharfar an fógra dá dtagraítear san fhomhír sin roimhe seo, cuirfidh an taiscí in iúl don Bhallstát i dtrácht go meastar a fhorchoimeádas a bheith fadaithe go huathoibríoch go ceann tréimhse sé mhí agus caithfidh an Ballstát fógra a thabhairt roimh dheireadh na tréimhse sin. Mura mbeidh fógra tugtha ar dhul in éag don tréimhse sin, rachaidh an forchoimeádas i léig. SCH.2

Airteagal 8

Imeacht aimsire

1. Ní fhéadfar eiseachadadh a dhiúltú ar an bhforas go mbeadh ionchúiseamh nó pionósú an duine faoi urchosc reachta de réir dhlí an Bhallstáit iarrtha.

2. Beidh de rogha ag an mBallstát iarrtha gan mír 1 a chur i bhfeidhm nuair atá an iarraidh ar eiseachadadh bunaithe ar chionta a bhfuil dlínse ag an mBallstát sin ina leith faoina dhlí coiriúil féin.

Airteagal 9

Ollmhaithiúnas

Ní dheonófar eiseachadadh i leith ciona atá folaithe ag ollmhaithiúnas sa Bhallstát iarrtha má bhí an Ballstát sin inniúil chun an cion a ionchúiseamh faoina dhlí coiriúil féin.

Airteagal 10

Cionta seachas na cionta a bhfuil an iarraidh ar eiseachadadh bunaithe orthu

1. I leith cionta a rinneadh sular tugadh suas duine a eiseachadadh seachas na cionta a bhfuil an iarraidh ar eiseachadadh bunaithe orthu, féadfar an duine sin, gan é a bheith riachtanach toiliú a fháil ón mBallstát iarrtha:

(*a*) a ionchúiseamh nó a thriail nuair nach bhfuil na cionta inphionóis le cailleadh saoirse;

(*b*) a ionchúiseamh nó a thriail a mhéad nach leanfaidh de na himeachtaí coiriúla beart a chur i bhfeidhm a shrianfadh a shaoirse phearsanta;

(*c*) a chur faoi phionós nó beart nach bhfuil cailleadh saoirse i gceist ann, lena n- áirítear pionós airgid, nó beart ina ionad sin, fiú más dóigh dó a sahoirse phearsanta a shrianadh, nó

(*d*) a ionchúiseamh, a thriail, a choinneáil d'fhonn pianbhreith nó ordú coinneála a chur isteach nó a chur faoi aon srianadh eile ar a shaoirse phearsanta má dhéanann sé, tar éis a thabhairt suas, a theideal chun riail na speisialtachta a tharscaoileadh go sainráite i leith cionta sonracha a rinneadh sular tugadh suas é.

2. Tabharfar an tarscaoileadh ón duine eiseachadta dá dtagraítear i mír 1, pointe (*d*), os comhair údaráis bhreithiúnacha inniúla an Bhallstáit iarrthaigh agus taifeadfar é i gcomhréir le dlí náisiúnta an Bhallstáit sin.

3. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go bhfuil an tarscaoileadh dá dtagraítear i mír 1, pointe (*d*), suite ar dhóigh a

SCH.2

léiríonn gur thug an duine i dtrácht dá dheoin féin é agus é lánfheasach ar na hiarmhairtí. Chuige sin, beidh de cheart ag an duine eiseachadta comhairle dlíodóra a fháil.

4. Nuair atá dearbhú déanta ag an mBallstát iarrtha de bhun Airteagal 6 (3), n í bheidh pointí (*a*), (*b*) agus (*c*) de mhír 1 den Airteagal seo infheidhme ar chionta fioscacha seachas na cinn dá dtagraítear in Airteagal 6 (3).

Airteagal 11

Toiliú an Bhallstáit iarrtha a thoimhdiú

Tráth an fhógra dá dtagraítear in Airteagal 18 (2) a thabhairt nó tráth ar bith eile, féadfaidh gach Ballstát a dhearbhú go dtoimhdeofar, ina chaidreamh leis na Ballstáit eile a bhfuil an dearbhú céanna déanta acu, go bhfuil an toiliú chun críocha Airteagal 14 (1), pointe (a), den Choinbhinsiún Eorpach um Eiseachadadh agus Airteagal 13 (1), pointe (a), de Chonradh Benelux tugtha mura sonróidh sé a mhalairt agus eiseachadadh á dheonú aige i gcás áirithe.

Nuair a shonraíonn an Ballstát i gcás áirithe nach cóir a mheas go bhfuil a thoiliú tugtha, leanfaidh Airteagal 10 (1) den Choinbhinsiún seo de bheith infheidhme.

Airteagal 12

Atheiseachadadh chuig Ballstát eile

1. Ní bheidh Airteagal 15 den Choinbhinsiún Eorpach um Eiseachadadh ná Airteagal 14 (1) de Chonradh Benelux infheidhme ar iarrataí ar atheiseachadadh ó Bhallstát go Ballstát eile.

2. Féadfaidh Ballstát, agus an fógra dá dtagraítear in Airteagal 18 (2) á thabhairt aige, a dhearbhú go leanfaidh Airteagal 15 den Choinbhinsiún Eorpach um Eiseachadadh agus Airteagal 14 (1) de Chonradh Benelux de bheith infheidhme mura bhforáiltear a mhalairt in Airteagal 13 den Choinbhinsiún maidir le nós imeachta simplithe eiseachadta idir Bhallstáit an Aontais Eorpaigh[1] nó nuair a thoitionn an duine i dtrácht lena atheiseachadadh chuig Ballstát eile.

Airteagal 13

Údarás lárnach agus cáipéisí tacaíochta a tharchur le facs

1. Ainmneoidh gach Ballstát údarás lárnach nó, más riachtanach sin faoina chóras bunreachtúil, údaráis lárnacha a bheidh freagrach as iarrataí ar eiseachadadh agus na cáipéisí tacaíochta is gá maille le haon chomhfhreagras oifigiúil a bhaineann leis na hiarrataí ar eiseachadadh a tharchur agus a ghlacadh, mura bhforáiltear a mhalairt sa Choinbhinsiún seo.

2. Sonróidh gach Ballstát, agus an fógra dá dtagraítear in Airteaga1 18 (2) á thabhairt aige, an t-údarás nó na húdaráis atá ainmnithe aige de bhun mhír 1 den Airteagal seo. Cuirfidh sé aon athrú a bhaineann leis an ainmniú sin in iúl don taiscí.

3. Féadfar facs a úsáid chun an iarraidh ar eiseachadadh agus na cáipéisí dá dtagraítear i mír 1 a tharchur. Beidh meaisín facs chun cáipéisí den sórt sin a tharchur agus a ghlacadh ag gach údarás lárnach agus féachfaidh sé chuige go mbeidh sé ag obair go rianúil.

4. D'fhonn barántúlacht agus rúndacht an tarchuir a áirithiú, déanfar feiste chripteagrafach a bheidh curtha ar mheaisín facs an údaráis

[1]IO Uimh. C78, 30.3.1995, lch. 1.

lárnaigh a oibriú nuair a bheidh an trealamh sin á úsáid chun an tAirteagal seo a chur i bhfeidhm. SCH.2

Rachaidh na Ballstáit i gcomhairle le chéile maidir leis na socruithe praiticiúla chun an tAirteagal seo a chur i bhfeidhm.

5. D'fhonn barántúlacht na gcáipéisí eiseachadta a áirithiú, déanfaidh údarás lárnach an Bhallstáit iarrthaigh a dhearbhú ina iarraidh go ndeimhníonn sé go bhfreagraíonn na cáipéisí atá tarchurtha mar thacaíocht leis an iarraidh sin do na cáipéisí bunaidh agus tabharfaidh sé tuairisc ar uimhriú na leathanach. Má dhíospóideann an Ballstát iarrtha go bhfreagraíonn na cáipéisí do na bunleaganacha, beidh a údarás lárnach i dteideal a iarraidh ar údarás lárnach an Bhallstáit iarrthaigh na cáipéisí bunaidh nó cóip dhílis díobh a thabhairt ar aird laistigh de thréimhse réasúnach trí bhealaí na taidhleoireachta nó ar bhealach comhaontaithe ar bith eile.

Airteagal 14

Eolas breise

Tráth an fhógra dá dtagraítear in Airteagal 18 (2) a thabhairt nó tráth ar bith eile, féadfaidh gach Ballstát a dhearbhú gurb amhlaidh, ina chaidreamh leis na Ballstáit eile a bhfuil an dearbhú céanna déanta acu, go bhféadfaidh údaráis bhreithiúnacha nó údaráis inniúla eile na mBallstát sin, más iomchuí, eolas breise i gcomhréir le hAirteagal 13 den Choinbhinsiún Eorpach um Eiseachadadh nó Airteagal 12 de Chonradh Benelux a iarraidh go díreach ar a údaráis bhreithiúnacha nó údaráis inniúla eile atá freagrach as imeachtaí coiriúla i gcoinne an duine a n-iarrtar a eiseachadadh.

Sonróidh an Ballstát, agus an dearbhú sin á dhéanamh aige, na húdaráis bhreithiúnacha nó na húdaráis inniúla eile dá chuid atá údaraithe chun an t-eolas breise sin a tharchur agus a ghlacadh.

Airteagal 15

Fíordheimhniú

Beidh gach cáipéis agus gach cóip de cháipéis arna tharchur chun críocha eiseachadta díolmhaithe ón bhfíordheimhniú nó ó aon fhoirmiúlacht eile mura bhforáiltear a mhalairt go sainráite i bhforálacha an Choinbhinsiúin seo, an Choinbhinsiúin Eorpaigh um Eiseachadadh nó Chonradh Benelux. Sa chás deireanach sin, measfar na cóipeanna de cháipéisí a bheith fíordheimhnithe nuair a dheimhníonn na húdaráis bhreithiúnacha a d'eisigh an bunleagan nó an t-údarás lárnach dá dtagraítear in Airteagal 13 gur cóipeanna dílse iad.

Airteagal 16

Idirthuras

I gcás idirthurais, faoi na coinníollacha atá leagtha síos in Airteagal 21 den Choinbhinsiún Eorpach um Eiseachadadh agus Airteagal 21 de Chonradh Benelux, trí chríoch Bhallstáit chuig Ballstát eile, beidh na forálacha seo a leanas infheidhme:

(*a*) Caithfidh gur leor an fhaisnéis san iarraidh ar idirthuras chun gur féidir leis an mBallstát idirthurais an iarraidh a mheas agus na bearta srianta is gá a ghlacadh d'fhonn an t-idirthuras a fhorghníomhú maidir leis an duine atá á eiseachadadh.

SCH.2

Is leor an fhaisnéis seo a leanas chun na críche sin:

— céannacht an duine atá á eiseachadadh,

— barántas gabhála nó cáipéis eile a bhfuil an éifeacht dhlíthiúil chéanna aici nó breithiúnas infhorghníomhaithe a bheith ar marthain,

— cineál agus tuairisc dhlíthiúil an chiona,

— tuairisc ar na himthosca ina ndearnadh an cion, lena n-áirítear an dáta agus an áit;

(*b*) Féadfar an iarraidh ar idirthuras agus an fhaisnéis dá bhforáiltear i bpointe (*a*) a sheoladh chuig an mBallstát idirthurais trí mhodh ar bith a fhágann taifead scríofa. Cuirfidh an Ballstát idirthurais a chinneadh in iúl tríd an modh céanna;

(*c*) I gcás aeriompair gan stad sceidealta, má tharlaíonn tuirlingt neamhsceidealta, soláthróidh an Ballstát iarrthach an fhaisnéis dá bhforáiltear i bpointe (*a*) don Bhallstát idirthurais i dtrácht;

(*d*) Faoi réir fhorálacha an Choinbhinsiúin seo, go háirithe Airteagail 3, 5, agus 7, leanfaidh forálacha Airteagal 21 (1), (2), (5) agus (6) den Choinbhinsiún Eorpach um Eiseachadadh agus Airteaga1 21 de Chonradh Benelux de bheith infheidhme.

Airteagal 17

Forchoimeádais

Ní fhéadfar aon forchoimeádas a dhéanamh i leith an Choinbhinsiúin seo seachas na cinn dá bhforáiltear go sainráite ann.

Airteagal 18

Teacht i bhfeidhm

1. Beidh an Coinbhinsiún seo faoi réir a ghlactha ag na Ballstáit i gcomhréir lena rialacha bunreachtúla faoi seach.

2. Cuirfidh na Ballstáit in iúl d'Ardrúnaí Chomhairle an Aontais Eorpaigh go bhfuil na nósanna imeachta is gá faoina rialacha bunreachtúla faoi seach chun an Coinbhinsiún seo a ghlacadh comhlíonta acu.

3. Tiocfaidh an Coinbhinsiún seo i bhfeidhm 90 lá tar éis don fhógra dá dtagraítear i mír 2 a bheith tugtha ag an Stát is Ballstát den Aontas Eorpach an tráth a ghlacfaidh an Chomhairle an Gníomh ag dréachtú an Choinbhinsiúin seo is déanaí a dhéanfaidh an beart sin.

4. Go dtí go dtiocfaidh an Coinbhinsiún seo i bhfeidhm, féadfaidh aon Bhallstát, tráth an fhógra dá dtagraítear i mír 2 a thabhairt nó tráth ar bith eile, a dhearbhú go mbeidh an Coinbhinsiún seo infheidhme a mhéad a bhaineann leis ina chaidreamh leis na Ballstáit a mbeidh an dearbhú céanna déanta acu. Beidh éifeacht leis na dearbhuithe sin 90 lá tar éis dáta a dtaiscthe.

5. Ní bheidh an Coinbhinsiún seo infheidhme ach ar iarrataí a dhéanfar tar éis an dáta ar a dtiocfaidh sé i bhfeidhm nó ar a gcuirfear i bhfeidhm é idir an Ballstát iarrtha agus an Ballstát iarrthach.

Airteagal 19 SCH.2

Aontachas Ballstát nua

1. Beidh an Coinbhinsiún seo ar oscailt d'aontachas aon Stáit a thiocfaidh chun bheith ina Bhallstát den Aontas Eorpach.

2. Is téacs údarásach téacs an Choinbhinsiúin seo i dteanga an Stáit aontaigh, arna dhréachtú ag Comhairle an Aontais Eorpaigh.

3. Déanfar na hionstraimí aontachais a thaisceadh leis an taiscí.

4. Tiocfaidh an Coinbhinsiún seo i bhfeidhm i leith aon Stáit a aontaíonn dó 90 lá tar éis dó a ionstraim aontachais a thaisceadh nó ar dháta an Choinbhinsiúin a theacht i bhfeidhm, mura mbeidh sé tagtha i bhfeidhm cheana tráth na tréimhse thuasluaite 90 lá a dhul in éag.

5. I gcás nach mbeidh an Coinbhinsiún seo tagtha i bhfeidhm fós tráth a n-ionstraimí aontachais a thaisceadh, beidh forálacha Airteagal 18 (4) infheidhme ar na Ballstáit aontacha.

Airteagal 20

Taiscí

1. Is é Ardrúnaí Chomhairle an Aontais Eorpaigh taiscí an Choinbhinsiúin seo.

2. Foilseoidh an taiscí in Iris Oifigiúil na gComhphobal Eorpach faisnéis maidir leis an gCoinbhinsiún a ghlacadh agus aontachais leis, na dearbhuithe, na forchoimeádais agus gach fógra eile a bhaineann leis.

IARSCRÍBHINN

Dearbhú comhpháirteach maidir leis an gceart chun tearmainn

Dearbhaíonn na Ballstáit go bhfuil an Coinbhinsiún seo gan dochar don cheart chun tearmainn a mhéad atá sé aitheanta ag a mBunreachtanna faoi seach nó do na Ballstáit sin forálacha Choinbhinsiún an 28 Iúil 1951 maidir le Stádas Dídeanaithe, mar atá arna fhorlíonadh le Coinbhinsiún an 28 Meán Fómhair 1954 maidir le Stádas Daoine gan Stát agus le Prótacal an 31 Eanáir 1967 maidir le Stádas Dídeanaithe, a chur i bhfeidhm.

———

Dearbhú ón Danmhairg, ón bhFionlainn agus ón tSualainn maidir le hAirteagal 7 den Choinbhinsiún seo

Deimhníonn an Danmhairg, an Fhionlainn agus an tSualainn — mar a dúirt siad le linn na caibidlíochta i gcomhair a n-aontachais le Comhaontuithe Schengen — nach ndéanfaidh siad a ndearbhuithe faoi Airteagal 6 (1) den Choinbhinsiún Eorpach um Eiseachadadh a agairt mar fhoras, i leith na mBallstát eile a áirithíonn cóir chomhionann, chun eiseachadadh cónaitheoirí ó Stáit nach Stáit Nordacha iad a dhiúltú.

———

Dearbhú maidir leis an gcoincheap ''Náisiúnaigh''

Tugann an Chomhairle dá haire gealltanas na mBallstát Coinbhinsiún Chomhairle na hEorpa an 21 Márta 1983 maidir le hAistriú

SCH.2

Daoine faoi Phianbhreith a chur chun feidhme i leith náisiúnaigh gach Ballstáit de réir bhrí Airteagal 3 (4) den Choinbhinsiún sin.

Tá an gealltanas ó na Ballstáit atá luaite sa chéad mhír gan dochar do chur i bhfeidhm Airteagal 7 (2) den Choinbhinsiún seo.

———

Dearbhú ón nGréig maidir le hAirteagal 5

Léiríonn an Ghréig Airteagal 5 faoi threoir mhír 3 den Airteagal sin. Áirithíonn an léiriú sin go gcomhlíonfar coinníollacha Bhunreacht na Gréige:

— a thoirmisceann go sainráite eachtrannach a eiseachadadh atá á lorg toisc a ghníomhaíochtaí ar mhaithe leis an tsaoirse, agus

— a dhéanann idirdhealú idir cionta polaitiúla agus cionta dá ngairtear cionta measctha nach bhfuil na rialacha céanna infheidhme orthu agus atá ar chionta polaitiúla.

———

Dearbhú ón bPortaingéil maidir le heiseachadadh arna iarraidh i dtaca le cion is inphionóis le pianbhreith saoil nó ordú coinneála saoil

Tar éis di forchoimeádas maidir le Coinbhinsiún Eorpach um Eiseachadadh 1957 a dhéanamh á rá nach ndeonóidh sí eiseachadadh daoine a iarrfar i dtaca le cion is inphionóis le pianbhreith saoil nó ordú coinneá la saoil, dearbhaíonn an Phortaingéil, nuair a iarrtar eiseachadadh i dtaca le cion is inphionóis le pianbhreith saoil nó ordú coinneála saoil, nach ndeonóidh sí an t-eiseachadadh, i gcomhlíonadh fhorálacha ábhartha Bhunreacht Phoblacht na Portaingéile mar atá arna léiriú ag Cúirt Bhunreachta, ach amháin más leor dar léi na forchinntithe arna dtabhairt ag an mBallstát iarrthach go ndéanfaidh sé bearta trócaire a chur ar aghaidh, i gcomhréir lena dhlí agus lena chleachtas um pionóis a fhorghníomhú, a d'fhéadfadh an duine a n-iarrtar a eiseachadadh a bheith i dteideal a fháil.

Athdhearbhaíonn an Phortaingéil bailíocht na ngealltanas arna ndéanamh i gcomhaontuithe idirnáisiúnta láithreacha ar páirtí iontu í agus go háirithe in Airteagal 5 de Choinbhinsiún Aontachais na Portaingéile leis an gCoinbhinsiún chun Comhaontú Schengen a chur i bhfeidhm.

———

Dearbhú ón gComhairle maidir le feidhmiú an Choinbhinsiúin

Dearbhaíonn an Chomhairle:

(*a*) go measann sí nach foláir:

— cur chun feidhme an Choinbhinsiúin seo,

— oibriú an Choinbhinsiúin seo nuair a bheidh sé tagtha i bhfeidhm,

— an chaoi atá ag na Ballstáit na forchoime ádais arna ndéanamh faoi chuimsiú an Choinbhinsiú in seo a leasú chun na coinníollacha don eiseachadadh a éascú nó na forchoimeá dais sin a tharraingt siar,

— oibriú ginearálta na nósanna imeachta eiseachadta idir na Ballstáit SCH.2

a athbhreithniú go tráthrialta ar bhonn faisnéise arna soláthar ag na Ballstáit;

(*b*) go mbreithneoidh sí, faoi cheann bliana tar éis don Choinbhinsiún seo a theacht i bhfeidhm, an cóir dlínse a thabhairt do Chúirt Bhreithiúnais na gComhphobal Eorpach.

Click here for Act

EXTRADITION (EUROPEAN UNION CONVENTIONS) ACT, 2001

EXPLANATORY MEMORANDUM

[*This memorandum is not part of the Act and does not purport to be a legal interpretation.*]

Introduction

The purpose of the Act is to give effect to two European Union Conventions on Extradition (the 1995 and 1996 Conventions) by amending, inter alia, the Extradition Act, 1965 (hereinafter referred to as the Principal Act). The Act also makes some changes to our general extradition law.

The 1995 Convention on simplified extradition procedures between the Member States of the European Union provides for a simplified procedure where the person sought consents to his or her surrender — such consent to be given before the High Court which must be satisfied that the consent is given voluntarily and in full awareness of the consequences. Once consent is given and, where the person claimed is a citizen of Ireland, the Minister for Justice, Equality and Law Reform agrees, the person will be extradited.

A person who has consented to his or her surrender may also renounce his or her right to the Specialty Rule (the rule whereby a person extradited for one offence may not be tried for other offences committed before his or her extradition) — such renunciation to be recorded before the High Court. The consent of the Minister for Justice, Equality and Law Reform is also required.

The 1995 Convention provides that consent or renunciation may not be revoked but allows parties to opt out of this requirement by making a declaration to that effect on ratification. It is proposed that Ireland will make such a declaration, and the Act allows for revocation.

The 1996 Convention relating to extradition between the Member States of the European Union, as well as extending the range of extraditable offences, also provides for the improvement and simplification of procedures in a number of respects. The range of extraditable offences is being extended by lowering the threshold for extradition from 12 to six months imprisonment for the offence in the requested state (while remaining 12 months in the requesting state) (see *section 11*). Further, to be an extraditable offence, it will be sufficient that the offence is criminal here at the date of making of the extradition request — previously for an offence to be extraditable in Ireland it must have been an offence under our law both at

the time it was committed and when the request was received. Revenue offences are also being made extraditable (see *section 13*). These latter two changes will be of general application. The position in relation to political offences remains unchanged (see *section 12*). Extradition requests, documents and correspondence may be sent by facsimile transmission provided the facsimile machine is fitted with a cryptographic device to ensure authenticity and confidentiality. Changes are also made in relation to the authentication and certification of documents. The Convention also requires all states to designate a Central Authority to be responsible for transmitting and receiving extradition requests and supporting documentation, and it is proposed that the Minister for Justice, Equality and Law Reform will be the Central Authority for Ireland.

The Act also gives effect to changes in our general extradition law. As from the commencement of *section 20*, all extradition proceedings will be held in the High Court. Evidence may be given by a witness outside the State through a television link or by affidavit in any extradition proceedings. The Act also deals with other miscellaneous matters such as foreign seals, laying of orders before the Houses of the Oireacthas and the content of such orders.

Both Conventions to which the Act gives effect include a provision that the terms of the Conventions will not affect more favourable bilateral arrangements already in existence between any Member States. This means that, as far as implementation of the Conventions is involved, the Backing of Warrants procedure with the UK contained in Part III of the Principal Act will not be affected. However, the Act will bring about a number of changes in our extradition arrangements with the UK. For example, there is a new definition of correspondence to deal with difficulties that may arise because acts that constitute offences by the law of both States may be designated differently. It is now provided in effect that the offence in the State need not be in the same category or of the same description as the offence in the UK — offences correspond where the acts of the person sought would constitute an indictable offence if committed in Ireland or are punishable on summary conviction by at least six months imprisonment. Also, it will be sufficient that the offence is criminal here at the date of making of the extradition request. In addition, as the UK has already a provision in its legislation making revenue offences extraditable in the context of the Backing of Warrants arrangements with this country, this Act will do likewise.

The text of both EU Conventions, in Irish and in English, is attached to the Act as *Schedules 1* and *2*.

Provisions of Act

PART I *(Sections 1 — 2)*

PRELIMINARY AND GENERAL

This Part defines terms used in the Act and provides for other routine matters.

Section 1 (Short title, collective citation, construction and commencement)

Section 1 provides that the short title of the Act is the Extradition (European Union Conventions) Act, 2001. It also provides that the Act will come into operation by Ministerial Order and that different provisions of the Act may be brought into effect by different orders.

Section 2 (Interpretation)

Section 2 (1) is a standard provision which provides for the definition of certain terms used in the Act. *Subsection (2)* provides that the amendments effected by the Act apply to offences whenever committed. However, the Act does not affect cases already decided where extradition was sought but refused on the grounds that the offence in question was a revenue offence.

PART 2 *(Sections 3 — 8)*

Convention of 1995

This Part gives effect to the 1995 Convention on simplified extradition procedures between the Member States of the European Union. It deals with cases where persons whose extradition is sought consent to being handed over. The 1995 Convention does not affect the application of more favourable provisions in the bilateral and multilateral agreements in force between Member States.

Section 3 (Amendment of section 3 of Principal Act)

A new subsection (1A) is inserted into section 3 of the Principal Act; it defines ''Convention country'' for the purposes of amendments being made to the Principal Act by *Part 2* of this Act.

Section 4 (Convention countries)

This section provides that the Minister for Foreign Affairs may by order designate countries that have adopted the Convention of 1995. The 1995 Convention is a European Union Convention and open only to EU Member States.

Section 5 (Provisional arrest)

This section amends section 27 of the Principal Act by inserting new subsections (2A) and (2B). It implements Article 4 of the 1995 Convention and sets out the information that must be provided to enable the simplified procedure to go ahead. This information has to be communicated also to the arrested person who must also be informed of his or her right to consent to surrender.

Section 6 (Consent to surrender)

This section inserts a new section (section 29A) into the Principal Act. It provides that where a person in extradition proceedings is brought before the High Court under a provisional arrest warrant or under a warrant of arrest, he or she may consent to being surrendered to the Convention country concerned. The procedure is elaborated on in *subsections (2)* to *(4)* of the new section. Where the person claimed is a citizen of Ireland, the Minister for Justice, Equality and Law Reform has to consent as well (*subsections (2)(e)* and *(3)(f)*).

Subsection (5) of the new section provides that if a person who is provisionally arrested consents to his or her being surrendered, the Minister for Justice, Equality and Law Reform shall inform the Convention country concerned not later than 10 days after the person is so arrested. This is also a requirement where the person does not consent to being surrendered.

Subsection (6) of the new section provides that a person who has consented to his or her surrender may subsequently (but before the making of a surrender order by the Minister) withdraw such consent.

Subsection (7) of the new section provides that where a person, in respect of whom there is a provisional arrest warrant under section 27 of the Principal Act and who has been the subject of a committal order (by the High Court), withdraws his consent, he/she shall, after a request for his/her extradition (under section 26 of the Principal Act) has been received, be brought before the High Court and the court shall affirm the order of committal provided there has been compliance with the Act.

Section 6 also makes a technical amendment to section 14 of the Principal Act to take account of the new consent provisions.

Section 7 (Waiver of rule of specialty)

This section amends section 20 of the Principal Act and inserts a new section 20A. A person who has consented to his or her surrender may also waive his or her right to the specialty rule (which provides that a person extradited for one offence may not be tried for other offences committed before his or her extradition unless certain conditions are complied with). Subsection (1) of the new section 20A provides that a person who has consented to his surrender may also voluntarily, before the High Court, give his consent to the Minister consenting to the waiver of specialty in his case. Section 20A (2) provides that a person who has consented in accordance with subsection (1) may withdraw such consent; however, such withdrawal must take place before the giving of such consent by the Minister. Section 20A (3) provides that the Minister shall not give his consent prior to the day he makes an order for the surrender of the person under section 33 of the Principal Act.

Note: Under Article 7 of the 1995 Convention consent and renunciation of speciality must be given before the judicial authorities of the requested state as compared with Article 10 of the 1996 Convention (see section 15) which requires the waiver of speciality in the limited circumstances contemplated by Article 10 to be given after his or her surrender before the judicial authority of the requesting state.

Section 8 (Surrender)

This section provides for the insertion of a new section 33A in the Principal Act and sets out the procedure where consent to surrender has been given (Articles 10 and 11 of the 1995 Convention deal with surrender). The date of consent will be the date on which the consent is made and recorded before the High Court.

Subsection (1) of section 33A provides that where the High Court makes an order under section 29A, the Minister shall notify the requesting country of that decision within 20 days of its making and subsection (2) provides that the Minister shall make an order for the surrender of the person sought not later than 20 days after the giving of notification.

However, subsection (3) allows a derogation from the period mentioned in subsection (2) if surrender within the specified period has been prevented by circumstances beyond the control of the Minister. Subsection (4) of the new section provides for the person to be released if he or she has not been surrendered to the requesting State within the new timeframe agreed under section 33A (3).

The new section 33A (5) provides that the previous subsections shall not apply where the Minister proposes to postpone surrender of a person claimed in accordance with section 32 of the Principal Act.

Part 3 *(Sections 9 — 19)*

CONVENTION OF 1996

This Part gives effect to the 1996 Convention relating to extradition between Member States of the European Union. The purpose of this Convention is to improve judicial co-operation between the EU states in the extradition area by extending the range of extraditable offences and improving and simplifying procedures in a number of respects.

Section 9 (Amendment of section 3 of Principal Act)

A new subsection (1B) is inserted into section 3 of the Principal Act and defines ''Convention country'' for the purposes of amendments being made to the Principal Act by Part 3 of this Act.

Subsection (1C) is inserted into section 3 of the Principal Act and provides for a Central Authority. The Explanatory Report to the 1996 Convention dealing with the designation of a Central Authority by each Member State states that ''the central authority will be a focal point for transmission and reception of extradition requests and necessary supporting documents.''

The existing provision for dealing with requests under Part II of the Principal Act is contained in *section 23* and it provides that a request for extradition of any person shall be made in writing and shall be communicated by *(a)* a diplomatic agent of the requesting country, accredited to the State, or *(b)* by any other means provided in the relevant extradition provisions.

Section 10 (Convention countries)

This section provides that the Minister for Foreign Affairs may by order designate countries that have adopted the Convention of 1996. The 1996 Convention is a European Union Convention and open only to EU Member States.

Section 11 (Extraditable offences)

This Section amends section 10 of the Principal Act by inserting new subsections (1A) and (1B) and gives effect to the reduction in the threshold for extradition as between contracting states provided for in Article 2 (1) of the 1996 Convention. It provides that offences will be extraditable if they are punishable by 6 months imprisonment in the requested Member State and 12 months in the requesting Member State. The previous general threshold was 12 months in *both* States (section 10(1) of the Principal Act and Article 2 of the 1957 European Convention on Extradition.).

It is also being provided that where extradition is granted for an offence that complies with the minimum sentence requirements (i.e. 12 months and 6 months in the requesting and requested state, respectively), extradition may also be granted for certain other offences (i.e. minor offences) that fail to comply with this requirement.

Section 11 (c) and *(d)* of the Act provide that, to constitute an extraditable offence, it will be sufficient for an offence to be criminal in this State at the date of making of the extradition request and in the requesting state at both the date of commission and request. However, if any part of the act constituting the extradition request was committed in this State, then it has to be an offence under the law of this State on the day on which it was committed. These provisions will ensure that no one can avoid extradition simply because

both states had not criminalised the offence in question at the time of its commission.

Section 12 (Political offences)

This section amends section 3 of the Extradition (European Convention on the Suppression of Terrorism) Act, 1987. Article 5 of the 1996 Convention requires that, as between contracting countries, no offence may be regarded as a political offence but it allows Member States to confine this requirement to the offences referred to in Articles 1 and 2 of the Suppression of Terrorism Convention. It is proposed that Ireland, on ratification, will make a declaration to this effect, setting out the offences under our law that may not be political viz. the offences set out in section 3 of the Extradition (European Convention on the Suppression of Terrorism) Act, 1987 and in the Schedule to the Extradition (Amendment) Act, 1994.

The position in Irish law in regard to the political offence exception is that since all of the EU States are parties to the Suppression of Terrorism Convention and orders applying Part II of the 1965 Act have been made in relation to all EU States, our 1987 Extradition (European Convention on the Suppression of Terrorism) Act, as amended by the Extradition (Amendment) Act, 1994, will apply (without more) to all EU States and there is, therefore, no need to include any ''political offence'' provision in the Act in relation to those States.

This section is included to cater for the possibility that post-enlargement new EU Member States may become parties to the 1996 Convention on Extradition between Member States of the European Union, although they may not be a party to the Convention on the Suppression of Terrorism.

Section 13 (Revenue offences)

This section gives effect to Article 6 of the 1996 Convention which makes revenue offences extraditable between EU states. Section 13 of the Principal Act contained an absolute bar on extradition for revenue offences. The amendments being made to the Principal Act by this provision will also enable simple amendments to be made to existing bi-lateral extradition agreements (e.g. USA and Australia) to provide for extradition for revenue offences, if that is so desired. It will also allow for extradition for revenue offences to be included in any future agreements that may be negotiated. The UK has already a provision in its legislation allowing for the possibility of extradition for revenue offences in the context of the Backing of Warrants arrangements with this country and the amendments in subparagraph *(c)* of the section will do likewise.

Also, *section 13 (a)* substitutes a new definition for the definition of revenue offences in section 3(1) of the Principal Act (inserted by section 3 *(a)* of the Extradition (Amendment) Act, 1994).

Section 14 (Pardon or Amnesty)

This section inserts a new section 18A in the Principal Act. It provides that extradition shall not be granted where the person claimed has (i) been granted a pardon under Article 13.6 of the Constitution, or (ii) become immune by virtue of any amnesty or pardon in accordance with the law of the requesting country, or (iii) by virtue of any Act of the Oireachtas, become immune from prosecution or punishment for the act for which extradition is sought.

The Explanatory Report to the 1996 Convention dealing with this matter states, inter alia, ''This Article (Article 9) provides that an

amnesty declared in the requested Member State, in which that State had competence to prosecute the offence under its own criminal law, will constitute a mandatory reason for not granting extradition.''

Section 15 (Rule of Specialty)

This section amends section 20 of the Principal Act and further modifies the specialty rule with regard to extradition between Member States. A person extradited for one offence may be tried or prosecuted for other offences committed before his or her extradition if the offences do not give rise to imprisonment, or where imprisonment is involved, if the person has expressly waived the benefit of specialty, such waiver to be made before the competent judicial authorities of the requesting state and to be shown to have been made voluntarily and in full awareness of the consequences.

As indicated above, extradition to a Convention country of a person claimed shall not be refused on the grounds only that a person may *(a)* be prosecuted or tried for offences which are not punishable by deprivation of liberty, or *(b)* upon conviction be liable to a term of imprisonment and such other penalty as does not involve a restriction of his personal liberty, and the High Court is satisfied that the other penalty will only be imposed should he or she be convicted, or *(c)* be subjected to a penalty or measure not involving the deprivation of liberty, including a financial penalty or a measure in lieu thereof, even if failure or refusal to submit to any measure or comply with any such penalty may involve restriction of his or her personal liberty.

In relation to an offence where imprisonment is involved, the person may only be proceeded against if he or she has expressly waived the benefit of specialty after his or her surrender (before the competent judicial authority) and, in the case of an Irish citizen, the Minister also consents. Article 7(2) of the Convention provides that a Member State may declare that it will authorise extradition of its nationals only under certain specified conditions. Ireland's declaration is this respect will provide for the need for such consent.

Section 16 (Application of rule of specialty in State)

This section amends section 39 of the Principal Act which deals with the application of the rule of specialty in the case of persons extradited to Ireland and contains analogous provisions to the previous section. Article 10 of the 1996 Convention provides that the consent of the requested state is not necessary in relation to those proceedings. Again a person has to expressly waive the benefit of specialty, such waiver to be made before a judge of the High Court, who has to be satisfied that the person consented voluntarily and in full awareness of the consequences.

Section 17 (Authentication)

Article 15 of the 1996 Convention, which deals with authentication, aims at simplifying the formal requirements in relation to documentation for extradition. The general principle established is that any document or copy thereof transmitted for the purposes of extradition (between Convention countries) shall be exempted from authentication or any other formality.

A new *subsection (2)* is being inserted into section 25 of the Principal Act and provides that for the purposes of an extradition request from a Convention county, a document shall be deemed to be an authenticated copy if it has been certified as a true copy by the judicial authority that issued the original or by an officer of the Central Authority duly authorised to do so.

A new section is also substituted for section 37 of the Principal Act. This imposes two distinct regimes, i.e. one for non-Convention countries *(subsection (1))* and the other for Convention countries *(subsections (2)* and *(3)*).

The new *section 37(1)* provides that in relation to non-Convention countries a document supporting a request for extradition shall be received in evidence if it purports to be signed by a judge, magistrate or officer of the requesting country, and to be certified by being sealed with the seal of a minister of state, ministry, department of state or other such persons performing similar functions.

The new *section 37(2)* provides that a document purporting to be a copy of a document supporting a request for extradition from a Convention country shall, subject to *section 37(3)*, be received in evidence without further proof.

The new *section 37(3)* provides that a document that purports to be certified by the judicial authority in a Convention country that issued the original or by an officer of the Central Authority duly authorised to do so, to be a true copy of a conviction and sentence or of a warrant of arrest, shall be received in evidence without further proof, and where a seal of the relevant judicial authority or Central authority has been affixed to the document, judicial notice shall be taken of that seal.

Section 18 (Facsimile transmission of documents)

This section inserts a new section 23A in the Principal Act and gives effect to Article 13(3), (4) and (5) of the 1996 Convention. The Central Authority is given the authority to receive extradition requests and documents by fax. In order to guarantee the authenticity of extradition documents, the Central Authority of the requesting Member State shall state in its request that it certifies that the documents transmitted in support of that request correspond to the originals. To ensure confidentiality and authenticity use will be made of cryptographic devices. Where the Central Authority in the State is not satisfied that the documents correspond with the originals, it may require the Central Authority of the requesting country to provide the original document or a true copy thereof.

Section 19 (Transit)

This section amends section 40 of the Principal Act and gives effect to Article 16 of the 1996 Convention which deals with the transit of a surrendered persons through Ireland from one Contracting Party to another. Any request for transit by a Convention country must contain the information specified in new subsection (1A), viz. the person's identity, whether there exists an arrest warrant, the nature and description of the offence, a description of the circumstances in which the offence was committed, the date and place of its commission, etc.

A new subsection (2A) is inserted into section 40 to deal with the unscheduled landing of an aircraft in the State which has on board a person who is being conveyed to a Convention country upon his or her surrender to that country pursuant to extradition proceedings.

Part 4 *(Sections 20 — 27)*

MISCELLANEOUS PROVISIONS

This Part provides for a number of substantive and procedural changes to our general extradition law.

Section 20 (Proceedings under Principal Act to be heard before High Court)

All extradition proceedings are being moved to the High Court. This is a change from the present law where the initial application for the extradition of persons from the State is made to the District Court. Since a substantial number of extradition cases end up in the High Court in any event it is considered that the consolidation of all extradition proceedings in the High Court would provide for a more efficient and expeditious hearing of such cases. Since 1994 all bail applications in extradition cases must be taken in the High Court.

Section 20(1)(f) and *(g)* provide for a right of appeal on a point of law from the High Court to the Supreme Court.

Section 20(3) provides for transitional arrangements. It provides that the moving of all extradition proceedings to the High Court shall not operate to affect extradition proceedings brought before the commencement of this section. In particular, the District Court shall, in relation to any such proceedings, have the same jurisdiction that it had immediately before such commencement.

Section 21 (Laying of orders before Houses of Oireachtas)

This section amends section 4 of the Principal Act. The effect of this section is to revert to the original requirement in the Principal Act which provided that Government Orders entered into force when they were made but were then laid before each House of the Oireachtas which could annul them if a resolution to that effect was passed within 21 days.

Section 22 (Evidence by affidavit)

This section inserts a new section 7B into the Principal Act and provides that evidence as to any matter to which proceedings under that Act relate may be given by affidavit, or by a statement in writing that purports to have been sworn by the deponent in a place other than the State and in the presence of a person duly authorised to attest to the swearing of such a statement by the deponent. The High Court may, if it considers that the interests of justice so require, direct that oral evidence be given of the matters described in the affidavit or statement.

Section 23 (Amendment of section 8 of Principal Act)

This section amends section 8 of the Principal Act — it inserts a new subsection (1A) and substitutes new subsections (3), 3(A) and 3(B) for the present subsection (3). It also makes a technical amendment to subsection (8). The purpose of the changes is to deal with difficulties that have arisen in practice from the present wording of section 8. For example, the existing section has been interpreted as requiring that every order made must embody the terms of the extradition agreement. Thus, as is most often the case, if the purpose of the order is merely to apply Part II to a new state on the accession of that state to (say) the 1957 Convention, the text of the Convention is set out in the order despite the fact that the text will be available in the previous order which will be referred to in the new order and cited together with it.

The amendments to the section propose that when an extradition agreement is made with another state or states the text of the agreement will be included but that when Part II is applied to a new state on the accession of that state to an existing agreement, the text of the agreement will not be included in the order. However, the order will recite or embody the terms of any reservation or declaration entered to that agreement by the country to which the order applies.

When an amendment to an existing agreement is made the order need only contain the text of the amendment.

The previous subsection (8) of section 8 of the Principal Act requires the publication in *Iris Oifigiúil* of the text of the orders made. The new subsection (8) requires that in future it will be sufficient to give notice in *Iris Oifigiúil* that the order has been made.

Overall these changes will mean a more streamlined and efficient procedure than has existed heretofore.

Section 24 (Evidence through television link by person outside State)

This section amends section 29 of the Criminal Evidence Act, 1992 to provide for the possibility of a person, other than the person whose extradition is being sought, being able to give evidence from abroad in extradition cases via live television link. Leave of the court will be needed.

Section 25 (Foreign seals)

Paragraph *(a)* of section 21(3) of the Principal Act is substituted to take account of the fact that some countries do not have ministerial seals and seal documents under the seal of a Ministry or Department. It is now provided that a seal of the relevant Minister, Ministry or Department is sufficient. This amendment also requires a consequential amendment to section 39(2) of the Principal Act and this is provided for in paragraph *(b)* of the section.

Section 26 (Corresponding offence)

This section deals with any difficulty that may arise with 'correspondence of offences' in Part III cases, i.e. the Backing of Warrants arrangements with the UK. It provides that correspondence exists where the act constituting the offence in the UK would, if done in the State, constitute an offence under the law of the State, being an offence which is punishable on indictment or punishable on summary conviction by imprisonment for a maximum term of not less than 6 months. This definition will mean that while the offence in the State may not be in the same category or of the same description as the offence in the UK, it will still be extraditable provided the act constituting the offence would, if done in the State, constitute an offence of the above gravity here.

This section also provides (in relation to the UK) that, to constitute an extraditable offence, it will be sufficient for an offence to be criminal here at the date of making of the extradition request and a crime in the UK at both the date of commission and request. However, if any part of the act constituting the extradition request was committed in this State, then it has to be an offence under the law of this State on the day on which it was committed. This provision is similar to that contained in *section 11* of the Act which applies to Part II countries.

Section 27 (Amendment of section 3 of Act of 1987)

This section amends section 3 of the Extradition (European Convention on the Suppression of Terrorism) Act, 1987.

The four Geneva Conventions of 1949 are being added to the list in section 3 *(a)* of the Extradition (European Convention on the Suppression of Terrorism) Act 1987. This is being done to ensure that the political offence exemption will not arise in cases involving offences under these Conventions. The Conventions in question have been given effect in Ireland by the Geneva Conventions Act 1962.

As the 1962 Act does not make specific provision in relation to extradition, this amendment is being made to remove any doubt there might be about the possibility of the political offence exemption being relied upon in Ireland in the case of offences under these Conventions.

Department of Justice, Equality and Law Reform,
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