

LAW No. 302 of 28 June 2004 *** Republished
on international judicial cooperation in criminal matters

Text in force as of 26 December 2013
DRAWN UP BY: THE NEAMȚ IT COMPANY

Text updated by means of the information legislative product LEX EXPERT in reliance upon the amending normative acts, as published in the Official Gazette of Romania, Part I, by 11 December 2013.

Underlying document

#B: Law no. 302/2004, republished in the Official Gazette of Romania, Part I, no. 377 of 31 May 2011

Amending documents

#M1: Law no. 300/2013

*Amendments and supplementations made through the amending documents are written in italic font. Before each amendment or supplementation, there is an indication of the normative act having performed that amendment or supplementation, in **#M1** format.*

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TITLE I

General Provisions

CHAPTER I

Scope and general principles of international judicial cooperation in criminal matters

ARTICLE 1

Scope

- (1) This law applies to the following forms of international judicial cooperation in criminal matters:
 - a) extradition;
 - b) surrender based on a European Arrest Warrant;
 - c) transfer of proceedings in criminal matters;
 - d) recognition and enforcement of judgments;
 - e) transfer of sentenced persons;
 - f) judicial assistance in criminal matters;
 - g) other forms of international judicial co-operation in criminal matters.
- (2) This law does not apply to the specific modalities of international police co-operation, where, under the law, they are not under judicial control.

ARTICLE 2

The meaning of certain terms and phrases

For the purposes of this law, the following terms and phrases are thus defined:

- a) Requesting State – the State that submits a request in the fields regulated by this law;
- b) Requested State – the State to which a request in the fields regulated by this law is sent;
- c) central authority – the authority thus designated by the Requesting State or by the Requested State, in the application of international conventions;
- d) judicial authority – law courts and the public prosecutor's offices attached to these, set up according to Romanian law, as well as the authorities having this capacity in the Requesting State, according to the latter's declarations in the applicable international instruments;

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- e) *prosecuted person - the person who was placed under international search;*

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- f) person sought - the person who is the object of an extradition procedure;
- g) extradited or extradited person – the person whose extradition has been approved;
- h) active extradition – the extradition procedure in which Romania has the capacity of requesting State;
- i) passive extradition – the extradition procedure in which Romania has the capacity of requested State;
- j) requested person – the person who is the object of a European Arrest Warrant;

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- k) *sentence – the sentence of life detention or imprisonment or the custodial measure imposed by means of a court decision or penal ordinance, further to a penal action;*
- l) *issuing State – the State in which a court decision was rendered or a penal ordinance was issued, as the case may be;*
- m) *executing State – the State to which a court decision was or shall be delivered for the purpose of its recognition and enforcement;*

- n) *person sentenced abroad – the Romanian citizen, as well as the citizen of another Member State of the European Union, stateless person or foreigner benefiting in Romania from a permanent residence right, sentenced in another State;*
- o) *permanent residence right -*
 - (i) *right of permanent residence in accordance with the provisions of [Government Emergency Ordinance no. 102/2005](#) on free circulation in the Romanian territory for the citizens of Member States of the European Union, the European Economic Area and the citizens of the Swiss Confederation, republished, as subsequently amended and supplemented; or*
 - (ii) *right of long-term residence in accordance with the provisions of [Government Emergency Ordinance no. 194/2002](#) on the status of foreigners in Romania, republished, as subsequently amended and supplemented;*
- p) *State in whose territory the person is residing – the State with which the latter has close connections based on the ordinary residence and other elements such as family, social, professional and cultural relations;*

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- r) For the purposes of [Title III](#) of this law, the issuing judicial authority is the judicial authority of a European Union Member State that is competent to issue a European Arrest Warrant according to the law of that State;
- s) For the purposes of [Title III](#) of this law, the executing judicial authority is the judicial authority of a European Union Member State that is competent to execute a European Arrest Warrant, according to the law of that State;
- ș) For the purposes of [Title III](#) of this law, the Issuing Member State is the Member State of the European Union in which a European Arrest Warrant has been issued;
- t) For the purposes of [Title III](#) of this law, the Executing Member State is the Member State of the European Union to which a European Arrest Warrant is sent.

ARTICLE 3

Limits of judicial co-operation

The application of this law is subject to Romania's interests of sovereignty, security, public policy and others, as defined by the [Constitution](#).

ARTICLE 4

Pre-emption of international law

- (1) This law shall be applied based on and for executing the norms concerning judicial co-operation in criminal matters, as comprised in the international judicial instruments to which Romania is a Party, which it supplements in situations that are not regulated therein.
- (2) The co-operation with an international criminal court or a public international organization, according to the relevant provisions of special international instruments, such as the statutes of international criminal courts, shall be examined by a distinct legal procedure; however, this law may be applied accordingly, for supplementation, if necessary.

ARTICLE 5*

International courtesy and reciprocity

- (1) In the absence of an international convention, judicial co-operation can take place by virtue of international courtesy, upon request sent through diplomatic channels by the Requesting State and with a written assurance of reciprocity from the competent authority in that State.
- (2) In the case provided in the previous paragraph, the present law is the common law in the matter for the Romanian judicial authorities.
- (3) The absence of reciprocity does not prevent the execution of a request for international judicial co-operation in criminal matters, if it:
 - a) proves to be necessary because of the nature of the act or of the need to fight against certain serious forms of crime;
 - b) may contribute to an improvement of the defendant or convict's status or to his social reinsertion;
 - c) may serve to clarify the judicial status of a Romanian citizen.

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**) In accordance with Article II (1) and Article IV of Law no. 300/2013 (#M1), starting with 1 February 2014 (the effective date of Law no. 286/2009 on the Penal Code and Law no. 135/2010 on the Code of Penal Procedure), paragraph (3) of Article 5, sub-paragraph b) shall read as follows:*

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"b) may contribute to improving the condition of the suspect, defendant or sentenced person or the social reintegration thereof;"

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ARTICLE 6

Assurance of reciprocity

If the Romanian State submits a request under this Law, based on international courtesy, the assurance of reciprocity shall be given by the Minister of Justice, for each case, any time it is necessary, at the reasoned request of the competent Romanian judicial authority.

ARTICLE 7

Applicable law

Requests sent to the Romanian authorities in the fields regulated by this Law shall be fulfilled according to the Romanian regulations pertaining to the process of penal law, unless this Law provides otherwise.

ARTICLE 8*)

Non bis in idem

- (1) International judicial co-operation is not admissible when, in Romania or in any other State, criminal prosecution has taken place for the same act and if:
 - a) a final decision has ordained acquittal or cessation of the criminal trial;
 - b) the penalty applied in this cause, through a final sentence, has been served or was the object of pardon or amnesty, either as a whole or for the part of it left unserved;
- (2) Paragraph (1) shall not apply if assistance is requested in order to review the final decision, for one of the reasons that justify the promotion of a means of extraordinary judicial review provided in the Romanian Criminal Procedure Code.
- (3) Paragraph (1) shall not apply where an international treaty to which Romania is part of contains conditions that are more favorable as regards the principle of non bis in idem.

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) In accordance with Article II (2) and Article IV of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of Law no. 286/2009 on the Penal Code and of Law no. 135/2010 on the Code of Penal Procedure), paragraph (1) of Article 8, sub-paragraph b) shall read as follows:*

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- "b) *the sentence imposed in a case, by means of final sentencing decision, was enforced or formed the object of pardon or amnesty, in full or in relation to the portion not yet served or if it was ordered to waive the enforcement of the sentence or to postpone the enforcement of the sentence and the period provisioned by [Article 82](#) (3) of the Penal Code expired, that is the supervision period provisioned by [Article 84](#) of the Penal Code without the applicability of revocation or cancellation.*"

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ARTICLE 9

Confidentiality

Romania is obliged to make sure, to the extent possible, upon request from the Requesting State, of the confidentiality of requests sent to it regarding the fields regulated by this Law, and of any documents attached to such requests. In the event that it would be impossible to ensure confidentiality, Romania shall notify the foreign State, which shall decide.

CHAPTER II

General provisions on the procedure of international judicial cooperation in criminal matters

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ARTICLE 10

Romanian central authorities

- (1) *The competence in fulfilling the specific powers by the Romanian central authority in the field of judicial cooperation in criminal matters shall lie with and be exercised by:*
- a) *the Ministry of Justice, through the relevant division, if the requests refer to extradition, European Arrest Warrant, transfer of sentenced persons, freezing order, confiscation order, recognition and enforcement of decisions and penal judicial documents, international letters rogatory, any other form of international judicial assistance pertaining to court proceedings or the stage of penal decision enforcement, as well as, irrespective of the stage in the proceedings, when, as the case may be, otherwise provided through this law or the request is submitted in accordance with international courtesy or the Ministry of Justice is appointed to be the single central authority in accordance with international treaties to which Romania is a party;*
 - b) *the Public Ministry, through its relevant divisions, when international letters rogatory or the other forms of international judicial assistance refer to criminal investigation and prosecution;*

- c) *the Ministry of Interior, through its relevant division, if referring to the judicial records.*
- (2) *In performing their powers, Romanian central authorities shall receive, conduct regularity examination and deliver to the requested State, for the purpose of enforcement, the requests submitted by the Romanian authorities. At the same time, Romanian central authorities shall receive, conduct regularity examination and, as the case may be, enforce or deliver to the competent Romanian authorities, for the purpose of enforcement, the requests submitted by foreign authorities.*
- (3) *Requests shall be fulfilled or are delivered for the purpose of enforcement, as the case may be, whenever the regularity examination performed reveals that they fulfil the form and substance examination provisioned by this law, the treaties to which Romania is a party, as well as, where applicable, the agreements or good practices established in relation to the requested or requesting State.*
- (4) *In relation to requests submitted by the Romanian authorities, failure to deliver the request as a result of non-compliance with the conditions provisioned by paragraph (3) or, in the case of submissions in view of enforcement to the authorities of the requested State, non-fulfilment, inappropriate or late fulfilment by the authorities of the requested State of the activities requested by the Romanian authorities, the absence of a reply from the authorities of the requested State, as well as any objective situations cannot be attributed to the Romanian central authorities and shall not fall under the scope of the provisions in the [Code of Penal Procedure](#) referring to judicial fine.*
- (5) *In relation to the Member States of the European Union, the provisions of paragraph (2) shall only apply provided that they do not infringe special provisions in this law or other special laws.*

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ARTICLE 11

Direct transmission

- (1) Requests for judicial assistance in criminal matters may be sent directly by the requesting judicial authorities to the requested judicial authorities, in the event that the international judicial instrument applicable in the relation between the Requesting State and the Requested State regulates this type of transmission.
- (2) With the exception of the cases mentioned in paragraph (1), requests for judicial assistance in criminal matters may be sent directly by the requesting judicial authorities to the requested judicial authorities in case of emergency; however, a copy of these shall be sent simultaneously to the Ministry of Justice or to the Public Prosecutor's Office attached to the High Court of Cassation and Justice, according to case.

- (3) The procedure mentioned in paragraphs (1) and (2) shall be used also for transmitting replies to emergency requests for judicial assistance in criminal matters.
- (4) In the case under paragraphs (1) and (2), direct transmissions may be made through the International Criminal Police Organization (Interpol).

ARTICLE 12

Other ways of sending the requests

- (1) To send requests, based on agreement between the Requesting and the Requested States, the proper electronic means may be used as well, in particular the fax, when available, if the authenticity and confidentiality of the request, as well as the credibility of the data sent, are guaranteed.
- (2) The previous paragraph shall not prevent the use of the avenues of emergency provided in [Article 11](#).

ARTICLE 13

Domestic competence

The competence of Romanian authorities for submitting a request in the fields regulated by this Law or for executing such a request is established by the provisions of the following Titles of this law, as well as by other relevant normative acts.

[ARTICLE 14](#)

Languages used

- (1) Requests under [Titles II](#) and [IV](#) - VII addressed to Romania and the documents attached to them shall be accompanied by a translation into Romanian, English or French. Where the documents above are translated into a language other than Romanian, the central authority that is competent under [Article 10](#) or the competent judicial authority, in the event of direct transmission, shall have it urgently translated.

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- (2) *Requests submitted by criminal prosecution services, Romanian courts of law or, where so stipulated, in the applicable treaty or in this law, by the Ministry of Justice, as well as the attached documents shall be accompanied by translations into one of the languages indicated in the legal instrument applicable in relation to the requested State. Requests submitted in observance of international courtesy and attached documents shall be translated into the official language of the requested State. Translation shall be performed upon the request of the criminal prosecution services or the court of law by a certified translator. If there is no*

certified translator for the language into which the request has to be translated in the lists of the court of appeals having jurisdiction over the criminal prosecution services or the court of law or, even though there is, they refuse to provide the requested service, the criminal prosecution services or the court of law shall request the Prosecutor's Office attached to the High Court of Cassation and Justice or the Ministry of Justice, as the case may be, to have it translated.

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- (3) Replies to requests addressed to Romania shall be drawn up in Romanian, and the translation of replies into the official language of the Requesting State or into English or French is optional, unless the international judicial instrument applicable ordains otherwise.

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- (4) *Translation of the foreign authorities' reply shall be made by a certified translator, upon the demand of the Romanian authority having submitted the request.*

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ARTICLE 15*

Deduction calculation of the arrest

- (1) The length of arrest served abroad for the accomplishment of a request submitted by Romanian authorities based on this Law shall be taken into account within the Romanian criminal procedure and shall be deducted from the length of the penalty imposed by the Romanian courts.
- (2) The requested Romanian authorities are obliged to provide to the competent authorities of the Requesting State the information needed for deducting the arrest served in Romania, based on a request sent to Romanian judicial authorities.

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) In accordance with [Article II](#) (3) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [Article 15](#) shall read as follows:*

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"ARTICLE 15

Calculation of the length of sentences and custodial measures

- (1) *The length of sentences and of custodial measures, in relation to the enforcement of a request submitted by the Romanian authorities in reliance upon this law, shall be taken into account in the Romanian penal procedure and shall be deducted from the length of the sentence imposed by the Romanian courts.*
- (2) *The requested Romanian authorities shall have the obligation to communicate to the competent authorities of the requesting State the information necessary in*

relation to the length of sentences and custodial measures served in Romania, in accordance with a request sent to the Romanian judicial authorities."

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ARTICLE 16

Costs

- (1) Costs caused by the execution of a request submitted under this Law are usually incurred by the requested State.
- (2) However, the requesting State or judicial authority shall incur:
 - a) the indemnities and remunerations of witnesses and experts, as well as their travelling expenses;
 - b) costs of the handing over of objects;
 - c) costs of the transfer of persons to the territory of the requesting State or to the seat of a judicial authority;
 - d) costs of the transit of a person from the territory of a foreign State or from the seat of a judicial authority to a third State;
 - e) costs of a video conference used for carrying out a request for judicial assistance;
 - f) other costs deemed as extraordinary by the Requested State according to the human and technological resources used for carrying out the request.
- (3) Following an agreement between the requested Romanian authorities and the requesting foreign authorities, one may derogate, in exceptional cases, from the provisions of paragraph (2).
- (4) Costs that are to be paid by Romania shall be paid from the State budget and be included, as appropriate, in the budget of the Ministry of Justice, of the Public Ministry and of the Ministry of Administration and Interior.

ARTICLE 17

The handing over of objects and goods

- (1) If a request concerns or involves the handing over of objects or goods, these may be handed over when they are not indispensable for proving a criminal act the prosecution or trial of which is of the competence of Romanian judicial authorities.

- (2) The handing over of objects and of other goods may be postponed, or may be conditioned by restitution.
- (3) Paragraphs (1) and (2) shall not infringe upon the rights of bona fide third parties and upon the rights of the Romanian State when these objects and goods may enter its property.
- (4) Objects and goods shall be handed over only based on a final judgment approving this and issued by the competent judicial authority.
- (5) In case of requests for extradition, the handing over of the objects and goods mentioned in paragraph (1) may take place even if extradition is not approved, particularly because of the escape or death of the sought person.

TITLE II Extradition

CHAPTER I Passive Extradition

SECTION 1 Conditions for extradition

ARTICLE 18*)

Persons subject to extradition

According to this law, upon request from a foreign State, persons who are in Romanian territory and who are under criminal prosecution or brought to justice for the commission of an offence, or who are wanted for serving a penalty or a preventive measure in the Requesting State, may be extradited from Romania.

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**) In accordance with Article II (4) and Article IV of Law no. 300/2013 (#M1), starting with 1 February 2014 (the effective date of Law no. 286/2009 on the Penal Code and Law no. 135/2010 on the Code of Penal Procedure), Article 18 shall read as follows:*

#M1

"ARTICLE 18

Persons subject to extradition

According to this law, upon request from a foreign State, persons who are in Romanian territory or who are under criminal prosecution or brought to justice for the commission of an offence, or who are wanted for serving a safety measure, a sentence or another decision issued by the penal court in the requesting State, may be extradited from Romania."

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ARTICLE 19*)

Persons exempt from extradition

(1) The following may not be extradited from Romania:

a) Romanian citizens, if the conditions mentioned in [Article 20](#) are not met;

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b) *persons seeking asylum, beneficiaries of the status as refugee or of subsidiary protection in Romania, where extradition would be to the origin country or to any other State where their life or freedom would be jeopardised or where they would be placed under torture, inhuman or degrading treatment;*

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c) foreign persons enjoying jurisdiction immunity in Romania, according to the conditions and limits established through conventions or other international agreements;

d) foreign persons summoned from abroad for being heard as parties, witnesses or experts by a requesting Romanian judicial authority, subject to the immunities provided by international conventions.

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(2) *The capacity of Romanian citizen, applicants for asylum or beneficiary of the status as refugee or of a subsidiary protection in Romania shall be assessed on the date when the judgment on extradition becomes final. If this capacity is recognized between the date when the judgment on extradition became final and the date agreed for surrender, a new judgment shall be rendered on the case.*

#CIN

**) In accordance with [Article II](#) (5) and [Article IV](#) of Law no. 300/2013 ([#M1](#)), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), paragraph (1) of [Article 19, sub-paragraph d\)](#) shall read as follows:*

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"d) foreign persons summoned from abroad for being heard as suspects, prejudiced persons, parties, witnesses or experts or interpreters before a requesting Romanian judicial authority, subject to immunities provided by international convention."

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ARTICLE 20

Extradition of Romanian citizens

- (1) Romanian citizens may be extradited from Romania based on the multilateral international conventions to which Romania is a party and based on reciprocity, only if at least one of the following conditions is met:
 - a) the person sought domiciles in the Requesting State at the date when the request for extradition is made;
 - b) the person sought also has the citizenship of the requesting State;
 - c) the person sought committed the act in the territory or against a citizen of a European Union Member State, if the requesting State is a Member of the European Union.
- (2) In the events provided in paragraph (1) a) and c), when extradition is being requested in view of criminal prosecution or trial, a supplementary condition requires that the Requesting State provide assurances deemed as sufficient that, should he or she be sentenced to a custodial penalty through a final court judgment, the extradited person will be transferred to Romania to serve the penalty.
- (3) Romanian citizens may be extradited also based on the provisions of bilateral treaties and based on reciprocity.
- (4) In view of finding whether the conditions in paragraphs (1) to (3) are met, the Ministry of Justice may request the production of a document issued by the competent authority of the requesting State.

ARTICLE 21

Mandatory grounds for refusing extradition

- (1) Extradition shall be refused if:
 - a) the right to a fair trial under the European [Convention](#) for the Protection of Human Rights and Fundamental Freedoms concluded in Rome on 4 November 1950 or under any other relevant international instrument ratified by Romania, has not been observed;
 - b) there are serious reasons to believe that extradition is being requested in order to prosecute or punish a person for reasons of race, religion, sex, nationality, language, political or ideological opinion or belonging to a certain social group;
 - c) the person's status is at a risk of worsening for one of the reasons shown in b);

- d) the request is submitted in a case that is pending with extraordinary courts, others than those created by the relevant international instruments, or in view of serving a penalty imposed by such a court;
 - e) it refers to an offence of political nature or to an offence related to a political offence;
 - f) it refers to a military offence that is not an offence of ordinary law.
- (2) The following shall not be deemed as political offences:
- a) attempts against the life of the leader of a State or against that of a member of his family;
 - b) crimes against humankind as provided by the Convention for the prevention and punishment of crimes of genocide, adopted on 9 December 1948 by the General Assembly of the United Nations;
 - c) offences provided in Article 50 of the Geneva Convention of 1949 for the Amelioration of the Condition of the Wounded and Sick in. Armed Forces in the Field, in Article 51 of the Geneva Convention of 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, in Article 129 of the Geneva Convention of 1949 Relative to the Treatment of Prisoners of War and in Article 147 of the Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War;
 - d) any similar violations of war laws, which are not provided in the Geneva Conventions mentioned in c);
 - e) the offences mentioned in [Article 1](#) of the European Convention on the Suppression of Terrorism, adopted in Strasbourg on 27 January 1977 and in other relevant international instruments;
 - f) offences mentioned in the [Convention](#) against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 17 December 1984 by the General Assembly of the United Nations;
 - g) any other offence the political nature of which has been removed by the international treaties, conventions or agreements to which Romania is a Party.

ARTICLE 22

Optional grounds for refusing extradition

- (1) Extradition may be refused when the act that motivates the request is the object of pending criminal proceedings or when this act may be the object of criminal proceedings in Romania.
- (2) Extradition of a person may be refused or postponed where the surrender of such person is likely to entail particularly serious consequences for him or her, especially because of his/her age or health. In the event that extradition is refused, [Article 23](#) (1) shall apply accordingly.

ARTICLE 23*)

Transfer of criminal proceedings in case of refusal to extradite

- (1) A refusal to extradite an own citizen or a political refugee obliges Romania, upon request from the Requesting State, to submit the case to its competent judicial authorities, in order for the criminal prosecution and trial to take place, if appropriate. For this purpose, the Requesting State should send to the Ministry of Justice in Romania, free of charge, the files, information and objects that regard the offence. The Requesting State shall be informed of the results of its request.
- (2) Should Romania opt for the solution of refusing to extradite a foreign national who was accused or convicted in another State for one of the offences in [Article 96](#) (1) or for any other offence for which the law of the requesting State provides the penalty of imprisonment with a special maximum of at least 5 years, the examination of its own competence and the exercise, if necessary, of criminal action shall take place ex officio, without exception and without delay. The Romanian authorities shall decide according to the same conditions as those for any serious offence provided and punished by the Romanian law.

#CIN

) In accordance with [Article II](#) (6) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(2\) of Article 23](#), shall read as follows:*

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"(2) Should Romania opt for the solution of refusing to extradite a foreign national, a person who is suspected, accused or sentenced in another State for one of the offences in [Article 96](#) (1) or for any other offence for which the law of the requesting State provides the penalty of imprisonment with a special minimum of at least 5 years, the examination of its own competence and the exercise, if necessary, of criminal action shall take place ex officio, without exception and without delay. The requested Romanian authorities shall decide according to the same conditions as those for any serious offence provided and punished by the Romanian law."

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ARTICLE 24*

Double criminality

- (1) Extradition may be allowed only if the deed of which the person the extradition of whom is being requested has been accused or for which he has been convicted is provided as an offence both in the law of the requesting State and in Romanian law.
- (2) By derogation from paragraph (1), extradition may be granted even if the act concerned is not provided in Romanian law, if for this act the prerequisite of double criminality is excluded by an international convention to which Romania is a party.
- (3) The differences between the legal classification and the name given to the same offence by the laws of the two States are irrelevant, if an international convention or, in its absence, a declaration of reciprocity, does not provide otherwise.

#CIN

) In accordance with [Article II \(7\)](#) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(1\) of Article 24](#), shall read as follows:*

#M1

"(1) Extradition may be allowed only if the deed of which the person the extradition of whom is being requested is suspected or has been accused or for which he has been convicted is provided as an offence both in the law of the requesting State and in the Romanian law."

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ARTICLE 25

Fiscal offences

- (1) In matters of fees and taxes, of customs and currency exchange, extradition shall be granted according to the international agreement applicable, for acts that have a correspondent, according to Romanian law, in offences of the same nature.
- (2) Extradition cannot be refused for the reason that Romanian law does not levy the same type of fees or taxes or does not comprise the same type of regulations in matters of fees and taxes, customs or currency exchange as the legislation of the Requesting State.

ARTICLE 26

Seriousness of the penalty

Extradition shall be granted by Romania, in view of criminal prosecution or trial, for acts the commission of which entails, according to the legislation of the Requesting State and to Romanian law, a custodial penalty of at least one year, and in view of serving a penalty, provided it is at least 4 months long.

ARTICLE 27

Capital punishment

If the act for which extradition is requested is punished by death in the law of the Requesting State, extradition can be granted only under the condition that the Requesting State provide guarantees deemed as sufficient by the Romanian State, that the capital punishment will not be executed, and that it is to be commuted.

ARTICLE 28*)

Penalty with suspension of service

A person sentenced to a custodial penalty with conditional suspension of service may be extradited in case of partial suspension, if the part of the penalty still to be served meets the requirements of seriousness provided in [Article 26](#) and there are no other legal impediments for extradition.

#CIN

**) In accordance with [Article II \(8\)](#) and [Article IV](#) of Law no. 300/2013 (#M1), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [Article 28](#) shall read as follows:*

#M1

"ARTICLE 28

Deferment in the service of penalty and suspension of penalty service on probation

The person in relation to which the court ordered to postpone the enforcement of sentence or the person sentenced to a custodial sentence whose service has been suspended on probation may be extradited if the part of sentence still to be served meets the requirements of seriousness provided in [Article 26](#) and there are no other legal impediments for extradition."

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ARTICLE 29

Offences committed in a third State

In case of offences committed in the territory of a State other than the requesting State, extradition may be granted when Romanian law ascribes the competence of prosecution and judgment to the Romanian judicial authorities for offences of the

same type that are committed outside Romanian territory, or when the requesting State proves that the third State on the territory of which the offence was committed will not request extradition for that act.

ARTICLE 30

Lack of prior complaint

Extradition shall not be granted if, according to both Romanian law as well as the legislation of the requesting State, criminal action can be initiated only upon prior complaint from the injured person, and this person is opposing the extradition.

ARTICLE 31

The right to defence

Romania shall not grant extradition if the person sought would be tried in the Requesting State by a court that does not provide the fundamental safeguards of procedure and protection of the right to defence or by a national court set up especially for that case, or if the extradition is requested in view of service of a penalty delivered by that court.

ARTICLE 32*)

Judgment in absentia

- (1) If extradition of a person is requested in view of service of a penalty handed down in a judgment in absentia against that person, Romania may refuse extradition for this purpose, if it deems that the trial procedure has disregarded the right to defence acknowledged to any person accused of having committed an offence. However, extradition shall be granted if the requesting State provides safeguards deemed as sufficient to guarantee the right of the person sought to a new trial that would safeguard his right to defence. Such a decision of extradition entitles the requesting State either to try the case again, in the presence of the convict, if the latter has no objections, or, if otherwise, to prosecute the extradited.
- (2) When Romania announces the person whose extradition has been requested, about the judgment delivered against him in absentia, the Requesting State shall not take this announcement to be a notification that entails effects upon the criminal proceedings in this latter State.

#CIN

**) In accordance with [Article II](#) (9) and [Article IV](#) of Law no. 300/2013 ([#M1](#)), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [Article 32](#) shall read as follows:*

#M1

"ARTICLE 32

Judgment in absentia

- (1) *If extradition of a person is requested in view of service of a penalty handed down in a judgment in absentia against that person, Romania may refuse extradition for this purpose, if it deemed that the trial procedure has disregarded the right to defence acknowledged to any person suspected or accused of having committed an offence. However, extradition shall be granted if the requesting State provides safeguards deemed as sufficient to guarantee the right of the person sought to a new trial that would safeguard his right to defence. Such a decision of extradition entitles the requesting State either to try the case again, in the presence of the convict, if the latter has no objections or, if otherwise, to prosecute the extradited.*
- (2) *When Romania announces the person whose extradition has been requested about the judgment delivered against him in absentia, the requesting State shall not take this announcement to be a notification that entails effects upon the criminal proceedings in this latter State."*

#B

ARTICLE 33

Periods of time limitation

- (1) Extradition shall not be granted if the period of time limitation for criminal liability or the period of time limitation for penalty service has expired according either to Romanian legislation or to the legislation of the requesting State.
- (2) The submission of the request for extradition shall interrupt the period of time limitation previously not expired.

ARTICLE 34

Amnesty

Extradition shall not be allowed for an offence that has been amnestied in Romania, if the Romanian State was competent to prosecute this offence, according to its own penal law.

ARTICLE 35

Pardon

A pardon act adopted by the requesting State shall render the request for extradition inoperative, even if the other conditions for extradition were met.

SECTION 2

The procedure of extradition from Romania

ARTICLE 36

The request for extradition and the documents attached

- (1) A request for extradition, made in writing by the competent authority of the requesting State, shall be addressed to the Ministry of Justice. If the request is being made through diplomatic channels, it shall be sent without delay to the Ministry of Justice. Another way of transmission may be agreed upon directly by the requesting State and the requested Romanian State.
- (2) To support the request, the following shall be attached:
 - a) according to the stage of the criminal trial, the originals or the authenticated copies of the final sentence, with a mention of the fact that it has become final, of the decisions handed down following the exercise of means of judicial review, of the warrant for the service of imprisonment, and respectively, the originals or authenticated copies of the provisional arrest warrant, of the prosecutor's charges and of other documents that have legal power. The certification of copies shall be provided free of charge by the competent court or public prosecutor's office, as appropriate;
 - b) a presentation of the deeds for which extradition is being requested. The date and place of their commission, their legal classification and references to the legal provisions that are applicable to them shall be provided in the most accurate manner possible;
 - c) a copy of the legal provisions applicable or, if this is not possible, a statement concerning the law applicable, as well as the most accurate distinctive marks of the person sought and any other information likely to determine the latter's identity and nationality;
 - d) data concerning the length of the penalty not served, in case of requests for extradition of a sentenced person who has served only part of the penalty.

ARTICLE 37

The procedure for passive extradition

- (1) Extradition from Romania shall be decided upon by the Judiciary.
- (2) The procedure of passive extradition is urgent and takes place also during the judicial recess.
- (3) The role of the Ministry of Justice consists of exercising the competences bestowed upon it, as a central authority, by the law and the international treaties to which Romania is a party.

- (4) In the exercise of its competences as a central authority, the Ministry of Justice mainly performs, through its specialized directorate, the following activities:
- a) receipt of the request for extradition;
 - b) examination of the request for extradition and of the documents attached thereto, from the point of view of international regularity, according to [Article 38](#);
 - c) transmission of the request for extradition and of the documents attached to it to the competent general prosecutor, according to [Article 40](#);
 - d) reasoned restitution of the request for extradition and of the documents attached thereto, in the cases in [Article 38 \(4\)](#);
 - e) execution, in collaboration with the Ministry of Administration and Interior, of the final decision that ordained extradition;
 - f) communication to the central authority of the requesting State, of the solution given to the request for extradition or to the request for provisional arrest in view of extradition, delivered by the competent judicial authority.

ARTICLE 38

The international regularity check

- (1) The international regularity check is aimed at checking whether the extradition request and the documents attached thereto comply with the provisions of applicable international treaties, including with the declarations made by Romania based on the provisions of certain multilateral conventions.
- (2) Through its specialized directorate, the Ministry of Justice shall, within 3 working days from the date of receipt of a request, perform the international regularity check provided in paragraph (1), in order to find whether:
 - a) between Romania and the requesting State there are conventional norms or there is reciprocity for extradition;
 - b) the request for extradition is accompanied by the documents set forth in the applicable international treaty;
 - c) the request and the attached documents are accompanied by translations, under [Article 14](#);

- d) there exists one of the limits for granting judicial co-operation, according to [Article 3](#).
- (3) Where the extradition of a Romanian citizen is being requested, during the international regularity check, the Ministry of Justice shall also check the existence of reciprocity concerning the extradition of own nationals.
- (4) If the international regularity conditions provided in paragraph (2) a) and b) and in paragraph (3) are not met, as well as when it finds the existence of the situation provided in paragraph (2) d), the Ministry of Justice shall return the request and the attached documents, explaining the reasons.

If the request for extradition and the attached documents are not accompanied by translations into Romanian, the competent public prosecutor's office shall take measures to provide a translation as soon as possible.

- (5) In the event of requests for provisional arrest in view of extradition, the international regularity check shall be performed within 24 hours from the receipt of the request.

ARTICLE 39

Concurrence of requests

- (1) If extradition is requested by several States either for the same act or for different acts, Romania shall decide, while taking into account all the circumstances and, in particular, the seriousness and the place of commission of the offences, the dates when the requests were lodged, the nationality of the requested person, the existence of extradition reciprocity in relation to Romania and the possibility of a further extradition towards another requesting State.
- (2) In the situation provisioned in paragraph (1), the Ministry of Justice will decide, if may be the case, to which Requesting State the person sought will be surrendered, according to the international obligations Romania assumed according to the international treaties in this matter or according to the obligations deriving from the status of Member State of the European Union, taking into account the enforceable judgments applied to each of the requests for extradition, as well as the criteria set in paragraph (1).
- (3) The Ministry of Justice shall urgently notify the concurrence of requests to the competent authorities of the requesting States.

ARTICLE 40

Notification of the competent public prosecutor

Except for the cases of restitution provided in [Article 38](#) (4), the request for extradition and the documents attached to it shall be sent by the Ministry of Justice, within 48 hours, to the general prosecutor attached to the court of appeals in the jurisdiction of which the person sought domiciles or has been seen or, if the location of the person is unknown, to the general prosecutor from the prosecutor's office attached to the Court of Appeal in Bucharest.

ARTICLE 41

Representation of the requesting State

- (1) Within the procedure of passive extradition, the Requesting State shall be represented by the central authority and the Public Ministry in Romania. At the express request of the Requesting State, its own representatives may participate to the resolution of the extradition request, with the approval of the competent court.
- (2) Paragraph (1) shall also apply accordingly for active extradition.

[ARTICLE 42*](#)

The judicial procedure and special rules of competence

- (1) The judicial procedure of extradition is of the competence of the court of appeals within the jurisdiction of which the person sought domiciles or has been identified and to the public prosecutor's office attached to it.

[#M1](#)

(1[^]1) If the requesting State concomitantly requests the extradition of two or more persons, investigated in the same penal file or in related files, who have been localized in the jurisdictions of different courts of appeal, the competence to settle the extradition requests shall lie with the Bucharest Court of Appeals.

[#B](#)

- (2) The requests for provisional arrest in view of extradition and the requests for extradition shall be solved by the criminal section of the competent court of appeals, in a panel consisting of one judge.
- (3) The decision handed down regarding the request for extradition is subject to appeal on points of law, according to [Article 52](#) (8) and [Article 53](#).
- (4) The norms of criminal procedure concerning prosecution, trial and enforcement shall apply for the procedure of extradition as well, to the extent that this law does not provide otherwise.

[#CIN](#)

**) In accordance with [Article II](#) (10) and [Article IV](#) of Law no. 300/2013 ([#M1](#)), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and*

Law no. 135/2010 on the Code of Penal Procedure), paragraph (3) of Article 42 shall read as follows:

#M1

"(3) The decision handed down regarding the request for extradition is subject to appeal, according to Article 52 (8) and Article 53."

#B

ARTICLE 43*

Provisional arrest and notification of the court

(1) The competent general prosecutor or the public prosecutor whom he designates shall, within 48 hours from receipt of the request for extradition and of the documents attached to it, proceed to identifying the person sought, to whom he shall hand the arrest warrant, as well as the other documents sent by the authorities of the requesting State.

#M1

(2) After identification, the general prosecutor of the prosecutor's office attached to the court of appeals having jurisdiction over the location where the sought person was apprehended shall immediately notify the competent court of appeals, to decide on the measure of provisional arrest in view of having the sought person extradited and continue the judicial procedure of settling the request for extradition. In the case referred to in Article 42 (1[^]1), the person sought may also be heard by the Bucharest Court of Appeals by videoconference. Proceedings performed by the prosecutor's office attached to the court of appeals under whose jurisdiction the person sought was apprehended shall be delivered to the Prosecutor's Office attached to the Bucharest Court of Appeals, immediately after the hearing of the person sought.

#B

(3) Provisional arrest in view of extradition shall be ordered and extended by the same panel empowered to solve the request for extradition, through a closure, and the provisional arrest may not exceed 180 days. After the rendering of the decision according to which the arrest was ordered, the judge shall at once issue a provisional arrest warrant in view of extradition. The provisions of the Code of Penal Procedure concerning the contents and execution of the arrest warrant shall apply accordingly.

#M1

(4) Provisional arrest in view of extradition shall take place in apprehension and provisional arrest facilities, which shall be organised and operate under the coordination of the Ministry of Interior, save where the person is already serving a sentence in a prison subordinated to the National Prison Administration.

#B

- (5) During the resolution of the request for extradition, the court shall re-examine periodically, but not later than 30 days the need to maintain the measure of provisional arrest, and may ordain, according to case, either extension or the replacement of this measure by the measure of obligation not to leave the country or city. The measure of provisional arrest is replaced with the obligation of not leaving the country or city only in well-grounded cases and only if the court considers that the person sought will not try to evade the judgment of the request for extradition.
- (6) Once the request for extradition is granted, by issuing a sentence, the court shall also order the arrest of the extradited person in view of his/her surrender.
- (7) The measure of arrest in view of the surrender shall cease by law if the extradited person is not taken into the custody of the competent authorities in the Requested state in 30 days from the date agreed upon for surrender, except for the case provisioned in [Article 57](#) (6). In this case, the court shall order at once the release of the extradited person and shall inform in this respect the Ministry of Justice and the Centre for International Police Cooperation within the General Inspectorate of the Romanian Police.
- (8) If the Romanian judicial authorities have issued a warrant for provisional arrest or a warrant of service of imprisonment against the person sought, for acts committed in Romanian territory, the warrant for provisional arrest in view of extradition shall take effect from the date when the person concerned is no longer under the rule of the warrant for provisional arrest or of the warrant for service of imprisonment.
- (9) The closure, according to which the measure of provisional arrest in view of extradition was ordered to be imposed, maintained, replaced or ceased, may be filed against by appeal in recourse in 24 hours from pronouncement. The file shall be submitted to the appeal court in 24 hours and the appeal in recourse shall be judged in 3 days from the registration of the case. The appeal in recourse filed against the closure according to which the provisional arrest measure was ordered or maintained is not liable to suspension.

#CIN

- *) In accordance with [Article II](#) (11) and [Article IV](#) of Law no. 300/2013 (**#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraphs \(5\) and \(9\) of Article 43](#) shall read as follows:*

#M1

- "(5) During the resolution of the request for extradition, the court shall examine periodically, but not later than 30 days the need to maintain the measure of provisional arrest, and may ordain, according to case, either extension of the*

provisional arrest or the replacement of this measure by the measure of house arrest, judiciary supervision or bail. The measure of provisional arrest shall be replaced with house arrest, judiciary supervision or bail only in well-grounded cases and only if the court considers that the person sought will not try to evade judgment of the request for extradition.

-
- (9) *The closure according to which the measure of provisional arrest in view of extradition was ordered to be imposed, maintained, replaced or ceased may be challenged separately by a statement of opposition, within 48 hours from pronouncement. The file shall be submitted to the higher-ranking court within 48 hours, and the statement of opposition shall be judged within 5 days from the registration of the case. The statement of opposition against the closure according to which the provisional arrest measure was ordered or maintained is not liable to suspension."*

#M1

ARTICLE 44

Provisional arrest in cases of emergency

- (1) *In cases of emergency, upon the reasoned request of the requesting State, the prosecuted person may be subject to provisional arrest in view of extradition, prior to the receipt of the request for extradition.*
- (2) *The red note or the diffusion of international prosecution through the channels of the International Police Organisation - Interpol shall amount to a request for provisional arrest in view of extradition, if expressly stipulated in the applicable treaty or where there is reciprocity.*
- (3) *The persons referred to in [Article 19](#) may not be arrested in reliance upon a red note or a diffusion of international prosecution through the channels of International Police Organisation - Interpol.*
- (4) *The request for provisional arrest in view of extradition shall specify:*
- a) the authority requesting the provisional arrest in view of extradition;*
 - b) the identification data of the person subject to international prosecution, including their citizenship;*
 - c) the existence of an arrest warrant or of any other document having the same legal effects or of a final court decision;*
 - d) confirmation of the validity for the document referred to in sub-paragraph c);*
 - e) description of acts, which should specify the date, location where they have been committed and the degree of participation in their perpetration;*

- f) *applicable legal provisions, including the ones referring to statutes of limitations on criminal liability or service of sentence;*
 - g) *confirmation that the request for extradition will be sent.*
- (5) *If the request is for the arrest of a person stipulated in [Article 19](#) or when the red note or diffusion of international prosecution through the channels of the International Police Organisation - Interpol do not amount to a request for provisional arrest in view of extradition, the request for provisional arrest in view of extradition shall be sent to the competent division of the Ministry of Justice, directly or by means of the International Police Cooperation Centre within the Romanian General Police Inspectorate.*
- (6) *Where it amounts to a request for provisional arrest in view of extradition and there is information that the person subject to international prosecution is in Romania, the International Police Cooperation Centre within the Romanian General Police Inspectorate shall send the red note or diffusion of international prosecution through the channels of the International Police Organisation - Interpol to the prosecutor's office attached to the court of appeals under whose jurisdiction the prosecuted person was located or, if the whereabouts of the person are unknown, to the prosecutor's Office attached to the Bucharest Court of Appeals.*
- (7) *After identification, the prosecutor shall immediately notify the competent court of appeals, in order to decide whether to take the measure of provisional arrest in view of extradition.*
- (8) *The maximum length of the measure of provisional arrest in view of extradition in relation to the person sought shall be 40 days, except where a longer period is stipulated in the applicable treaty.*
- (9) *The release of the person sought into freedom shall not exclude a new provisional arrest in view of extradition, or the extradition, if the request for extradition is afterwards received.*

#M1

ARTICLE 45

Apprehension in view of extradition

The measure of apprehension may only be taken by the prosecutor or by the criminal investigation services against the person sought after the person has been heard in the presence of their attorney. The measure of apprehension may not last for more than 24 hours. The criminal investigation services shall have the obligation to present the person, within the first 10 hours after having taken the person sought into custody, to the competent prosecutor.

#B

ARTICLE 46

The procedure with the court of appeals

- (1) In the first hearing, the court shall take a statement from the person sought, who shall be assisted free of charge by an interpreter and a defender appointed ex officio, if there is no chosen lawyer. The presence of the public prosecutor is obligatory. The procedure shall be public, unless the person sought or the public prosecutor opposes its publicity, and it shall be also oral and contradictory.
- (2) The person sought or the session prosecutor may request that the court allow a supplementary term of 8 days, for sufficiently justified reasons. The public prosecutor's office shall be obliged to contribute to the collection of data and documents needed in order to establish whether the conditions are met for an extradition and to ordain the seizure and depositing with the court of the objects referred to in [Article 17](#).
- (3) After the questioning, the person sought may opt either for voluntary extradition, or for continuation of the procedure, in case of opposition to extradition.

ARTICLE 47

Voluntary extradition

- (1) A person sought shall have a right to declare before the court that he renounces the benefits of defending himself against the request for extradition that are provided to him by the law, and that he gives his consent to being extradited and surrendered to the competent authorities of the Requesting State. His statement shall be recorded in an official record, signed by the president of the judgment panel, by the court clerk, by the person sought, by his lawyer and by the interpreter. If the court finds that the person sought is fully aware of the consequences of his option, the court, taking note of the public prosecutor's conclusions also, examines whether there are any impediments for extradition. If it is found that voluntary extradition is admissible, the court shall take act of this through a sentence and ordain upon the measure of provisional arrest to be taken until the person sought is surrendered. This sentence is final and shall be drawn up within 24 hours, and an authenticated copy of it shall be sent at once to the Ministry of Justice, which shall proceed according to the law.
- (2) Under the conditions mentioned in paragraph (1), the person sought may declare that he renounces the application of the speciality rule provided in [Article 74](#).

ARTICLE 48

Simplified extradition

In the case mentioned in [Article 47](#), it is no longer necessary to present a formal request for extradition and the documents provided in [Article 36](#) (2) if it is thus provided in the international convention applicable in relation to the Requested State or if the legislation of that State allows such a simplified extradition procedure and it has been applied to requests for extradition submitted by Romania.

ARTICLE 49

Opposition to extradition by the person sought

- (1) Should the person sought oppose the request for extradition, he shall be able to defend himself orally and in writing; and also to bring evidence.
- (2) After hearing the person sought, the file of the case shall be made available to the latter's defender for presenting, in writing, within 8 days, a reasoned opposition to the request for extradition and for showing the evidence allowed by Romanian law. The number of witnesses shall not exceed two.
- (3) Opposition may be founded only upon the fact that the person arrested is not the person requested or that the conditions for extradition are not met.
- (4) Once the opposition has been presented or the time limit for presenting it has expired, the public prosecutor may request a term of 8 days to reply to the opposition or to produce evidence, according to paragraph (2).

ARTICLE 50

Production of evidence

The evidence approved by the court shall be produced within 15 days, in the presence of the person sought assisted by the defender and, if necessary, by an interpreter, as well as in the presence of the public prosecutor.

ARTICLE 51

Additional information

- (1) Should the information provided by the Requesting State prove insufficient for allowing the Romanian State to render a decision in the application of this law, the competent court shall request the information needed. It shall appoint a term of 2 months to this aim.
- (2) The request for additional information, as well as the reply shall be sent by one of the means mentioned in [Article 36](#).

ARTICLE 52*)

Resolution of the case

- (1) After examining the request for extradition, the evidence and the conclusions of the party sought and of the public prosecutor, the court of appeals may:
 - a) ordain, in case of concurrence of requests as provided in [Article 39](#), a connection of the cases, even if they refer to different acts or are registered with different courts of appeal. The jurisdiction belongs to the court of appeal that was the first notified;
 - b) ordain, in case of need for additional information from the Requesting State according to [Article 51](#), a postponement of the resolution of the request for extradition for a term of 2 months. The request may be reiterated, and then a last term of 2 more months shall be granted;
 - c) find, through a sentence, whether or not the conditions for extradition are met.
- (2) The court of appeals is not competent to decide upon the correctness of the prosecution or conviction for which the foreign authority is requesting extradition, nor upon the desirability of the extradition.
- (3) Should the court of appeals find that the conditions for extradition are met, it shall decide to allow the request for extradition and ordain the maintenance of the provisional arrest in view of extradition, until the extradited person is surrendered, in [Article 57](#).
- (4) The decision ordaining extradition shall be reasoned within 5 days from its handing down.
- (5) In case of temporary or conditional extradition, the court shall make mention in the enacting terms of the sentence, of the conditions provided in those Articles.
- (6) Where the request for extradition is allowed, if any objects are to be handed over according to [Article 17](#), this shall be mentioned in the sentence, perhaps attaching an inventory of the objects.
- (7) Should the court find that the conditions for extradition are not met, it shall reject the request and ordain the release of the person sought. The decision shall be reasoned within 24 hours and sent to the general prosecutor attached to the court of appeal, which shall send it at once to the specialized compartment in the Ministry of Justice.
- (8) Decisions upon extradition may be appealed against on points of law by the competent general prosecutor and by the person sought, within 5 days from its handing down, with the Criminal Section of the High Court of Cassation and

Justice. The competent general prosecutor may file an appeal on points of law ex officio or upon the request of the minister of justice.

- (9) An appeal lodged against a decision rejecting a request for extradition shall stay the execution. An appeal against a decision ordaining extradition shall stay the execution, subject to the provisions on provisional arrest in view of extradition.

#CIN

) In accordance with [Article II](#) (12) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraphs \(8\) and \(9\)](#) of [Article 52](#) shall read as follows:*

#M1

- "(8) Decisions upon extradition may be appealed against by a statement of opposition by the competent general prosecutor and by the person sought, within 5 days after its handing down, with the Criminal Section of the High Court of Cassation and Justice. The competent general prosecutor may file a statement of opposition ex officio or upon the request of the minister of justice.*
- (9) *The statement of opposition lodged against a decision rejecting a request for extradition shall stay the execution. The statement of opposition lodged against a decision ordaining extradition shall stay the execution, subject to the provisions on provisional arrest in view of extradition."*

#B

ARTICLE 53*)

Judgment of the appeal on points of law and notification of the decision

- (1) After the sentence of the court of appeal is reasoned, the file of the case shall be at once forwarded to the Criminal Section of the High Court of Cassation and Justice.
- (2) Upon receiving the file, the president of the Criminal Section of the High Court of Cassation and Justice shall appoint a term for judgment regardless of the existence of other pending cases, with priority.
- (3) The appeal on points of law shall be judged within 10 days, by a panel of 3 judges.
- (4) To solve the appeal on points of law, the panel president may designate one of the judges or an assistant magistrate to make a written report.
- (5) The file of the case shall be returned to the court of appeal within 3 days from resolution of the appeal on points of law

- (6) The final decision upon extradition shall be notified to the general prosecutor attached to the court of appeal that judged the case in first instance, and to the specialized directorate within the Ministry of Justice.

#CIN

) In accordance with [Article II](#) (13) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [Article 53](#) shall read as follows:*

#M1

"ARTICLE 53

Judgment of the statement of opposition and notification of decision

- (1) After the sentence of the court of appeals is reasoned, the file of the case shall be at once forwarded to the Criminal Section of the High Court of Cassation of Justice.*
- (2) Upon receiving the file, the president of the Criminal Section of the High Court of Cassation of Justice shall appoint a term for judgment regardless of the existence of other pending cases, with priority.*
- (3) The statement of opposition shall be judged within no more than 10 days, by a panel of 3 judges.*
- (4) To solve the statement of opposition, the panel president may designate one of the judges or an assistant magistrate to make a written report.*
- (5) The file of the case shall be returned to the court of appeal within 3 days from resolution of the statement of opposition.*
- (6) The final decision upon extradition shall be notified to the general prosecutor of the prosecutor's office attached to the court of appeals that judged the case in first instance, and to the specialised directorate within the Ministry of Justice."*

#B

ARTICLE 54

Analogy

[Article 52](#) (8) and [Article 53](#) shall apply accordingly also where the court decides upon postponement of extradition, upon conditional admission of extradition, upon consent for extension of the object of extradition and upon re-extradition to a third State.

ARTICLE 55

Escape of the extradited person

An extradited person who, after having been surrendered to the requesting State, escaped before the resolution of the case or before serving the penalty for which extradition was granted, and who returns to or is identified in Romania, shall be arrested and surrendered once again, based on a warrant issued by the competent judicial authority of the requesting State, unless the latter breached the conditions on which extradition was granted.

SECTION 3

Effects of extradition from Romania

ARTICLE 56

Surrendering the extradited person

- (1) An excerpt of the final court decision ordaining extradition shall be deemed as necessary and sufficient legal basis for surrendering the extradited.
- (2) In order to establish the place and date of the surrender, the Ministry of Justice shall inform the Centre for International Police Cooperation within the General Inspectorate of the Romanian Police an excerpt of the enforceable court decision.
- (3) The date of surrender shall be communicated to the Ministry of Justice and to the competent court of appeals within 15 days from the date of the transmission of the court decision provisioned in paragraph (1). If the surrender date was not set within the 15 days period, the Centre for International Police Cooperation within the General Inspectorate of the Romanian Police shall submit an information note pertaining to the measures taken and the reasons for which the surrender date could not be set during this period.

ARTICLE 57

Terms for surrender of the extradited person

- (1) The Ministry of Justice shall at once make known to the competent authority of the Requesting State the solution adopted with respect to the extradition, and it shall also send it an excerpt of the final decision.
- (2) Any solution of total or partial rejection shall be reasoned.
- (3) In case of approval of extradition, the Requesting State shall be informed of the place and date of surrender, as well as of the length of arrest in view of extradition served by the person sought.
- (4) The place of surrender shall be, usually, a border point of the Romanian State. The Centre for International Police Cooperation within the General

Inspectorate of the Romanian Police, through the National Office Interpol shall ensure the surrender, and then it shall notify the Ministry of Justice and the competent court of appeals. The person sought shall be surrendered and taken over under escort.

- (5) Except for the case in paragraph (6), if the person sought is not taken over at the appointed date, he may be released within 15 days from this date; this term may be extended only by 15 days more.
- (6) In case of force majeure that prevents the surrender or taking-over of the person subject to extradition, the Romanian authorities and those of the Requesting State shall agree upon a new date of surrender, and provisions of [Article 56](#) (3) are applicable.

#M1

ARTICLE 58

Postponed surrender

- (1) *If the extradited person is subject to criminal investigation by the Romanian judicial authorities, the surrender thereof shall be postponed until the final resolution of the case. In a sentencing decision is passed, to be served in custody, the surrender shall be postponed until the release following parole or until the sentence is served in full.*
- (2) *Surrender may be postponed when:*
 - a) *it is found, based on a medical forensics appraisal, that the extradited person is suffering for a severe illness rendering impossible immediate surrender. In this case, surrender shall be postponed until the health of the extradited person improves;*
 - b) *the extradited person is pregnant or has an infant less than one year old. In this case, surrender is postponed until the case having determined the postponement ceases, making surrender possible;*
 - c) *for special circumstances, immediate surrender would entail severe consequences for the extradited person or their family. In this case, surrender may be postponed for no more than 3 months and only once.*
- (3) *In case of postponement of surrender in relation to the extradited person, the court shall issue a provisional arrest warrant in view of extradition. If the extradited person is, at the time when the request for extradition is admitted, subject to a provisional arrest warrant or detention order issued by the Romanian judiciary authorities, the provisional arrest warrant in view of extradition shall become effective on the date when the reasons having justified the postponement cease.*

- (4) *By derogation from paragraph (1), upon the express request of the requesting State, the extradited person may be temporarily surrendered, for a period mutually agreed upon between the Romanian authorities and the requesting State.*
- (5) *When the request referred to in paragraph (4) is sent after the surrender decision became final, temporary surrender shall be approved by the president of the criminal section of the court of appeals having settled the request for extradition, through reasoned closure, handed down in Council Chambers. Upon the request of the president of the criminal section of the court of appeals, the judiciary services having jurisdiction over the case or the executing court shall deliver the requested information.*
- (6) *The conditions for temporary surrender shall be determined through an agreement between the competent Romanian and foreign authorities. For Romania, the competent authority shall be the Ministry of Justice, through its relevant department. The extradited person shall be taken over and returned by the competent authorities of the requesting State, in the territory of Romania. Costs relating to taking over and returning the extradited person shall be borne by the requesting State.*
- (7) *If the person extradited in accordance with paragraph (4) is currently serving a custodial sentence or measure involving deprivation of liberty, the service of the sentence or of the measure shall be deemed suspended starting with the date when the person was taken over by the issuing State and until the date of their return.*

#M1

ARTICLE 59 *** Repealed

#B

ARTICLE 60

Transit

- (1) The transit, in Romanian territory, of an extradited who is not a Romanian citizen, may be granted on condition that no reasons of public policy is opposed to this and that extradition is granted for the offence, according to the Romanian law.
- (2) Should the extradited person have Romanian citizenship, the transit shall not be granted unless the situation is one in which the extradition of Romanian citizens can be approved.
- (3) Transit is granted upon request from the State concerned, made and sent by the means in [Article 36](#) (1), to which shall be attached at least the warrant for provisional arrest or the warrant for service of the penalty of imprisonment that justified the granting of extradition.

- (4) Decisions regarding transit shall be made by the Ministry of Justice.
- (5) The Ministry of Justice shall at once notify its decision to the competent authority of the Requesting State and to the Ministry of Administration and the Interior.
- (6) In case of air transit, when no landing on Romanian territory is intended, it is sufficient that a notification be made by the competent authority of the Requesting State to the Romanian Ministry of Justice. In case of forced landing, this notification shall have the same effects as a request for provisional arrest in view of extradition, and the Requesting State shall immediately address a formal request for transit. Paragraph 3 shall apply accordingly.
- (7) An extradited person who is in transit shall remain in a state of provisional arrest for the duration of his stay in Romanian territory.

ARTICLE 61

Re-extradition to a third State

- (1) Outside the case in [Article 74](#) (1) b), Romania's consent is required in order to allow the Requesting State to surrender to another State the person who was surrendered to it and who is wanted by the third State for offences previous to the surrender. Romania may request that the documents in [Article 36](#) (2) be presented.
- (2) [Articles 52](#) and [53](#) shall apply accordingly.

CHAPTER II

Active Extradition

SECTION 1

Conditions for requesting extradition

ARTICLE 62

Obligation to request extradition

The extradition of a person against whom the competent Romanian judicial authorities have issued a warrant for provisional arrest or a warrant for service of imprisonment or to whom a preventive measure was imposed shall be requested from a foreign State on the territory of which he was located, in all cases where the conditions provided in this law are met.

ARTICLE 63

Legal framework

- (1) [Section 1](#) of Chapter I of this Title shall apply accordingly if Romania is the Requesting State.

- (2) In addition to the condition concerning the seriousness of the penalty provided in Article 26, there is a supplementary condition in order for Romania to be able to request the extradition of a person in view of criminal prosecution: criminal action must have been initiated against that person, according to the conditions mentioned in the [Code of Penal Procedure](#).

SECTION 2

The procedure for requesting extradition

ARTICLE 64

Competence

The competence to draw up and send requests for extradition on behalf of Romania belongs to the Ministry of Justice.

#M1

ARTICLE 65

International search

- (1) *International search shall be requested and ordained with the purpose of identifying and searching for a person for localization and provisional arrest in view of extradition or surrender in Romania. For the purpose of this article, international search shall mean search through the channels of the International Police Organisation - Interpol or the entering into the Schengen Information System of an alert in relation to the person sought to be arrested in view of extradition.*
- (2) *International search shall be requested when the specified person, as the case may be, in the provisional arrest warrant, the detention order in relation to life detention or imprisonment or in the decision having ordained the custodial measure has not been found and there is a reasonable assumption that they have left the Romanian territory.*
- (3) *International search shall be ordered by the Centre of International Police Cooperation within the Romanian General Police Inspectorate upon the request of the court having issued the provisional arrest warrant or the executing court. In this respect, the court shall deliver the information specified in [Article 44](#) (4) a) - f), as well as any other additional data and information demanded.*
- (4) *The Centre for International Police Cooperation within the Romanian General Police Inspectorate shall communicate in the shortest time practicable to the requesting court the date of international search and the date when the alert has been entered into the Schengen Information System.*
- (5) *The court having issued the provisional arrest warrant or the executing court shall check periodically, but no later than 6 month after the initiation of the international search, the validity of the provisional arrest warrant or the detention order in*

relation to a custodial sentence or of the custodial measure ordained and, insofar as changes occurred, shall inform the Centre for International Police Cooperation within the Romanian General Police Inspectorate and the competent department of the Ministry of Justice.

- (6) *If the person sought has been localized in the territory of another State, when, in accordance with the law of that State or the applicable treaty, the red note or diffusion does not amount to a request for provisional arrest in view of extradition, and also when the corresponding National Interpol office expressly requests so, the Ministry of Justice, through the competent department, shall prepare and deliver the request for provisional arrest in view of extradition.*

#B

ARTICLE 66*

The procedure for active extradition

- (1) As soon as it is informed, by any means capable of producing a written record and the authenticity of which can be verified, by the Centre for International Police Co-operation from the Romanian General Police Inspectorate, through its specialized structure, or by the Ministry of Justice, about the fact that a person who is sought internationally or wanted by the Romanian judicial authorities for enforcing a warrant for service of imprisonment or a warrant for provisional arrest, has been located in the territory of a foreign State, the executing court or the court that issued the warrant for provisional arrest shall establish, through a reasoned conclusion, whether the conditions set forth in this Law are met for requesting extradition.
- (2) The Centre for International Police Co-operation is obliged to inform, through its specialized structure, the executing court or the court that issued the warrant for provisional arrest, as soon as the corresponding Central National Interpol Office notifies the fact that the person who is the object of the warrant has been located. The information shall be sent directly, and a copy thereof shall be sent to the Ministry of Justice.
- (3) The court shall decide through a conclusion, handed down in the council chamber by a single judge, with the participation of the prosecutor and without summoning the parties, on an emergency and priority basis. The conclusion shall not be handed down in a public session and shall be entered into a special register.
- (4) In order to keep evidence of the court activity a separate registry shall be kept for rulings in respect of notifications concerning extradition. This registry shall contain the files in each hearing, separated for each panel, the closure rendered and its number, as well as the initials of the judge having drawn it. At the same time, the registry for recording notifications concerning extradition shall be prepared and kept, where the following mentions shall be written: running number; name and forename of the defendant or convicted person; number and date of the warrant

for provisional arrest or for serving the sentence; number and date of the letter from the International Police Cooperation Office within the Romanian General Police Inspectorate or the Ministry of Justice; the number of the court file; the number and date when the closure was delivered; the date when the closure was served to the Ministry of Justice. The appeal court shall keep a separate registry for these cases. The registry evidencing notifications concerning extradition is not intended for to be made public.

- (5) The closure in paragraph (3) may be appealed by the prosecutor, within 24 hours from its handing down. The case file shall be forwarded to the appellate court within 24 hours. The appeal shall be tried within no more than 3 days by the higher-ranking court. The appellate court shall return the case file to the first court within 24 hours from the resolution of the appeal.
- (6) The final conclusion finding that the legal conditions are met for requesting extradition, together with the documents in [Article 36 \(2\)](#), shall be sent at once to the Ministry of Justice. The final conclusion finding that the conditions are not met for requesting extradition shall be sent to the Ministry of Justice within 3 days from its rendition.
- (7) Within no more than 3 days of the receipt of the final conclusion finding that the conditions are met for requesting extradition, the Ministry of Justice shall perform, through its specialized directorate, an international regularity check, under [Article 38](#), which shall apply accordingly.
- (8) Depending on the conclusions of the international regularity check, the specialized directorate of the Ministry of Justice shall either draw up the extradition request and send it, together with the attached documents, to the competent authority of the Requested State, or draw up a reasoned document suggesting to the Minister of Justice to notify the general prosecutor attached to the High Court of Cassation and Justice, in view of initiating the procedure for revision of the final conclusion that ordained the request for extradition. In both cases, it shall inform the Centre for International Police Co-operation within the Romanian General Police Inspectorate. If it finds the documents to be incomplete, before drawing up and sending the extradition request, the specialized directorate of the Ministry of Justice may require the competent court to send within no more than 72 hours the additional documents needed according to the appropriate international treaty.
- (9) When it is found that the conditions of international regularity are not met for requesting extradition, the Minister of Justice, through the general prosecutor attached to the High Court of Cassation and Justice, shall request the initiation of the procedure for revision of the final decision having ascertained fulfillment of the conditions required to request extradition. The Minister of Justice may not request initiation of the procedure of revision for any other reasons than those relating to the conclusions of the international regularity check.

- (10) Requests for revision shall be submitted within no more than 3 days, if the person referred to in paragraph (1) is detained in view of being extradited to Romania. In all other cases the request shall be submitted within no more than 15 days. The period shall start running from the date when the general prosecutor receives the request whereby the Minister of Justice requires the former to support the revision of the final court decision having ascertained fulfillment of the conditions necessary to request extradition. The court competent to judge the revision request shall be the court referred to in paragraph (1). If the person specified in paragraph (1) is arrested in view of being extradited to Romania, the revision request shall be settled as a matter of emergency and priority. In all other cases, the revision request shall be settled within no more than one month after the cause registration date.
- (11) If it finds that the request for revision is justified, the court shall cancel the appealed conclusion. Where the court finds that the request for revision is not justified, it shall reject it and uphold the conclusion. The revision court's decision shall be final and must be notified within 24 hours from rendition to the Minister of Justice and to the general prosecutor attached to the High Court of Cassation and Justice.
- (12) Requests for extradition and the documents attached thereto, together with the documents in [Article 36](#) (2) and by certified translations into the language of the Requested State or into English or French, shall be sent to the competent authority of the Requested State, through one of the channels provided in [Article 36](#) (1).
- (13) If extradition is requested for a person convicted in absentia, for the case where the Requested State informs the pursued person of the decision rendered in absentia, such a notice shall not produce effects in consideration of the Romanian criminal procedure.
- (14) Where the person sought is not provisionally arrested in view of extradition, the procedure provided in this Article shall be confidential until the Requested State receives an extradition request.

#CIN

) In accordance with [Article II](#) (14) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(5\) of Article 66](#) shall read as follows:*

#M1

"(5) The closure in paragraph (3) may be appealed by the prosecutor through a statement of opposition, within 24 hours from its handing down. The case file shall be forwarded to the higher-ranking court within 24 hours. The statement of opposition shall be tried within no more than 3 days by the higher-ranking court.

The higher-ranking court shall return the case file to the first court within 24 hours from the resolution in the statement of opposition."

#M1

ARTICLE 66¹

Simplified extradition

When the person subject to international search through the channels of the International Police Organisation - Interpol or in relation to which an alert has been entered into the Schengen Information System agrees to be extradited to Romania, the submission of an official request for extradition is no longer necessary if the central authority of the State having made the request delivers a notification to that effect, and the international convention applicable in relation to the requested State or the legislation of that State regulates such a procedure.

#B

ARTICLE 67

Withdrawal of the extradition request

(1) Where the person sought is no longer under the power of the warrant for provisional arrest or of the warrant for penalty service, the competent court shall, either ex officio or at the prosecutor's request, establish through a reasoned conclusion that the legal conditions for requesting extradition no longer exist and shall at once ordain the withdrawal of the extradition request. This decision shall be sent to the Ministry of Justice within 24 hours from its pronouncement. The Ministry of Justice shall withdraw without delay the extradition request and announce this to the Centre for International Police Co-operation within the Romanian General Police Inspectorate.

(2) [Article 66](#) shall apply accordingly.

ARTICLE 68

Transmission of additional information at the request of the requesting State

#M1

(1) *Where, in order to solve a request for extradition, the authorities of a foreign State request the transmission of additional information, it shall be sent to it within the time limit set by the authorities of the requested State, by the Ministry of Justice, through its competent department.*

#B

(2) The task of having the documents translated belongs to the Ministry of Justice or, where appropriate, to the competent court.

#M1

ARTICLE 69

Re-trial for the extradited person

The assurance of re-trial in case of extradition of a person sentenced in absentia shall be provided by the Ministry of Justice, through its competent department, upon the request of the requested State. [Article 95](#) (3) shall apply accordingly.

#B

ARTICLE 70

Request for re-extradition to Romania

[Article 61](#) shall apply accordingly if Romania requests to a foreign State the re-extradition of a person whose extradition has previously been granted to the latter by a third State.

SECTION a 3-a

Effects of extradition into Romania

ARTICLE 71

Taking over the extradited

The provisions concerning the surrender/taking-over of the extradited person included in [Article 56](#) and [57](#) shall apply accordingly in the case of persons extradited from abroad into Romania.

ARTICLE 72

Receipt of the extradited

- (1) When brought to Romania, an extradited person shall be at once handed over to the prison administration or to the competent judicial authority, according to case.
- (2) Should the extradited have been sentenced in absentia, he shall be re-tried, upon request, while observing the rights in [Article 32](#) (1).

ARTICLE 73

Notification of the solution

The Ministry of Justice shall inform the competent Romanian judicial authority of the manner in which the request for extradition was solved by the Requested State and, the case being, of the length of provisional arrest in view of extradition, so that it may be deducted according to [Article 15](#).

ARTICLE 74

The speciality rule

- (1) A person surrendered as an effect of extradition shall not be prosecuted, tried or detained in view of serving a penalty, or subjected to any other restraint of his/her

personal freedom for any act that is previous to the surrender, other than the one that motivated the extradition, unless:

- a) the State that surrendered the person so consents; for this purpose, the competent Romanian authorities shall deliver to the Requested State a request in this respect, together with the documents stipulated in [Article 36](#) (2) and a protocol recording of the statements of the extradited person;
 - b) while being able to do so, the extradited person has not left the territory of Romania, within 45 days from his final release, or when he returned to Romania after having left it.
- (2) The Romanian authorities may however take the necessary measures in view of, on the one hand, a possible sending of the person away from the Romanian territory, and on the other hand, an interruption in the period of time limitation according to its legislation, including the recourse to a procedure in absentia.
 - (3) When the classification of the act incriminated is to be amended during the procedure, the extradited person shall not be prosecuted or tried except to the extent that the elements that make up the re-classified offence would allow extradition.
 - (4) In the case in paragraph (1) (a), the request to the foreign State shall be submitted by the Ministry of Justice, based on a conclusion by the court that has competence to solve the case in first instance, at the reasoned proposal of the Public Ministry or based on a conclusion by the court with which the case is pending, where extradition has been granted after the beginning of the trial of the extradited person, as the case may be.

ARTICLE 75

Effects of conditional extradition

- (1) Where extradition has been granted subject to a condition, the court that requested extradition shall take the measures needed in view of observing the condition imposed by the requested State and shall provide guarantees in this respect.
- (2) Where the condition imposed is the resending of the extradited person into the territory of the requesting State, the court shall ordain that such person be escorted to the border in view of being taken over by the competent authorities of the requesting State.

CHAPTER III

Common provisions

ARTICLE 76

Costs

- (1) Costs regarding the procedure of extradition performed in Romanian territory shall be borne by the Romanian State, through the budgets of the authorities and institutions involved, according to the competences given to each of them by this Law. [Article 16](#) (4) shall apply accordingly.
- (2) Transit costs shall be borne by the requesting State.

ARTICLE 77

Extradition fraud

The surrender of a person by expulsion, readmission, re-escort to the frontier or another measure of the same type is prohibited whenever it conceals a will to elude extradition rules.

CHAPTER IV

Provisions for the implementation of legal instruments relating to extradition and adopted within the European Union

ARTICLE 78

Scope of application

- (1) This Chapter is aimed at implementing the provisions of the Convention of 10 March 1995 on simplified extradition procedures between the Member States of the European Union and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union, as well as the provisions regarding extradition included in the [Convention](#) of 19 June 1990 applying the Schengen [Agreement](#) of 14 June 1985 on the gradual abolition of checks at common borders, Schengen, in relation to the Member States of the European Union that have submitted statements on the non-application of the Council [Framework Decision](#) of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States of the European Union for acts committed prior to a certain date.
- (2) [Chapters I](#) and [II](#) of this Title shall apply accordingly, however without affecting the obligations that emerge from accession to the Convention of 10 March 1995 on simplified extradition procedures between the Member States of the European Union, and to the Convention of 27 September 1996 relating to extradition between the Member States of the European Union.

ARTICLE 79

Political offences

In the application of the Convention of 27 September 1996 relating to extradition between the Member States of the European Union, no offence may be considered to be a political offence.

ARTICLE 80

Statutory limitation, amnesty and other causes that remove criminal liability or the consequences of sentencing

- (1) As regards the statutory limitation of criminal liability and penalty service, only the provisions included in the legislation of the Requesting State shall be applicable.
- (2) Amnesty granted by Romania shall not prevent extradition, unless the act provided in penal law is of the competence of Romanian courts.
- (3) The absence of a prior complaint or of another condition required for initiating criminal actions under Romanian law, shall not affect the obligation to extradite.

ARTICLE 81

Extradition in matters of excise taxes, value-added tax and customs

Romania shall grant extradition for acts provided in penal law in matters of excise taxes, value-added tax and in matters of customs, under the Law.

#M1

ARTICLE 82

Entry in the Schengen Information System in relation to the person sought to be arrested

An entry into the Schengen Information System in relation to the person sought to be arrested shall amount to a European Arrest Warrant in all cases where [Framework Decision 2002/584/JHA](#) of the Council of 13 June 2002 on the European Arrest Warrant and surrender procedures among Member States, published in the Official Journal of the European Union series L no. 190 of 18 July 2002 applies. When that framework decision does not apply, an alert entered into the Schengen Information System shall produce the same legal effects as a request for provisional arrest in view of extradition.

#B

ARTICLE 83

Simplified extradition

Simplified extradition shall apply in relations with the Member States of the European Union, without checking the special conditions provided in [Article 48](#), whenever the conditions in [Article 47](#) are met.

TITLE III

Provisions on co-operation with the Member States of the European Union in the application of the Council [Framework Decision No. 2002/584/JHA](#) of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States

CHAPTER I General provisions

ARTICLE 84 Definition of the European Arrest Warrant

- (1) The European Arrest Warrant is a judicial decision issued by the competent judicial authority of a Member State of the European Union, with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
- (2) Member States shall execute any European Arrest Warrant on the basis of the principle of mutual recognition and confidence, in accordance with the provisions of Council [Framework Decision No. 2002/584/JHA](#) of 13 June 2002, published in Official Journal of the European Communities No. L 190/1 of 18 July 2002.

ARTICLE 85 The competent Romanian authorities

- (1) In Romania, the law courts have been designated as issuing judicial authorities.
- (2) The executing Romanian judicial authorities are the courts of appeal.
- (3) The Romanian authorities competent to receive the European Arrest Warrant shall be the Ministry of Justice and the prosecutor's offices attached to the courts of appeal appointed in accordance with paragraph (2) under whose jurisdiction the requested person was located. If the location of the requested person is not known, the European Arrest Warrant shall be sent to the Prosecutor's Office attached to the Court of Appeals of Bucharest.
- (4) The Romanian Central Authority is the Ministry of Justice. In this capacity, the Ministry of Justice shall:
 - a) receive the European Arrest Warrant issued by a judicial authority of another Member State of the European Union and shall deliver the same to the prosecutor's office attached to the court of appeal under whose jurisdiction the requested person was located or to the Prosecutor's Office attached to the Court of Appeal of Bucharest, if the requested person was not located, whenever the issuing judicial authority fails to transmit the European Arrest Warrant directly to the receiving Romanian judicial authority;

- b) transmit the European Arrest Warrant issued by a Romanian judicial authority, if it cannot be transmitted directly to the receiving foreign judicial authority or when the executing Member State appointed the Ministry of Justice as the receiving authority;
- c) keep track of the European Arrest Warrants issued or received by the Romanian judicial authorities, for statistics purposes;
- d) fulfil any other duty provided by law meant to assist and support Romanian judicial authorities in issuing and executing European Arrest Warrants.

ARTICLE 86

Contents and form of the European Arrest Warrant

- (1) A European Arrest Warrant shall contain the following information:
 - a) identity and nationality of the requested person;
 - b) name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
 - c) mention of the existence of a final court decision, or a warrant for provisional arrest or of any other enforceable court decision having the same effect, which falls under the provisions of [Articles 88 and 96](#) of this Law;
 - d) nature and legal classification of the offence, in particular with respect to [Article 96](#);
 - e) a description of the circumstances under which the offence was committed, including the time, place, and degree of participation of the requested person;
 - f) the penalty handed down, if the judgment has remained final, or the penalty provided in the law of the issuing State for the offence committed;
 - g) if possible, other consequences of the offence.
- (2) European Arrest Warrants shall be drawn up according to the model provided in [annex no. 1](#).
- (3) An European Arrest Warrant sent to the competent authority of another Member State shall be translated into the official language(s) of the executing State or into one or several official languages of the institutions of the European Union, which are accepted by the executing State, according to the declaration deposited with the General Secretariat of the Council of the European Union.

- (4) European Arrest Warrants sent to the Romanian authorities for execution shall be translated into Romanian, English or French.

ARTICLE 87

Costs

Costs for the execution of a European Arrest Warrant in Romanian territory shall be borne by Romania. The other costs shall be borne by the issuing State.

CHAPTER II

Issuing a European Arrest Warrant by the Romanian authorities

ARTICLE 88*)

Procedure for issuing a European Arrest Warrant

#M1

- (1) *The authority referred to in paragraph (3) shall issue a European Arrest Warrant when, considering the nature of the offence committed, the age and criminal antecedents of the requested person, as well as other circumstances of the case, the authority believes that it is appropriate to issue a European Arrest Warrant and provided that the following conditions are met:*
- a) *the requested person is in the territory of another Member State of the European Union;*
 - b) *the provisional arrest warrant or the detention order for life detention or imprisonment is valid;*
 - c) *statutory limitation does not operate, in accordance with the Romanian law, in relation to criminal liability or the service of the sentence or amnesty or pardon;*
 - d) *when arrest or surrender is being requested:*
 - (i) *in view of conducting criminal prosecution or trial, the sentence stipulated by the Romanian law for the offence committed being life detention or imprisonment for 2 years or more;*
 - (ii) *in view of sentence service, the imposed sentence or the outstanding sentence still to be served is life detention or imprisonment for 1 year or more;*
 - (iii) *in view of enforcing the custodial sentence, the length of the measure being 6 months or more.*

- (2) *When the provisional arrest measure is taken as a result of the competent Romanian judiciary service replacing a measure or obligation whose compliance was previously supervised by the executing State, the European Arrest Warrant may be issued even if the condition stipulated in paragraph (1) sub-paragraph d) is not met. The condition contemplated in paragraph (1) sub-paragraph d) shall apply whenever the executing State notifies the application, in this case, of [Article 2 \(1\)](#) of Council Framework Decision 2002/584/JHA, as transposed in the domestic law of that State.*
- (3) *European Arrest Warrants shall be issued:*
- a) *during the criminal prosecution stage, by the court having issued the provisional arrest warrant, ex officio or upon the notification by the prosecutor conducting or supervising criminal prosecution against the requested person;*
 - b) *during the trial stage, by the court reviewing the case is pending resolution, ex officio or upon the notification by the prosecutor or the authority in charge of the enforcement for the provisional arrest warrant or the decision imposing the custodial measure;*
 - c) *in the service stage, by the executing court, ex officio or upon notification by the prosecutor or the authority in charge of the enforcement for the detention order in relation to life detention or imprisonment or the decision imposing the custodial measure.*
- (4) *The court shall check compliance with the conditions stipulated in paragraph (1) and shall proceed as follows, as the case may be:*
- a) *issue the European Arrest Warrant and supervise the adoption of measures for translating and delivering it, in accordance with [Article 86 \(3\)](#), [Articles 89](#) and [90](#);*
 - b) *ascertain, through reasoned closure, that the conditions stipulated in paragraph (1) are not met to issue a European Arrest Warrant. The closure may be challenged by second appeal by the prosecutor, within 3 days after service. The second appeal shall be tried by the higher-ranking court, within 3 days after the registration of the case, in Council Chamber, without the parties being subpoenaed, in the presence of the prosecutor. If the second appeal is admitted, the court of first instance shall have the obligation to issue a European Arrest Warrant.*
- (5) *In the case referred to in paragraph (4) a), the issuing court shall inform the prosecutor conducting or supervising the criminal prosecution or the court reviewing the case for settlement on the issuance of the European Arrest Warrant, and in the cases referred to in paragraph (4) b), it shall notify the closure to the competent prosecutor.*

- (6) *The issuing court may request, ex officio or upon the request of the competent prosecutor, the unavailability or return of the goods which may serve as material evidence in the criminal trial or acquired by the requested person as a result of the offence being committed. The issuing court shall make such a specification in subparagraph g) of the form provided in [annex no. 1](#).*

#B

- (7) In order to keep evidence of the activity of the court, the Recording Registry of European Arrest Warrants shall be prepared and kept. The following information shall be specified in this registry: running number; name, forename(s) and nationality of the requested person; number and date of the letter delivered by the prosecutor's office or the court before which the criminal case is pending; number of the executing court file; date when the European Arrest Warrant was issued; date when the European Arrest Warrant was transmitted; information on the execution of the European Arrest Warrant; reasons for non-execution of the European Arrest Warrant; date when the requested person was surrendered; date when the European Arrest Warrant was withdrawn. The registry is not meant to be made public.
- (8) The procedure described in this article shall be confidential until the requested person is arrested in the executing Member State.

#CIN

) In accordance with [Article II \(15\)](#) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraphs \(3\)](#) and [\(4\)](#) of [Article 88](#) shall read as follows:*

#M1

"(3) European Arrest Warrants shall be issued:

- a) during the criminal prosecution stage, by the rights and freedoms judge appointed by the president of the court that would be competent to judge the case on the merits, ex officio or upon the notification by the prosecutor conducting or supervising criminal prosecution against the requested person;*
- b) during the trial stage, by the judge appointed by the president of the court of first instance, ex officio or upon the notification by the prosecutor or the authority in charge with the enforcement of the provisional arrest warrant or the decision ordering the custodial measure;*
- c) during the service stage, by the judge appointed by the president of the executing court, ex officio or upon the notification by the prosecutor or the authority in charge with the enforcement of the detention order in relation to*

life detention or imprisonment or the decision imposing the custodial measure.

- (4) *The competent judge shall monitor fulfilment of the conditions referred to in paragraph (1) and proceed as follows, as the case may be:*
- a) *issue the European Arrest Warrant and monitor the adoption of measures for the delivery thereof, in accordance with [Article 86](#) (3), [Articles 89](#) and [90](#);*
 - b) *ascertain, through reasoned closure, that the conditions referred to in paragraph (1) are not met to issue a European Arrest Warrant. The closure may be challenged by a statement of opposition by the prosecutor, within 3 days after service. The statement of opposition shall be judged by the higher-ranking court, within 3 days after the registration of the case, in the Council Chamber, without the parties being subpoenaed, in the presence of the prosecutor. Should the statement of opposition be admitted, the rights and freedoms judge initially notified shall have the obligation to issue a European Arrest Warrant."*

#M1

ARTICLE 89

Delivery for enforcement and translation of the European Arrest Warrant

- (1) *If the issuing court is in possession of no information in this regard, the identification of the foreign authority competent to receive or to enforce the European Arrest Warrant shall be made with the support of the national contacts to the European Judicial Network or the Ministry of Justice, through its competent department.*
- (2) *When notified of the localization or arrest of the requested person in the territory of another Member State, the European Arrest Warrant, in Romanian and the foreign language, shall be delivered by the issuing court, through fax, e-mail or any safe means of communication, leaving a written track, to the competent foreign authority, within the period indicated by the latter, and inform the Centre of International Police Co-operation within the Romanian General Police Inspectorate.*
- (3) *The original copy of the European Arrest Warrant shall be delivered by the issuing court, upon the request of the foreign authority.*
- (4) *Any difficulty relating to the delivery or authenticity of the European Arrest Warrant or of any document necessary to enforce it shall be settled directly or by means of the competent department of the Ministry of Justice.*
- (5) *The delivery of the European Arrest Warrant for enforcement to the foreign authority competent to receive or enforce the same shall stop the statutory limit.*

- (6) *When the foreign authority competent to receive or enforce the European Arrest Warrant determines that the European Arrest Warrant does not fulfil the form conditions or is inaccurate, the issuing court shall take measures to operate the necessary amendments and supplementations.*
- (7) *The translation of the European Arrest Warrant shall be made, as a matter of emergency, upon the request of the issuing court, by a certified translator. If the lists of the court of appeals having jurisdiction over the issuing court includes no certified translator for the language into which the European Arrest Warrant needs to be translated or, even though there are translators, they refuse to provide the requested service, the issuing court shall request the relevant department of the Ministry of Justice to have it translated.*
- (8) *In the case of direct delivery, the issuing court shall inform the relevant department of the Ministry of Justice on the last business day of each calendar month in relation to the European Arrest Warrants sent for enforcement in the reference period and the progress of their enforcement.*

#M1

ARTICLE 90

Additional information and warranties

- (1) *On the date or after the delivery of the European Arrest Warrant for enforcement, the issuing court shall inform, ex officio or upon the request of the foreign authority, the additional information necessary for the enforcement of the warrant. The delivery and translation of additional information shall be performed in accordance with [Article 89](#).*
- (2) *Where the European Arrest Warrant was issued for the purpose of criminal prosecution or trial, and the requested person is a national or resident of the executing State, the Ministry of Justice, through its relevant department, shall provide the warranty that, in case of conviction, once surrendered, that person may be transferred in observance of this law.*

#M1

ARTICLE 91

Temporary transfer or hearing of the requested person during the surrendering procedure in reliance upon the European Arrest Warrant

- (1) *In the case of a European Arrest Warrant issued in view of criminal prosecution or trial, delivered for enforcement to an authority in another Member State, in relation to which no decision was made or, if made, it is not final, the issuing court may request, upon the demand of the prosecutor conducting or supervising criminal prosecution or of the court of law, that the person against whom that European Arrest Warrant was issued:*

- a) *is temporarily transferred to Romania for a period mutually agreed upon with a foreign authority. The issuing court shall make specifications in this respect in sub-paragraph f) of the form provided in [annex no. 1](#), save for the case where the foreign authority competent to receive or enforce the European Arrest Warrant specified that the temporary transfer has to be requested by means of a separate request; or*
 - b) *is heard directly by the prosecutor conducting or supervising the criminal prosecution or by the court of law, by videoconference. The request having as its object the hearing by videoconference of the requested person shall be prepared in accordance with [Articles 172](#) and [178](#) by the prosecutor conducting or supervising the criminal prosecution or by the competent court and shall be delivered together with the European Arrest Warrant or afterwards; or*
 - c) *is heard in the presence or, to the extent permitted by the laws of the foreign State, by the prosecutor conducting or supervising the criminal prosecution or by the judge appointed by the competent court. The request having as its object the hearing of the requested person shall be prepared in accordance with [Article 172](#) by the prosecutor conducting or supervising the criminal prosecution or by the competent court and delivered together with the European Arrest Warrant or afterwards.*
- (2) *The temporary transfer to Romania of the person against whom the European Arrest Warrant was issued shall only be demanded in cases of emergency, when their personal presence is mandatory, in accordance with the law, or when, depending on the circumstances of the case, the prosecutor conducting or supervising the criminal prosecution or the court of law deems that their presence is necessary. Temporary transfer shall not prejudice the right of the requested person to attend the trial of the surrender request, based on the European Arrest Warrant issued by the Romanian court.*
 - (3) *The requested person, who is temporarily transferred, shall be held in custody until they are returned to the executing State. Receipt in the detention and provisional arrest centres organised and operating under the subordination of the Ministry of Interior shall take place in reliance upon the provisional arrest warrant or the detention order in relation to life detention or imprisonment or the court decision underlying the issuance of the European Arrest Warrant. The length of the arrest shall be extended or maintained in accordance with the law.*
 - (4) *Bringing into Romania and return of the requested person to the judiciary executing authority having ordered the temporary transfer shall be made by the Centre for International Police Co-operation within the Romanian General Police Inspectorate.*

#M1

ARTICLE 92

The European Arrest Warrant issued in reliance upon a sentencing decision handed down in absentia

- (1) *When the sentenced person did not attend trial, the issuing court shall check the documents and proceedings of the file, in order to ascertain whether:*
 - a) *the sentenced person has been timely notified, by written subpoena handed in person or by telephone notification, fax, e-mail or by any other such means, in relation to the day, month, year or venue where they should appear and of the fact that judgment may be handed down if they do not appear for the trial; or*
 - b) *being aware of the day, month, year and venue where they should appear, the sentenced person instructed their chosen attorney or the attorney appointed ex officio to represent them, and judicial representation and defence before the court of law have actually been performed by the attorney; or*
 - c) *after the sentencing decision has been personally handed over and they were informed that, in accordance with the law, the case may be re-tried or that the judgment may be subject to legal action and that it may be checked, including based on new evidence, and if any legal action is admitted, it may be quashed, the sentenced person either expressly waived to have the case re-tried or to take legal action, or did not request the case to be re-tried or did not initiate, within the period provided by law, that legal action.*

- (2) *When the documents and proceedings of the file reveal that the sentenced person was not personally handed over the sentencing decision, the issuing court shall inform the executing judicial authority that:*
 - a) *within 10 days after receiving, as the case may be, in the detention and provisional arrest centres organised and operating under the subordination of the Ministry of Interior or the prison the surrendered person, the sentencing decision shall be personally served to the latter, in observance of the Code of Penal Procedure;*
 - b) *upon the delivery of the sentencing decision, the surrendered person shall be informed that they have the right, as the case may be:*
 - (i) *to take legal action, in accordance with the Code of Penal Procedure; or*
 - (ii) *to have the case re-tried, in accordance with the Code of Penal Procedure.*

- (3) *At the same time, when the proceedings in the file reveal that the sentenced person did not previously receive any official information in respect of the criminal action against them, after the delivery of the European Arrest Warrant, the issuing court shall deliver, upon the request of the executing judiciary authority, a copy of the sentencing decision translated, as the case may be, into the language understood by the sentenced person, in order for the latter to be informed. Delivery of the sentencing decision shall not be deemed communication within the meaning of paragraph (2) and shall not produce effects in relation to the limit of time within which it may be challenged, being for information purposes only.*
- (4) *Findings in accordance with paragraphs (1) and (2) shall be mentioned in subparagraph d) of the form provided in [Article 86](#) (2). When the provisions of paragraph (1) b) apply, if the contents of the tasks assigned to the chosen attorney or to the attorney appointed ex officio are not apparent from the documents of the file, the court may request the attorney having provided defence for the sentenced person to give a statement in respect of the relation between the latter and their client, and this shall not be deemed as prejudicing to the professional secrecy or confidentiality principle. The statement shall only be used for the purpose of this article and shall not be made public.*

#M1

ARTICLE 93

Temporary surrender

- (1) *If the executing judiciary authority, after having approved the surrender of the requested person, orders that the surrender be postponed, the issuing court may request, ex officio, upon the request of the competent prosecutor or of the court handling the case for settlement, that the person be surrendered temporarily in order to be heard or attend criminal prosecution or trial. Temporary surrender shall take place in accordance with conditions mutually agreed upon by the issuing court and the competent foreign authority.*
- (2) *Bringing in Romanian and returning the requested person in relation to whom the executing judiciary authority ordered temporary surrender shall be performed by the Centre for International Police Co-operation within the Romanian General Police Inspectorate.*
- (3) *Admission in the apprehension and provisional arrest centres organised and operating under the subordination of the Ministry of Interior shall be made in reliance upon the provisional arrest warrant or the detention order underlying the European Arrest Warrant. The length of the arrest shall be extended or maintained in accordance with the law.*
- (4) *The person who was temporarily surrendered shall remain in custody until there are returned, save where the authorities of the executing State request that they be released and, in this case, only provided that the person no longer falls under*

the provisional arrest warrant or the detention order. Release of the person held in custody shall also take place when, upon the termination of a period of no more than 18 days after the revocation or replacement of the provisional arrest measure or the rendition of the closure ascertaining the provisional arrest measure as automatically ceased, the surrendered person was not take over by the authorities of the executing State. Until the termination of the 18-day period, the surrendered person shall remain in custody, at the disposal of the authorities of the executing State.

#B

ARTICLE 94

Withdrawal of the European Arrest Warrant

- (1) The European Arrest Warrant shall be withdrawn if the grounds having substantiated the issuance thereof ceased or the requested person died.
- (2) In the case referred to in [Article 65](#) (4), the European Arrest Warrant shall be withdrawn if the person sought internationally was extradited or surrendered in Romania.
- (3) Withdrawal shall be requested by the issuing court, and the latter shall inform, in this respect, the executing judicial authority, the Ministry of Justice or, as appropriate, the prosecutor's office carrying out or monitoring the activity of criminal prosecution or the court having decided the measure of provisional arrest against the defendant or having decided on the preventive measures.

#M1

ARTICLE 95

Bringing the surrendered person into Romania

- (1) *The Centre for International Police Co-operation within the Romanian General Police Inspectorate:*
 - a) *shall agree with the competent foreign authorities upon the time limit for taking over the surrendered person and ensure that they are brought into Romania, under escort. In case of temporary transfer or temporary surrender, the take-over date shall be determined subject to approval by the issuing court, depending on the agreement concluded by the issuing court with the executing foreign authority;*
 - b) *shall inform on the take-over date and location where the surrendered person was delivered, the issuing court, the competent department with the Ministry of Justice, as well as the executing court or the court reviewing the case, if the latter are different from the issuing court or the prosecutor conducting or supervising the criminal prosecution.*

- (2) *When, in order to bring the surrendered person into Romania, air transportation is used with a stop or road transportation with a third State being transited, the competent department of the Ministry of Justice, upon the request of the authority referred to in paragraph (1), shall prepare the transit request and ensure, if the case may be, translation of the European Arrest Warrant, as well as of the additional information.*
- (3) *If the surrendered person was sentenced in absentia, the executing court shall communicate the sentencing decision within 10 days after having received it, as the case may be, to the apprehension and provisional arrest centre organized and operating under the subordination of the Ministry of Interior or in prison. At the same time, the executing court shall inform the surrendered person in accordance with [Article 92](#) (2) b).*
- (4) *Immediately after it is informed that the surrendered person was brought into Romania, the issuing court shall request directly the executing State for information referring to the length of the arrest served by the person surrendered in reliance upon the European Arrest Warrant which shall be communicated, as the case may be, to the executing court, the court reviewing the case, if they differ from the issuing court, or to the prosecutor conducting or supervising the criminal prosecution, save where it was communicated on the take-over date.*

#B

CHAPTER III

Execution of European Arrest Warrants by the Romanian authorities

ARTICLE 96

Acts that allow surrender

- (1) The following offences, regardless of the name given to the same in the laws of the issuing Member State, and if sanctioned under the laws of the issuing Member State by imprisonment or a custodial preventive measure of a maximum of at least 3 years, shall not be subject to the verification of the double criminality of the act:
 1. participation in a criminal organization;
 2. terrorism;
 3. trafficking in human beings;
 4. sexual exploitation of children and child pornography;
 5. illicit trafficking in narcotic drugs and psychotropic substances;
 6. illicit trafficking in weapons, munitions and explosives;
 7. corruption;
 8. fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;
 9. laundering of the proceeds of crime;
 10. counterfeiting of currency, including the euro;

11. computer-related crime;
12. environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
13. facilitation of unauthorized entry and residence;
14. murder, grievous bodily injury;
15. illicit trade in human organs and tissue;
16. kidnapping, illegal restraint and hostage-taking;
17. racism and xenophobia;
18. organized or armed robbery;
19. illicit trafficking in cultural goods, including antiques and works of art;
20. swindling;
21. racketeering and extortion;
22. counterfeiting and piracy of products;
23. forgery of administrative documents and trafficking therein;
24. forgery of means of payment;
25. illicit trafficking in hormonal substances and other growth promoters;
26. illicit trafficking in nuclear or radioactive materials;
27. trafficking in stolen vehicles;
28. rape;
29. arson;
30. crimes within the jurisdiction of the International Criminal Court;
31. unlawful seizure of aircraft/ships;
32. sabotage.

- (2) For acts other than those provided in paragraph (1), surrender may be subject to the condition that the acts motivating the issuing of the European Arrest Warrant be offences according to the Romanian law, regardless of their constituent elements or of their legal classification.

ARTICLE 97

Special conditions

- (1) The execution of a European Arrest Warrant by the executing Romanian judicial authorities may be subject to the following conditions:
 - a) if the European Arrest Warrant was issued in view of service of a custodial penalty or preventive measure applied through a decision in absentia or if the person concerned was not legally summoned regarding the date and place of the court session that led to the decision in absentia, the surrender of the requested person shall be granted if the issuing judicial authority shall provide a safeguard deemed as sufficient that the person who is the object of the European Arrest Warrant will be able to obtain a re-judgment of the cause in the issuing Member State, in his presence;
 - b) if the offence based on which the European Arrest Warrant was issued is sanctioned by life imprisonment or by a preventive measure involving lifelong deprivation of freedom, the legislation of the issuing Member State must

provide the possibility of reviewing the penalty or preventive measure imposed or conditional release, after the service of 20 years of the penalty or preventive measure imposed, or the application of measures of clemency.

#M1

- (2) *While not infringing upon paragraph (1), the surrender, in reliance upon a European Arrest Warrant issued in view of criminal prosecution or trial, of a Romanian citizen or of a person living in Romania and having continuous and legal residence in the Romanian territory for a period of at least 5 years shall take place subject to the condition that, if a custodial sentence is rendered, the surrendered person shall be transferred to Romania.*

#B

ARTICLE 98*)

Grounds for refusing execution

- (1) The executing Romanian judicial authority shall refuse to execute a European Arrest Warrant in the following cases:
- a) when the information it possesses shows that the person sought was tried with a final sentence for the same acts by a Member State other than the issuing State, on condition that, in case that there was a conviction, the sanction was served or is being served or the period of time limitation for service has expired, the penalty was pardoned or the offence was amnestied or another reason that prevents execution occurred, according to the law of the sentencing State;
 - b) when the offence on which the European Arrest Warrant is based is covered by amnesty in Romania, if the Romanian authorities are competent, according to Romanian law, to prosecute that offence;
 - c) when the person who is subject to the European Arrest Warrant is not criminally liable, according to Romanian law, because of his age, for the acts on which the European Arrest Warrant is based.
- (2) The executing Romanian judicial authority may refuse to execute a European Arrest Warrant in the following cases:
- a) in the case under [Article 96](#) (2) of this law; exceptionally, in matters of fees and taxes, customs and currency exchange, the execution of the European Arrest Warrant may not be refused because the Romanian legislation does not levy the same type of fees or taxes or does not contain the same regulations in matters of fees and taxes, customs and currency exchange as the legislation of the issuing Member State;

- b) when the person who is the object of the European Arrest Warrant is undergoing criminal proceedings in Romania for the same act as the one that reasoned the European Arrest Warrant;

#M1

- c) *when the European Arrest Warrant was issued for the purpose of executing a custodial sentence or a custodial safety measure, if the requested person is a Romanian person or lives in Romania and has had continuous and legal residence in the Romanian territory for a period of at least 5 years and declares that he refuses to serve the sentence or the safety measure in the issuing Member State;*

#B

- d) when the person who is the object of the European Arrest Warrant has been tried with a final sentence for the same acts in a third State that is not a Member State of the European Union, on the condition that, in case that there was a conviction, the sanction was served or is being served or the period of time limitation for service has expired, or that the penalty was pardoned or the offence was amnestied according to the law of the sentencing State;
- e) when the European Arrest Warrant refers to offences that were committed, according to the Romanian law, in Romanian territory;
- f) when the European Warrant includes offences that have been committed outside the territory of the issuing State and the Romanian law does not allow the prosecution of these acts when they were committed outside Romanian territory;
- g) when, according to the Romanian legislation, the period of time limitation for liability for the offence that is the object of the European Arrest Warrant or for service of the penalty applied, has expired, provided that the acts would have been of the competence of the Romanian authorities;
- h) when the competent Romanian judicial authority has decided either not to prosecute, or to cease the prosecution, or close the case in respect, of the requested person for the offence on which the European Arrest Warrant is based or has rendered, in relation to the requested person, a final decision concerning the same offences, which prevents future procedures;

#M1

- i) *when the sentenced person did not personally attend trial, save where the issuing judicial authority informs that, in accordance with the law of the issuing State:*

- (i) *the person was informed, in a timely manner, by written subpoena handed over personally or by notification delivered by telephone, fax, e-mail or by any other such means, on the day, month, year and venue where they should appear and the fact that a decision may be issued even if they do not attend court; or*
- (ii) *the person, being aware of the day, month, year and venue where they should appear, instructed their chosen attorney or the attorney appointed ex officio to represent them, and legal representation before the court was actually provided by that attorney; or*
- (iii) *after the sentencing decision was personally handed over to them and they were informed that, in accordance with the law, the case may be re-tried or that the judgment is subject to legal action and that it may be reviewed inclusively based on new evidence, and, if the legal action were admitted, it may be quashed, the sentenced person either expressly waived the re-trial of the case or the legal action, or did not request the case to be re-tried or did not take, within the time limit stipulated by law, that legal action; or*
- (iv) *the sentenced person did not personally receive the sentencing decision, however, immediately after the surrender, such judgment shall be personally delivered and the person shall be informed that the sentencing decision is subject, within a limited period, to legal action, occasion on which the competent court could examine the challenged decision, including in reliance upon new evidence, and, in settling the legal action, whose trial may be personally attended by the sentenced person, the sentencing decision may be quashed.*

#B

- (3) If only the case provided for in paragraph (2) (c) is applicable in this case, before rendering the decision stipulated in Article 107, the executing Romanian judicial authority shall request the issuing judicial authority to deliver a certified copy of the sentencing decision, as well as any other necessary information, informing the issuing judicial authority in relation to the purpose for which such documents are requested. The foreign penal decision shall be recognized, incidentally, by the court of law before which the procedure for executing the European Arrest Warrant is pending. If the executing Romanian judicial authority recognized the foreign executing penal decision, the executing warrant for the sentence shall be issued on the rendition date of the decision referred to in [Article 107](#).
- (4) In the case referred to in paragraph (3), if the requested person is held in arrest and the issuing judicial authority delays the delivery of the requested documents, the provisions of [Article 103](#) (4) shall apply accordingly. If the issuing judicial authority fails to deliver the documents stipulated in paragraph (3), within no more than 20 days after the date of the first request, if the executing Romanian judicial

authority refuses to execute the European Arrest Warrant, the latter shall inform the issuing judicial authority of the possibility to request recognition and execution of the sentencing penal decision based on the instruments applicable in the relationship between Romania and the issuing Member State or, in the absence thereof, in reliance upon reciprocity.

#CIN

) In accordance with [Article II](#) (16) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), paragraph (2) of [Article 98](#), [sub-paragraph h](#)) shall read as follows:*

#M1

"h) when a Romanian judicial authority decided either to waive criminal prosecution, or to close the case for the offence underlying the European Arrest Warrant or rendered, in relation to the requested person, a final decision, in reference to the same offences, preventing any future proceedings;"

#B

ARTICLE 99*)

Preliminary procedures

#M1

- (1) Within 48 hours after receiving a European Arrest Warrant, the prosecutor checks whether the European Arrest Warrant is accompanied by a translation into Romanian or in either of English or French. If the warrant is not translated into any of the languages referred to above, the prosecutor's office shall request the issuing judicial authority to issue a translation. If the European Arrest Warrant is translated into English or French, the competent prosecutor may order that a translation of the warrant be made, as a matter of emergency.*
- (2) The prosecutor shall check whether the European Arrest Warrant contains the information stipulated in [Article 86](#) (1). If the European Arrest Warrant does not contain such information or is inaccurate, as well as when the provisions of [Article 98](#) (2) i) (iv) apply, the prosecutor shall request the issuing authority to deliver, within no more than 10 days, the information necessary or a copy of the sentencing decision rendered in absentia, translated into the language understood by the sentenced person, as the case may be. Failure by the issuing judicial authority to deliver the sentencing decision rendered in absentia shall bear no effect on the apprehension of the requested person and the notification of the court in accordance with [Articles 101](#) and [102](#).*

#B

- (3) If the European Arrest Warrant contains the information stipulated in Article 86 (1) and has been translated in accordance with the provisions of paragraph (1), the*

prosecutor shall take the actions necessary to identify, search, locate and apprehend the requested person. The provisions of [Articles 493 \(1\)](#) – 493 (7) of the Code of Penal Procedure shall apply accordingly.

- (4) If, further to the verifications conducted, it is found that the requested person falls under the territorial jurisdiction of another prosecutor's office, the prosecutor shall immediately deliver the European Arrest Warrant to the competent prosecutor's office and informs the issuing judicial authority and the Ministry of Justice in such respect.
- (5) If the verifications conducted reveal that, beyond any doubt, the requested person is not located in the Romanian territory, the prosecutor shall order that the case be closed and shall inform the issuing judicial authority and the Ministry of Justice in such respect.
- (6) If the requested person is the object of ongoing criminal proceedings, for the same acts for which the European Arrest Warrant has been issued, the prosecutor shall deliver, for information purposes, to the relevant prosecutor or the competent court, a copy of the European Arrest Warrant, the translation and, if available, the additional information provided by the issuing judicial authority, requesting the latter to assess and immediately inform whether the criminal prosecution or trial may be suspended until the case is settled by the executing Romanian judicial authority. The provisions of [Articles 240](#) and [303](#) of the Code of Penal Procedure shall apply accordingly.
- (7) If the ongoing criminal procedures against the requested person refer to offences other than the ones covered by the European Arrest Warrant, the competent prosecutor shall also deliver, for information purposes, to the relevant prosecutor or the competent court, a copy of the European Arrest Warrant, its translation and, if available, the additional information provided by the issuing judicial authority, requesting to be informed without delay of the stage of such proceedings.
- (8) The preliminary proceedings stipulated in paragraphs (6) and (7) shall not preclude the measures contemplated under paragraph (3).
- (9) If the surrender of the requested person is conditional upon another Member State or a third State giving its consent, the measures aimed at apprehending the requested person shall be taken on the date when the consent of such State is received.
- (10) The procedure described in this article shall not be public.

#CIN

) In accordance with [Article II](#) (17) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and*

Law no. 135/2010 on the Code of Penal Procedure), paragraphs (3) and (6) of Article 99 shall read as follows:

#M1

"(3) If the European Arrest Warrant contains the information referred to in Article 86 (1) and it is translated in compliance with the provisions of paragraph (1), the prosecutor shall take the necessary measures to identify, seek, localize and apprehend the requested person. Articles 521 - 526 of the Code of Penal Procedure shall apply accordingly.

.....

(6) If the requested person forms the object of criminal procedure in progress, for the same offences for which the European Arrest Warrant was issued, the prosecutor shall deliver, for information purposes, to the case prosecutor or the competent court a copy of the European Arrest Warrant, the translation and, if necessary, the additional information communicated by the issuing judicial authority, and request the latter to assess and inform at once whether criminal prosecution or trial may be suspended until the resolution of the case by the Romanian executing judicial authority. Articles 312, 313 and Article 367, respectively, of the Code of Penal Procedure shall apply accordingly."

#B

ARTICLE 100

Apprehension of the requested person

(1) The measure to apprehend the requested person may only be adopted by the prosecutor after having heard the person in the presence of his/her attorney. The apprehension measure shall be imposed by ordinance based on reasons and may not last for more than 24 hours.

#M1

(2) The apprehended person shall be informed at once, in the language that they understand, on the reasons for the apprehension and the contents of the European Arrest Warrant. When the provisions of Article 98 (2) i) (iv) apply and it was delivered by the issuing authority, the prosecutor shall order that the sentencing decision be served to the requested person. The requested person shall be informed of the effects, in accordance with the law of the issuing State, resulting from the delivery of the sentencing decision.

#B

(3) The apprehended person shall be handed a copy of the European Arrest Warrant and the translation thereof. Such provision shall also apply if the competent prosecutor receives a new European Arrest Warrant after having notified the competent court of appeal in observance of Article 102.

- (4) The apprehended person may request that a member of his/her family or another person appointed by the former be informed of the adopted measure. Both the request, and the notification, shall be recorded in a protocol. As an exception, if the prosecutor estimates that this would impair the execution of the European Arrest Warrant issued against the requested person or, if in possession of information in this respect, of European Arrest Warrants issued against other participants to the offence, the prosecutor shall refuse this request.
- (5) If the requested person is a minor, the time limit stipulated in paragraph (1) shall be reduced by half. In this case, the apprehension may be extended, if mandatory, by ordinance based on reasons, for no more than 8 hours.
- (6) In view of apprehending the requested person, the competent officer may enter any lodging where the requested person is located, without the consent of the latter or of the person who owns or uses such lodging, as well as the headquarters of any legal person, without approval from the legal representative thereof.

#M1

ARTICLE 101

Apprehension and arrest based on the entry in the Schengen Information System

- (1) *If a positive result is achieved in relation to a person for which another Member State made an entry in view of arrest, the Centre for International Police Cooperation within the Romanian General Police Inspectorate shall request the warned Member State to confirm, as a matter of emergency, the validity of the decision based on which such alert has been issued.*
- (2) *Warning in view of arrest shall be delivered to the prosecutor's office attached to the court of appeals having jurisdiction over the place where the person has been located. [Articles 99](#), [100](#) and [104](#) shall apply accordingly, unless contrary to this article.*
- (3) *Warning in view of arrest shall amount to a European Arrest Warrant.*
- (4) *The prosecutor with the prosecutor's office attached to the court of appeals having jurisdiction over the location where the requested person was apprehended shall notify the competent court of appeals, in order to assess on taking the provisional arrest measure in view of surrender.*
- (5) *The judge notified in accordance with paragraph (4):*
 - a) *shall admit, by reasoned closure, the prosecutor's proposal and shall ordain provisional arrest in view of surrender, for a period of no more than 15 days;*
or

- b) shall dismiss, by reasoned closure, the prosecutor's proposal and, if the case may be, shall order the release of the apprehended person. In order to ensure the appropriate performance of the execution procedure in relation to the European Arrest Warrant or prevent the requested person from evading the execution procedure of the European Arrest Warrant, the court shall ordain, by reasoned closure, the enforcement, for no more than 30 days, of a non-custodial preventive measure stipulated in the [Code of Penal Procedure](#).
- (6) The judge shall communicate at once to the Centre of International Police Cooperation within the Romanian General Police Inspectorate and the competent department of the Ministry of Justice the decision adopted in accordance with paragraph (5).
- (7) In view of carrying on the procedure in accordance with [Article 103](#), the judge shall adjourn the trial of the case and set a period of 15 days within which the prosecutor to deliver the European Arrest Warrant, accompanied by the Romanian translation and, where applicable, the sentencing decision ruled in absentia. If, upon the expiry of the 15-day period, the prosecutor failed to provide the European Arrest Warrant, the judge shall order revocation, as the case may be, of the provisional arrest measure in view of surrender and the immediate release of the requested person or of the measure adopted in accordance with paragraph (5) b).
- (8) The European Arrest Warrant shall be delivered by the warned Member State within no more than 10 days after the rendition of the closure referred to in paragraph (5).
- (9) The provisions hereof shall not apply when the alert in view of arrest is accompanied by a European Arrest Warrant. In this case, [Article 99](#) shall apply.
- (10) In case of warnings referring to persons sought to be arrested in view of extradition, the provisions of [Article 45](#) shall apply.

#B

ARTICLE 102*)

Notifying the court of appeals in view of arresting and surrendering the requested person

- (1) The prosecutor shall notify the competent court of appeal by means of a motion to adopt the measure of arresting the requested person.
- (2) As soon as the court has been notified, the case shall be allocated, under the conditions of the law, to a panel consisting of one judge, in order to decide whether to adopt the measure of arrest and whether the requested person should be surrendered.

- (3) In order to keep track of the activity of the court, the Registry concerning arrest and surrender based on European Arrest Warrants shall be prepared and kept. The following specifications shall be recorded in this registry: running number; name and forename(s) of the requested person; the number and date of the letter sent by the prosecutor's office; the number and date of the European Arrest Warrant; the issuing judicial authority; the number of the court file; the date and solution rendered; the number and date of the national arrest warrant; the period of arrest, indicating the date when the measure begins and the date when it expires; the name and forename(s) of the judge having ordered the measure of arrest and/or the surrender of the requested person; the date when an appeal was lodged, with separate specification of the solution against which the legal remedy was lodged; the date when the appeal was submitted to the judicial control court; the solution rendered by the appeal court, as well as extensions of the arrest; the date when service of process was made on the decision referring to the surrender to the issuing judicial authority, the Ministry of Justice and the Centre for International Police Co-operation within the Romanian General Police Inspectorate.

#CIN

) In accordance with [Article II \(18\)](#) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(3\) of Article 102](#) shall read as follows:*

#M1

"(3) For the court records, the Registry referring to arrest and surrender in accordance with European Arrest Warrants shall be prepared and kept. This registry shall contain the following specifications: running number; full name of the requested person; number and date of the prosecutor office's letter; number and date of the European Arrest Warrant; the issuing judicial authority; number of the court file; date and solution ruled; number and date of the domestic arrest warrant; length of arrest, indicating the date from which the measure shall be initiated and the date when it shall expire; full name of the judge having ruled the arrest measure and/or surrender of the requested person; date when the statement of opposition was submitted, with a separate indication against which solution the legal action was initiated; date when the statement of opposition was submitted to the to the judicial control court; the solution ruled by the higher-ranking court, as well as extension of the arrest period; date when the decision on surrender was delivered to the issuing judicial authority, the Ministry of Justice and the Centre for International Police Co-operation within the Romanian General Police Inspectorate."

#B

ARTICLE 103*)

Procedure for executing a European Arrest Warrant

#M1

- (1) *First of all, the judge shall check the identity of the requested person and make sure that it was delivered, in copy and in a language that they understand, the European Arrest Warrant and, if applicable, the sentencing decision rendered in absentia. When delivered by the issuing authority, the judge shall hand over to the requested person the sentencing decision rendered in absentia.*
- (2) *If the case be, upon the demand of the requested person, the judge shall postpone the case only once, for at least 5 days, and request the issuing authority to deliver, in copy and in a language which the requested person understands, the sentencing decision rendered in absentia. Failure by the issuing authority to deliver the sentencing decision rendered in absentia shall bear no effect on the continuation of the execution procedure of the European Arrest Warrant and on the surrender of the requested person.*

#B

- (3) After receiving the European Arrest Warrant, the judge shall inform the requested person of the rights specified under [Article 104](#), the effects of the specialty rule, as well as the possibility to consent to his/her being surrendered to the issuing judicial authority, notifying the legal consequences of the consent for surrender, in particular the irrevocable nature thereof.
- (4) If the European Arrest Warrant was issued against a Romanian citizen, in view of serving a sentence or a custodial preventive measure, the judge shall ask the requested person whether he/she agrees to serve the penalty or preventive measure in the issuing Member State.
- (5) Should the requested person consent to the surrender, an official record shall be made and signed by the judge, by the court clerk, by the attorney and by the requested person. The same official record shall also include, where appropriate, the mention of renunciation of entitlement to the speciality rule.
- (6) In the case referred to in paragraph (5), if none of the reasons for refusing the execution provided for in [Article 98](#) is applicable, the judge may decide through the sentence, in accordance with [Article 107](#), both on the arrest and the surrender of the requested person.
- (7) If the requested person does not consent to his/her surrender to the issuing judicial authority, the procedure for executing the European Arrest Warrant shall proceed with the hearing of the requested person, to be limited to the recording of his/her position in relation to the existence of one of the mandatory or optional reasons for non-execution, as well as the potential objections referring to identity.
- (8) In the cases referred to in paragraphs (5) and (7), when the judge deems it necessary to set a time limit for rendering a decision in relation to the surrender, the arrest of the requested person during the procedure for executing the European Arrest Warrant shall be ordered by a closure based on reasons.

(9) The court shall check from time to time, but no later than 30 days, whether it is mandatory to maintain the arrest in view of surrender. In this respect, the court shall decide by a closure based on reasons, taking into account the time limits indicated in [Article 110](#).

(10) In all cases, the measure of arrest in view of surrender may only be adopted after having heard the requested person in the presence of his/her attorney. The initial period of the arrest shall not exceed 30 days, and the overall period, until the actual surrender to the issuing Member State, shall not exceed 180 days, under any circumstances.

#M1

(11) *When the requested person is released, the judge shall order against them one of the non-custodial preventive measures stipulated in the [Code of Penal Procedure](#). In this case, if, afterwards, the judge orders the execution of the European Arrest Warrant, through the decision referred to in [Article 107](#), the judge shall adopt the measure of arrest in view of surrendering the requested person.*

#B

(12) If the judge deems that it is mandatory to request additional information or guarantees in the case from the issuing judicial authority, the former shall postpone the case and set a time limit for receiving the requested data. The set period shall not exceed 10 days.

(13) Immediately after the sentence provided in [Article 107](#) or the closure indicated in paragraph (2) or (9), as applicable, is drawn up, the judge shall issue an arrest warrant. The provisions of the [Code of Penal Procedure](#) in respect of the content and execution of the arrest warrant shall apply accordingly.

(14) The hearing session is public, except where, upon the request of the prosecutor, of the requested person or *ex officio*, the judge deems that it is mandatory to judge the case behind closed doors. Attendance by the prosecutor is mandatory.

#CIN

) In accordance with [Article II](#) (19) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(11\) of Article 103](#) shall read as follows:*

#M1

"(11) If the requested person is released, the court shall order against them the measure of judiciary control, judiciary control on bail or house arrest, and [Articles 211 - 222](#) of the Code of Penal Procedure shall apply accordingly. In this case, if, subsequently, the court orders the execution of the European Arrest Warrant, by

the decision for surrender, it shall also order the arrest of the requested person in view of surrender to the issuing judicial authority."

#M1

ARTICLE 103^{^1}

Revocation of the decision based on which the alert was entered in view of arrest or the European Arrest Warrant was issued

- (1) When the issuing State informs in relation to the revocation of the decision based on which the alert was entered in view of arrest or the European Arrest Warrant was issued:
 - a) the prosecutor, notified in accordance with [Articles 99](#) or [101](#), shall order the case to be closed and, if applicable, revoke the preventive measure adopted against the requested person and so informs the Centre for International Police Co-operation within the Romanian General Police Inspectorate and the competent department in the Ministry of Justice;*
 - b) the judge, notified in accordance with [Articles 101](#) or [102](#), by final judgment, acknowledges the revocation of the decision in reliance upon which the alert in view of arrest was entered or the European Arrest Warrant was issued, as appropriate, and orders the revocation of the preventive measure adopted against the requested person.**
- (2) If the information referred to in paragraph (1) occurs after the decision ordering the surrender of the requested person to the issuing State became final, the competent court of appeals, upon notification by the prosecutor, shall order, by final decision, revocation of execution of the European Arrest Warrant and, if applicable, revocation of the custodial measure ordered previously.*
- (3) Remedy of the material prejudice or of a moral prejudice in case of deprivation or restriction of freedom in reliance upon warnings in view of arrest or European Arrest Warrants withdrawn or revoked shall be borne by the issuing State, in accordance with its law.*

#B

ARTICLE 104

Rights of the person arrested on the basis of a European Arrest Warrant

- (1) The arrested person is entitled to be informed about the contents of the European Arrest Warrant.**
- (2) The arrested person is entitled to be assisted by legal counsel, either chosen by him/her or appointed ex officio by the court.**

- (3) The arrested person who does not understand or speak Romanian is entitled to be assisted by an interpreter provided free of charge by the court.

ARTICLE 105

Temporary surrender or taking the statement of the requested person

- (1) If the issuing judicial authority so requests, the judge may order temporary surrender of the requested person or his/her statement may be taken.
- (2) Where temporary surrender has been granted, it shall take place under the conditions and for the duration agreed upon by the issuing and executing judicial authorities. In all cases, the person sought must return to Romania in order to participate in the procedure of surrender based on the European Arrest Warrant.
- (3) If temporary surrender is not granted or not requested, the executing Romanian judicial authority shall take a statement of the requested person, with the participation of the person designated by the issuing judicial authority, if appropriate, according to the law of the issuing Member State. The requested person shall be heard according to the Romanian [Code of Penal Procedure](#) and under the conditions agreed upon by the judicial authorities involved. In all cases, the trial-related rights of the requested person must be observed.

ARTICLE 106

Events during the trial

If, during the procedure of executing a European Arrest Warrant, the Constitutional is notified of an unconstitutionality exception of a provision in this title, the exception shall be judged with priority, within no more than 45 days after the notification submitted to the Constitutional Court.

ARTICLE 107

The decision

- (1) In all the cases, the court shall decide on the execution of the European Arrest Warrant through a sentence, in observance of the time limits stipulated in [Article 110](#). In making its decisions, the court shall have regard to all the circumstances of the case and the need to execute the European Arrest Warrant.
- (2) Within no more than 24 hours after the surrender decision became final, the court shall deliver the decision adopted to the issuing judicial authorities, to the Ministry of Justice and to the Centre for International Police Co-operation within the Romanian General Police Inspectorate.

- (3) If the surrender of the requested person was postponed, irrespective whether, at the time when the decision was rendered, the former is or not subject to a provisional arrest warrant or a detention order issued by the Romanian judicial authorities, the arrest warrant referred to in [Article 103](#) (13) shall be enforced on the date when the reasons having underlain the postponement cease.

#M1

- (4) *If the surrender of the person has been refused, the court shall enforce the provisions of [Article 28](#) (3) of Law no. 141/2010 on the set up, organisation and operation of the National Information Warning System and Romania's participation of the Schengen Information System, as subsequently amended.*

#B

ARTICLE 108*)

Legal actions

#M1

- (1) *The closures referred to in [Article 101](#), [Article 103](#) (8) and (9) may be appealed with appeal on points of law, within 24 hours from their rendition.*

#B

- (2) The decision indicated in [Article 107](#) (1) may be appealed within 5 days from its rendition, save where the requested person agrees to be surrendered, and the decision is final.
- (3) Appeals submitted against the decision ruling that the requested person should be surrendered shall suspend the execution of such decision, except for the provisions governing the arrest measure. The file shall be brought before the appeal court within 24 hours.

#CIN

) In accordance with [Article II](#) (20) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [Article 108](#) shall read as follows:*

#M1

"ARTICLE 108

Legal actions

- (1) *The closures referred to in [Article 101](#), [Article 103](#) (8) and (9) may be appealed by statement of opposition within 24 from their rendition.*
- (2) *The decision indicated in [Article 107](#) (1) may be appealed by statement of opposition within 5 days from its rendition, save where the requested person admits to surrender, when the decision becomes final.*

- (3) *The statement of opposition submitted against the decision ordering the surrender of the requested person shall stay the execution, save for the provisions referring to the measure of arrest. The file shall be forwarded to the higher-ranking court within 24 hours."*

#B

ARTICLE 109*)

The solving of appeals

Appeals on points of law submitted in accordance with [Article 108](#) shall be solved as priorities, within no more than 3 days from the registration of the case.

#CIN

) In accordance with [Article II](#) (21) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [Article 109](#) shall read as follows:*

#M1

"ARTICLE 109

Resolution of the statement of opposition

Statements of opposition submitted in accordance with [Article 108](#) shall be solved as priorities, within no more than 3 days from the registration of the case."

#B

ARTICLE 110

Time limits

- (1) The European Arrest Warrant shall be solved and executed in emergency procedure.
- (2) In the case referred to in [Article 103](#) (5), the decision on the execution of the European Arrest Warrant shall be rendered no later than 10 days after the court hearing date during which the requested person expressed his/her consent to be surrendered.
- (3) In all other cases, the final decision concerning the execution of the European Arrest Warrant shall be rendered within 60 days after the requested person was arrested.
- (4) When, for justified reasons, a decision cannot be handed down within the time limits mentioned in the previous paragraphs, the court may postpone the handing down for 30 days, while announcing this to the issuing judicial authority, together with the grounds for postponement and while maintaining the measures necessary in view of surrender.

- (5) When, for exceptional reasons, the time limits in this Article cannot be observed, the executing Romanian judicial authority shall inform Eurojust, specifying the reasons for the delay.

ARTICLE 111

Surrendering the requested person

- (1) Surrender shall be performed by the Center for International Police Co-operation within the Romanian General Police Inspectorate, with the support of the police precincts under whose jurisdiction the detention place is located, within 10 days after the surrendering decision became final.

#M1

- (2) *If, for reasons independent of the will of the Romanian authorities or the authorities of the issuing State, surrender cannot be performed within the time limit determined by the Centre for International Police Co-operation within the Romanian General Police Inspectorate and the competent authority of the issuing State, this shall take place within 10 days after the date agreed upon.*
- (3) **** Repealed*

#B

- (4) Should the maximum time limits for surrender expire while the person concerned was not received by the issuing State, the requested person shall be released. However, this shall not be grounds for refusing the execution of a future European Arrest Warrant based on the same acts.

#M1

- (5) *In all cases, upon surrender, the Romanian authorities shall communicate to the authorities of the issuing State ensuring the take-over of the surrendered person the length of the arrest served by the latter in executing the European Arrest Warrant, in order to be deducted from the sentence or the custodial measure to be enforced.*

#M1

ARTICLE 112

Postponed or temporary surrender

- (1) Article 58 (1) - (5) and (7) shall apply accordingly.
- (2) *The conditions regarding temporary surrender shall be determined by the agreement concluded between the competent Romanian and foreign authorities. For Romania, the competent authority shall be the court of appeals having executed the European Arrest Warrant. The surrendered person shall be taken over and returned by the competent authorities of the issuing State, in the territory*

of Romania. Costs relating to taking over and returning the surrendered person shall be borne by the issuing State.

#M1

ARTICLE 113

The handing over of articles

- (1) The Romanian executing judicial authority may order, upon the request of the issuing judicial authority or ex officio, the freezing and handing over, in accordance with the Romanian law, of articles constituting material means of evidence or which have been acquired by the requested person as a result of having committed the offence having formed the basis for the European Arrest Warrant, without prejudice to the rights held by the Romanian State or third parties over the same.*
- (2) The articles referred to in paragraph (1) shall be handed over even if the European Arrest Warrant cannot be enforced as a result of the death or escape by the requested person.*
- (3) If the articles are susceptible of seizure or confiscation in Romania and, at the same time, necessary for the appropriate conduct of the criminal trial pending before the Romanian judicial authorities, the Romanian executing authority may refuse to hand them over or may order their temporary hand over, subject to return.*

#B

ARTICLE 114

Concurrence of requests

- (1) Where two or more Member States have issued a European Arrest Warrant regarding the same person, the executing Romanian judicial authority shall decide upon the priority of execution, taking into account all the circumstances and, in particular, the place of commission and the seriousness of the offence, issuing dates of the warrants, as well as whether the warrant was issued in view of criminal prosecution, of trial or in view of service of a penalty or preventive measure. The executing Romanian judicial authority may request, if necessary, the endorsement of Eurojust regarding this decision.
- (2) In case of concurrence between a European Arrest Warrant and a request for extradition made by a third State, the executing Romanian judicial authority shall decide while taking into account all the circumstances and particularly those in paragraph (1) and those provided in the convention on extradition applicable in relation to the third State. Should prevalence be given to the request for extradition, [Title II](#) shall apply.

- (3) Should it decide to grant priority to the request for extradition, the executing Romanian judicial authority shall make this known to the authority that issued the European Arrest Warrant.
- (4) If, in relation to the same person, before surrendering the latter, the Romanian authorities receive from the competent authorities of the same issuing Member State two or more warrants, the cases regarding the execution of such European Arrest Warrants shall be merged before the court which was notified first, and only one decision shall be handed down in relation to the execution of each of the European Arrest Warrants. If surrender is only admitted for one or several of the offences, the surrendering decision shall expressly state so, and the provisions of Article 115 shall apply accordingly.
- (5) This Article shall not infringe upon obligations emerging from the capacity of Party to the Statute of the International Criminal Court.

CHAPTER IV Other stipulations

ARTICLE 115 The speciality rule

- (1) Consent for the prosecution, trial, sentencing or detention of a person by the Romanian authorities for other acts committed prior to his/her surrender based on a European Arrest Warrant shall be presumed to have given by the Member States that notified the General Secretariat of the Council of the European Union with regard to such consent, unless the executing judicial authority ordains otherwise in its decision of surrender.
- (2) Except in the cases referred to in paragraphs (1) and (4), a person surrendered to Romanian authorities may not be prosecuted, tried, or deprived of his or her freedom for another offence committed prior to his or her surrender, unless the executing Member State consents. To this end, the Romanian issuing judicial authority shall send the executing judicial authority a request for authorization, accompanied by the information in [Article 86](#) (1).
- (3) In its relationship with Member States other than the ones indicated in paragraph (1), the consent of the executing Romanian judicial authorities shall be required. In this respect, the competent judge shall decide, by final closure, rendered behind closed doors, without summoning the parties, within no more than 30 days after having received the request, without prejudice to the guarantees referred to in [Article 97](#).
- (4) The previous paragraphs shall not apply under one of the following circumstances:

- a) When the requested person expressly renounced the speciality rule before the executing judicial authority, before the surrender;
- b) When the requested person renounced, after surrender, the use of the speciality rule in connection to certain offences previous to his surrender. The statement of renunciation of the speciality rule shall be given before the competent judicial authority of the issuing Member State, and an official record shall be drawn up according to the internal law of the latter State. The requested person shall have a right to be assisted by a lawyer. Renunciation of the speciality rule must be willed and in full awareness of its consequences;
- c) When, while having had the possibility to leave the territory of the Member State to which he was surrendered, the person concerned did not do so within 45 days from his final release, or when he returned to this territory after having left it;
- d) When the offence is not sanctioned with a custodial penalty;
- e) When, at the end of the criminal trial, no custodial penalty and no preventive measure is applied.

ARTICLE 116

Transit

- (1) For approval of transit of a person in Romanian territory in view of executing a European Arrest Warrant, the Issuing State must provide the following data:
 - a) the existence of a European Arrest Warrant;
 - b) the identity and citizenship of the person subject to the European warrant;
 - c) the legal classification of the act;
 - d) a description of the circumstances in which the offence was committed, including the date and place.
- (2) The request and the information mentioned in paragraph (1) need not be provided in case of air transit without a stopover, unless there is forced landing.
- (3) The request and the information regarding transit shall be delivered to the Ministry of Justice, and the latter shall forward them at once to the Court of Appeal of Bucharest.

- (4) The Court of Appeal of Bucharest shall hand down a closure regarding the request for transit, in a panel of two judges of the Criminal Section, in the council chamber, on the day of its receipt.
- (5) The closure is final and shall be sent at once to the Ministry of Justice, which shall immediately forward it to the issuing State.
- (6) Should the requested person have Romanian citizenship, transit shall only be granted if the condition under [Article 97](#) (2) is met.

ARTICLE 117

Subsequent surrender

- (1) Consent upon surrender of a person by the Romanian State to another Member State, based on a European Arrest Warrant issued for other offences committed prior to his/her surrender, shall be considered to have been given by all the Executing States that informed the General Secretariat of the European Union Council of a favourable stipulation in this matter, unless the executing judicial authority declares the opposite in the decision of surrender.
- (2) In any case, the consent of the executing Romanian judicial authority to the subsequent surrender of the person requested by an issuing Member State to another State shall not be necessary where the requested person:
 - a) while having had the chance to leave the territory of the State to which he/she was surrendered, did not do so within 45 days from his final release, or returned to this territory after having left it;
 - b) consented to being surrendered to a Member State other than the executing State, based on a European Arrest Warrant. Consent shall be given before the competent judicial authority of the issuing Member State and shall be recorded in an official record drawn up according to the latter State's internal law. The requested person has a right to be assisted by a lawyer. Consent must be expressed freely and in full awareness of its consequences;
 - c) renounces the speciality rule, according to [Article 115](#) (3) and (4) (a) to (c).
- (3) In situations not regulated by paragraphs (1) and (2), the approval of the executing Romanian judicial authority is required, which shall be requested according to [Article 89](#), while attaching to the request the information mentioned in [Article 86](#) (1) accompanied by a translation.
- (4) In its relationship with Member States other than the ones indicated in paragraph (1), the consent of the executing Romanian judicial authorities to

the surrender of the requested person to a third State shall be required. In this respect, the competent judge shall decide, by final closure, rendered behind closed doors, without summoning the parties, within no more than 30 days after having received the request, without prejudice to the guarantees referred to in [Article 97](#).

- (5) Paragraphs (1) to (4) shall apply accordingly where Romania is the issuing Member State.

ARTICLE 118

Surrender after extradition

- (1) If the requested person was extradited into Romania from a third State, by which the person was protected by the provisions on speciality rule contained in the agreement based on which he was extradited, the executing Romanian judicial authority shall request authorization from the State that extradited the person so that he can be surrendered to the issuing State. The periods mentioned in [Article 110](#) shall lapse from the date when the speciality rule no longer applies.
- (2) While solving the request for authorization, the executing Romanian judicial authority shall continue to ensure the material conditions required for an actual surrender.

ARTICLE 119

Subsequent extradition

- (1) The extradition of a person who was surrendered to Romania based on a European Arrest Warrant, requested afterwards by a State that is not a Member of the European Union, may not be granted without the consent of the executing judicial authority that approved the surrender.
- (2) If the Romanian judicial authorities approved the surrender of a person to another Member State of the European Union, based on a European Arrest Warrant, and the issuing judicial authorities request consent for extraditing the person sought to a third State that is not a Member of the European Union, consent shall be given according to the bilateral or multilateral instruments to which Romania is a party, while taking into account the request for extradition.

ARTICLE 120

Immunities and privileges

- (1) When a person referred to by a European Arrest Warrant enjoys immunity in Romania, the executing judicial authority shall at once request the competent authority to remove this privilege.

- (2) Should the removal of immunity be of the competence of another State or of an international organization, the request shall be made by the judicial authority that issued the European Arrest Warrant. The executing judicial authority shall notify this to the issuing judicial authority.
- (3) While the request for withdrawal of immunity referred to in paragraph (2) is being solved, the executing judicial authority shall take the measures it sees necessary to guarantee the actual surrender once the person no longer enjoys immunity.
- (4) The periods in [Article 110](#) shall lapse from the date when the executing judicial authority was informed of the removal or withdrawal of immunity.
- (5) When a person referred to by a European Arrest Warrant is in Romania following his extradition from a third State that is not a member of the European Union, and the surrender is limited to the offence for which it was granted, the periods in the previous paragraph shall start when the authorities of the State that extradited the requested person give their consent for the speciality rule to lose its effect, and the person may be surrendered to the State that issued the European Arrest Warrant. Until the decision is made, the executing judicial authority shall take the measures necessary for surrender, if required.

ARTICLE 121

Relation with other legal instruments

The conditions, requirements and procedure for the issuing and execution of a European Arrest Warrant are those established in this law, except for those provided in bilateral or multilateral conventions to which Romania is a party, which simplify or facilitate the surrender procedure, according to paragraph 2 of [Article 31](#) of Framework-Decision No. 2002/584/JHA of the Council of the European Union of 13 June 2002 on the European Arrest Warrant and Surrender Procedures between Member States.

ARTICLE 122

Transitional provisions

- (1) This Title shall apply to the European Arrest and Surrender Warrants received by the Romanian authorities after its entry into force, even when they refer to acts that are previous to this date.
- (2) The extradition procedures pending at the time when this Title enters force shall continue to be solved according to [Title II](#).

TITLE IV

Transfer of proceedings in criminal matters

CHAPTER I

Requests for transfer of criminal proceedings

#M1

ARTICLE 123

Exchange of information and consultation with foreign judicial authorities

- (1) *When there are well-grounded reasons to believe that another State is conducting criminal proceedings in relation to the same offences or related acts and which involve the same person, the prosecutor conducting or supervising the criminal prosecution or the court of law may contact the competent authority of the other State, directly or, in the case of non-EU Member States, by means of the competent central authority in accordance with [Article 10](#), to confirm the existence of such parallel proceedings, in view of initiating consultations. If the Romanian judicial services is in possession of no information in this respect, in relation to the Member States of the European Union, the competent authorities to be contacted shall be identified with the support of the national contacts with the European Judicial Network appointed at the level of the Public Ministry or the Ministry of Justice, as the case may be. In this respect, foreign authorities shall be provided, at least, with the following information:*
- a) *a description of the acts and circumstances forming the object of the criminal proceeding being conducted;*
 - b) *all relevant information on the identity of the investigated person and, if the case may be, of prejudiced persons;*
 - c) *the status of criminal proceedings;*
 - d) *information on the provisional arrest or apprehension of the investigated person, if appropriate.*
- (2) *In enforcing paragraph (1), the following shall also be well-grounded reasons:*
- a) *the investigated person shall invoke, providing information in this regard, the fact that they are subject to criminal prosecution in relation to the same acts or related acts in another State; or*
 - b) *a request for international judicial cooperation in criminal matters submitted by another State indicating the potential existence of such parallel criminal proceedings; or*
 - c) *police authorities have information in that regard.*

- (3) *The procedure stipulated in paragraph (1) shall not apply when the competent authorities conducting parallel proceedings have already been informed by any other means.*
- (4) *In determining the existence of parallel proceedings, the prosecutor conducting or supervising the criminal prosecution or the competent court of law shall initiate direct consultations or by means of Eurojust or, in the case of non-EU Member States, by means of the competent central authority in accordance with [Article 10](#). The purpose of consultations is to reach a consensus in respect of any efficient solution meant to avoid the negative consequences which could derive from such parallel proceedings, which, as applicable, may also lead to the conduct and continuation of single criminal proceedings wither in Romania, or in another State.*
- (5) *Insofar as direct consultations are in progress, the competent authorities involved shall keep each other informed of the significant measures adopted during the proceedings.*
- (6) *Requests filed by the authorities of other States in view of confirming the existence of parallel proceedings shall be settled by the Prosecutor's Office attached to the High Court of Cassation and Justice or by the court before which the case is pending. Save for the case where their provision could lead to prejudices for material national interests in security matters or could jeopardise the safety of individuals, foreign authorities shall be provided, within a reasonable time, with at least the following information:*
 - a) *whether criminal proceedings are or have been conducted in relation to some or all of the same acts or related acts forming the object of criminal prosecution referred to in the request delivered by the foreign authority and whether the same persons are concerned;*
 - b) *where criminal proceedings are or have been conducted, the contact data of the competent authorities; and*
 - c) *the status of such proceedings or, if a final decision has been ruled, the nature of that final decision.*

#M1

ARTICLE 124

Conditions

Romanian judicial authorities may request the competent authorities of another State to initiate criminal proceedings or continue the same, when the exercise by the requested foreign State serves the interest of appropriate delivery of justice or favours, in a case of conviction, the social reintegration and one or more of the following cases apply:

- a) *the investigated person has their ordinary residence in the requested State;*

- b) *the investigated person is a national of the requested State or that is their State of origin;*
- c) *the investigated person is serving or will serve a custodial sentence in the requested State;*
- d) *the investigated person is subject, in the requested State, to criminal investigation for the same act or for related acts;*
- e) *transfer is justified by the interest to uncover the truth and, in particular, if the most significant items of evidence are found in the requested State;*
- f) *the service of a potential sentencing decision in the requested State is susceptible of mitigating the convict's chances of social reintegration;*
- g) *the presence of the investigated person for hearings in the criminal proceedings dealt with by the Romanian judicial authorities cannot be ensured, even when hearing could be conducted by videoconference, but it may be ensured in the requested State;*
- h) *a potential sentencing decision could not be enforced in Romania, even when there is the possibility to submit a request for extradition or to issue a European Arrest Warrant, the requested State being able to;*
- i) *the defendant has been sentenced by final decision in Romania, one or more of the cases in sub-paragraphs a) - h) apply, and the Romanian State cannot enforce the sentencing decision, even where extradition or the European Arrest Warrant is possible, and the requested State does not accept, as a matter of principle, the enforcement of a foreign sentencing decision or refused to enforce a sentencing decision ruled by a foreign court.*

#B

ARTICLE 125*)

Procedure

- (1) Transfer of criminal proceedings shall be requested based on the decision of the court that would be competent to settle the case in first instance, if the proceedings refer to criminal prosecution, or of the court with which the case is pending, if the proceedings refer to a trial.

#M1

- (2) *In this respect, upon the proposal of the prosecutor conducting or supervising criminal prosecution or ex officio, if the conditions provided by law are met, the court shall ordain, by reasoned closure, the transfer of criminal proceeding. In case of transfer of criminal prosecution, the proposal of the prosecutor conducting or*

supervising the criminal prosecution shall be settled in the Council Chamber, without the parties being subpoenaed. Attendance by the prosecutor is mandatory.

#B

- (3) The closure in paragraph (2) may be appealed. The time limit for appeal shall be 5 days from its rendition. The file shall be submitted to the appeal court within 5 days, and the appeal shall be judged within 30 days after the registration of the case. The appeal shall stay the execution.
- (4) The final closure ordaining transfer of proceedings shall stay the period of time limitation for criminal liability, as well as the continuation of the criminal proceedings already initiated, subject to acts and steps of urgent nature.
- (5) The request shall be submitted by the prosecutor carrying out or monitoring the criminal prosecution or by the court, as appropriate, and shall be delivered to the Prosecutor's Office attached to the High Court of Cassation and Justice or to the Ministry of Justice, in accordance with [Article 10](#), together with copies certified by a competent Romanian magistrate of all relevant documents, save where the foreign State requests that the original of the file be sent.
- (6) If not transmitted to the Requested State, the original of the file shall be archived. If the original is delivered, a certified copy of the file shall be kept in the archives. Return of the original is requested if the criminal prosecution or trial is not taken over by the Requested State.

#CIN

) In accordance with [Article II](#) (22) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(3\) of Article 125](#) shall read as follows:*

#M1

"(3) The closure in paragraph (2) may be challenged by statement of opposition. The time limit for opposition shall be 5 days, calculated as of the ruling. The file shall be forwarded to the higher-ranking court within 5 days, and the statement of opposition shall be judged within 30 days after the registration of the case. The statement of opposition shall stay the execution."

#B

ARTICLE 126

Transmission of requests

The Ministry of Justice or, where appropriate, the Prosecutor's Office attached to the High Court of Cassation and Justice, shall ensure the transmission of requests for transfer of criminal proceedings by one of the means provided in this Law.

#M1

ARTICLE 127

Effects of requests for transfer of criminal proceedings

- (1) *Until the receipt of the decision by the requested State in relation to the request for transfer of criminal proceedings, the prosecutor conducting or supervising the criminal prosecution or the court, as the case may be:*
 - a) *may conduct any criminal investigation actions, save for bringing the defendant before the court or enforcing a penalty against the investigated person. The prosecutor conducting or supervising the criminal prosecution or the court shall inform in writing the requested State on the acts or measures ordained after the delivery of the request;*
 - b) *may withdraw the request for transfer of criminal proceedings at any time.*
- (2) *The right of criminal prosecution and enforcement is re-acquired by Romanian judicial authorities when:*
 - a) *the requested State informs that it shall initiate no actions in relation to the request for transfer of criminal proceedings or that it does not accept such a request;*
 - b) *the requested State informs that it shall revoke the admission of the request for transfer of criminal proceedings;*
 - c) *the requested State delivers its decision not to initiate or not to cease criminal proceedings.*
- (3) *The delivery of a request for transfer of criminal proceedings extends the periods of statutory limitation in relation to criminal liability by 6 months.*
- (4) *In case of conviction, the judgment ruled by the requested State shall be noted in the judicial records and shall produce the same effects as if rendered by a Romanian court.*

#M1

ARTICLE 127¹

Complaint by the prejudiced person

- (1) *In the case of an offence committed outside the Romanian territory, the complaint submitted to the Romanian judicial services by the prejudiced person, resident in Romania, shall be delivered directly or, in the case of non-EU Member States, by means of the central authorities referred to in [Article 10](#), the competent foreign authorities of the State in whose territory the offence was committed, save where competence is held by the Romanian State.*

(2) [Articles 123 - 127](#) shall not apply in this case.

#M1

CHAPTER II

Taking over or initiating criminal proceedings upon the request of a foreign State

#B

ARTICLE 128*

Requests for taking over the criminal proceedings

(1) Any request for taking over the criminal proceedings made by a foreign State to the Romanian public prosecutor's offices or courts shall be forwarded, according to case, to the Ministry of Justice or to the public prosecutor's office attached to the High Court of Cassation and Justice.

#M1

(2) *When the offence was committed in the Romanian territory, requests to take over criminal prosecution or trial shall be settled, as the case may be, by prosecutor's offices attached to the courts of appeals or the courts of appeals having jurisdiction over the location where the offence was committed or the investigated person was identified or the prejudiced person resides. When the offence was committed abroad, the requests for taking over the criminal prosecution or trial shall be settled, as the case may be, by the prosecutor's office attached to the court of appeal having jurisdiction over the residence of the perpetrator or by the court of appeals. If the perpetrator does not have his domicile and does not reside in Romania, the competence in settling the request shall pertain to the Prosecutor's Office attached to the Court of Appeals of Bucharest or to the Court of Appeals of Bucharest, as the case may be. Requests for taking over criminal prosecution in relation to offences which, in accordance with the law, fall under the jurisdiction of the Directorate for Investigating Organized Crime and Terrorism or the National Anti-Corruption Directorate, shall be settled by the latter.*

#B

- (3) The competent general prosecutor or the public prosecutor designated by him shall decide upon the request according to the [Code of Penal Procedure](#).
- (4) Requests for taking over a trial shall be sent by the Ministry of Justice to the public prosecutor's office attached to the court of appeal that is competent to solve it. The competent general prosecutor shall notify his proposal for admission or rejection of the request to the court of appeal.
- (5) Once invested with a request for taking over a trial, the competent court of appeal shall ordain upon the admissibility of the request, through a reasoned conclusion. The conclusion may be appealed within 5 days from its handing down.

- (6) If the request is deemed as admissible, the trial shall continue according to the Code of Penal Procedure.
- (7) The Prosecutor's Office attached to the High Court of Cassation and Justice or the Ministry of Justice shall inform the authorities of the Requesting State in respect of the admission or dismissal of the request to transfer the criminal proceedings.

#CIN

**) In accordance with Article II (23) and Article IV of Law no. 300/2013 (#M1), starting with 1 February 2014 (the effective date of Law no. 286/2009 on the Penal Code and Law no. 135/2010 on the Code of Penal Procedure), paragraph (5) of Article 128 shall read as follows:*

#M1

"(5) Once vested with the request for taking over the trial, the competent court of appeals shall ordain, by reasoned closure on the admissibility of such request. The closure may be appealed by statement of opposition, within 5 days after its handing down."

#M1

ARTICLE 128^1

Initiation of criminal proceedings upon the notification of authorities in a foreign State

- (1) *Notification of authorities in other States, in relation to offences being committed, in view of the Romanian State initiating criminal proceedings, shall be settled by the competent Romanian judicial authorities, in accordance with the provisions of the Penal Code and the Code of Penal Procedure.*
- (2) *In case of an offence committed in the Romanian territory, the complaint submitted by the competent authorities of the State whose resident the prejudiced person is shall be received from the Prosecutor's Office attached to the High Court of Cassation and Justice and shall be settled by the competent judicial authorities in accordance with the Romanian law.*

#M1

ARTICLE 128^2

Dismissing the request for taking over or initiating criminal proceedings

- (1) *The request by the Romanian State to take over or initiate criminal proceedings shall be dismissed if conducting the criminal prosecution violates the principle non bis in idem or if, on the date specified in the request, the statutory limitation for criminal liability expired in accordance with the Romanian law.*

- (2) *At the same time, the request by the Romanian State to take over or initiate criminal proceedings may fully or partially be dismissed, in the following cases:*
- a) *the reason underlying the request is not well-grounded;*
 - b) *the perpetrators are unknown;*
 - c) *the ordinary residence of the investigated person is not in Romania;*
 - d) *the investigated person is not a Romanian citizen and their ordinary residence was not in Romania when the offence was committed;*
 - e) *the offence in relation to which prosecution is requested has political nature or is a purely military or purely tax offence;*
 - f) *there are well-grounded reasons to believe that the request for criminal prosecution is determined by considerations relating to race, nationality or political opinion;*
 - g) *the Romanian penal law is already applicable in relation to the offence and, under such law, criminal liability is subject to statutory limitation when the request was received;*
 - h) *criminal prosecution violates international agreements concluded by Romania;*
 - i) *criminal prosecution violates fundamental principles of Romanian judicial order;*
 - j) *considering the circumstances of the case, taking over criminal prosecution is not desirable.*

#M1

ARTICLE 128³

Revoking the admission of request and returning the case

- (1) *Admitting the request for taking over or initiating criminal proceedings shall be revoked when:*
- a) *carrying on criminal proceedings in Romania violates the non bis in idem principle; or*
 - b) *if, on the date specified in the request, the statutory limitation of criminal liability has expired under the Romanian law; or*

- c) *if the offence for which it was requested to initiate or carry on criminal proceeding is not an offence under the Romanian law, and the perpetrator shall not be held criminally liable.*
- (2) *Admission of the request for taking over or initiating criminal proceedings may be revoked when:*
- a) *the attendance of the investigated person may not be ensured in view of hearing or it is deemed that a potential conviction could not be served in Romania; or*
 - b) *one of the reasons for refusal stipulated in [Article 128²](#) is uncovered prior to arraignment; or*
 - c) *in any other cases, if the requesting Romanian State agrees.*
- (3) *Revoking the admission shall be ordered by ordinance or reasoned closure, as the case may be. Revoking the admission shall have as effect the return of documents delivered by the requesting State and that State re-acquires the right to criminal prosecution.*

#B

CHAPTER III

Provisions for the implementation of the [Convention](#) of 19 June 1990 applying the Schengen [Agreement](#) of 14 June 1985 on the gradual abolition of checks at common borders, Schengen

ARTICLE 129*

Application of the non bis in idem principle

- (1) A person who has been finally judged by a Member State of the Schengen Area may not be prosecuted or tried by another for the same acts provided that, where he is sentenced, the sentence has been served or is currently being served or can no longer be carried out under the law of the sentencing State.
- (2) Nevertheless, paragraph (1) shall not apply where:
- a) the acts to which the foreign judgment relates took place in whole or in part in Romanian territory. In this case, this exception shall not apply if the acts took place in part in the territory of the Member State where the judgment was given;
 - b) the acts to which the foreign judgment relates constitute an offence against State security or other equally essential interests of Romania;

- c) the acts to which the foreign judgment relates were committed by a Romanian official in violation of the obligations of his office.
- (3) The exceptions in paragraph (2) shall not apply where the Member State concerned has, in respect of the same acts, requested the taking over of criminal prosecution or has granted the extradition of the person concerned.

#CIN

**) In accordance with Article II (24) and Article IV of Law no. 300/2013 (#M1), starting with 1 February 2014 (the effective date of Law no. 286/2009 on the Penal Code and Law no. 135/2010 on the Code of Penal Procedure), paragraph (2) of Article 129 shall read as follows:*

#M1

"(2) Nevertheless, the provisions of paragraph (1) shall not apply if:

- a) *the acts to which the foreign judgment relates took place in whole or in part in Romanian territory. In this case, this exception shall not apply if the acts took place in part in the territory of the Member State where the judgment was given;*
- b) *the acts to which the foreign judgment relates constitute an offence against the national security or against other essential interests of Romania;*
- c) *the acts to which the foreign judgment relates were committed by a Romanian official in violation of the obligations of his office."*

#M1

TITLE V

Recognition and enforcement of court decisions, penal ordinances and judicial documents in relationship with third States

#M1

CHAPTER I

General Provisions

#M1

ARTICLE 130

Scope of application and meaning of terms or expressions

- (1) *This title shall apply in the relationship with third states, in the field of recognition and enforcement of court decisions and penal ordinances, in accordance with the rules included in the international treaties to which Romania is a party, and, in their absence, based on reciprocity. The provisions of this Title shall also apply, as supplementation, to cases which were not regulated by the international treaties.*

The provisions of [Chapter III](#) shall also apply in relationship with the Member States of the European Union, unless they are contrary to the special provisions.

- (2) Within the meaning of this Title, the terms and expressions below shall have the following meaning:
- a) *disqualification* – any deprivation from or suspension of a right, any interdiction or incapacity;
 - b) *judicial document* – the act issued by a competent judicial authority;
 - c) *foreign penal ordinance* – any of the decisions provided in [Article 1](#) (g) of the European Convention on the International Validity of Criminal Judgments, adopted in Hague on 28 May 1970, ratified by Government Ordinance no. 90/1999, approved by [Law no. 35/2000](#), or provided in the bilateral treaties concluded by Romania or established based on reciprocity;
 - d) *third State* - a State which is not member of the European Union.

#M1

ARTICLE 131

Competence of Romanian authorities

- (1) As regards the decisions issued by the courts of law of third States and the foreign penal ordinances, the Ministry of Justice, through the specialised directorate, shall have the competence:
- a) *to receive the request from the issuing State for recognition of the court decision for the service on the territory of Romania of the sentence imposed in the issuing State or for producing other legal effects, as the case may be, as well as the request of a sentenced person for transfer to Romania;*
 - b) *to receive the request for taking a preventive measure if the sentenced person is in Romania;*
 - c) *when the recognition takes place for the enforcement on the Romanian territory of the sentence imposed in the issuing State, to send, at the request of the issuing State, before or after receiving the request mentioned under sub-paragraph (a) or (b), in particular the following documents and information:*
 - (i) *a document attesting that the sentenced person has Romanian citizenship or that he enjoys a right of permanent stay in Romania;*

- (ii) *the legal provisions revealing that the facts which determined that a sentence be imposed in the issuing State constitute offences under the Romanian law;*
 - (iii) *information on conditional release and statutory limitation of sentence enforcement;*
 - (iv) *a statement containing the information provisioned by [Article 132](#);*
- d) *unless the issuing State indicated that it does not agree that the court decision or the penal ordinance issued against a Romanian citizen or against a foreigner enjoying a right of long-term stay in Romania is enforced in Romania, to request such to communicate the information provisioned by [Article 132](#);*
- e) *to conduct the regulatory control and, if applicable:*
 - (i) *to request that additional documents and information are transmitted;*
 - (ii) *to request the statement of the sentenced person, unless such is on the territory of Romania;*
 - (iii) *when the sentenced person is on the territory of Romania, and the foreign court decision was issued in his absence, to request information regarding the sentenced person's right to file a statement of opposition or to exercise any other opposition, according to the law of the issuing State;*
- f) *to verify the domicile of the sentenced person abroad, in order to determine the judicial authority competent to execute the request mentioned under subparagraph (a) or (b);*
- g) *to refuse the initiation of the procedure of recognition and enforcement on the territory of Romania of the foreign court decision, when:*
 - (i) *Romania is not the State of citizenship or the State on whose territory the sentenced person enjoys a right of permanent stay;*
 - (ii) *as of the receipt date of the foreign court decision, less than 6 months remained to be served from the sentence imposed on the sentenced person, unless the sentenced person is on the territory of Romania;*
 - (iii) *the issuing State failed to send the documents provisioned by subparagraph e) until the expiry of a maximum term of 120 days, as well as in other cases expressly provided by the law;*

- h) to consult with the issuing State whenever it deems it necessary.*
- (2) With regard to the court decisions or penal ordinances issued by the Romanian judicial authorities, the Ministry of Justice, through the specialised directorate, shall be competent:*
- a) to receive the request of the State of execution or of the person in respect of whom the foreign court decision or penal ordinance was issued, for recognition thereof so for serving the sentence imposed in Romania or for producing other legal effects, as the case may be;*
 - b) to send the documents and information provisioned by [Article 132](#), as well as any other additional information requested by the State of execution;*
 - c) to request from the State of execution a document attesting that the sentenced person has its citizenship or that he lives on its territory, as well as:*
 - (i) a statement from the competent authority regarding the transfer of the sentenced person;*
 - (ii) the legal provisions revealing that the facts which determined that a sentence be imposed in Romania constitute offences under the law of the State of execution;*
 - (iii) information regarding amnesty, pardon, conditional release and statutory limitation of the sentence enforcement;*
 - (iv) a statement regarding the procedure applicable to the Romanian court decision;*
 - d) to prepare, at the request, as the case may be, of the court of law or of the penal prosecution authorities, based on the documents and information provisioned by [Article 132](#):*
 - (i) the request for recognition and enforcement on the territory of a third State of the court decision or penal ordinance and to communicate the decision of the State of execution to the applicant Romanian judicial authority;*
 - (ii) the request for taking preventive measures against the sentenced person when such is on the territory of the State of execution;*
 - e) to suspend the procedure until the fulfilment of the requirement provisioned by [Article 140²](#) (4) (b);*

f) *to consult with the State of execution whenever it deems it necessary.*

(3) *The National Prison Administration:*

- a) *shall inform the sentenced person serving custodial sentences in the prisons in Romania, to whom this title may apply, with regard to their right to request the transfer to the State of execution;*
- b) *shall ensure the surrender, under escort, of the sentenced person from the prisons in Romania, in relation to whom the transfer to the State of execution was ordered or who were returned according to sub-paragraph e);*
- c) *shall inform the specialised directorate of the Ministry of Justice, the enforcement court and the court within whose territorial jurisdiction the detention facility is located with regard to the date of surrender of the sentenced person to the authorities of the State of execution;*
- d) *after receipt of the sentenced person in the prison abroad, shall inform the specialised directorate of the Ministry of Justice:*
 - (i) *with regard to the detention facility, the service regime established and the measures taken, if applicable;*
 - (ii) *when the sentenced person evaded and its apprehension was not possible;*
- e) *shall ensure that a person transferred from Romania to the State of execution, who was returned to the country in order to take part in the judgement of the extraordinary legal remedy initiated against the Romanian court decision, is taken over, on the date when the person concerned is brought into the country, and held in prison until is sent back to the State of execution or until the communication of the release decision;*
- f) *upon the termination of the period of the imprisonment sentence, on the date decided by the court of law in the case of conditional release, as well as on any other date decided by the competent judicial authorities in the particular situations provided by the law, shall immediately inform the Ministry of Justice and the General Border Police Inspectorate of the release of the persons transferred in Romania for the enforcement of the sentence, irrespective of the committed offence. The General Border Police Inspectorate shall inform the specialised directorate of the Ministry of Justice if, within the time limit provisioned by [Article 157](#) (c), the released person left the territory of Romania;*

- g) *in case of conditional release or pardon of the rest of the sentence which was not served, shall communicate to the specialised directorate of the Ministry of Justice the number of days remaining to be executed;*
 - h) *shall ensure the takeover of the persons transferred for enforcement of the sentence in a prison subordinated to the National Prison Administration, at the time when such is brought into the country.*
- (4) *The International Police Cooperation Centre within the Romanian General Police Inspectorate shall ensure:*
- a) *the transfer, under escort, from the issuing State to Romania, of the persons sentenced abroad;*
 - b) *the takeover from abroad, under escort, of the sentenced persons, which were previously transferred, in respect of whom it was ordered to bring them to Romania in order to take part in the judgement of the extraordinary opposition against the court decision, unless the duty to bring him into the country belongs to the State of execution.*
- (5) *The Ministry of Foreign Affairs shall ensure, by its consular offices, that the statement of the sentenced person serving a life imprisonment or imprisonment sentence or a custodial measure, on the territory of the issuing State is taken, and shall send such statement to the specialised directorate of the Ministry of Justice, within maximum 30 business days from the receipt date of the request.*

#M1

ARTICLE 132*)

Documents and information

For the recognition and enforcement of foreign court decisions or penal ordinances, the following documents and information shall be necessary, as the case may be:

- a) *name, first name, pseudonym, alias used, only if such are known, as well as the gender, citizenship, number of the identity card or of the passport, date and place of birth, photograph, last known address or residence, languages that the person understands;*
- b) *information on the family, social or professional relationships had in Romania;*
- c) *total term of the sentence, the date on which the sentence service started, the date on which the sentence would be considered served, the period already served, if applicable, the number of days which shall be deducted from the total sentence as a result of the effects caused by amnesty or pardon subsequently granted;*

- d) *information regarding conditional or anticipated release, as the case may be;*
- e) *a copy, certified as true copy, as the case may be, of the penal ordinance or court decision issued in the first instance and, if applicable, in exercising the oppositions;*
- f) *applicable legal provisions;*
- g) *unless the sentenced person is in Romania, the statement of the sentenced person in respect of the request to serve the sentence imposed in the issuing State in a prison or sanitary unit in Romania;*
- h) *if applicable, any medical-legal report or findings or other medical documents attesting to the physical and mental condition of the sentenced person, the treatment followed by such on the territory of the issuing State and potential recommendations for continuation of the treatment in Romania, as well as, in the case of a minor sentenced person, the copy of the social investigation report;*
- i) *information on the sentenced person's possibility to claim extraordinary legal remedy, after transfer, against the sentencing decision;*
- j) *in the case of the court decisions issued in his absence, when the sentenced person is on the territory of the issuing State, information regarding the person's right to take legal action resulting in the re-examination of the case in his presence.*

#CIN

) According to [Article II](#) (25) and [Article IV](#) of Law no. 300/2013 (#M1**), beginning from the 1st of February 2014 (date when [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure enter into force), [Article 132 \(h\)](#) shall read as follows:*

#M1

- "h) *if applicable, any expertise, report or other medical documents attesting to the physical and mental condition of the sentenced person, the treatment followed by such on the territory of the issuing State and potential recommendations for continuation of the treatment in Romania, as well as, in the case of a minor sentenced person, the copy of the social investigation report;*"

#M1

ARTICLE 133

Law governing the enforcement and effects of the transfer of sentence service

- (1) *If Romania is an issuing State, the enforcement, as the case may be, of the sentence or custodial measure or of the rest which was not served shall fall under the competence of the Romanian court whenever:*
 - a) *the request for recognition of a court decision is withdrawn before the State of execution recognizes the court decision and enforces the sentence or the custodial measure imposed by the Romanian court;*
 - b) *the State of execution refuses to recognize the court decision and to enforce the sentence or the custodial measure imposed by the Romanian court;*
 - c) *the State of execution expressly waives its right of enforcement;*
 - d) *the State of execution indicates that it can no longer enforce the sentence or the custodial measure because the sentenced person evaded and could not be found on its territory;*
 - e) *the State of execution indicates that it cannot enforce the sentence or the custodial measure because the sentenced person could not be found on its territory.*
- (2) *The Romanian court shall be competent to judge a legal action, exercised by the sentenced person, after his transfer in the State of execution, for the cancellation or modification of the sentencing court decision. Any decision further to which the sentence or custodial measure ceases to be enforceable, as well as a decision whereby the competent Romanian court settled the respective opposition shall be sent to the specialised directorate of the Ministry of Justice for information of the State of execution.*
- (3) *If Romania is an issuing State, when the State of execution communicated the decision of not enforcing or of ceasing to enforce the sentence or the custodial measure as a result of amnesty or pardon, the competent Romanian court shall record this in the Register of records and enforcements of penal decisions.*
- (4) *The amnesty or pardon by the Romanian State, in its capacity as issuing State, when it occurs after the transfer of the sentenced person or after delegation of the sentence service, shall be applied by a judge of the enforcement court. The decision to apply the amnesty or pardon shall be sent to the specialised directorate of the Ministry of Justice for communication to the State of execution.*
- (5) *The amnesty or pardon by the Romanian State, in its capacity as State of execution, shall be applied by a judge of the enforcement court or, when the sentenced person is in custody, from the corresponding court within whose territorial jurisdiction the detention facility is located. The decision to apply the amnesty or pardon shall be sent to the specialised directorate of the Ministry of Justice for communication to the issuing State.*

#M1

CHAPTER II

Recognition and enforcement of foreign court decisions

#M1

SECTION 1

Transfer of sentenced persons, held in custody in third States, in order to serve the sentence or the custodial measure in a prison or medical unit in Romania

#M1

ARTICLE 134

Measures preceding the notification of the court

- (1) *When it finds that the issuing State sent the documents and information provisioned by [Article 132](#), Ministry of Justice, through the specialised directorate, shall forward them to the prosecutor's office attached to the appeal court within whose territorial jurisdiction the sentenced person has his domicile, for the notification of the appeal court.*
- (2) *Upon receipt of the file, the prosecutor shall verify whether:*
 - a) *the enforcement of the foreign court decision in Romania would be contrary to the principle non bis in idem;*
 - b) *the sentenced person is under penal investigation in Romania for the same offences for which the foreign court decision was issued;*
 - c) *the sentenced person is under penal investigation in Romania for other offences than those for which the foreign court decision was issued;*
 - d) *any of the grounds for refusal provisioned by [Article 136](#) (2) is applicable;*
 - e) *the sentenced person enjoys the effects of the speciality rule. The provisions of [Article 157](#) shall apply only unless otherwise provided in the treaty applicable in the relationship with the issuing State or provided that, according to the reserve or statement made by the issuing State to a multilateral treaty, accepted by Romania, the transfer is conditioned by the compliance with the speciality rule.*
- (3) *The information necessary for the verifications provisioned by paragraph (2) subparagraphs b) and c) shall be communicated to the prosecutor within maximum 5 days from the receipt date of the request.*

- (4) *If the provisions of paragraph (2) sub-paragraph (e) are applicable, the prosecutor shall inform, as the case may be, the prosecutor who conducts or supervises the penal prosecution or the court of law.*
- (5) *If, until the notification of the court, the request provisioned by [Article 131](#) (1) (a) is withdrawn, the prosecutor shall order the classification and shall return the file to the specialised directorate of the Ministry of Justice.*

#M1

ARTICLE 135*

Length and subject of the procedure for the recognition of a foreign court decision

- (1) *The president of the court or the judge delegated by such shall schedule the court hearing, which may not be longer than 10 days from the registration date of the case at the court. The term of the judicial procedure for the recognition of the foreign court decision shall be of 60 days from the registration date of the case with the court.*
- (2) *The court bench shall be formed by a single judge, judging in Council Chambers, the sentenced person not being subpoenaed to appear before the court. The prosecutor's attendance is mandatory.*
- (3) *The object of the procedure of recognition of a foreign court decision is to verify the requirements provisioned by [Article 136](#), and, if such are fulfilled, to assign legal effects on the territory of Romania to the foreign court decision and to transfer the sentenced person in a prison or medical unit in Romania. The provisions regarding the monetary sentences, assuring measures or judicial expenses, as well as any provisions included in the foreign court decision, other than those regarding the enforcement of the life imprisonment or imprisonment sentence or of the custodial measure shall not form the object of this procedure, unless the issuing State expressly requests so. In this latter case, the court of law notified for the transfer of the sentenced person shall also rule on the recognition and enforcement of other penal provisions included in the foreign court decision.*
- (4) *If the person was sentenced for several offences, the requirements shall be verified for each offence. When the requirements are fulfilled only for some of the offences, the court may order the partial recognition of the foreign court decision. For this purpose, prior to making a decision, the court may consult the issuing State through the specialised directorate of the Ministry of Justice.*
- (5) *If, before the final settlement of the case, the issuing State withdraws its request, the court of law shall deny it as ungrounded.*
- (6) *The court shall review the foreign court decision, shall verify the acts in the file and, based on its findings, shall issue one of the following rulings:*

- a) *shall order, through the judgment, the recognition and enforcement of the sentence imposed by the foreign court;*
 - b) *if the nature or length of the sentence imposed by the foreign court do not correspond to the nature or length of the sentence provisioned by the Romanian penal law for similar offences:*
 - (i) *shall adapt, by the judgment, the custodial sentence imposed by the foreign court, according to paragraphs (7) and (8) or, when adaptation is not possible,*
 - (ii) *shall establish and apply, by the judgement, the sentence for the committed offence;*
 - c) *shall order, by the judgment, the dismissal of the request for recognition and enforcement of the foreign court decision in Romania.*
- (7) *In the case provisioned by paragraph (6) (b) (i), the court of law shall adapt the sentence imposed by the foreign court when:*
- a) *its nature does not correspond, in terms of name or regime, to the sentences regulated by the Romanian penal law;*
 - b) *its length exceeds, as the case may be, the special maximum limit of the penalty provisioned by the Romanian penal law for the same offence or the maximum general limit of the imprisonment penalty provisioned by the Romanian penal law or when the length of the resulting sentence imposed in the case of concurrence of offences exceeds the total sentences established for concurrent offences or the maximum general limit of the imprisonment penalty admitted by the Romanian penal law. Adaptation by the court of law of the sentence imposed by the foreign court consists of the reduction of the sentence to the maximum limit admitted by the Romanian penal law for similar offences.*
- (8) *The sentence established by the Romanian court, according to paragraph (7), shall have to correspond, as much as possible, from the standpoint of its nature or length, to the one imposed by the issuing State and shall not aggravate the situation of the sentenced person. The sentence imposed in the issuing State may not be turned into a monetary sentence.*
- (9) *If the provisions of paragraph (6) sub-paragraph (b) item (ii) are applicable, upon establishing and imposing the penalty for the committed offence, the court of law shall have the obligation to take into account the facts, the conditions and circumstances in which such were committed, as implicitly or explicitly resulting from the foreign court decision and, at the same time:*

- (i) *it shall not turn a custodial sentence into a monetary sentence;*
 - (ii) *it shall fully calculate out of the imposed sentence the time served by the sentenced person in the issuing State;*
 - (iii) *shall not aggravate the situation of the sentenced person and shall not have to comply with the minimum limit of the sentence provisioned by the Romanian penal law for the committed offence.*
- (10) *The provisions of paragraph (6) sub-paragraph (b) item (ii) shall not apply if the applicable treaty in the relationship with the issuing State excludes the conversion of the sentence or if the issuing State specifically indicated that it shall grant the transfer only provided that the Romanian State executes either the sentence imposed by the foreign court, or the sentence adapted by the Romanian court according to paragraphs (7) and (8).*
- (11) *The judgement provisioned by paragraph (6) shall be drawn up in up to 10 days from pronouncement and shall be sent to the specialised directorate of the Ministry of Justice, to be communicated to the sentenced person. The prosecutor, ex officio or upon the request of the Minister of Justice, as well as the sentenced person may file a second appeal against this judgement in a time limit of up to 10 days. The time limit is calculated for the prosecutor from the day when the judgement was rendered. For the sentenced person, the time limit is calculated from the communication of the copy of the enactments terms. The file shall be forwarded to the second appeal court in 3 days and the second appeal shall be judged in court session in 10 days in Council Chambers, without subpoenaing the sentenced person. The prosecutor's attendance is mandatory.*
- (12) *The sentence shall be enforced according to the provisions of the [Code of Penal Procedure](#). The final decision and a copy of the life detention order or of the detention order, as the case may be, shall be communicated to the specialised directorate of the Ministry of Justice.*
- (13) *If, after issuance of the life detention order or of the detention order, the issuing State:*
 - a) *informs that the transfer can no longer take place, the court shall order the cancellation of the detention order or life detention order. In this case, the judgment for recognition of the foreign penal decision shall produce legal effects only in respect of the state of relapse, unless the transfer is no longer possible because amnesty was granted or as a result of the fact that it was subsequently established that the person is not guilty for having committed the offence or as a result of the death of the sentenced person in the issuing State;*

- b) sends a new decision for the enforcement of another sentence, the provisions of the [Code of Penal Procedure](#) regarding the opposition to enforcement, which are not contrary to the provisions of this title, shall apply accordingly. In this case, the enforcement court shall be the appeal court which issued the judgement provisioned by paragraph (6).
- (14) If, after the transfer of the sentenced person, the issuing State sends a new court decision for the enforcement of another sentence, the provisions of [Article 137](#) shall apply accordingly.
- (15) If the provisions of paragraph (13) (a) are applicable and the transfer can no longer take place as a result of the withdrawal by the sentenced person of its consent to transfer, all the expenses incurred by the Romanian State shall be incumbent upon the sentenced person based on the order of the management of the Ministry of Justice or of the Romanian General Police Inspectorate, which is a writ of enforcement. In case of failure to willingly pay the debt, such shall be enforced according to the provisions of the [Fiscal Procedure Code](#) regarding the recovery of fiscal debts.
- (16) If the court refused to recognize the court decision sent by the issuing State, the request of the sentenced person or of the issuing State may be re-examined if new elements appeared.

[#CIN](#)

**) According to [Article II](#) item 26 and [Article IV](#) of Law no. 300/2013 ([#M1](#)), beginning with the 1st of February 2014 (date when Law no. 286/2009 on the Penal Code and Law no. 135/2010 on the Code of Penal Procedure enters into force), [Article 135 \(11\)](#) shall read as follows:*

[#M1](#)

"(11) The judgement provisioned by paragraph (6) shall be drawn up in up to 5 days from pronouncement and shall be sent to the specialised directorate of the Ministry of Justice, to be communicated to the sentenced person. The prosecutor, ex officio or upon the request of the Minister of Justice, as well as the sentenced person may file an appeal against this judgement in a time limit of up to 10 days. The time limit is calculated for the prosecutor from the day when the judgement was rendered. For the sentenced person, the time limit is calculated from the communication of the copy of the enactments terms. The file shall be forwarded to the appeal court in 3 days and the appeal shall be judged in court session in 10 days in Council Chambers, without subpoenaing the sentenced person. The prosecutor's attendance is mandatory."

[#M1](#)

[ARTICLE 136](#)

Requirements for the recognition and enforcement of a foreign court decision

- (1) *A foreign court decision may be recognised in Romania if it may produce legal effects under the Romanian penal law and provided that the following legal requirements are fulfilled:*
- a) *the decision is final and enforceable;*
 - b) *the fact for which the sentence was imposed would have constituted an offence, should it had been committed on the territory of Romania. If the sentence was imposed for several offences, this requirement shall be verified for each offence;*
 - c) *the sentenced person agreed to serve the sentence in Romania, unless it would be expelled from Romania after serving his sentence in Romania. If necessary, depending on the age or physical condition of the sentenced person, such consent may be given by his representative;*
 - d) *none of the reasons for non-recognition and non-enforcement provisioned by paragraph (2) is applicable. If any of the reasons provisioned by paragraph (2) is applicable, the court may order the recognition only provided that it is satisfied that the sentence service in Romania would significantly contribute to the social reintegration of the;*
 - e) *the enforcement in Romania of the life detention sentence or detention sentence or of a custodial measure may facilitate the social reintegration of the sentenced person.*
- (2) *The foreign court decision shall not be recognised and enforced when:*
- a) *the recognition and enforcement on the territory of Romania of the foreign court decision would be contrary to the fundamental principles of legal order of the Romanian State;*
 - b) *the court decision refers to a political offence or an offence connected to a political offence or a military offences which is not an common law offence;*
 - c) *the sentence was imposed on grounds of race, religion, gender, nationality, language, political or ideological opinions or members to a certain social group;*
 - d) *the person was sentenced in Romania according to an enforceable judgement for the same criminal acts. If the foreign court decision was also imposed for other penal facts, the court may order its partial recognition, provided that the other requirements are fulfilled;*

- e) *the person was sentenced in another state for the same criminal acts, and the foreign court decision issued in this State was previously recognised in Romania;*
 - f) *the sentenced person enjoys penal jurisdiction immunity in Romania;*
 - g) *the penalty was imposed to a person which is not liable under the penal law, according to the Romanian legislation;*
 - h) *the sentence consists of a measure of psychiatric or medical assistance which may not be executed in Romania or, as the case may be, provides a medical or therapeutic treatment which may not be supervised in Romania, according to the legal or health national system;*
 - i) *the sentenced person left Romania, establishing his/her domicile in another State, and his connections to the Romanian State are not significant;*
 - j) *the sentenced person committed a serious offence, which may alarm the society or had close relationships with members of a criminal organization, which may render its social reintegration in Romania doubtful;*
 - k) *there are strong indications that the court decision was issued in breach of the fundamental rights and freedoms, in particular that the sentence was imposed in order to sanction the sentenced person on grounds of gender, race, religion, ethnic origin, citizenship, language, political convictions or sexual orientation, and the sentenced person did not have any possibility to oppose to such circumstances before the European Court of Human Rights or another international court.*
- (3) *On a case by case basis, taking into consideration the specific circumstances of the case, the court may deny the recognition and enforcement of the foreign court decision if:*
- a) *the person is under investigation in Romania for the same offence for which he/she was sentenced abroad. If the court decision was also issued in respect of other offences, the court may order the partial recognition thereof, provided that the other requirements are fulfilled;*
 - b) *when the issuing State rejected the request filed based on [Article 134](#) (1).*
- (4) *If the sentenced person is investigated in Romania for the offence for which it was sentenced abroad, instead of denying the recognition, the court may order either the recognition of the foreign court decision, or the stay of the proceedings until a decision is made in the penal proceedings under judgment by the Romanian judicial authorities.*

- (5) *The foreign court decision shall not be recognised or, if it was recognised, shall not be enforced, when, according to the Romanian penal law, the amnesty or pardon was granted, the fact is not longer an offence under the law, as well as in any other cases provisioned by the law.*

#M1

SECTION 2

Recognition and enforcement of foreign court decision if the sentenced person is in Romania

#M1

ARTICLE 137*)

Recognition procedure concerning the foreign court decision and taking preventive measures

- (1) *When it finds that the issuing State sent the records and information referred to in [Article 132](#), the Ministry of Justice, through the specialised Directorate, shall forward them to the Prosecutor's Office of the appeal court within whose territorial jurisdiction the convicted person is domiciled or, if the person concerned is held in detention, in whose territorial jurisdiction the detention facility is located, in order to notify the appeal court. The provisions of [Article 134](#) (2) (a) – (d), and (4), as well as of [Article 135](#) (1) and (4) - (10) shall apply accordingly, if these do not contravene this section.*
- (2) *The court bench shall be formed by a single judge, judging in Council Chambers, the sentenced person being subpoenaed to appear before the court. The prosecutor's attendance is mandatory.*
- (3) *Subject to the procedure for the recognition of the foreign court decisions is the verification of the requirements provisioned by [Article 136](#) (1) (a), (b), (d), e) and (2) - (4) and the requirements are met, the subject is the granting of legal effects on Romanian territory to the foreign court decision. Depending on the nature of the sentence and if the requirements provisioned by the Romanian law are met, the court may order the application of one of the individualisation measures of the sentence service.*
- (4) *Upon the specific request of the issuing State, one of the preventive measures provisioned by the [Code of Penal Procedure](#) may be taken in respect of the sentenced person. Choosing the measures to be taken shall done taking into account the sentence imposed in the issuing State, the nature of the offence, the health, age, prior convictions and other aspects concerning the person for whom the measure is taken.*
- (5) *The measure of provisional arrest may be imposed in what concerns the sentenced person is the committed offence is included in one of the categories provisioned by [Article 96](#) (1) and one of the following situations occur:*

- a) *The sentenced person fled from the issuing State in order to evade prosecution, trial or sentence service and took refuge on Romanian territory; or*
 - b) *The sentence imposed by the foreign court of the rest of the sentence remaining to be served is at least one year imprisonment.*
- (6) *The length of the preventive measure cannot exceed 180 days. Preventive measures shall be terminated by default according to the law as follows:*
- a) *Upon the end of the time limit provisioned by the law or by the Romanian judicial authorities;*
 - b) *When, before the issuance of a decision for the recognition of the foreign court decisions, the time served in arrest reached the period of the imprisonment sentence imposed abroad; or*
 - c) *If the provisional arrest was ordered prior to the receipt of the request for the recognition and enforcement of the foreign court decision, when in 30 days from the date of the provisional arrest, the speciality directorate of the Ministry of Justice did not receive the documents and information provisioned by [Article 132](#).*
- (7) *The legal situation of the sentenced person cannot be aggravated as effect of the length of the custodial preventive measure imposed by the Romanian judicial authorities.*
- (8) *The judgement shall be drawn up in up to 10 days from pronunciation. The prosecutor, ex officio or upon the request of the Minister of Justice, as well as the sentenced person may file a second appeal against this judgement in a time limit of up to 10 days. The time limit is calculated for the prosecutor from the day when the judgement was rendered. For the sentenced person, the time limit is calculated from the day the judgement is rendered or if the sentenced person was absent from court both for debates and for pronunciation, the time limit is calculated from the communication of the copy of the enactments terms. The file shall be forwarded to the second appeal court in 3 days and the second appeal shall be judged in court session in 10 days in Council Chambers, upon subpoenaing the sentenced person. The prosecutor's attendance is mandatory.*

#CIN

) 1. According to [Article II](#) item 27 and [Article IV](#) of Law no. 300/2013 (#M1**), beginning with the 1st of February 2014 (date when [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure enter into force), [Article 137](#) (6), (b) shall read as follows:*

#M1

"b) When, before the issuance of a decision for the recognition of the foreign court decisions, the time served in provisional arrest reached the period of the imprisonment sentence imposed abroad; or"

#CIN

2. According to [Article II](#) item 28 and [Article IV](#) of Law no. 300/2013 (#M1), beginning with the 1st of February 2014 (date when [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure enter into force), [Article 137](#), [\(8\)](#) shall read as follows:

#M1

"(8) The judgement shall be drawn up in up to 10 days from pronouncement. The prosecutor, ex officio or upon the request of the Minister of Justice, as well as the sentenced person may file an appeal against this judgement in a time limit of up to 10 days. The time limit is calculated for the prosecutor from the day when the judgement was rendered. For the sentenced person, the time limit is calculated from the day the judgement is rendered or if the sentenced person was absent from court both for debates and for pronouncement, the time limit is calculated from the communication of the copy of the enactments terms. The file shall be forwarded to the appeal court in 3 days and the appeal shall be judged in court session in 10 days in Council Chambers, upon subpoenaing the sentenced person. The prosecutor's attendance is mandatory."

#M1

ARTICLE 138

Notification of the foreign court decision and opposition of the sentenced person

- (1) *If the foreign court decision was rendered in absentia, the prosecution, upon the receipt of the file shall notify the sentenced person in respect of the decision. The notification shall include the following mentions:*
- a) *That a request for the enforcement on Romanian territory of a sentence was received;*
 - b) *That the sentenced person concerned has the right to oppose to the foreign court decision and to file a statement of opposition to this aim, if this right is conferred by the law of the issuing State;*
 - c) *That the respective statement of opposition is under the jurisdiction of the issuing State;*
 - d) *That the respective statement of opposition shall be filed to the competent prosecutor's office, according to [Article 137](#);*

- e) *That the time limit for filing the statement of opposition is 30 days and it is calculated from the receipt of the notification;*
 - f) *That failure to file the statement of opposition in 30 days results in considering the foreign court decision as rendered in the presence of the sentenced person.*
- (2) *A copy of the notification shall be communicated to the specialised directorate of the Ministry of Justice and shall be transmitted by the Ministry to the issuing State.*
 - (3) *Upon the termination of the 30 days time limit and if the sentenced person did not file a statement of opposition, the prosecutor shall notify the competent appeal court according to [Article 137](#).*
 - (4) *Upon the termination of the 30 days time limit and if the sentenced person filed a statement of opposition, the prosecutor shall order the classification of the file, shall return the file to the specialised directorate of the Ministry of Justice along with the statement of opposition and the documents submitted by the sentenced person.*

#M1

CHAPTER III

Special recognition and enforcement procedures

#M1

ARTICLE 139*)

The recognition and enforcement of the penal law and administrative penalties imposed by the foreign judicial authorities and judicial expenses

- (1) *The recognition and enforcement of the foreign court decision and penal ordinances according to which penal law or administrative penalties of payment of the judicial expenses were imposed shall take place according to the treaty signed by Romania and the foreign requesting State or, if such treaty does not exist, according to this Law, as well as according to the [Code of Penal Procedure](#), under the requirement of reciprocity.*
- (2) *If the issuing State transmitted the documents and information provisioned by [Article 132](#), the Ministry of Justice, through its specialised directorate shall forward these documents and information to the prosecutor's office attached to the local court with territorial jurisdiction for the place in which the person who was imposed that particular penalty or who was compelled to pay judicial expenses resides in, in order to notify the competent court. If the person concerned is neither domiciled or lives on Romanian territory, the competent court is the Local Court of Sector 2, Bucharest.*

- (3) *The court bench shall be formed by a single judge, judging in Council Chambers, upon subpoenaing the parties. The prosecutor's attendance is mandatory. The decision of the court is expressed in a judgement. The judgement may be subject to a second appeal in 10 days from pronouncement, filed by the prosecutor or the person concerned. The file shall be forwarded to the second appeal court in 3 days and the second appeal shall be judged in court session in 10 days in Council Chambers, upon subpoenaing the parties.*
- (4) *The enforcement of disqualifications and other criminal provisions of the court decision or the foreign penal ordinance shall take place only if the Romanian penal law provides for the committed offence the enforcement of such measure or disqualification.*
- (5) *When the enforcement of a penal or administrative fine is requested, as well as the payment of judicial expenses, the competent court shall exchange the amount concerned in the Romanian currency, according to the applicable exchange rate for the date when the decision was rendered.*
- (6) *The amount of the resulted penal or administrative fine resulted following the conversion cannot exceed the general maximum limit provisioned by the Romanian law. However, the court of law may uphold and enforce the penal or administrative fine up to the level of the amount issued in the foreign State, when the Romanian law provides for the committed offence a sentence more severe than the one provisioned by the law of the issuing State.*
- (7) *The provisions of the foreign court decision governed by [Article 135](#) or [137](#), accordingly shall not be subject to this procedure.*
- (8) *The enforceable decision shall be communicated to the specialised directorate of the Ministry of Justice.*

#CIN

) According to [Article II](#) item 29 and [Article IV](#) of Law no. 300/2013 (#M1**), beginning with the 1st of February 2014 (date when [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure enter into force), [Article 139](#), (3) shall read as follows:*

#M1

"(3) The court bench shall be formed by a single judge, judging in Council Chambers, upon subpoenaing the parties. The prosecutor's attendance is mandatory. The decision of the court is expressed in a judgement. The judgement may be subject to appeal in 10 days from pronouncement, filed by the prosecutor or the person concerned. The file shall be forwarded to the appeal court in 3 days and the appeal shall be judged within a time limit of 10 days."

#M1

ARTICLE 140*)

Recognition and enforcement of the foreign confiscation orders

- (1) The recognition and enforcement of the foreign confiscation orders issued by third States shall take place according to the treaty signed by Romania and the foreign requesting State or, if such treaty does not exist, according to this Law, as well as according to the Code of Penal Procedure, under the requirement of reciprocity.*
- (2) To the meaning of paragraph (1), a confiscation order is a penalty or an enforceable measure ordered by a judicial authority of the issuing State, related to one or several offences, resulting in final dispossession of that asset.*
- (3) The recognition and enforcement of the decision ordering similar measures to confiscation, which, according to the Romanian law, are not criminal penalties, may be ordered only if:*
 - a) The measures result in the final dispossession of that assets;*
 - b) The measures were ordered by a competent judicial authority of the issuing State related to one or several criminal acts;*
 - c) The assets are related products or instruments.*
- (4) Competent for the recognition and enforcement of the decision provisioned in paragraph (1) is the tribunal having jurisdiction in the place where the respective asset is located. If the decision concerns:*
 - a) Several movable assets from the jurisdiction of different tribunals, the competent authority is the Tribunal of Bucharest;*
 - b) Several movable assets and one immovable asset, the competent authority is that having jurisdiction in the place where the respective asset is located;*
 - c) Several immovable assets from the jurisdiction of different tribunals, the competent authority is that having jurisdiction in the place where the most valuable immovable asset is located.*
- (5) The court bench shall be formed by a single judge, judging in Council Chambers, upon subpoenaing the parties. The prosecutor's attendance is mandatory. The decision of the court is expressed in a judgement. The judgement may be subject to a second appeal in 10 days from pronouncement, filed by the prosecutor or the person concerned. The file shall be forwarded to the second appeal court in 3 days and the second appeal shall be judged in court session in 10 days in Council Chambers, upon subpoenaing the parties.*

- (6) *When there are reasonable suspicions regarding the occurrence of a concrete danger concerning the concealment, destruction, alienation or removal of the assets subject to confiscation, the court may impose, ex officio or upon the request of the issuing State or of the prosecutor, the measure of preservation, ordering the seizure of the movable or immovable assets in view of confiscation. The court shall issue the order by motivated closure, in Council Chambers, without subpoenaing the parties. The prosecutor's attendance is mandatory. The closure may be acted against at the same time with the judgement provisioned in paragraph (5).*
- (7) *When the confiscation of money is requested, the competent court shall exchange the amount concerned in the Romanian currency, according to the applicable exchange rate for the date when the decision was rendered.*
- (8) *When the confiscation of a identified assets is requested, the recognition of the foreign decision shall take place only if the Romanian law provisions the measure of confiscation for the committed offence, except for the case when according to the applicable treaty it is provides otherwise or when the Romanian law provides for the committed offence a penalty more severe than the one provisioned by the law of the issuing State.*
- (9) *[Article 248](#) (2) - (4), [Article 260](#), [267](#) and [268](#) shall apply accordingly, if not contravening to this section. [Article 265](#) (1) - (3) shall apply if it is not contrary to the treaty signed by Romania and the issuing State or, when the treaty does not contain provisions to this aim, if is not agreed upon otherwise by the Romanian and foreign authorities. The competent authority in Romania is the Ministry of Justice.*
- (10) *The decisions provisioned in paragraphs (1) and (2) shall be enforced if these are of an enforceable nature and none of the reasons provisioned by [Article 136](#) (2) (a) – (c), (k) and [Article 262](#) (1) (b) – (h) and (4) shall apply.*
- (11) *The enforceable decision provisioned in paragraph (5) shall be communicated to the specialised directorate of the Ministry of Justice.*

#CIN

) According to [Article II](#) item 30 and [Article IV](#) of Law no. 300/2013 (#M1**), beginning with the 1st of February 2014 (date when [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure enter into force), [Article 140](#), (5) shall read as follows:*

#M1

"(5) The court bench shall be formed by a single judge, judging in Council Chambers, upon subpoenaing the parties. The prosecutor's attendance is mandatory. The decision of the court is expressed in a judgement. The judgement may be subject to appeal in 10 days from pronunciation, filed by the prosecutor or the person concerned. The file shall be forwarded to the appeal court in 3 days and the

appeal shall be judged in court session in 10 days in Council Chambers, upon subpoenaing the parties."

#M1

ARTICLE 140[^]1

Recognition of the foreign court decisions in view of producing other effects than that of serving a custodial sentence, as well as of other judicial documents issued by the foreign authorities

- (1) The recognition, as main remedy, of the foreign court decisions in view of producing other effects than that of serving a custodial sentence shall be made upon the request of the party concerned or upon the prosecutor's request, according to the treaty signed by Romania and the issuing State, by the local court with jurisdiction in the area the party concerned is domiciled.*
- (2) The recognition of the foreign court decisions in view of producing other legal effects than that of serving a custodial sentence, may also be made incidentally, within an ongoing trial, by the prosecutor, in criminal investigation stage, or by the court examining on its docket the case for resolution.*
- (3) In the situations provisioned by paragraphs (1) and (2), the absence of a treaty does not impair the recognition of the foreign court decisions, if such situation is deemed necessary for the resolution of a criminal case or may contribute to the improvement of the situation in which the defendant or of the sentenced person is in, or to his/her reintegration. [Article 131](#) (1), [Article 132](#), [135](#) and [Article 136](#) (2) shall apply accordingly.*
- (4) The judicial documents issued by competent foreign judicial authority shall be recognised by the prosecutor conducting or supervising the prosecution or by the court of law, if it is deemed necessary for the resolution of a criminal case or may contribute to the improvement of the situation in which the defendant or of the sentenced person is in, or to his/her reintegration. The foreign judicial documents cannot be conferred an evidencing force exceeding the one conferred in the issuing State.*

#M1

CHAPTER IV

Recognition and enforcement of the court decision and of other procedural documents issued by the Romanian judicial authorities

#M1

SECTION 1

Transferring sentenced persons who are serving in detention certain custodial sentences or measures from Romania to other States

#M1

ARTICLE 140²

Requirements for transferring in the State of execution of persons held in the custody of Romanian prisons of medical units

- (1) Any person sentenced in Romania, who is a citizen of a third State or lives on the territory of a State other than the one of citizenship and who wants to be transferred on the territory of the State of citizenship may request the initiation of the transfer procedure to the State of execution, directly or through the judge delegated for the enforcement of custodial sentences appointed for the prison where the person concerned is located or the management of the medical unit where the person concerned is checked into.*
- (2) If the sentenced person has multiple citizenship, out of which one is that of the Romanian State, the foreign citizenship shall be considered as dominant only if the foreign State is the one where the Romanian citizen lives in. If one of the citizenships is that of another Member State of the European Union, the procedure provisioned in [Title V](#) shall apply with priority, except for the case when the respective Member State declared that it does not agree to take under its jurisdiction the service of the sentence imposed to the person concerned or when the provisions of [Article 149](#) (2) apply. The documents and information provisioned in [Article 132](#) shall be transmitted to a single State of execution once.*
- (3) The procedure shall not be initiated when it was ordered the postponement or the interruption of the custodial sentence or of life imprisonment or the removal or amendment of the sentence. Moreover, the procedure shall not be initiated when the sentenced person evaded the sentence, leaving the country and the extradition or the European Arrest Warrant procedure commenced previously for the enforcement of the court decision.*
- (4) Requesting the initiation of the procedure provisioned in paragraph (1) does not entail the obligation to transmit to the State of execution the documents and information provisioned in [Article 132](#), when:*
 - a) It is considered, either by the State of execution or by the competent Romanian authorities, that serving the sentence in the State of execution would not aim to facilitate the social rehabilitation or the reintegration in society of the sentenced person; or*
 - b) Until the initiation of the procedure, the sentenced person did not pay the penal fine, the judicial fine, the judicial expenses advanced by the State, the expenses to which the parties are entitled and the civil claims; or*
 - c) The sentenced person has to serve less than 6 months imprisonment or may be released on parole before serving the entire sentence in the following 6 months; or*

- d) *The decision is not enforceable or the person concerned acted against the decision by extraordinary legal remedy; or*
 - e) *The sentenced person is investigated in another criminal case; or*
 - f) *The person concerned was sentenced for grievous offences which had a profound destructive echo for the public opinion in Romania; or*
 - g) *There is sufficient evidence that once transferred, the sentenced person may be released in a much shorter period of time in comparison with the duration of the sentence remaining to be served according to the Romanian law or that the special maximum limit provisioned by the law of the issuing State is less than the special maximum limit provisioned by the Romanian penal law; or*
 - h) *Following consultations, the State of execution declared it does not agree to take under its jurisdiction the service of the sentence imposed by the Romanian court.*
- (5) *By exception from the provisions of paragraph (4) (a) – (c), (f) and (g), requesting the initiation of the procedure mentioned in paragraph (1) entails the obligation to transmit to the State of execution, the documents and information provisioned in [Article 132](#) when the sentenced person was previously surrendered, as effect of an extradition request made by the Ministry of Justice or of a European Arrest Warrant issued by the competent Romanian court, provided that, if convicted, the person concerned shall be returned to the State of execution.*
- (6) *When the person concerned is checked into a Romanian medical unit, serving a custodial measure imposed as a result of committing an offence, the provisions of paragraphs (1) - (5) shall apply accordingly.*

#M1

ARTICLE 140³

Prior procedure

- (1) *Subject to the prior procedure is the verification of the requirements provisioned in [Article 140²](#) (4) (b) – (f) and of the situations provisioned in paragraph (2), made by the judge delegated for the execution of the custodial sentences, appointed for the prison in which the sentenced person is located.*
- (2) *The delegated for the execution of the custodial sentences, appointed for the prison in which the sentenced person is located, shall verify:*
 - a) *Whether the persons previously surrendered pursuant to an extradition request made by the Ministry of Justice or a European Arrest Warrant issued by the Romanian competent court, were surrendered under the condition of*

return in case of conviction, mentioning this aspect in the memorandum provisioned in paragraph (4);

- b) *Whether the sentenced person agrees to be transferred in the State of execution. To this aim, the judge delegated for the execution of the custodial sentences, appointed for the prison in which the sentenced person is located, shall hear the respective person at the detention place in the presence of a lawyer appointed ex officio or a hired one and, if the sentenced person requested specifically, of the diplomatic or consular representative of the State of execution, drawing up to this aim a record-statement signed by the judge, the sentenced person and the lawyer. Moreover, person concerned shall be informed that according to the Romanian law, the consent of the sentenced person is irrevocable.*
 - c) *Whether the sentenced person was imposed the measure of expulsion.*
- (3) *When, depending on the circumstances of the case it is deemed necessary, the judge delegated for the execution of the custodial sentences, appointed for the prison in which the sentenced person is located, shall request:*
- a) *The division for social reintegration within the prison to draw up an assessment report for the sentenced person, setting to this aim a time limit which cannot exceed 10 days;*
 - b) *The specialised directorate of the Ministry of Justice to consult the competent authority in the State of execution on the possible release of the sentenced person on parole or before the termination date of the sentence and also on the procedure which the State of execution shall apply in case of transferring the sentenced person.*
- (4) *The memorandum drawn up by the judge delegated for the execution of the custodial sentences, appointed for the prison in which the sentenced person is located, the record-statement provisioned in paragraph (2) (b) and the documents and information provisioned in [Article 132](#) (a), (c), (d) – (f), (h) and (i) shall be transmitted to the specialised directorate of the Ministry of Justice.*
- (5) *If [Article 140²](#) (4) (b) – (f) is applied, the specialised directorate of the Ministry of Justice and the sentenced person shall be informed to this aim.*
- (6) *After the receipt of the documents and information provisioned in paragraph (4), the Ministry of Justice take the necessary steps for the translation and, if appropriate, shall notify the State of execution.*

#M1

ARTICLE 140⁴
Judicial procedure

- (1) *If the State of execution agrees for the sentenced person to be transferred, the specialised directorate of the Ministry of Justice shall transmit the documents and information provisioned by [Article 140³](#) (4), as well as those communicated by the Stated of execution to the prosecutor's office attached to the court having jurisdiction in area of the detention place, in order to notify the competent court. The notification of the court shall be made in up to 15 days from the registration of the case at the prosecutor's office.*
- (2) *The length of the judicial procedure is 30 days from the date when the case was registered on the court's docket. The court bench shall be formed by a single judge, judging in Council Chambers, the sentenced person being subpoenaed to appear before the court. The prosecutor's attendance is mandatory.*
- (3) *The court shall verify the acts in the case file and on the basis of those noted, shall order by enforceable judgement:
 - (i) *The transfer of the sentenced person to the State of execution; or*
 - (ii) *The dismissal of the transfer request. The court shall establish, if appropriately, a time limit for the re-examination of the situation by the judge delegated for the execution of the custodial sentences, appointed for the prison in which the sentenced person is located, which cannot be less than one year.**
- (4) *The decision shall be communicated to the specialised directorate of the Ministry of Justice, as well as to the Romanian authorities competent to ensure the surrender of the sentenced person.*

#M1

SECTION 2

Recognition and enforcement, on the territory of other States, of the courts decisions and other procedural documents, issued by the Romanian judicial authorities

#M1

ARTICLE 140⁵

Passing on the service of life imprisonment or the custodial sentence or the custodial measure

- (1) *The enforcement of a court decision issued by a Romanian court may be passed on to a third State only if the sentenced person is located on the territory of the State of execution and one or several of the following requirements are applied:
 - a) *The sentenced person has its habitual residence in that third State;*
 - b) *The sentenced person is citizen of that third State;**

- c) *The State of execution is the State of origin for the sentenced person, and declared its consent to take over the execution of the sentence;*
 - d) *If the service of the sentence in that third State may ameliorate the possibilities of social reintegration of the sentenced person;*
 - e) *If it concerns a custodial sentence which may be served in that third State, continuing the service of another custodial sentence, which the person concerned is currently serving or follows to serve in that State, apart from the case in which the sentenced person shall be brought from the State of execution to Romania, pursuant to an extradition request or a European Arrest Warrant or shall be transferred for the service of the sentence imposed by the foreign authorities to a Romanian prison;*
 - f) *If it is considered that the enforcing court does not have the possibility to ensure the sentence service, even if referring to the issuance of a European Arrest Warrant or upon an extradition request, and the third State has this possibility.*
- (2) *To this aim, the enforcing court, ex officio or upon the request of the appropriate prosecutor or of the sentenced person, shall file a motivated proposal to the specialised directorate of the Ministry of Justice in order to request the foreign State to recognise and to enforce the court decision and shall transmit the documents and information provisioned by [Article 132](#).*
- (3) *The request for the recognition and enforcement of the court decision shall be drawn up and transmitted to the State of execution, if further to the international regulatory control, it is observed that Romania and the State of execution have signed an applicable treaty containing provisions to this aim. The absence of a treaty does not impair the transmission of the request for the recognition and enforcement of the court decision, when the State of execution declared its consent to take over the service of the custodial sentence or measure involving deprivation of liberty.*
- (4) *The documents provisioned by the applicable international treaty shall be enclosed upon request or, in the absence of a treaty, the documents and information provisioned by [Article 132](#). The translation of the documents shall be made by a certified translator, upon the request of the specialised directorate of the Ministry of Justice.*

#M1

ARTICLE 140⁶

The enforcement of other penal provisions contained by the court decision, as well as of other procedures documents issued by the Romanian judicial authorities

The enforcement of other penal provisions contained by the court decision, as well as of other procedures documents issued by the Romanian judicial authorities, on the territory of another State, shall take place according to the requirements of the treaty signed by Romania and the foreign State or, in the absence of a treaty, on the basis of reciprocity, when following the consultations with the State of execution, it is noted that this requirement is met.

#M1

TITLE VI

Provisions on cooperation with the Member States of the European Union in enforcing Council [Framework Decision 2008/909/JHA](#) of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

#M1

CHAPTER I

General provisions

#M1

ARTICLE 141

Scope

- (1) This title shall apply in the relationship with Member States of the European Union having transposed Council [Framework Decision 2008/909/JHA](#) of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. In the relationship with the Member States which have not transposed the framework decision, the provisions of [Title V](#) shall apply.*
- (2) This title shall also apply in the relationship with the States with which Romania has concluded a treaty containing provisions similar to the framework decision.*

#M1

ARTICLE 142

Competence of Romanian judicial authorities

- (1) Whenever Romania is the executing State, and the sentenced person is detained in another Member State of the European Union, recognition and enforcement, in Romanian territory, of foreign judgments, in view of transferring the sentenced person, shall fall under the competence of the court of appeal having jurisdiction over their domicile. If the sentenced person's domicile is not in Romanian territory, competence shall lie with the Court of Appeals of Bucharest.*

- (2) *Whenever Romania is the executing State, and the sentenced person is located in Romanian territory, recognition and enforcement of judgments delivered by the issuing State shall fall under the competence of the court of appeals having territorial jurisdiction over the domicile of the sentenced person. If the sentenced person's domicile is not in Romanian territory, competence shall lie with the Court of Appeals of Bucharest. When the sentenced person is in Romania, serving a sentence, competence for the recognition and enforcement shall lie with the court of appeals having territorial jurisdiction over the court ruling over the detention facility.*
- (3) *Whenever Romania is the executing State, the Prosecutor's Office attached to the Court of Appeals of Bucharest shall be competent to receive the request of the issuing State, submitted in accordance with [Article 161](#). In the case of [Article 161](#) (9), the prosecutor's office competent to receive the decision and certificate shall be the office attached to the court of appeals referred to in paragraph (4).*
- (4) *In the case contemplated under [Article 161](#) (9), the court of appeals of the judge having taken the preventive measure or to which the prosecutor's office is attached which includes the prosecutor having adopted the preventive measure shall have competence to recognise and enforce the decision issued by the issuing State.*
- (5) *Whenever Romania is the issuing State, and the sentenced person is in the territory of another Member State of the European Union, competence to request the latter State to adopt a preventive measure and to recognise and enforce the Romanian decision shall lie with the executing court.*

#M1

ARTICLE 143

Competence of Romanian administrative authorities

- (1) *The Ministry of Justice, through its relevant department, shall fulfil, as the case may be, the tasks referred to in [Articles 152](#) and [164](#), as well as any other tasks provided in this title.*
- (2) *The Centre for International Police Co-operation within the Romanian General Police Inspectorate:*
 - a) *shall ensure the transfer, under escort, from Romania to the executing State, of the sentenced person, in accordance with [Article 146](#) (3);*
 - b) *shall inform the relevant department with the Ministry of Justice, the competent court of appeals and the executing court in relation to the transfer of the sentenced person from Romania to the executing State;*

- c) upon the request of the court of law called to settle the extraordinary legal remedy, shall ensure that the transferred person is brought, under escort, from the executing State to Romania, save where the obligation to bring them is incumbent upon the executing State.

(3) *The National Prison Administration:*

- a) shall inform the sentenced persons in the prisons in Romania, falling under the provisions of this title, of their right to request that they serve their sentence in the executing State;
- b) shall ensure the take-over, on the date when the sentenced person, transferred in accordance with [Article 146](#) (1), is brought into Romania;
- c) after the sentenced person transferred in accordance with [Article 146](#) (1), is admitted into the prison, shall inform competent the court of appeals and the specialised directorate of the Ministry of Justice:
 - (i) in relation to the detention facility, service regime and adopted measures, if appropriate;
 - (ii) when the sentenced person escaped and they could not be apprehended;
- d) upon the termination of the imprisonment length, upon the date set forth by the court of law in the case of conditional release, and also on any other date decided by the competent judiciary authorities in the situations expressly stipulated by law, shall communicate at once to the Ministry of Justice and the General Border Police Inspectorate of the release of the sentenced persons, transferred in accordance with [Article 146](#) (1). The General Border Police Inspectorate shall inform the specialised directorate of the Ministry of Justice, whether the released person left the territory of Romanian within the period provisioned by in [Article 157](#) c);
- e) in case of conditional release or pardon in relation to the time left to be served of the sentence, shall communicate to the specialised directorate of the Ministry of Justice the number of outstanding days.

#M1

ARTICLE 144

Law governing execution

- (1) Whenever Romania is the executing State, the execution of a custodial sentence or measure involving deprivation of liberty involving deprivation of liberty imposed by a decision, recognised by the Romanian court, shall be governed by the Romanian law. The length of the custodial period served in the issuing State shall

be calculated from the overall length of the custodial sentence or measure involving deprivation of liberty which has to be served in Romania. Amnesty or pardon may be granted both by Romania, and by the issuing State.

- (2) Whenever Romania is the issuing State, the execution of a custodial sentence or measure involving deprivation of liberty, imposed by a decision recognized by the competent authority of the executing State, shall be governed by the law of the executing State. Amnesty or pardon may be granted both by Romania, and by the executing State.
- (3) [Article 133](#) (2) - (5) shall apply accordingly.

#M1

ARTICLE 145

Transit

- (1) Transit in the Romanian territory of a person transferred from one Member State to another Member State of the European Union shall be approved by the specialised directorate of the Ministry of Justice, in reliance upon the request of the requesting State.
- (2) The request shall be submitted in writing and shall be accompanied by the copy of the certificate referred to in [Annex no. 5](#). Where the certificate is not accompanied by a translation into Romanian, the requesting State may request permission to deliver the translation into Romanian afterwards. The Romanian authority competent to receive the transit request shall be the Centre for International Police Co-operation within the Romanian General Police Inspectorate.
- (3) It is not necessary to approve the transit, if the person is moved by plane and no stop is contemplated in Romanian territory. In the case of an unforeseen stop, transit shall be approved in reliance upon a verbal request and the certificate. The request shall be confirmed in writing, within no more than 24 hours, by the competent authority of the requesting State. By derogation from paragraph (1), transit through the Romanian territory shall be approved by the General Border Police Inspectorate.
- (4) A sentence imposed in Romania against the person referred to in paragraph (1) shall not be an impediment to the transit across Romania. The executing court, upon the notification of the specialised directorate of the Ministry of Justice, the Centre for International Police Co-operation within the Romanian General Police Inspectorate or the authority having jurisdiction to impose the detention order or the decision, shall check whether it is possible to surrender the person who shall transit the Romanian territory or to enforce the custodial sentence or measure involving deprivation of liberty in the territory of the Member State to which the person is transferred.

- (5) *If a provisional arrest warrant was issued or a measure involving deprivation of liberty was ordained against the person to transit the Romanian territory, the prosecutor conducting or supervising the criminal prosecution or the court reviewing the case shall check, ex officio, upon notification by the specialised directorate of the Ministry of Justice, the Centre for International Police Co-operation within the Romanian General Police Inspectorate or the authority in charge of executing the detention order or decision, whether it is possible to request the surrender of the person to transit the Romanian territory or whether it is possible to request the Member State to which the person is transferred to take over criminal prosecution or court proceedings.*
- (6) *In enforcing paragraph (1), the Ministry of Justice, through its relevant department, shall decide, in reliance upon the report submitted by the Centre for International Police Co-operation within the Romanian General Police Inspectorate, in relation to the request for transit, within no more than 3 days after the receipt thereof. The decision shall be postponed until the translation requested in accordance with the provisions of paragraph (2) is received.*
- (7) *Any costs incurred in relation to the transit across the Romanian territory shall be borne by the requesting State, save for the case when the latter would bear costs incurred in relation to a similar request submitted by the Romanian authorities. In this respect, the Ministry of Justice may request a confirmation of reciprocity.*
- (8) *The request to transit the territory of another Member State in relation to a person who shall be transferred from Romania to the issuing State shall be submitted by the specialised directorate of the Ministry of Justice, upon notification by the Centre for International Police Co-operation within the Romanian General Police Inspectorate or of the issuing State.*

#M1

ARTICLE 146

Transfer of the sentenced person under escort

- (1) *Transfer of a sentenced person from the issuing State to Romania shall take place on the date mutually agreed upon between the competent Romanian authorities and the authorities of the issuing State, within no more than 30 days after the decision referred to in [Article 154](#) became final.*
- (2) *If unforeseen circumstances prevent the transfer of the sentenced person within the mutually agreed upon time, the authorities provisioned by paragraph (1) shall contact each other at once and agree on a new date. In this case, transfer shall take place within 10 days after the new date established as indicated above.*
- (3) *Transfer from Romania to the executing State of the sentenced person, who is serving a sentence in a prison in Romania, shall take place on the date mutually agreed upon between the Centre for International Police Co-operation within the*

Romanian General Police Inspectorate and the competent authority of the executing State, within no more than 30 days after the decision ruled by the competent authority of the executing State became final. The provisions of paragraph (2) shall apply accordingly.

#M1

ARTICLE 147

Consequences of transferring the sentenced person

If Romania is the issuing State, the execution, as the case may be, of the sentence or measure involving deprivation of liberty or the outstanding period still to be served shall fall under the competence of the Romanian court, whenever:

- a) the certificate and the decision are withdrawn before the executing State enforces the sentence or the measure involving deprivation of liberty;*
- b) the executing State refuses to recognise and to enforce the custodial sentence or the measure involving deprivation of liberty imposed by the Romanian court;*
- c) the executing State expressly waives its executing right;*
- d) the executing State indicates that it may no longer execute the custodial sentence or the measure involving deprivation of liberty, because the sentenced person escaped and could not be found in its territory;*
- e) the executing State indicates that it may no longer execute the custodial sentence or measure, because the sentenced person could not be found in its territory.*

#M1

ARTICLE 148

Costs

- (1) Costs relating to the transfer of the sentenced person, under escort, from the issuing State to Romania, shall be borne by the issuing State. The issuing State shall bear any costs incurred exclusively in its territory prior to the transfer of the sentenced person.*
- (2) Costs relating to the transfer, under escort, of the sentenced person from Romania to the executing State shall be borne by Romania. Romania shall bear any other costs incurred exclusively in its territory, prior to the transfer of the sentenced person.*

#M1

ARTICLE 149

Enforcement in time

- (1) *Romania, as the issuing and the executing State, shall enforce the provisions of this title in relation to the recognition and execution of final judgments rendered both before, and after the effective date hereof.*
- (2) *When another Member State of the European Union states that, in its capacity as executing State, it shall not apply [Framework Decision 2008/909/JHA](#) to final judgments rendered before 5 December 2011, recognition and execution of Romanian judgments in the territory of that State shall be requested in accordance with the procedure described in [Title V](#).*
- (3) *[Title V](#) shall also apply when the issuing State is another Member State of the European Union, which represents that it shall not apply the framework decision referred to in paragraph (2) to final judgments ruled prior to 5 December 2011.*

#M1

CHAPTER II

Execution in Romanian territory of custodial sentences or measures involving deprivation of liberty ruled by the courts of other Member States of the European Union

#M1

SECTION 1

Joint Provisions

#M1

ARTICLE 150

General conditions

Judgments ruled by the courts of other Member States of the European Union shall be recognised and executed in Romanian territory in reliance upon the principle of mutual trust and in accordance with the provisions hereof, if they are likely to produce legal effects in accordance with the Romanian penal law and they do not infringe the public order of the Romanian State.

#M1

ARTICLE 151

Reasons for non-recognition and non-execution

- (1) *A decision ruled in another Member State of the European Union shall not be recognised and executed in Romania, even if the conditions referred to in [Article 155](#) are met, when:*
 - a) *the person was sentenced by final decision in Romania for the same criminal offences. If the foreign court ruling was also issued for other criminal acts, the*

court may order partial recognition thereof, provided that the other conditions are fulfilled;

- b) the person was sentenced in another State for the same criminal acts, and the foreign court ruling issued in that State was previously recognised and executed in Romanian territory;*
 - c) the sentenced person benefits from criminal jurisdiction immunity in Romania;*
 - d) the sentence was imposed against a person who is not criminally liable in accordance with the Romanian penal law;*
 - e) the sentence consists of a measure consisting of psychiatric or medical assistance which cannot be enforced in Romania or, as the case may be, provides a medical or therapeutic treatment which may not be supervised in Romania, in accordance with the national legal or health care system;*
 - f) when, in accordance with the Romanian penal law, the statutory limitation occurred in relation to the service of the sentence;*
 - g) when the sentenced person did not personally attend court proceedings, save where the issuing State informs that, in accordance with its law:
 - (i) the person was informed, in a timely manner, through written subpoena handed in person or by notification served by telephone, fax, e-mail or by any other such means, in relation to the day, month, year and venue where they should appear and the legal consequences for non-attendance; or*
 - (ii) the person, being aware of the day, month, year and venue where they should appear, instructed their chosen attorney or the attorney appointed ex officio to represent them, and judicial representation before the court of law has actually been performed by the attorney; or*
 - (iii) after the sentencing decision has been personally handed over and they were informed that the decision may be subject to legal action, occasion on which the competent court may examine the challenged decision including based on new evidence, and that, following the settlement of the legal action, which they may attend in person, the sentencing decision may be quashed, the sentenced person either expressly waived the legal action, or initiated, within the time limit set forth by law, that legal action.**
- (2) The decision ruled in another Member State of the European Union shall not be recognised or, if it has been recognised, shall not be executed, when, in*

accordance with the Romanian law, amnesty, pardon, decriminalization of the offence, or any other cases set forth by law occurred.

- (3) On a case-by-case basis, taking into account the specific circumstances of the case and after consultations with the competent authorities of the issuing State, the court may refuse to recognise and execute the decision delivered by the issuing State, if
- a) the person is investigated in Romania for the same criminal act for which they were sentenced abroad. If the decision was also ruled for other criminal acts, the court may ordain partial recognition thereof, provided that the other conditions are met;
 - b) when the issuing State dismissed the requests submitted in accordance with [Article 158](#) (1).

#M1

ARTICLE 152

Powers of the Ministry of Justice

The Ministry of Justice, through its relevant department, shall be competent:

- a) *to receive the decision and certificate referred to in [Annex no. 5](#), delivered by the issuing State, translated into Romanian, save where the provisions of [Article 161](#) (9) apply;*
- b) *in the case of sentenced persons, who are, in other Member States of the European Union, serving a sentence, to receive their requests for the initiation of the procedure for the issuing State delivering the court decision and the certificate;*
- c) *to request the issuing State, ex officio or upon the request of the sentenced person, to deliver the court decision and the certificate;*
- d) *to consult, ex officio or upon the request of the competent court, with the competent authority in the issuing State;*
- e) *to perform regularity control and to request, as the case may be:*
 - (i) *the supplementation or rectification of the certificate;*
 - (ii) *the statement of the sentenced person;*
 - (iii) *the notification delivered thereto, in accordance with [Annex no. 6](#);*

- (iv) when the imposed sentence is a measure involving deprivation of liberty, a copy of any report or of any medical forensics finding or any other medical documents attesting to the physical and mental health of the person, the treatment underwent in the territory of the issuing State and any potential recommendations for the treatment to be continued in Romania;*
- f) to suspend the delivery to the competent Romanian court of the decision and of the certificate, when the certificate is incomplete or does not comply with the decision or one of the documents referred to in sub-paragraph e) (iii) and (iv) is missing;*
- g) to return the decision and the certificate, if the issuing State failed to deliver the documents referred to in sub-paragraph f), by the expiry of a 60-day period;*
- h) to check the domicile of the sentenced person, in view of determining the authority referred to in [Article 142](#);*
- i) to refuse to initiate the procedure for the recognition of the foreign decision, when, on the date of its receipt, there is less than 6 months still to be served from the penalty imposed against the sentenced person, save for the case where the sentenced person is in Romanian territory;*
- j) to inform the competent authority of the issuing State of the diligences performed in accordance with [Article 153](#) (1);*
- k) to communicate, upon the express request of the issuing State, information on the release of the sentenced person on parole.*

#M1

SECTION 2

Transfer of sentenced persons, detained in other Member States of the European Union, in view of executing custodial sentences or measures involving deprivation of liberty in a prison or healthcare unit in Romania

#M1

ARTICLE 153

Preparatory measures to notifying the court

- (1) If it is found that the issuing State delivered the decision and the certificate referred to in [Annex no. 5](#), as well as, if appropriate, the information stipulated in [Article 152](#) e) (ii) - (iv), the Ministry of Justice, through its relevant department, shall forward the same to the prosecutor's office attached to the court of appeals having jurisdiction over the domicile of the sentenced person, in view of notifying the court*

of appeals. The court shall be notified within no more than 20 days after the date when the case is registered with the prosecutor's office.

- (2) Upon receiving the file, the prosecutor shall check whether:
- a) the execution of the decision delivered by the issuing State in Romania would violate the non bis in idem principle;
 - b) the sentenced person is subject to criminal investigation in Romania for the same offences for which the decision delivered by the issuing State was rendered;
 - c) the sentenced person is subject to criminal investigation in Romania for offences other than the ones for which the decision delivered by the issuing State was rendered. If the case may be, the prosecutor shall inform the prosecutor conducting or supervising the criminal prosecution or the court reviewing the case for settlement in relation to the effects of the specialty rule and, when the provisions of [Article 155](#) (1) a), b), d) and e) do not apply, shall request the delivery of information stipulated in [Article 86](#) (1);
 - d) any of the reasons for non-recognition and non-execution stipulated in [Article 151](#) applies.
- (3) the information necessary for the checks referred to in paragraph (2) b) and c) are communicated to the prosecutor, within no more than 5 days after the receipt of the request.
- (4) If the provisions of paragraph (2) c) apply, the prosecutor conducting or supervising the criminal prosecution or the court reviewing the case for settlement shall be informed on the right of the sentenced person to be subject to the specialty rule, in accordance with [Article 157](#).
- (5) If, prior to the initiation of court proceedings, the issuing State withdraws the certificate, the prosecutor shall order the case to be closed and the file to be returned to the specialised directorate of the Ministry of Justice.

#M1

ARTICLE 154*)

The length and object of the judiciary procedure for the recognition and execution of the decision

- (1) The president of the court or the delegated judge appointed by the former shall set the court hearing date, which shall not be longer than 10 days after the date when the case was registered on the dockets of the court. The length of the procedure shall be 30 days after the registration of the case on the dockets of the court, save for the case where the provisions of [Article 158](#) (1) apply. In this case, the length of

the procedure shall be 60 days after the registration of the case with on the dockets of the court.

- (2) The court shall pass trial with a panel consisting of only one judge, in Council Chamber, without the sentenced person being subpoenaed. Attendance by the prosecutor is mandatory.*
- (3) The object of the procedure shall consist in checking the conditions set forth in [Article 155](#) and, if such conditions are met, the enforcement of the decision delivered by the issuing State. Civil provisions, provisions referring financial penalties, precautionary measures or legal expenses, as well as any provisions in the decision delivered by the issuing State, other than those referring to the execution of the custodial sentence or the measure involving deprivation of liberty, shall not constitute the object of this procedure.*
- (4) If the person was sentenced for several offences, the conditions shall be examined for each and every offence. When the conditions are met only for several of the offences, the court may order the partial recognition of the decision. In this case, prior to the rendition of the decision referred to in paragraph (6), the court shall request the issuing State, directly or by means of the specialised directorate of the Ministry of Justice, to specify when and under what conditions it shall agree with partial recognition, and whether it withdraws its certificate.*
- (5) If, prior to final resolution of the case, the issuing State withdraws the certificate, the court shall dismiss the request as ungrounded.*
- (6) The court shall examine the foreign court decision, shall check the documents and proceedings of the file and, in reliance upon its findings, shall render one of the following decisions:*
 - a) shall order, by judgment, for the execution in Romania of the sentence imposed by the court of the issuing State;*
 - b) if the nature or length of the sentence imposed by the foreign court does not comply with the nature or length of the sentence provisioned by the Romanian penal law for similar offences, it shall adapt, through the judgment, the sentence imposed by the court of the issuing State, in accordance with paragraphs (8) and (9);*
 - c) shall order, through the judgment, to dismiss the request for execution in Romania of the court decision delivered by the issuing State.*
- (7) In view of rendering one of the solutions provisioned by paragraph (6), the court may consult, directly or by means of the specialised directorate of the Ministry of Justice, the competent authority of the issuing State, however the consultation procedure shall not extend the length set forth in paragraph (1).*

- (8) *In the case referred to in paragraph (6) b), the court of law shall adjust the sentence imposed by the decision delivered by the issuing State, whenever:*
- a) *the nature thereof does not comply, in terms of name or status, with the sentences governed by the Romanian penal law;*
 - b) *its length exceeds, as the case may be, the maximum special limit of the sentence provisioned by the Romanian penal law for the same offence or the maximum general limit for imprisonment as provisioned by the Romanian penal law or when the length of the resulting penalty imposed in the case of concurrence of offences exceeds the total length of the sentences applicable for concurrent offences or the maximum general limit of imprisonment admitted by the Romanian penal law. The court of law adjusting the sentence imposed by the court of the issuing State shall consist in reducing the sentence down to the maximum limit admitted by the Romanian penal law for similar offences.*
- (9) *The sentence ruled by the Romanian court in accordance with paragraph (6) shall comply, insomuch as practicably possible, in terms of nature or length, with that applied by the issuing State and shall not aggravate the situation of the sentenced person. The sentence imposed in the issuing State may not be converted into financial penalty.*
- (10) *The judgment referred to in paragraph (6) shall be drawn up within no more than 10 days after ruling and shall be communicated to the sentenced person directly or by means of the authority appointed by the issuing State.*
- (11) *An appeal on points of law may be submitted against the judgment referred to in paragraph (6), within 10 days, by the prosecutor and by the sentenced person. For the prosecutor, the period shall start running from ruling. For the sentenced person, it shall run from the service of a copy of the operative part. The file shall be forwarded to the appeal court within 3 days, and the appeal on points of law shall be tried within 10 days, in the Council Chamber, without the sentenced person being subpoenaed. Attendance by the prosecutor is mandatory.*
- (12) *Execution of the sentence shall take place in accordance with the [Code of Penal Procedure](#). The court shall serve the final decision and a copy of the detention order for life detention or imprisonment or of the judgment, as the case may be, to the competent authorities of the issuing State, to the Centre for International Police Co-operation within the Romanian General Police Inspectorate, as well as, in copy, to the specialised directorate of the Ministry of Justice. The final decision referred to in paragraph (6) c) shall be delivered to the competent authorities of the issuing State and to the specialised directorate of the Ministry of Justice.*

(13) *If, after the issuance of the detention order for life detention or imprisonment, the issuing State:*

- a) *withdraws the certificate, the court shall ordain the cancellation of the detention order for life detention or imprisonment. In this case, the judgment of the Romanian court shall only produce legal effects in relation to the condition of re-offence, save where the certificate was withdrawn for a reason relating to the operation of amnesty or as a result of the fact that it was subsequently determined that the person was not guilty of that offence or following the death of the sentenced person;*
- b) *delivers a new certificate for the execution of another sentence, the provisions of the [Code of Penal Procedure](#) referring to the opposition against execution, which are not contrary to the provisions of this title, shall apply accordingly. In this case, the executing court shall be the court of appeals having ruled the judgment referred to in paragraph (6).*

(14) *If, after the transfer of the sentenced person, the issuing State delivers a new certificate for the execution of another sentence, the provisions of [Article 159](#) shall apply accordingly.*

(15) *If the court refused to recognise the court decision delivered by the issuing State, the request of the sentenced person or of the issuing State may be re-examined, where new elements came to light.*

[#CIN](#)

**) In accordance with [Article II](#) (31) and [Article IV](#) of Law no. 300/2013 ([#M1](#)), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(11\) of Article 154](#) shall read as follows:*

[#M1](#)

"(11) An appeal may be submitted against the judgment referred to in paragraph (6), within 10 days, by the prosecutor and by the sentenced person. For the prosecutor, the period shall start running from ruling. For the sentenced person, it shall run from the service of a copy of the operative part. The file shall be forwarded to the appeal court within 3 days, and the appeal shall be tried within 10 days, in the Council Chamber, without the sentenced person being subpoenaed. Attendance by the prosecutor is mandatory."

[#M1](#)

[ARTICLE 155](#)

Special conditions for the recognition and execution of foreign court decisions

(1) *The Romanian court shall recognise and execute the court decision delivered by the issuing State, provided that the following conditions are met:*

- a) *the decision is final and enforceable;*
 - b) *the offence for which the sentence was imposed would have amounted, if committed in Romanian territory, an offence and its author would have been held accountable. If the sentence was imposed for more than one offence, the conditions shall be examined for each and every offence;*
 - c) *the sentenced person is a Romanian national;*
 - d) *the sentenced person agrees to serve the sentence in Romania. The agreement thereof is not necessary when the sentenced person is a Romanian national and they reside in Romanian territory or, although not residing in Romanian territory, they shall be expelled to Romania. If necessary, considering the age or the physical or mental health of the sentenced person, agreement may be expressed by their representative;*
 - e) *none of the reasons for non-recognition and non-execution referred to in [Article 151](#) applies.*
- (2) *The court decision delivered by the issuing State may also be recognised and executed when the sentenced person is not a Romanian national, but lives in Romania and has had continuous and legal residence in Romanian territory for a period of at least 5 years and shall not lose the right of permanent residence in Romania. Agreement by the sentenced person is mandatory.*

#M1

[ARTICLE 156](#)

Execution of foreign court decision as effect of a European Arrest Warrant

- (1) *When, in accordance with [Article 97](#) (2), surrender of a Romanian national from Romania, in reliance upon a European Arrest Warrant, occurred subject to their transfer, in case of conviction in view of serving the sentence in a prison or health care facility in Romania, the agreement referred to in [Article 155](#) (1) d) is no longer necessary.*
- (2) *Transfer to Romania, in view of executing the sentence, shall take place in reliance upon the certificate referred to in [Annex no. 5](#) and the court decision delivered by the issuing State.*
- (3) *Taking over the sentenced person under escort, receipt and custody thereof in prison shall occur in compliance with the judgment having previously ordered the surrender of the sentenced person and, if appropriate, of the judgment granting the approval for such person to also be investigated for offences other than the ones forming the object of the first judgment. Custody in prison in reliance upon such judgment may not exceed 90 days after the day when the sentenced person has*

been taken over. The 90-day period shall be deducted from the penalty imposed against the sentenced person.

- (4) After transfer of the sentenced person in Romania, the execution of the decision ruled by the court of the issuing State shall be performed by the competent Romanian court, in accordance with [Article 160](#).
- (5) The provisions hereof shall only apply if the certificate and the court decision are delivered by issuing State within no more than 3 months after the date when the court decision may be enforced. If the certificate and the court decision are delivered after the expiry of that time limit, the provisions of [Article 154](#) shall apply.

#M1

ARTICLE 157

Specialty rule

The person transferred to Romania from another Member State of the European Union may not be subject to criminal investigation or serve another custodial sentence, for an offence committed prior to their transfer, except for the one for which they were transferred, save where:

- a) *the sentenced person agreed to be transferred to Romania; or*
- b) *the sentenced person expressly waived the right to benefit from the application of the specialty rule in relation to offences committed prior to transfer to Romania. In the case of the sentenced person transferred to Romania, the prosecutor conducting or supervising the criminal prosecution or the court of law shall hear the sentenced person, in the presence of their chosen counsel or of an attorney appointed ex officio. The statement shall be recorded in writing and shall be signed by the sentenced person, by the attorney, by the criminal prosecution officer or by the president of the panel of judges and by the court clerk, as well as by an interpreter, when the statement was given through an interpreter. The statement waiving the specialty rule shall be irrevocable; or*
- c) *the sentenced person did not leave the Romanian territory within 45 days after they were permanently released, although they could or were allowed to leave the Romanian territory or, although they left Romania in this period of time, subsequently returned, of their own free will, or was legally brought back, from a third State; or*
- d) *the offence is not punishable under the Romanian law by a custodial sentence or measure involving deprivation of liberty or criminal investigations do not result in the enforcement of a measure restricting personal liberty; or*

- e) *the sentenced person could be compelled to serve a sentence or a measure not involving deprivation of liberty, in particular a financial penalty or an equivalent measure, even if the penalty or measure may entail a restriction upon personal liberty; or*
- f) *in any other cases than the ones contemplated in sub-paragraphs a) - e), when the issuing State agrees that the person is subject to criminal investigation or punished for an offence committed prior to its transfer.*

#M1

ARTICLE 158

Procedure for requesting the consent of the issuing State

- (1) *If the provisions of [Article 157](#) a), d) and e) do not apply, the request for granting consent shall be submitted by the court of appeals notified in accordance with [Article 154](#), ex officio or upon the reasoned proposal of the prosecutor. The request to grant consent shall contain the information referred to in [Article 86](#) (1), delivered by the prosecutor conducting or supervising the criminal prosecution or the court reviewing the case for settlement. The request to grant consent shall be translated by a certified translator and delivered, directly or by means of the specialised directorate of the Ministry of Justice, to the competent authority of the issuing State. In this case, the court of appeals shall postpone trial of the case and set a court hearing days of no less than 15 days, calculated from the date when the request of the competent authority of the issuing State was delivered.*
- (2) *In the case of a sentenced person transferred to Romania, when the provisions of [Article 157](#) a) - e) do not apply, the request to grant consent shall be submitted by the competent court, in accordance with [Article 88](#) (3). The request to grant consent shall contain the information referred to in [Article 86](#) (1), shall be translated by a certified translator and shall be delivered, directly or by means of the specialised directorate of the Ministry of Justice, to the competent authorities of the issuing State.*
- (3) *The warranties requested by the issuing State shall be provided by the requesting judicial authority, save for the ones referred to in [Article 90](#) (2).*

#M1

SECTION 3

Recognition and execution of court decisions ruled in other Member States of the European Union, if the sentenced person is in Romania

#M1

ARTICLE 159

Preliminary measures

- (1) *If it is ascertained that the issuing State delivered the court decision and the certificate provisioned by [Annex no. 5](#), as well as, if appropriate, the information referred to in [Article 152](#) e) (ii) - (iv), the Ministry of Justice, through its relevant department, shall forward the same to the prosecutor's office attached to the competent court of appeals.*
- (2) *The provisions of paragraph (1) shall not apply to the situation contemplated in [Article 161](#) (9).*
- (3) *When the prosecutor, following examinations conducted in accordance with [Article 153](#) (2), finds that the person was also sentenced in Romania and they are registered with a probation service, the prosecutor shall inform the competent probation service in relation to the request for execution, in custody, of the sentence of life detention or imprisonment or a measure involving deprivation of liberty submitted by the issuing State or by the sentenced person.*
- (4) *[Article 153](#) paragraph (4) shall apply accordingly.*

#M1

ARTICLE 160*

Procedure for the recognition and execution of the custodial sentence or measure involving deprivation of liberty

- (1) *The court shall be notified within no more than 15 days after the registration of the case with the prosecutor's office or at least 5 days prior to the expiry of the length for the arrest measure, ordered in accordance with [Article 161](#) (9). The president of the court or the judge delegated by the former shall set the court hearing date, which shall be no more than 3 days after the registration of the case on the dockets of the court. The length of the procedure shall be 30 days after the registration of the case on the dockets of the court.*
- (2) *The court shall judge in a panel consisting of only one judge in the Council Chamber, with the sentenced person being subpoenaed. Attendance by the prosecutor shall be mandatory.*
- (3) *The object of the procedure shall consist in examining the conditions stipulated in [Article 155](#) and, provided that they are met, the recognition and execution of the foreign court decision. Civil provisions, the provisions referring to fiscal penalties, precautionary measures or legal expenses, as well as any provisions, other than those referring to the execution of the sentence of life detention or imprisonment or a measure involving deprivation of liberty, from the foreign court decision, shall not fall under the scope of this procedure.*
- (4) *If the person was sentenced for more than one offence, examination of the conditions shall be made for each and every offence. When the conditions are only met for several of the offences, the court may ordain the partial recognition of the*

foreign court decision. In this case, prior to the rendition of the judgment provisioned by paragraph (7), the court shall request the issuing State, directly or by means of the specialised directorate of the Ministry of Justice, to specify the conditions for consenting to partial recognition and whether it withdraws the certificate.

- (5) Upon the express request of the issuing State or ex officio, the court of law may adopt, prior to the rendition of the judgment referred to in paragraph (7), one of the preventive measures stipulated in the [Code of Penal Procedure](#). The length of the preventive measures shall not exceed 60 days. The preventive measures shall automatically cease upon the expiry of the period provisioned by law or set forth by the judiciary authorities or when, prior to the rendition of a decision for the recognition of a foreign court decision, the length of arrest reached the length of the imprisonment sentence imposed abroad. [Article 161](#) (2), (5), (6) and (8) shall apply accordingly.
- (6) If, prior to the resolution of the case, the issuing State withdraws the certificate, the court shall dismiss the request as ungrounded.
- (7) [Article 154](#) (5) - (9), (13) and (15) shall apply accordingly. The sentence shall be drawn up within 10 days as of ruling. An appeal on points of law may be submitted against the judgment, within 10 days, by the prosecutor and the sentenced person. For the prosecutor, the period shall start running from ruling. For the sentenced person, the period shall start running from ruling or, if they did not attend either the proceedings, or the ruling, as of the delivery of a copy of the operative part. The file shall be forwarded to the appeal court within 3 days, and the appeal on points of law shall be tried within 10 days, in the Council Chamber, and the sentenced person shall be subpoenaed. Attendance by the prosecutor shall be mandatory.
- (8) The final decision shall be delivered to the competent authority of the issuing State and to the specialised directorate of the Ministry of Justice. The execution of the custodial sentence or of the measure involving deprivation of liberty shall take place in accordance with the provisions of the [Code of Penal Procedure](#).
- (9) [Article 135](#) (15) shall apply accordingly.

#CIN

*) In accordance with [Article II](#) (32) and [Article IV](#) of Law no. 300/2013 (**#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(7\) of Article 160](#) shall read as follows:

#M1

- "(7) [Article 154](#) (5) - (9), (13) and (15) shall apply accordingly. The judgment shall be drawn up within 10 days as of ruling. An appeal may be submitted against the judgment, within 10 days, by the prosecutor and the sentenced person. For the

prosecutor, the period shall start running from ruling. For the sentenced person, the period shall start running from ruling or, if they did not attend either the proceedings, or the ruling, as of the delivery of a copy of the operative part. The file shall be forwarded to the appeal court within 3 days, and the appeal shall be tried within 10 days, in the Council Chamber, and the sentenced person shall be subpoenaed. Attendance by the prosecutor shall be mandatory."

#M1

ARTICLE 161

Preventive measures adopted prior to the delivery of the court decision and certificate

- (1) *Upon the express request of the issuing State, one of the preventive measures stipulated by the Code of Penal Procedure may be adopted against the sentenced person, prior to the delivery of the court decision and of the certificate stipulated in Annex no. 5.*
- (2) *The request shall specify the offence for which the person has been sentenced, the date and place where the offence has been committed, the imposed sentence, as well as their features, as accurate as possible. The request shall also contain a description of the offences committed.*
- (3) *In view of identifying, searching, localising and apprehending the sentenced person, the prosecutor's office provisioned by Article 142 (3) may request the initiation of a search, in accordance with the Code of Penal Procedure.*
- (4) *When, in accordance with the Code of Penal Procedure, the adoption of a preventive measure falls under the competence of the prosecutor, the judiciary authority competent to order on the preventive measure shall be the prosecutor with the prosecutor's office attached to the court of appeals having territorial jurisdiction over the location where the sentenced person was apprehended. When, in accordance with the Code of Penal Procedure, the adoption of a preventive measure falls under the competence of the judge, the judiciary authority competent to order on the preventive measure shall be the judge with the court of appeals having territorial jurisdiction over the location where the sentenced person was apprehended.*
- (5) *The selection of the measure to be adopted shall be made taking into account the sentence imposed in the issuing State, the nature of the offence, the health condition, age, antecedents and other situations referring to the person against whom the measure has been adopted.*
- (6) *The arrest measure may be adopted against the sentenced person if the committed offence forms part of one of the categories of offences listed in Article 96 (1) and one of the following applies:*

- a) *the sentenced person fled from the issuing State, in order to evade criminal prosecution, trial or the service of the sentence and became refugee in Romanian territory; or*
 - b) *the sentence imposed by the foreign court or the outstanding period from the sentence is less than one year imprisonment.*
- (7) *The length of the preventive measure may not exceed 180 days. Preventive measures shall automatically cease:*
- a) *upon the expiry of the period stipulated by law or set forth by the judicial authorities; or*
 - b) *when, prior to the rendition of a decision recognizing a foreign court decision, the length of arrest reached the length of the imprisonment imposed abroad; or*
 - c) *when, within 30 days after the arrest date, the issuing State failed to deliver the court decision and the certificate provisioned by [Annex no. 5](#).*
- (8) *The legal condition of the sentenced person may not become aggravated as a result of the length of the preventive measure involving deprivation of liberty imposed by the court.*
- (9) *If the request of the issuing State has been admitted, the judicial authority having taken the preventive measure shall request at once the competent authority to deliver the court decision and the certificate and shall inform the Prosecutor's Office attached to the Court of Appeals of Bucharest and the specialised directorate of the Ministry of Justice in that regard. If the measure of arrest was taken, the court decision and the certificate, translated into Romanian, shall be delivered within 15 days after the arrest date.*
- (10) *If the request of the issuing State has been dismissed or the sentenced person was not found in Romanian territory, the Prosecutor's Office attached to the Court of Appeals of Bucharest shall inform the competent authority of the issuing State and the specialised directorate of the Ministry of Justice in that regard.*

#M1

ARTICLE 162

Obligations relating to the information of the issuing State

- (1) *The competent court of appeals shall inform the competent authority of the issuing State in respect of:*
- a) *the practical impossibility to execute the custodial sentence or the measure involving deprivation of liberty when:*

- (i) *the person against whom the detention order provisioned by [Article 160](#) was issued has not been found;*
 - (ii) *the sentenced person escaped from the prison where they were serving their sentence;*
 - b) *application of amnesty or pardon, in accordance with the Romanian law;*
 - c) *the date of conditional release and the date when the length of sentence expired.*
- (2) *In the case referred to in paragraph (1) a) (ii), b) and c), the issuing State shall be informed of the outstanding period of the sentence, still to be served.*

#M1

ARTICLE 163

Variation in the execution of custodial sentences and measures involving deprivation of liberty

- (1) *When the provisions of [Article 162](#) (1) a) apply and there is a reasonable assumption that the sentenced person left the Romanian territory, the court of appeals may waive the right to the execution of the custodial sentence or of the measure involving deprivation of liberty.*
- (2) *Cessation in the Romanian State executing the custodial sentence or the measure involving deprivation of liberty shall occur whenever the issuing State informs its decision in this respect.*

#M1

CHAPTER III

Recognition and execution in other Member States of the European Union of Romanian court decisions imposing custodial sentences

#M1

SECTION 1

Transfer of sentenced persons detained in a prison or health care facility in Romania, in view of having the sentence executed in other Member States of the European Union

#M1

ARTICLE 164

Powers of the Ministry of Justice

In the case of transfer from Romania to another Member State of the European Union of a sentenced person, in the progress of serving a custodial sentence or measure

involving deprivation of liberty, the Ministry of Justice, through its relevant department, shall be competent:

- a) to receive the request for the initiation of the procedure to transfer to the executing State the court decision and the certificate provisioned by [Annex no. 5](#);*
- b) to supplement the certificate provisioned by [Annex no. 5](#) and to deliver the same, together with the court decision, to the competent authorities of the executing State;*
- c) to appoint a certified translator to translate the certificate and, if appropriate, the Romanian court decision, as well as any other additional information;*
- d) to request the executing State, prior to or no later than the certificate delivery date, to inform the legal provisions relating to early or conditional release, as well as information on their applicability in relation to the sentence imposed against the person at issue;*
- e) to notify to the sentenced person the decision referring to the delivery of the court decision and certificate;*
- f) to deliver to the sentenced person the decision of the executing State in relation to the enforcement of the sentence;*
- g) to request, ex officio or upon the demand of the competent Romanian judicial authorities, the withdrawal of the certificate delivered to the executing State;*
- h) to inform the executing State in relation to the amnesty or pardon granted after the transfer of the sentenced person;*
- i) to communicate to the executing State the additional information that was requested.*

#M1

ARTICLE 165

Consultation with the executing State

- (1) The Ministry of Justice, through its relevant department, shall consult with the competent authorities of the executing State whenever necessary. Consultation may take place irrespective whether the initiation of the procedure to deliver the court decision and the certificate was requested by the sentenced person or by the executing State.*
- (2) Consultation is mandatory in the case provisioned by [Article 166](#) (1) b) and c).*

- (3) *If, following the consultations and the approval issued by the competent authority of the executing State, it is ascertained that the execution of the sentence in the executing State would not achieve the purpose of facilitating social rehabilitation and reintegration of the person into society, the Ministry of Justice, through its relevant department, shall communicate its decision to the sentenced person and, as the case may be, the executing court or the court having jurisdiction over the detention facility.*

#M1

ARTICLE 166

Conditions for delivery of the Romanian court decision in view of execution

- (1) *Any person sentenced in Romania may request directly or by means of the delegated judge for the execution of custodial sentences, appointed for the prison where the person is detained, the initiation of the procedure for delivery to the executing State of the Romanian court decision and of the certificate provisioned by [annex no. 5](#), if subject to one of the following instances:*
- a) *they are nationals of the executing State and live in its territory; or*
 - b) *they are nationals of the executing State, do not live in its territory, but will be expelled in that territory; or*
 - c) *they do not fall under any of the instances referred to in sub-paragraphs a) and b), but they want to be transferred to the executing State.*
- (2) *If the sentenced person has citizenship of two Member States of the European Union, and also when they live in the territory of a State other than the one whose national they are, they shall specify in the request to which of the two States they wish to be transferred. The court decision and the certificate shall be delivered to only one executing State, and only once.*
- (3) *The procedure shall not be initiated when postponement or termination in executing a sentence for imprisonment or life detention was ordered, or the removal or amendment of the sentence. At the same time, the procedure shall not be initiated when the sentenced person evaded the service of the sentence, by leaving the country, and in order to execute the court decision, the procedure of extradition or of the European Arrest Warrant were subsequently fulfilled.*
- (4) *The request to initiate the procedure described in paragraph (1) shall not entail the obligation to deliver to the executing State the court decision and the certificate, when:*
- a) *following the consultations referred to in [Article 165](#), it is assessed, either by the executing State, or by the competent Romanian authorities, that the execution of sentence in the executing State would not achieve the purpose*

of facilitating the social rehabilitation and reintegration of the sentenced person into society; or

- b) until the procedure initiation date, the sentenced person failed to pay the penal fine, judicial fine, legal expenses incurred by the State, costs payable to the parties and civil indemnification; or*
 - c) the sentenced person has to serve less than 6 months imprisonment or could be released on parole prior to the full execution of the sentence in the following 6 months; or*
 - d) the court decision is not final or the sentenced person submitted extraordinary legal remedy against it; or*
 - e) the sentenced person is investigated in another criminal case; or*
 - f) the person has been sentenced for severe offences which had a deeply unfavourable impact on the public opinion in Romania; or*
 - g) the maximum period of the sentence provisioned by the law of the issuing State is lower than the maximum limit laid down in the Romanian penal law.*
- (5) Notwithstanding the provisions of paragraphs (3) and (4) a) - c), f) and g), the request to initiate the procedure described in paragraph (1) shall entail the obligation to deliver the court decision and the certificate to the executing State, when the sentenced person has been surrendered previously, in reliance upon a European Arrest Warrant issued by a Romanian court or upon the request for extradition submitted by the Ministry of Justice, provided that, in case of conviction, the person shall be returned to the executing State.*

#M1

ARTICLE 167

Procedure before the delegated judge for the execution of custodial sentences

- (1) The delegated judge for the execution of custodial sentences, appointed for the prison where the sentenced person is held, shall check whether the conditions set forth in [Article 166](#) (3) and (4) are fulfilled, as well as:*
- a) in the case of persons previously surrendered in reliance upon requests for extradition submitted by the Ministry of Justice or European Arrest Warrants issued by the Romanian courts, whether the extradition or surrender took place subject to return in case of conviction, and specify so in the closure referred to in paragraph (4);*
 - b) whether the sentenced person agrees to be transferred to the executing State. In this respect, the delegated judge for the execution of custodial*

sentences, appointed for the prison where the sentenced person is held, shall hear that person, in the detention facility, in the presence of an attorney appointed ex officio or chosen and, if expressly requested by the sentenced person, of the diplomatic or consular representative of the executing State, and shall prepare in this respect a protocol signed by the judge, the sentenced person and the attorney. The consent of the sentenced person shall be irrevocable;

c) whether the safety measure of expulsion has been imposed against the sentenced person;

d) when the sentenced person did not attend trial, whether the person:

(i) has been notified, in a timely manner, by written subpoena handed in person or by notification by telephone, fax, e-mail or by any other such means, in relation to the time, day, month, year and venue where they should appear before the court and the consequences of non-attendance; or

(ii) being aware of the time, day, month, year and venue where they should appear, the sentenced person instructed their chosen attorney or the attorney appointed ex officio to represent them, and judicial representation and defence before the court of law have actually been performed by that attorney; or

(iii) after the sentencing decision has been personally handed over and they were informed that, in accordance with the law, that decision may be subject to legal action, it may be reviewed, including based on new evidence, and that if the legal action is admitted, it may be quashed, the sentenced person either expressly waived the initiation of legal action, or did not initiate, within the period provided by law, that legal action.

(2) When, depending on the circumstances of the case, the delegated judge for the execution of custodial sentences, appointed for the prison where the sentenced person is held, deems necessary, he shall request:

a) the department for social reintegration within the prison to prepare an assessment report in relation to sentenced person, and set a time limit which may not exceed 10 days;

b) the specialised directorate of the Ministry of Justice to consult with the competent authority in the executing State in respect of a potential early or probation release of the sentenced person or any other elements necessary to check fulfilment of the conditions stipulated by law.

- (3) *If it is found that the sentenced person does not meet the conditions to be transferred from Romania to the executing State, the delegated judge for the execution of custodial sentences, appointed for the prison where the sentenced person is held, shall set, if appropriate, a time limit to re-examine the situation of the sentenced person, which shall be of no less than one year, and inform in this respect the sentenced person and the Ministry of Justice.*
- (4) *The delegated judge for the execution of custodial sentences, appointed for the prison where the sentenced person is held, shall rule by reasoned closure. The closure shall be served to the sentenced person within two days after rendition. A statement of opposition may be submitted against the closure by the sentenced person to the local court having jurisdiction over the prison within 3 days after delivery of the closure. The file shall be forwarded to the competent court within 3 days, and the statement of opposition shall be tried within 10 days, in the Council Chamber, and the sentenced person shall be subpoenaed. Attendance by the prosecutor shall be mandatory. The decision issued by the local court shall be final.*
- (5) *The final closure issued by the delegated judge for the execution of custodial sentences, appointed for the prison where the sentenced person is held or the decision issued by the local court, the protocol referred to in paragraph (1) b), the sentencing court decision, as well as any other additional information necessary to fill in the certificate provisioned by [Annex no. 5](#) shall be delivered to the specialised directorate of the Ministry of Justice.*
- (6) *The procedure described in this article shall be a matter of emergency and conducted with priority.*

#M1

ARTICLE 168

Transfer, under escort, of the sentenced person from Romania to the executing State

- (1) *The Ministry of Justice shall deliver the final decision of the executing State to the Centre for International Police Co-operation within the Romanian General Police Inspectorate, the National Prison Administration, the sentenced person and the delegated judge for the execution of custodial sentences, appointed for the prison where the sentenced person is held.*
- (2) *The sentenced person shall be transferred from Romania to the executing State, within no more than 30 days after the date when the final decision of the executing State has been delivered to the Ministry of Justice.*
- (3) *If, for reasons independent from the will of either of the States, transfer cannot take place within the time limit set forth in paragraph (2), the Centre for International Police Co-operation within the Romanian General Police Inspectorate shall agree with the competent authority of the executing State upon a new date*

for the transfer of the sentenced person. In this case, the transfer shall take place within 10 days after the new date agreed upon.

- (4) If, after the transfer, the executing State wishes for the transferred person to be subject to criminal prosecution, conviction or punished by another custodial sentence, for an offence committed prior to their transfer, other than the one for which they have been transferred, the competence to settle such request shall lie with the Court of Appeals of Bucharest.*
- (5) In the case referred to in paragraph (4), the president of the court or the delegated judge appointed by the latter shall set the court hearing date, which shall not exceed 5 days after the registration of the case on the dockets of the court. The court shall judge by a panel consisting of only one judge, in the Council Chamber, without the sentenced person being summoned, in the presence of the prosecutor. The object of the procedure shall consist in checking the conditions stipulated in [Article 166](#) and whether any of the reasons referred to in [Article 151](#) applies. The court shall rule by judgment. The judgment shall not be subject to any means of challenge. After rendition, a copy of the minutes of the decision shall be delivered to the specialised directorate of the Ministry of Justice, in view of being forwarded to the issuing State and to the sentenced person. After the decision is drawn up, it shall be delivered in full to the sentenced person. The decision shall be drawn up within 30 business days after its handing down.*

#M1

SECTION 2

Execution of life detention or imprisonment sentence or of a measure involving deprivation of liberty, when the sentenced person is not in Romanian territory

#M1

ARTICLE 169

Conditions for the delivery of the Romanian court decision

- (1) Recognition and execution of a court decision rendered by a Romanian court may be requested of another Member State of the European Union:*
 - a) without the consent of the sentenced person and irrespective of the opinion of the executing State, if the sentenced person has the citizenship of the executing state and:*
 - (i) their domicile or permanent residence is in the executing State, including if the sentenced person returned or took refuge to that domicile or to that residence, following the criminal proceedings pending in Romania or because of the court decision ruled in Romania; or*

- c) *when the sentenced person did not attend the court proceedings, the executing court shall check the proceedings and documents of the file in order to ascertain whether:*
- (i) the sentenced person has been notified, in a timely manner, by written subpoena handed in person or by notification by telephone, fax, e-mail or by any other such means, in relation to the time, day, month, year and venue where they should appear before the court and the consequences of non-attendance; or*
 - (ii) the sentenced person, being aware of the time, day, month, year and venue where they should appear, they instructed their chosen attorney or the attorney appointed ex officio to represent them, and judicial representation and defence before the court of law have actually been performed by that attorney; or*
 - (iii) the sentenced person, after the sentencing decision has been personally handed over and they were informed that, in accordance with the law, that decision may be subject to legal action, it may be reviewed, including based on new evidence, and that if the legal action is admitted, it may be quashed, the sentenced person either expressly waived the initiation of legal action, or did not initiate, within the period provided by law, that legal action;*
- d) *ex officio, upon the request of the sentenced person or of the competent prosecutor's office, submits a reasoned proposal to the specialised directorate of the Ministry of Justice to deliver the penal court decision and the certificate provisioned by [Annex no. 5](#) to the executing State and communicate the court decision, as well as the documents referred to in subparagraphs a) - c);*
- e) *if deemed necessary, requests the Ministry of Justice to consult with the competent authority of the executing State, including in relation to a potential early or parole release by the executing State and in relation to the procedure to be enforced by the executing State.*
- (3) *In case of emergency, prior to delivering the court decision and the certificate, the executing court may request that preventive measures be adopted against the sentenced person, delivering in this respect the necessary documents and information. [Article 161](#) (2) shall apply accordingly. The request shall be delivered directly or by means of the specialised directorate of the Ministry of Justice.*
- (4) *The executing court shall inform ex officio the specialised directorate of the Ministry of Justice on any measure or decision following which the sentencing*

court decision ceases to be enforceable, including as a result of amnesty or pardon.

- (5) *If informed by the executing State on the possibility for partial recognition of the sentencing court decision, the executing court shall notify the specialised directorate of the Ministry of Justice whether it agrees with the partial execution or whether the certificate ought to be withdrawn.*

#M1

TITLE VI¹

Recognition and execution in relation to the Member States of the European Union of court decisions ordering penalties or criminal measures not involving deprivation of liberty

#M1

CHAPTER I

Provisions on cooperation with the Member States of the European Union in applying Council [Framework Decision 2009/829/JHA](#) of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

#M1

SECTION 1

General provisions

#M1

ARTICLE 170¹

The scope and meaning of certain terms and phrases

- (1) *This chapter shall apply in the relationship with the Member States of the European Union, in the field of recognition of documents whereby, during the criminal trial, in accordance with the domestic laws and procedures of the issuing State, one or more of the following supervision measures have been ordered:*
- (a) *an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;*
 - (b) *an obligation not to enter certain localities, places or defined areas in the issuing or executing State;*
 - (c) *an obligation to remain at a specified place, where applicable during specified times;*

- (d) *an obligation containing limitations on leaving the territory of the executing State;*
 - (e) *an obligation to report at specified times to a specific authority;*
 - (f) *an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed;*
 - (g) *an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;*
 - (h) *an obligation not to drive a vehicle;*
 - (i) *an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;*
 - (j) *an obligation to undergo therapeutic treatment or treatment for addiction;*
 - (k) *an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed.*
- (2) *For the purpose of this chapter, the terms and expressions below shall have the following meanings:*
- a) *supervision measure – any of the obligations referred to in paragraph (1) or notified by the executing State to the General Secretariat of the Council, in accordance with [Article 8](#) (2) of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, ordained during a criminal trial as alternative to measures involving deprivation of liberty;*
 - b) *supervised person – person subject to criminal proceedings and against whom a supervision measures will or has been adopted;*
 - c) *document imposing a supervision measure – enforceable document adopted in the course of criminal proceedings by a competent authority of the issuing State, in accordance with its domestic laws and procedures and imposing against a certain natural person, as alternative to provisional arrest, one or more supervision measures.*
- (3) *This chapter shall also apply in relation to the non-EU Member States, with which a bilateral or multilateral agreement was concluded in this field. In relation to the*

Member States of the European Union which have not transposed the relevant EU laws in this field, the provisions of [Title V](#) shall apply.

#M1

ARTICLE 170²

Competence of Romanian authorities

- (1) *When Romania is the executing State, competence to receive certificates and the documents ordering supervision measures issued by other Member States of the European Union shall lie, in the criminal prosecution stage, with the Prosecutor's Office attached to the High Court of Cassation and Justice, and, in the court proceedings stage, with the Ministry of Justice, through its relevant department.*
- (2) *The competence to recognize and execute the document ordering the supervision measure shall lie, as the case may be, with the prosecutor's office attached to the tribunal or with the tribunal having jurisdiction over the ordinary legal residence of the supervised person. If the person's residence is not in Romanian territory, the competence shall lie with the Prosecutor's Office attached to Bucharest Tribunal or with Bucharest Tribunal, as the case may be.*
- (3) *When Romania is the executing State, supervision of compliance with the obligations imposed by the issuing State shall lie with the competent Romanian authorities and shall be governed by the Romanian law.*
- (4) *Communications, consultations, exchange of information, requests and notifications including in relation to adopting, amending, replacing or terminating a supervision measure or to the supervision of compliance with the obligations imposed by Romanian judicial authorities or, when Romania is the executing State, by the authorities of the issuing State, shall be performed directly or, when direct contact is not possible, by means of central authorities.*

#M1

ARTICLE 170³

Adopting, amending, replacing or terminating supervision measures

- (1) *Competence in adopting, amending, replacing or terminating supervision measures shall lie with the issuing State and they shall be governed by its laws.*
- (2) *The competence of the issuing State to adopt, amend, replace or terminate supervision measures shall not prejudice the right of the executing State to investigate the supervised person for criminal acts, other than the ones for which they are investigated in the issuing State.*

#M1

SECTION 2

Supervision by the authorities of other Member States of the European Union of compliance with the obligations imposed by Romanian judicial authorities

#M1

ARTICLE 170⁴

Consultation with the authorities of the executing State

- (1) *When, in order to ensure the appropriate delivery of criminal proceedings or to prevent evasion of criminal prosecution or proceedings by a person whose ordinary legal residence is not in Romanian territory it is deemed necessary to adopt a preventive measure not involving deprivation of liberty, the competent judicial authority may consult the authorities of the executing State in relation to the possibility for supervision, in the territory of that State, of compliance by the supervised person with the obligations imposed.*
- (2) *Consultation of the executing State may be initiated when, by a statement given:*
 - a) *during criminal proceedings, the supervised person indicated that their ordinary legal residence is in the territory of another Member State of the European Union; or*
 - b) *during supervision by the competent Romanian authorities of compliance with the obligations previously imposed by the competent Romanian judicial authorities, the supervised person notifies a change of residence in the territory of another Member State of the European Union and return to the executing State.*
- (3) *Consultation is mandatory when the executing State is different from the one indicated by the supervised person as its ordinary legal residence.*
- (4) *The competent Romanian judicial authority may request the executing State to notify information in relation to the identity and, as the case may be, residence of the supervised person, as well as any other data necessary and useful to adopt, amend, replace or terminate supervision measures, as the case may be.*

#M1

ARTICLE 170⁵

Length of supervision measures

- (1) *The length of supervision measures whose compliance is to be monitored in the territory of another Member State of the European Union shall be decided by the competent Romanian judicial authority, in accordance with Romanian law.*
- (2) *Extending, maintaining, replacing or terminating supervision measures shall be ordained in accordance with the provisions of the Romanian law by the competent*

Romanian judicial authority and notified at once to the executing State and to the supervised person.

- (3) *When the executing State initiated supervision of compliance by the supervised person with the obligations imposed by the Romanian judicial authority, and the length stipulated by the law of the executing State is close to expiry, the competent Romanian judicial authority, depending on the circumstances of the case, may request the executing State to continue supervision of compliance with the obligations.*

#M1

ARTICLE 170^6

Delivery of the certificate and judicial instrument whereby the supervision measure was adopted

- (1) *The certificate provisioned by Annex no. 7 shall be filled in and signed by the judicial authority having adopted the supervision measure. The certificate and the judicial instrument whereby the supervision measure was adopted shall be delivered by the Romanian judicial authorities having adopted that measure directly to the competent authority appointed by the executing State, through any means allowing written record.*
- (2) *If the Romanian judicial authorities has no information in this respect, the identification of the authorities competent to receive the documents referred to in paragraph (1) shall be made through the national contacts to the European Judicial Network appointed at the level of the Public Ministry or of the Ministry of Justice, as the case may be.*
- (3) *The original of the certificate and of the document whereby the supervision measure was adopted shall be delivered by the Romanian judicial authorities having issued the same, upon the request of the foreign authority.*
- (4) *When the competent foreign authority decides that the certificate does not meet the form conditions or is inaccurate, the competent Romanian judicial authorities shall take measures to perform the necessary amendments and supplementations or to provide additional information.*
- (5) *The certificate and judicial instrument whereby the supervision measure was adopted shall be translated upon the request of the Romanian judicial authorities having issued them, by a certified translator.*

#M1

ARTICLE 170^7

Withdrawal of the certificate delivered to the executing State

- (1) *The certificate delivered to the executing State may be withdrawn in the following cases:*
 - a) *the supervision measure provided by the law of the executing State has the same or a different nature, but different contents as compared to the supervision measure ordered by the Romanian judicial authority; or*
 - b) *the length of the supervision measure stipulated by the law of the executing State does not comply with the length until which the competent Romanian judicial authorities may extend or maintain that measure; or*
 - c) *the executing State shall notify the fact that, should a European Arrest Warrant be issued by Romania following the replacement of the measure or obligation whose supervision is being requested by the measure of provisional arrest it should have to refuse to surrender the supervised person.*
- (2) *The certificate shall be withdrawn within no more than 10 days after the date when the Romanian judicial authority received notification from the executing State in relation to the decision to recognise the instrument whereby the Romanian judicial authorities adopted the supervision measure. In the case referred to in paragraph (1) c), the 10-days period shall start running from the receipt of the executing State's notification or of the decision not to recognise the instrument whereby the Romanian judicial authorities adopted the supervision measure.*
- (3) *When, in accordance with the law of the executing State, non-withdrawal of the certificate in the case indicated in paragraph (1) c) has a direct impact on the arrest or surrender of the supervised person in reliance upon a potential European Arrest Warrant which could be issued in accordance with [Article 88](#) (2), withdrawal of the certificate shall be mandatory.*
- (4) *Withdrawal of the certificate in the cases provisioned by paragraph (1) a) and b) shall not take place if the executing State started supervision of compliance by the supervised person with the obligations imposed by the Romanian judicial authorities, save where the competent authorities of the executing State agrees in that respect.*
- (5) *The supervised person shall be informed at once of the certificate being withdrawn.*

#M1

ARTICLE 170⁸

Supervision of compliance with the obligations incumbent upon the supervised person

- (1) *Supervision of compliance by the investigated person with the obligations incumbent upon them shall fall under the competence of Romanian authorities*

until the date when the executing State notifies its decision to recognise and execute the instrument whereby the supervision decision was adopted or until the date mutually agreed between the competent authorities of the two States, as the case may be.

- (2) After the date specified in paragraph (1), supervision of compliance by the supervised person with the obligations incumbent upon it shall fall under the competence of the authorities in the executing State and shall be governed by the latter's laws.*
- (3) Notwithstanding paragraph (2), supervision of the manner in which the supervised person complies with the obligations imposed shall pertain to Romania, when:*
 - a) the supervised person established their ordinary legal residence in the territory of a State other than the executing State; or*
 - b) the certificate delivered to the executing State is withdrawn; or*
 - c) the obligations imposed following the amendment or replacement of measures previously supervised by the executing State shall not fall under the scope of [Article 170¹](#) (1), and the executing State refuses to ensure their supervision; or*
 - d) the provisions of [Article 170⁵](#) (3) apply, and the executing State refuses to carry on supervision of the obligations imposed by the Romanian judicial authorities; or*
 - e) the executing State notifies the decision to cease supervision of the obligations imposed by the competent Romanian judicial authorities; or*
 - f) it is practically impossible for the executing State to supervise compliance with the obligations because the supervised person has not been found in its territory.*

#M1

ARTICLE 170⁹

Effects of breaching the supervision measure

- (1) If, during the supervision measure, the executing State delivers data and information justifying either new obligations to be imposed, or the amendment, replacement or termination of existing ones, the competent Romanian judicial authority shall notify the decision it made within the shortest time possible or within the time limit mutually agreed with that State.*

- (2) *If an order was issued to replace the supervision measure by provisional arrest, arrest and surrender of the supervised person shall be requested in accordance with [Title III](#).*

#M1

ARTICLE 170¹⁰

Hearing the supervised person

- (1) *When, during the criminal proceedings, it is necessary or, in accordance with the Romanian law, mandatory for the investigated person to be heard, their testimony may be taken by videoconference. The request concerning the hearing by videoconference shall be prepared in accordance with [Articles 172](#) and [178](#) and submitted directly to the competent authority of the executing State.*
- (2) *When, in accordance with the law of the executing State, hearing by videoconference is conditional upon the supervised person's consent, and the latter refuses to be heard, the Romanian judicial authority having adopted the supervision measure:*
- a) *may order the replacement or termination of the supervision measure, provided that the conditions set forth in the Romanian law are met; or*
 - b) *may request that the investigated person be heard in the presence of the prosecutor or of the competent Romanian judge or, to the extent permitted by the law of the executing State, by the former. The request having as its object the hearing of the supervised person shall be prepared in accordance with [Article 172](#) and submitted directly to the competent authority of the executing State.*

#M1

SECTION 3

Supervision by the Romanian authorities of compliance with the obligations imposed by other Member States of the European Union

#M1

ARTICLE 170¹¹

The powers of Romanian authorities competent to receive the certificates issued by other Member States of the European Union

- (1) *The authorities listed in [Article 170²](#) (1) shall have the following powers:*
- a) *to receive the certificate provisioned by [Annex no. 7](#) and the document whereby a supervision measure was ordered, translated into Romanian;*
 - b) *to conduct the regularity control and to request, as the case may be:*

- (i) *the filling in, rectification or signing of the certificate;*
 - (ii) *the original of the certificate or of the document whereby the supervision measure was ordered, when it is impossible to determine the authenticity of the one delivered by the issuing State;*
 - (iii) *the statement or request of the supervised person concerning the supervision by the Romanian authorities of compliance with the obligations imposed by the issuing State;*
 - (iv) *confirmation of the enforceable feature of the document whereby the supervision measure was imposed;*
 - (v) *information and date referring to the legal actions stipulated by the law of the issuing State or exercised by the supervised person against the document whereby the supervision measure was imposed;*
 - (vi) *information referring to the maximum length stipulated by the law of the issuing State for which the supervision measure may be imposed or, if the length is not specified, the length for which it will probably be necessary for the Romanian authorities to supervise compliance with the obligations imposed in charge of the supervised person;*
- c) *to stay the delivery to the Romanian authority competent to recognise the instrument whereby the supervision measure was imposed when the certificate is incomplete, does not comply with that instrument or one of the documents listed in items (iii) and (iv) is missing;*
 - d) *to return the instrument whereby the supervision measure was imposed and the certificate, if the issuing State failed to deliver the requested documents or information by the expiry of no more than 30 days;*
 - e) *to check the identity and residence of the supervised person, in view of determining the authority competent to recognise and to execute the instrument whereby the supervision measure was imposed.*
- (2) *The procedure described in this article shall be a matter of emergency and conducted with priority.*

#M1

ARTICLE 170¹²

Preliminary judicial procedures

- (1) *If it is ascertained that the issuing State delivered the certificate and the instrument whereby the supervision measure was imposed, as well as any other information*

requested in accordance with [Article 170¹¹](#), the Prosecutor's Office attached to the High Court of Cassation and Justice or the Ministry of Justice, through its relevant department, as the case may be, shall forward the same to the prosecutor's office attached to the tribunal or to the competent tribunal and inform the issuing State accordingly.

- (2) The prosecutor appointed by the head prosecutor of the prosecutor's office or the judge appointed by the president of the court, upon receiving the file, shall also check, *inter alia*, whether:
 - a) the supervised person is subject to criminal investigation in Romania for the same offences for which the supervision measure was taken;
 - b) the supervised person is subject to criminal investigation in Romania for other offences than the ones for which the supervision measure was adopted. If applicable, the prosecutor conducting or supervising the criminal prosecution or the court reviewing the case for settlement shall be informed of the supervision measure being imposed by the issuing State;
 - c) the nature or length of the supervision measure adopted by the issuing State shall comply with the nature or length of the supervision measure as stipulated in the Romanian law for similar offences;
 - d) the supervised person is in Romanian territory;
 - e) the measure may be supervised in Romania.
- (3) If the prosecutor's office or the court notified in accordance with paragraph (1) deems that they do not hold competence to recognise and adopt the necessary measures to supervise the compliance with the obligations imposed by the issuing State, it shall deliver at once, *ex officio*, the file to the competent Romanian authority and so inform the competent authority of the issuing State and the Prosecutor's Office attached to the High Court of Cassation and Justice or the Ministry of Justice, as the case may be.
- (4) If the prosecutor's office or the court notified in accordance with paragraph (1) deems that additional information or clarifications are necessary, it may request directly from the competent authority of the issuing State to deliver the same within no more than 10 days.
- (5) When the nature or length of the supervision measure adopted by the issuing State does not comply with the nature or length of the supervision measure stipulated by the Romanian law, the competent prosecutor or judge, as the case may be, shall decide and deliver to the issuing State the contents of the supervision measure, and request the latter State to confirm maintenance of the certificate. The adjusted supervision measure shall not be harsher than the

supervision measure adopted by the issuing State. If, following consultations, the issuing State withdraws the certificate, the competent prosecutor or judge, as the case may be, shall close the proceedings and return the file to the Prosecutor's Office attached to the High Court of Cassation and Justice or to the Ministry of Justice, as the case may be.

- (6) The competent prosecutor or judge, as the case may be, shall close proceedings and return the file to the Prosecutor's Office attached to the High Court of Cassation and Justice or to the Ministry of Justice also when, following the examinations performed, it is ascertained that the person is not in Romania or that the measure may not be supervised in Romania.*
- (7) The procedure described in this article shall be a matter of emergency and conducted with priority. The length of the procedure shall not exceed 40 days from the registration of the case with the prosecutor's office or the court, as the case may be.*

#M1

ARTICLE 170¹³*

Recognition, in the criminal prosecution stage, of the document whereby the issuing State adopted the supervision measure

- (1) In the criminal prosecution stage, the competent prosecutor shall order by ordinance. The prosecutor shall order the written summons or by telephone note of the supervised person. The day, venue and time set for hearing shall be informed to the supervised person by no less than 3 days in advance. Failure by the supervised person to appear shall not prevent the prosecutor from ruling on the supervision measure.*
- (2) When the conditions of [Article 170¹⁶](#) are met, the wording of the ordinance shall expressly specify the obligations which the investigated person has to comply with during the supervision measure and shall be informed that, in case of breach with the obligations incumbent upon them, the issuing State shall be notified in that respect.*
- (3) The length of the supervision measure is as determined by the competent authority of the issuing State, save for the case where this is longer than the maximum length set forth by the Romanian law.*
- (4) A complaint may be submitted against the prosecutor's ordinance by the supervised person or by any interested person, if their lawful interests have been prejudiced. The complaint shall be submitted within 5 days. For the sentenced person, the time limit shall start running from the delivery of a copy of the ordinance. The file shall be delivered to the appeal court within 24 de ore after the submission of the complaint. The issuing State shall be informed at once of the complaint being submitted.*

- (5) *The substantial reasons having underlain the adoption of the supervision measure may not form the object of the complaint, and they may only be appealed before the competent authority of the issuing State.*
- (6) *The complaint shall be submitted to the prosecutor's office of the prosecutor having ruled by ordinance and shall be settled by the tribunal where that prosecutor's office is attached. When the ordinance compelled the recognition of the instrument whereby the issuing State took the supervision measure, submission of the complaint shall not stay the supervision of compliance with the obligations incumbent upon the supervised person.*
- (7) *The complaint shall be settled by a panel consisting of only one judge, in the Council Chamber, with the supervised person being summoned, within 10 days after the registration of the case on the dockets of the court, by final closure. In trying the complaint, attendance by the prosecutor is mandatory. The court of law, in settling the complaint, shall check the prosecutor's ordinance, in reliance upon the material in the file and any documents submitted, and shall order to have the complaint admitted or dismissed. If the complaint is admitted against the solution not to recognise the instrument whereby the issuing State adopted the supervision measure, the court shall quash the appealed solution, shall recognise the instrument whereby the issuing State adopted the supervision measure and determine the obligations in charge of the supervised person. The closure shall be notified directly to the competent authority of the issuing State. The court shall inform the prosecutor and the Prosecutor's Office attached to the High Court of Cassation and Justice in this respect.*

#CIN

) In accordance with [Article II](#) (33) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(4\) of Article 170¹³](#) shall read as follows:*

#M1

"(4) A complaint may be submitted against the prosecutor's ordinance by the supervised person or by any interested person, if their lawful interests have been prejudiced. The complaint shall be submitted within 5 days after delivery of a copy of the ordinance. The file shall be delivered to the appeal court within 24 de ore after the submission of the complaint. The issuing State shall be informed at once of the complaint being submitted."

#M1

ARTICLE 170^{14*}

Recognition, in the court proceedings stage, of the instrument whereby the supervision measure was adopted

- (1) *The judge shall settle the case, through reasoned closure, issued in the Council Chamber. The judge shall order the written summons or by telephone note of the supervised person. The day, venue and time set for hearing shall be informed to the person by no less than 3 days in advance. Failure by the person to appear shall not prevent the judge from ruling on the supervision measure.*
- (2) *When the conditions of [Article 170¹⁶](#) are met, the wording of the closure shall expressly specify the obligations which the investigated person has to comply with during the supervision measure and shall be informed that, in case of breach with the obligations incumbent upon them, the issuing State shall be notified in that respect.*
- (3) *The length of the supervision measure is as determined by the competent authority of the issuing State, save for the case where this is longer than the maximum length set forth by the Romanian law.*
- (4) *The decision may be challenged by appeal on points of law, within 5 days after rendition or service, as the case may be, by the supervised person or by any interested person, if by recognising the instrument whereby the issuing State took the supervision measure their lawful interests have been prejudiced.*
- (5) *The appeal on points of law shall be submitted to the tribunal of the judge having ruled on the instrument whereby the issuing State adopted the supervision measure. The file shall be sent to the appeal court, within 24 hours after the submission of the appeal on points of law. The issuing State shall be informed at once on the appeal on points of law having been submitted.*
- (6) *The appeal on points of law shall be settled within 10 days after the registration of the case on the dockets of the court, by the competent court of appeals, in the Council Chambers, with the parties being summoned, by a panel consisting of a single judge, in reliance upon the material in the file case and any documents submitted. Attendance by the prosecutor is mandatory. When recognition was ordered, the appeal on points of law shall not suspend the supervision of compliance with the obligations incumbent upon the supervised person. If the appeal on points of law has been admitted against the solution not to recognise the instrument whereby the issuing State took the supervision decision, the court shall quash the appealed decision, shall recognise the instrument whereby the issuing State adopted the supervision measure and determine the obligations in charge of the supervised person. The final closure shall be notified directly to the competent authority of the issuing State. The court shall inform the tribunal and the specialised directorate of the Ministry of Justice in this respect.*

#CIN

) In accordance with [Article II](#) (34) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and*

Law no. 135/2010 on the Code of Penal Procedure), paragraphs (4) - (6) of Article 170¹⁴ shall read as follows:

#M1

- "(4) The decision may be challenged by appeal, within 5 days after rendition or service, as the case may be, by the supervised person or by any interested person, if by recognising the instrument whereby the issuing State took the supervision measure their lawful interests have been prejudiced.
- (5) The appeal shall be submitted to the tribunal of the judge having ruled on the instrument whereby the issuing State adopted the supervision measure. The file shall be sent to the appeal court, within 24 hours after the submission of the appeal. The issuing State shall be informed at once on the appeal having been submitted.
- (6) The appeal shall be settled within 10 days after the registration of the case on the dockets of the court, by the competent court of appeals, in the Council Chambers, by a panel consisting of a single judge, in reliance upon the material in the file case and any documents submitted. When recognition was ordered, the appeal shall not suspend the supervision of compliance with the obligations incumbent upon the supervised person. If the appeal has been admitted against the solution not to recognise the instrument whereby the issuing State took the supervision decision, the court shall quash the appealed decision, shall recognise the instrument whereby the issuing State adopted the supervision measure and determine the obligations in charge of the supervised person. The final closure shall be notified directly to the competent authority of the issuing State. The court shall inform the tribunal and the specialised directorate of the Ministry of Justice in this respect."

#M1

ARTICLE 170¹⁵

Supervision by the Romanian authorities of compliance by the supervised person with the obligations incumbent upon them

- (1) Supervision of compliance by the supervised person with the obligations incumbent upon them during the supervision measure shall be performed by the institution, officer or authority especially appointed, as the case may be, by the prosecutor having issued the ordinance or by the judge having handed down the closure, in accordance with the law.
- (2) If the interdiction was imposed against the supervised person to leave the Romanian territory or a certain locality, a copy of the ordinance or of the court closure shall be delivered on their issuing date to the supervised person, to the police units having jurisdiction over their residence and where they are prohibited from being located, the public registrar and border authorities.

- (3) *The institution, officer or authority especially appointed by the prosecutor having issued the ordinance or by the court having rendered the closure shall regularly check compliance with the obligations by the supervised person, and, if breaches are ascertained or any other items which could lead to the amendment, termination or replacement of the supervision measure by the issuing State, shall notify at once the prosecutor or the court in view of notifying the issuing State, in accordance with the form provisioned by [Annex no. 8](#). Supervision of compliance by the supervised person with the obligations incumbent upon them during the measure shall cease if the issuing State failed to reply to the notification, within no more than 40 days after the date of the first notification. Termination of the supervision shall be informed to the issuing State at once.*
- (4) *When, following the notification provisioned by paragraph (3), the issuing State informs on the replacement of the supervision measure with the measure of arrest and the issuance of a European Arrest Warrant, the procedure for the receipt, examination and execution of the European Arrest Warrant shall be as stipulated in [Title III](#) hereof.*
- (5) *Supervision of compliance by the supervised person with the obligations incumbent upon them shall cease as soon as the issuing State delivers a notification to that effect or whenever, following the initiation of legal action as provisioned by [Article 170¹³](#) (4) or [Article 170¹⁴](#) (4), the solution to recognise the instrument whereby the issuing State adopted the supervision measure was quashed.*
- (6) *In the case described in [Article 170¹³](#) (3) or [Article 170¹⁴](#) (3), the especially appointed institution, officer or authority shall inform, no later than 30 days before the expiry of the length, the competent prosecutor or judge, in view of notifying the issuing State.*
- (7) *When it is practically impossible for the especially appointed institution, officer or authority to supervise compliance with the obligations in charge of the supervised person as a result of the fact that they are not located in Romanian territory, they shall inform the competent prosecutor or judge in view of notifying the issuing State.*

#M1

ARTICLE 170¹⁶

Conditions of the recognition of the instrument whereby the issuing State adopted the supervision measure

The judicial instrument whereby the issuing State adopted the supervision measure may only be recognised provided that the following conditions are met:

- a) *the instrument has, in accordance with the law of the issuing State, an enforceable nature;*

- b) *the investigated person's ordinary legal residence is in Romanian territory or they are one of the members of the family of a Romanian national or of a person enjoying the right of permanent residence in Romanian territory or will conduct a lucrative business, go to school or professional training in Romanian territory;*
- c) *the recognition shall not violate the non bis in idem principle;*
- d) *the offence for which the supervision measure was imposed would have amounted, if it were committed in Romanian territory, to an offence. If the measure was imposed for several offences, the conditions shall be examined for each and every offence. [Article 96](#) (1) shall apply accordingly;*
- e) *the supervision measure was imposed against a person who, in accordance with the Romanian law, may be held accountable under criminal liability;*
- f) *the supervision measure was imposed against a person who does not enjoy criminal jurisdiction immunity in Romanian territory;*
- g) *the supervision measure imposed by the issuing State forms part of the category listed in [Article 170¹](#) (2).*

#M1

CHAPTER II

Provisions on co-operation with the Member States of the European Union in applying Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

#M1

SECTION 1

General provisions

#M1

ARTICLE 170¹⁷

Scope and meaning of certain terms

- (1) *This chapter shall apply in the relationship with Member States of the European Union in the field of recognition of court decisions and probation decisions with a view to the supervision of probation measures and alternative sanctions, for the purpose of their execution in the European Union. At the same time, this chapter shall also apply in relation to other States with which a bilateral or multilateral agreement was concluded in the field.*

- (2) For the purpose of this chapter, the terms and expressions below shall have the following meanings:
- a) *court decision – any final decision whereby a court imposed against a natural person having committed an offence one of the following sanctions:*
 - (i) *suspension in serving the sentence on probation;*
 - (ii) *postponement in enforcing the sentence;*
 - (iii) *conditional release;*
 - (iv) *an alternative sanction;*
 - b) *suspension in serving the sentence on probation – the sentence of imprisonment or a measure involving deprivation of liberty whose execution is fully or partially suspended, through the application of one or more probation measures;*
 - c) *postponement in enforcing the sentence – measure whereby the enforcement of a sentence has been postponed on probation, through the imposition of one or several probation measures, or in which one or more probation measures are imposed instead of a custodial sentence or of a measure involving deprivation of liberty;*
 - d) *conditional release – early release of a sentenced person after the partial service of an imprisonment sentence or of a measure involving deprivation of liberty by imposing one or more probation measures;*
 - e) *alternative sanction – any other sanction not involving deprivation of liberty, imposed against a natural person by means of a court decision, as a result of having committed an offence, other than financial penalty, and consisting of an obligation or coercion measure and which is self-standing;*
 - f) *probation decision – a court or administrative decision rendered in reliance upon a court decision, whereby a probation measure was imposed or conditional release was ordered;*
 - g) *probation measures – any measures, obligations or restrictions among the ones stipulated in [Article 170^20](#), determined in charge of a natural person in relation to a suspended sentence, a conditional sentence or a conditional release.*

#M1

ARTICLE 170^18

Competence

- (1) *Whenever Romania is the executing State, recognition of foreign court decisions and probation decisions ordering compliance with certain probation measures or alternative sanction falls under the competence of the tribunal having jurisdiction over the person's residence.*
- (2) *Notwithstanding paragraph (1), competence shall lie with the court ruling on another offence committed by the sentenced person through the foreign court decision, an offence which could lead to the revocation or cancellation of the sanction ruled by the foreign court.*
- (3) *Supervision of compliance with the probation measures or alternative sanction imposed by the court decision or probation decision having formed the object of recognition shall fall under the competence of the probation service attached to the tribunal having jurisdiction over the person's residence.*
- (4) *Whenever Romania is the issuing State, settlement of the request for execution in another Member State of the European Union in relation to a court decision ruled by a Romanian court, when the sentenced person will execute the sentence or is currently serving the sentence, shall fall under the competence of the court having ruled in first instance the court decision whose recognition is being requested. When the decision was ruled by the High Court of Cassation and Justice, competence shall lie with Bucharest Tribunal.*

#M1

SECTION 2

Recognition of court decisions and probation decisions setting forth probation measures or alternative sanctions ruled by the courts or authorities of other Member States of the European Union, in view of their execution in Romania

#M1

ARTICLE 170¹⁹

General conditions

- (1) *Final court decisions ruled by the courts of other Member States of the European Union shall be recognised and executed in Romania in reliance upon the principle of mutual trust and in observance of the provisions hereof, if they are likely to produce legal effects in accordance with the Romanian penal law and provided that they do not violate the public order of Romania.*
- (2) *Final court decisions imposing probation measures or alternative sanctions ruled by the courts of other Member States of the European Union shall be recognised and executed in Romania, provided that the following conditions are met:*

- a) *the court decision ordained the suspension in the execution of the sentence on parole, postponement in enforcing the sentence, conditional release or an alternative sanction;*
 - b) *probation measures or the alternative sanction imposed by a foreign court decision have a correspondent in the Romanian law and are compatible with it;*
 - c) *the offence for which the sanction was imposed would have amounted, if committed in Romanian territory, to an offence. If the sentence was imposed for several offences, the conditions shall be checked for each and every offence;*
 - d) *the sentenced person is in the issuing State and wishes to return or to establish in Romania or is already located in Romania and:*
 - (i) *they hold Romanian citizenship and reside or will reside in Romania; or*
 - (ii) *do not hold Romanian citizenship, however, they either enjoy residence right or the right to stay in Romanian territory in accordance with the law, or are one of the members of the family of a Romanian national or of a person enjoying residence right or the right to stay in Romanian territory, or prove that they will conduct a lucrative business, go to school or professional training in Romanian territory.*
- (3) *If the probation measures are determined by means of a probation decision issued in reliance upon a foreign court decision, both the court decision, and the probation decision shall be subject to recognition.*

#M1

ARTICLE 170²⁰

Probation measures and alternative sanctions

Foreign court decisions may be recognised and executed in Romania, if probation measures or the alternative sanction imposed through that decision or in reliance upon it fall under the following categories:

- (a) *an obligation for the sentenced person to inform a specific authority of any change of residence or working place;*
- (b) *an obligation not to enter certain localities, places or defined areas in the issuing State;*
- (c) *an obligation containing limitations on leaving the territory of the executing State;*

- (d) *instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;*
- (e) *an obligation to report at specified times to a specific authority;*
- (f) *an obligation to avoid contact with specific persons;*
- (g) *an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;*
- (h) *an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation;*
- (i) *an obligation to carry out community service;*
- (j) *an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;*
- (k) *an obligation to undergo therapeutic treatment or treatment for addiction.*
- (l) *an obligation to communicate information which may be control the means of existence of the sentenced person.*

#M1

ARTICLE 170²¹

Grounds for refusing recognition and execution of court decisions

A court decision issued in another Member State of the European Union shall not be enforced, even though the conditions provisioned by [Article 170¹⁹](#) are met, when:

- a) *the person was sentenced in Romania for the same offence. If the foreign court decision was also ruled for other offences, the court may order partial recognition thereof, provided that the other conditions are met;*
- b) *the person was sentenced in another State for the same offence, and the foreign court decision issued in that State was previously recognised and executed in Romanian territory;*
- c) *the sentenced person enjoys criminal jurisdiction immunity in Romania;*
- d) *the sanction was imposed against a person who, in accordance with the Romanian penal law, cannot be held criminally liable due to their age;*

- e) *the sanction requires the execution of a measure referring to the person's psychiatric or medical condition and which may not be enforced in Romania or, as the case may be, specifies medical or therapeutic treatment which may not be supervised in Romania, in accordance with the domestic legal or healthcare system;*
- f) *when, in accordance with the Romanian penal law, statutory limitation occurred in relation to the service of the sentence;*
- g) *when the sentenced person did not personally attend the court proceedings, save where the issuing State informs that, in accordance with its law:*
 - (i) *the person has been timely notified, by written subpoena handed in person or by telephone notification, fax, e-mail or by any other such means, in relation to the day, month, year or venue where they should appear and of legal consequence in case of non-attendance; or*
 - (ii) *being aware of the day, month, year and venue where they should appear, the person instructed their chosen attorney or the attorney appointed ex officio to represent them, and judicial representation before the court of law has actually been performed by that attorney; or*
 - (iii) *after the sentencing decision was personally handed over and they were informed that the decision may be subject to legal action, occasion on which the competent court may review the appealed decision, including in reliance upon new evidence, and that, following the resolution of the legal action, the proceedings of which they may attend in person, the sentencing decision may be quashed, the sentenced person either expressly waived the legal action, or did not initiate, within the time limit stipulated by law, that legal action;*
- h) *the length of the parole period or the length of probation measures, respectively the alternative sanction or the time left until the expiry thereof is of less than 6 months or 60 hours, in the case of community service.*

#M1

ARTICLE 170²²

Documents and information necessary for the recognition and execution of court decisions

- (1) *In view of the recognition and execution of court decisions, the competent authority of the issuing State shall deliver to the tribunal having jurisdiction over the place where the person resides or will reside the following documents, translated into Romanian:*
 - a) *the certificate filled in as per the template in [Annex no. 9](#);*

- b) *the court decision whereby the probation measures or the alternative sanction have been adopted;*
 - c) *the probation decision whereby the probation measures have been imposed, when applicable;*
 - d) *the person's statement in relation to their intention to return or to be established in Romania within the following 30 days after the date of the statement, if the sentenced person is in the issuing State;*
 - e) *any other documents submitted by the person to the authority in the issuing State.*
- (2) *After receipt of the documents listed in paragraph (1), the president of the court shall set the period for reviewing the request in view of admitting it in principle, which shall not exceed 5 days after the registration of the case on the dockets of the court.*
- (3) *The court shall try by a panel consisting of only one judge.*

#M1

ARTICLE 170²³

Preliminary measures

- (1) *The court notified in accordance with [Article 170²²](#) shall check whether the documents and information delivered by the issuing State have been translated into Romanian and, if not, request that their translations be delivered.*
- (2) *If the certificate is missing, is incomplete or does not comply with the court decision or with the probation decision delivered, the court shall request the issuing State to deliver, supplement or rectify the certificate, within no more than 15 days.*
- (3) *If one or more of the documents provisioned by [Article 170²²](#) (1) b) - e) are necessary, but have not been delivered by the issuing State, the court may request the latter to deliver copies of such documents within no more than 15 days.*
- (4) *The court may request the issuing State, if appropriate:*
 - (i) *the assessment report or any other report prepared before or after the conviction by the probation service or by another competent authority of the issuing State; or*

- (ii) *a copy of the document issued by the Romanian authorities attesting to the residence or stay right of the person or of a member of their family, when the sentenced person is not a Romanian national; or*
 - (iii) *documents attesting to the connection between the sentenced person and the Romanian State; or*
 - (iv) *other documents deemed relevant in the settling the request.*
- (5) *Upon the request of the issuing State, the court shall inform the competent authority of the maximum limit of the sentence stipulated by the Romanian law for the offence for which the person at issue has been sentenced and which could be imposed against them in case of revocation or cancellation in the suspension of the service of the sentence on parole.*

#M1

ARTICLE 170²⁴

Admission in principle

- (1) *If it is ascertained that the delivered documents satisfy the requirements provisioned by [Article 170²²](#) (1) or have been supplemented or rectified as per the request, the court shall admit the request in principle through the closure and shall set a period for its settlement. The court shall order the information ex officio of the probation service having territorial jurisdiction over the place where the sentenced person is currently living or will live and request a consultative approval in relation to the probation measures or alternative sanction whose execution has been requested.*
- (2) *If it is ascertained that the delivered documents do not satisfy the requirements provisioned by [Article 170²²](#) (1) and that they have not been delivered, supplemented or rectified as per the request, the court shall dismiss the request by final judgment and inform the issuing State in that regard.*
- (3) *If, following the information referred to in [Article 170²³](#) (5) or for any other reasons, the issuing State informs that it shall withdraw the certificate, the court shall acknowledge the withdrawal of the request, shall close the case by final decision and shall return the documents received to the issuing State.*

#M1

ARTICLE 170^{25*}

Procedure for recognising court decisions

- (1) *The court shall settle the request in the Council Chamber, with the sentenced person and the probation service being summoned. Attendance by the prosecutor shall be mandatory.*

- (2) *The object of the procedure shall consist of examining the conditions provisioned by [Article 170^19](#) and, if they are satisfied, the recognition of the decision in view of executing the probation measures or the alternative sanction.*
- (3) *The court shall rule by judgment, within 10 days after the admission in principle. The decision shall be drawn up within no more than 5 days after ruling and shall be served to the sentenced person and to the probation service.*
- (4) *An appeal on points of law may be submitted against the judgment, within 5 days, by the prosecutor, ex officio or upon the request of the probation service, as well as by the sentenced person. For the prosecutor, the time limit shall start running as of ruling. For the sentenced person, the time limit shall start running from ruling or, if they did not attend the proceedings, or the ruling, after the service of a copy of the operative part.*
- (5) *The appeal court shall rule in a panel consisting of a single judge. The provisions of paragraph (1) shall apply accordingly. The file of the appeal on points of law shall be forwarded to the court within 3 days, and the appeal on points of law shall be settled within 5 days, in the Council Chamber, with the parties being summoned. The decision shall be drawn up within no more than 5 days after ruling and served to the sentenced person and to the probation service.*
- (6) *The final decision of the Romanian court of law shall be notified at once to the competent authority in the issuing State. The final decision shall be notified, upon request, to the issuing State.*

#CIN

) In accordance with [Article II](#) (35) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraphs \(4\) and \(5\)](#) of [Article 170^25](#) shall read as follows:*

#M1

- "(4) An appeal may be submitted against the judgment, within 5 days, by the prosecutor, ex officio or upon the request of the probation service, as well as by the sentenced person. For the prosecutor, the time limit shall start running as of ruling. For the sentenced person, the time limit shall start running from ruling or, if they did not attend the proceedings, or the ruling, after the service of a copy of the operative part.*
- (5) The appeal court shall rule in a panel consisting of a single judge. The provisions of paragraph (1) shall apply accordingly. The file shall be forwarded to the court within 3 days, and the appeal shall be settled within 5 days, in the Council Chamber, with the parties being summoned. The decision shall be drawn up within no more than 5 days after ruling and served to the sentenced person and to the probation service."*

#M1

ARTICLE 170²⁶

Length of procedure

- (1) *The overall length of the procedure for recognising the foreign court decision shall be of maximum 60 days after the receipt of the request and of the documents provisioned by Article 170²² (1).*
- (2) *The period referred to in paragraph (1) may be exceeded by no more than 60 days, if:*
 - (i) *the documents provisioned by Article 170²² (1) required translation, supplementation or rectification or the court requested additional information and the issuing State could not satisfy such request on time;*
 - (ii) *due to exceptional circumstances, it is impossible for the court to settle the request within the time limit specified in paragraph (1).*
- (3) *In the case provisioned by paragraph (2), the court shall inform the competent authority of the issuing State on the need to extend the time limit for settling the request, the reasons leading to the delay and the time period estimated to be required to complete the procedure.*

#M1

ARTICLE 170²⁷

Decisions of the court of law

- (1) *If, following examinations, the court ascertains that the conditions provisioned by Article 170¹⁹ are satisfied and that there is no ground for refusal from the ones listed in Article 170²¹, it shall act as follows:*
 - a) *recognise the court decision and order the supervision of probation measures or alternative sanction, as stipulated in the court decision of the issuing State;*
 - b) *recognise the court decision and order the supervision of probation measures or alternative sanction, as resulting from their adjustment in accordance with Article 170²⁸.*
- (2) *The court of law shall dismiss the request, when:*
 - a) *the conditions provisioned by Article 170¹⁹ are not satisfied; or*
 - b) *there is a ground for refusal from the ones listed in Article 170²¹.*

- (3) *If, following examination, the court ascertains the applicability of a ground for refusal, from among the ones listed in [Article 170^21](#), the court may order, in exceptional cases, the recognition of the court decision and the execution of the probation measures or alternative sanction in Romania only where there is the confidence that this would materially contribute to the social reintegration of the sentenced person and that this would not breach the rights or prejudice the benefits of the victims of the offence committed by the sentenced person, if they live in Romania. In order to make a decision, the court of law shall request the probation service to prepare a report describing the reintegration chances of the sentenced person in the Romanian society and shall consult the issuing State. [Article 170^32](#) shall apply accordingly.*
- (4) *If the court dismissed the request of the issuing State, a new request on the same court decision shall be inadmissible, save where the request was dismissed in accordance with the provisions of [Article 170^24](#) (2).*

#M1

[ARTICLE 170^28](#)

Adjusting probation measures or the alternative sanction

- (1) *The court of law shall adjust one or more of the probation measures or the alternative sanction or the probation period, and shall envisage, insomuch as practicably possible, a correspondence as close as possible to the contents of the probation measures or the alternative sanction imposed through the decision of the authority of the issuing State, whenever:*
 - a) *the length of the probation measure or of the alternative sanction or of the probation period determined by the foreign court in relation to the offence committed does not comply in terms of extent or exceeds the maximum general limit of the probation measure or of the probation period to be imposed, in accordance with the Romanian law. The length of probation measures or of the alternative sanction resulting from such adjustment shall not exceed the length originally ordered by the decision of the issuing State's authority;*
 - b) *the nature of the probation measure or of the alternative sanction shall not comply with the nature of probation measures or the alternative sanction which has been imposed, in accordance with the Romanian law. Probation measures or the alternative sanction resulting from the adjustment shall not be more severe than the ones originally ordered by the issuing State's authority.*
- (2) *Adjustment by the court of law of the length of the probation measure, the alternative sanction or the probation period if the length originally set forth in the decision of the foreign court exceeds the maximum length laid down by the*

Romanian penal law shall consist in the reduction of such length down to the maximum limit set forth by the Romanian penal law.

- (3) *In the case stipulated in paragraph (1), the court shall inform the competent authority of the issuing State on the adjustment of probation measures or of the alternative sanction before their execution. Within 10 days after the information, the issuing State shall have the possibility to withdraw the certificate, and then the recognised court decision shall not be enforced.*

#M1

ARTICLE 170²⁹

Partial recognition and execution

- (1) *If the person was sentenced for several offences, the conditions shall be examined for each and every offence. When the conditions are only fulfilled for several of the offences, prior to the judgment being issued, the court shall request the issuing State to specify whether and, as the case may be, under what circumstances partial execution could take place or whether it withdraws its certificate.*
- (2) *If only several of the probation measures set forth in the foreign court decision or probation decision may be executed in Romania, prior to the judgment being issued, the court shall request the issuing State to specify whether and, as the case may be, under what circumstances partial execution could take place or whether it withdraws its certificate. If, following information, the issuing State maintains its request and does not withdraw its certificate, the court shall proceed to recognize the court decision and, as the case may be, the probation decision and shall enforce the probation measures for which the conditions have been satisfied.*
- (3) *If, by the time of recognition of the court decision by the Romanian court, the probation measures or the alternative sanction were partially executed, the court shall appropriately deduct the time already served and enforce the outstanding time to be served.*

#M1

ARTICLE 170³⁰

Execution of probation measures and alternative sanction

- (1) *The execution of probation measures and alternative sanction shall be governed by the Romanian law. The competence to try a legal action in view of quashing or amending the foreign court decision shall lie with the issuing State.*
- (2) *In the case referred to in [Article 170²⁸](#) (3) execution shall not start before the expiry of the 10-day period.*

- (3) *The court having recognised the foreign court decision shall be the executing court and shall be competent to adopt the subsequent measures after recognition.*
- (4) *The probation service shall supervise the execution of probation measures and alternative sanctions in observance of the Romanian laws in the field of probation.*
- (5) *Amnesty or pardon may be granted both by the issuing State, and by Romanian authorities.*

#M1

ARTICLE 170^31

Execution of probation measures or of the alternative sanction, undertaking the subsequent decisions

- (1) *If, following the recognition of a foreign court decision, the sentenced person does not comply, in bad faith, the supervision measures or the alternative sanction or commits a new offence within the probation period, the Romanian court shall be competent to revoke the sanction, in accordance with the Romanian penal law and in compliance with the foreign court decision, when the latter refers to:
 - a) *the suspension in serving the sentence on probation;*
 - b) *conditional release;*
 - c) *an alternative sanction.**
- (2) *In the cases referred to in paragraph (1) b) and c), the court may only order revocation if the foreign court decision or probation decision recognised expressly refers to the custodial sentence which would be imposed in such a case.*
- (3) *The court shall inform the competent authority of the issuing State in relation to the sanction being revoked and the sentence imposed.*

#M1

ARTICLE 170^32

Execution of probation measures or alternative sanction, not undertaking the subsequent decisions

- (1) *If, following the recognition of a foreign court decision, the sentenced person fails to fulfil the supervision measures or the alternative sanction or commits a new offence within the probation period, the competence to revoke the sanction or to adopt other measures shall lie with the issuing State, when the foreign court decision recognised refers to:
 - a) *the postponement in enforcing the sentence;**

- b) *conditional release;*
 - c) *an alternative sanction;*
 - d) *one of the cases provisioned by [Article 170²⁷](#) (3);*
 - e) *a sentenced person who subsequently established their residence in another State and is no longer in Romania.*
- (2) *In the cases referred to in paragraph (1) b) and c), the Romanian court shall return to the issuing State competence in relation to the revocation of the sanction if the foreign court decision or probation decision recognised do not expressly refer to the custodial sentence to be imposed in such a context.*
- (3) *In the cases provisioned by paragraph (1), the execution delegated judge shall inform the competent authority of the issuing State whenever the former ascertains the existence of grounds for revocation or of actions on which it requested to be informed. Information shall be made by filling in the form provisioned by [Annex no. 10](#). If, in accordance with the law of the issuing State, it is mandatory to hear the sentenced person, their statement may be taken by the authorities of the issuing State by videoconference. The request concerning the hearing by videoconference of the sentenced person shall be prepared in accordance with the clauses of the treaty concluded between Romania and the issuing State or, in the absence thereof, on a reciprocity basis, and delivered through the channels and means of communication referred to therein or in this law, as the case may be, to the tribunal having jurisdiction over the residence of the sentenced person. [Articles 172](#) and [178](#) shall apply accordingly. Hearing by videoconference shall take place in the presence of a representative of the probation service.*
- (4) *Together with the information of the competent authority of the issuing State, in accordance with paragraph (3), the execution delegated judge shall request the issuing State to inform on the subsequent measure that was adopted.*

[#M1](#)

[ARTICLE 170³³](#)

Cessation of supervision

- (1) *The supervision of the sentenced person in Romania shall cease and competence for subsequent decisions shall lie with the issuing State, in the following cases:*
- a) *the sentenced person evaded supervision and has not been found in Romania;*
 - b) *upon the request of the issuing State, when it informs that the sentenced person has committed another offence for which its authorities initiated criminal investigation or rendered final sentence;*

- c) *the issuing State shall inform in relation to any measure or decision leading to the impossibility to carry on the execution of probation measures or of the alternative sanction;*
 - d) *the issuing State ordered the amendment of the probation measures, the alternative sanction or the length of the probation period and it is ascertained that, in consideration of the actual content of the probation measure or of the alternative sanction, as resulting following the amendment, the supervision may no longer be ensured or is no longer compliant with the Romanian probation system.*
- (2) *The supervision ceases in the case of amnesty or pardon granted by the Romanian authorities.*
 - (3) *The supervision ceases upon expiry, if the length of the probation period expired and the sentenced person complied with the probation measures or with the alternative sanction.*
 - (4) *Upon cessation of the supervision, the probation service shall prepare a report containing a summary of the supervision process, to be delivered to the execution delegated judge in view of being forwarded to the issuing State.*

#M1

ARTICLE 170³⁴

Communication between the executing court in Romania and the competent authorities of the issuing State and keeping record

- (1) *During the recognition procedure in relation to the foreign court decision and, after the recognition thereof, during the execution of probation measures, the court shall communicate directly with the competent authority of the issuing State through the provision and request of information ensuring celerity and efficiency of the recognition procedure in relation to the court decision and able to support the supervision process and the social reintegration of the sentenced person.*
- (2) *In order to keep record of the court activity, a Registry shall be prepared and kept on the probation measures and alternative sanctions ordered in the territory of other Member States of the European Union and executed in Romania. The following specifications shall be made in this registry: running number; full name of the sentenced person; the executing court; number and date of the sentencing court decision; the issuing State; the date when the certificate and the court decision were received; the number and date of the court decision recognising the foreign court decision; the probation service in charge of the supervision and information on the execution of probation measures.*

#M1

SECTION 3

Recognition of court decision setting forth probation measures or alternative sanctions rendered in Romania in view of their execution in other Member States of the European Union

#M1

ARTICLE 170^{35*}

Conditions for requesting the recognition of court decisions

- (1) *The recognition of court decisions and the execution in the territory of another Member State of the probation measures or of the alternative sanction imposed thereby may be requested of another Member State when:*
 - a) *the court ordered, through the court decision, one of the following sanctions:*
 - (i) *suspension in the service of the sentence on probation in accordance with Article 86¹ of the Penal Code;*
 - (ii) *supervised release in accordance with Article 103 of the Penal Code;*
 - (iii) *suspension in the service of the sentence or probation or under control in accordance with Article 110¹ of the Penal Code;*
 - (iv) *conditional release of the minor child, with the application of the provisions of Article 110¹ 4 of the Penal Code;*
 - b) *through the court decision, the court ordered in charge of the person a probation measure falling under one of the categories referred to in Article 170²⁰;*
 - c) *the court decision is final and enforceable;*
 - d) *the assessment report prepared by the probation service, before the rendition of the court decision or during the supervision, reveals that the execution of probation measures enforced by means of the court decision in the territory of the executing State can ensure the social reintegration of the sentenced person;*
 - e) *the documents of the file, the statement of the sentenced person or the data provided by the competent authorities reveal that the person:*
 - (i) *is in the territory of that State; or*
 - (ii) *will leave the Romanian territory no later than upon the expiry of a 30-day period after the date of the statement given in this respect. In view of ascertaining the fulfilment of this condition, the execution delegated*

judge or the probation service may request the sentenced person to submit supporting documents;

- f) the sentenced person is not subject to criminal prosecution or tried for other offences;*
- g) the outstanding period of time until the expiry of the probation period imposed by the court exceeds 6 month. Failure to fulfil this condition shall not preclude the delivery of documents and information referred to in [Article 170^37](#) (2) if, following consultations with the executing State, the latter represents that it may ensure the execution of probation measures for the outstanding time until the expiry of the probation period;*
- h) legal provisions relating to the revocation or cancellation of the sanction are not applicable;*
- i) the person proves that their ordinary and legal residence is in the territory of that State.*

(2) Upon the request of the sentenced person, the recognition of the court decision may also be requested of a Member State other than the one in whose territory the sentenced person has the legal and ordinary residence, provided that the conditions listed in paragraph (1) a) - h) are met and the executing State agrees to take over execution in its territory of the probation measures imposed by the Romanian court. In view of establishing a connection with the executing State in whose territory the sentenced person requests for the probation measures imposed against them to be executed, the executing court or the probation service may request the sentenced person, ex officio or upon the demand of the executing State, to provide supporting documents.

#CIN

) In accordance with [Article II](#) (36) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), paragraph (1) [a\)](#) and [g\)](#) of [Article 170^35](#) shall read as follows:*

#M1

"a) the court ordered, through the court decision, one of the following sanctions:

- (i) suspension in the service of the sentence on probation in accordance with [Article 91](#) of the Penal Code;*
- (ii) civic training session, supervision, consignment in weekends, daily assistance in accordance with [Article 115](#) of the Penal Code;*

.....

- g) *the outstanding period of time until the expiry of the supervision period imposed by the court exceeds 6 month. Failure to fulfil this condition shall not preclude the delivery of documents and information referred to in [Article 170^37](#) (2) if, following consultations with the executing State, the latter represents that it may ensure the execution of probation measures for the outstanding time until the expiry of the supervision period;"*

#M1

ARTICLE 170^36

Initiation of the procedure for requesting the recognition of court decisions

- (1) *If, on the rendition date, the sentenced person declares that they intend to return or have returned to the territory of another Member State, after the court decision became final, but before the delivery thereof to the probation service, the court enforces the provisions of [Article 170^37](#) and informs the probation service of the adopted measures.*
- (2) *If the court decision was delivered to the probation service and, either on the contact date, or upon the first report or subsequently, the sentenced person declares to the probation officer that, as the case may be, they returned or intend to return in the territory of another Member State, the latter shall inform the executing court. The statement of the sentenced person shall be recorded in a protocol signed by the probation officer and by the sentenced person, if present, and shall be delivered to the executing court together with the proposal to initiate the procedure set forth in [Article 170^37](#). The proposal is contained in a reasoned protocol.*

#M1

ARTICLE 170^37

Delivery of the certificate and of the court decision

- (1) *The certificate provisioned by [Annex no. 9](#) shall be filled in by the execution delegated judge with the court having issued in first instance the court decision whose recognition is being requested. When the decision was rendered by the High Court of Cassation and Justice, the certificate shall be filled in by the execution delegated judge within Bucharest Tribunal.*
- (2) *The certificate, the court decision and, if available, the assessment report prepared by the probation service before the rendition of the court decision or during the supervision period, as the case may be, shall be delivered by fax, e-mail or by any safe means of communication, leaving written proof, to the foreign authority competent to receive or execute it.*
- (3) *The documents provisioned by paragraph (2) shall be delivered translated into the language or one of the official languages of the executing State or into another language which the executing State officially declared to be acceptable.*

- (4) *Delivery of the documents provisioned by paragraph (2) may also be performed through the secured system of the European Judicial Network, when it is operational. The originals of the certificate and of the court decision shall be delivered upon the request of the competent foreign authority, by overnight courier services.*

#M1

ARTICLE 170³⁸

Request and provision of information

- (1) *Together with the delivery of the documents provisioned by [Article 170³⁷](#) (2), the execution delegated judge shall request information relating to:*
- a) *the maximum duration of the deprivation of liberty contemplated in the law of the executing State for the offence in relation to which the court decision has been issued and which could be imposed against the sentenced person if the latter breaches the probation measures or commits a new offence;*
 - b) *the statement of the executing State as to undertaking or not the decisions subsequent to the recognition of court decisions.*
- (2) *After the delivery of the documents provisioned by [Article 170³⁷](#) (2), the execution delegated judge shall communicate, ex officio or upon the request of the competent authority of the executing State, additional information necessary for the recognition of court decisions or for the execution of probation measures.*

#M1

ARTICLE 170³⁹

Withdrawal of the certificate delivered to the executing State

- (1) *The certificate delivered to the competent authority of the executing State may be withdrawn when:*
- a) *after delivery of the documents provisioned by [Article 170³⁷](#) (2), but prior to the recognition of the court decision by the executing State, it is ascertained that the provisions referring to the revocation or cancellation of the sanction shall apply;*
 - b) *after receipt of the information requested in accordance with [Article 170³⁸](#) (1) it is ascertained that the maximum length of deprivation of liberty stipulated in the law of the executing State for the offence in relation to which the court decision was rendered and which could be imposed against the sentenced person if the latter breached the probation measures or committed a new offence is higher than the one set forth in the Romanian law;*

- c) *after receipt of the decision for the adjustment of probation measures or the length of the probation period imposed by the court decision whose recognition was requested, it is deemed that the probation measures imposed by the executing State are not likely to correspond to the ones imposed in the Romanian court decision or to ensure the social reintegration of the sentenced person.*
- (2) *In the cases provisioned by paragraph (1) b) and c), the certificate may be withdrawn no later than the expiry of a 10-day period after the receipt of information, save for the case where the execution of probation measures commenced. In adopting a decision concerning the withdrawal of the certificate, the execution delegated judge may request the standpoint of the probation service competent to supervise the execution of the sanction in Romania.*

#M1

ARTICLE 170⁴⁰

Effects of recognition of court decisions by the executing State

- (1) *The execution of probation measures imposed by means of a court decision recognised by the executing State shall be governed by the law of the executing State.*
- (2) *The competence to try a legal action in view of quashing or amending court decisions shall pertain to the Romanian State.*
- (3) *Amnesty or pardon may be granted both by the Romanian State, and by the executing State.*

#M1

ARTICLE 170⁴¹

Execution of probation measures with the executing State undertaking the subsequent decisions

- (1) *Following recognition of court decisions, the executing State shall be competent to take all the subsequent decisions in relation to the sanction imposed by the Romanian court decision, save for the cases provisioned by [Article 170⁴²](#).*
- (2) *During the supervision, the execution delegated judge shall deliver ex officio information that could lead to the amendment of probation measures, to the revocation of the sanction or to the execution of a custodial sentence or of a safety measure following the breach of a probation measure. The information shall be made by filling in the form provisioned by [Annex no. 10](#). The delivery and translation of additional information shall be performed in accordance with [Article 170³⁷](#) (2) and (3).*

- (3) *If, prior to the recognition of court decisions by the executing State, the Romanian court proceeded to execute probation measures, their supervision shall cease in Romania on the date when the executing court was notified on the recognition of the court decision.*

#M1

ARTICLE 170⁴²

Execution of probation measures without the executing State undertaking the subsequent decisions

- (1) *If the executing State represents that, in certain expressly stipulated cases, it shall not undertake the decision subsequent to the recognition of court decisions, the executing court shall re-acquire competence in relation to the revocation of the sanction imposed by court decision. The representation of the executing State shall be examined by the execution delegated judge on the certificate filling in date.*
- (2) *The execution delegated judge shall request the competent authority of the executing State to inform, during supervision, the executing court in Romania of any finding which could entail the sanction to be revoked, in particular in the case of breach of probation measures or the perpetration of a new offence. The information shall be performed by filling in the form provisioned by [Annex no. 10](#).*
- (3) *If the competent authority of the executing State proceeded to adjust or amend the probation measures of the length of the probation period and the conditions for revocation are satisfied, the executing court shall act in accordance with the Romanian law, also taking into account the sentencing court decision.*
- (4) *In the case described in paragraph (1), if the sentenced person continues to be in the executing State, they may be heard by videoconference, in accordance with [Articles 172](#) and [178](#). Hearing by videoconference shall take place in the presence of a representative of the probation service or of the authority of the executing State competent to supervise the person.*
- (5) *The competent authority of the executing State shall be informed at once in relation to the subsequent decision of the Romanian executing court.*

#M1

ARTICLE 170⁴³

Re-acquiring the competence to supervise the execution of probation measures

The executing court shall re-acquire the right to enforce the probation measures imposed by court decision delivered to the executing State when:

- a) *the certificate is withdrawn in accordance with [Article 170³⁹](#);*

- b) *after delivery of the documents listed in [Article 170^37](#) (2) or after recognition of the court decision, the executing State shall inform that it is impossible to execute or to continue to execute probation measures because the sentenced person may no longer be found, evaded or no longer has the legal and ordinary residence in its territory;*
- c) *in the case provisioned by [Article 170^42](#).*

#M1

ARTICLE 170^44*)

Communication between the executing court in Romania and the competent authorities in the executing State and keeping track

- (1) *In view of initiating the procedure for recognition, during this procedure and, after the recognition of the Romanian court decision, during the execution of probation measures, the executing court, through the execution delegated judge, shall communicate directly with the competent authority in the executing State by providing and requesting information able to ensure the celerity and efficiency of the procedure for the recognition of the court decision and supporting the process of social reintegration of the sentenced person.*
- (2) *For keeping track of the court's activity, a Registry shall be drawn up and kept of probation measures and alternative sanctions executed in the territory of other Member States of the European Union. This registry shall contain the following specification: running number; full name of the sentenced person; the executing court; number and date of the sentencing court decision; date when the certificate and court decision are delivered; the executing State; information on the execution of probation measures in the executing State.*

#CIN

) In accordance with [Article II](#) (37) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(2\) of Article 170^44](#) shall read as follows:*

#M1

- "(2) For keeping track of the court's activity, a Registry shall be drawn up and kept of probation measures and alternative sanctions executed in the territory of other Member States of the European Union. This registry shall contain the following specification: running number; full name of the person against whom the decision was rendered; the executing court; number and date of the decision; date when the certificate and court decision are delivered; the executing State; information on the execution of probation measures in the executing State."*

#B

TITLE VII

Judicial assistance in criminal matters

CHAPTER I

International judicial assistance

ARTICLE 171

The object of judicial assistance

For the purpose of this Chapter, international judicial assistance shall comprise mainly the following activities:

- a) international letters rogatory;
- b) hearings by videoconference;
- c) appearance in the requesting State of witnesses, experts and prosecuted persons;
- d) service of procedural documents drawn up or submitted in criminal proceedings;
- e) judicial records;
- f) other forms of judicial assistance.

ARTICLE 172*)

The general contents of a request for judicial assistance and the documents attached thereto

- (1) A request for judicial assistance must specify:
 - a) the name of the requesting judicial authority and the name of the requested judicial authority;
 - b) the object of and the reasons for the request;
 - c) the legal classification of the acts;
 - d) the data for identifying the accused, the defendant or the sentenced person, or the witness or expert, as appropriate;
 - e) the legal classification and the summary of the facts.
- (2) Depending on the nature and the object of the request, supporting documents shall be attached to it, as appropriate.

- (3) The documents attached to a request for judicial assistance need to be certified by the requesting judicial authority, and shall be exempt of any other formalities of super-legalization.

#CIN

**) In accordance with [Article II](#) (38) and [Article IV](#) of Law no. 300/2013 ([#M1](#)), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [Article 172](#) shall read as follows:*

#M1

"ARTICLE 172

The general contents of a request for judicial assistance and the documents attached thereto

(1) A request for judicial assistance must specify:

- a) the name of the requesting judicial authority and the name of the requested judicial authority;*
- b) the object of and the reasons for the request;*
- c) the legal classification of the acts;*
- d) the data for identifying the suspect, the defendant or the sentenced person, or the witness or expert, as appropriate;*
- e) the legal classification and the summary of the facts.*

(2) Depending on the nature and the object of the request, supporting documents shall be attached to it, as appropriate.

(3) The documents attached to a request for judicial assistance need to be certified by the requesting judicial authority, and shall be exempt of any other formalities of super-legalization."

#B

ARTICLE 173

International letters rogatory

International letters rogatory in criminal matters shall be the form of judicial assistance that consists in the authorization given by a judicial authority in one State to an authority in another State, which is empowered to accomplish, on its behalf, certain judicial activities relating to a certain criminal proceeding.

ARTICLE 174*)

The object of letters rogatory

- (1) The object of a request for letters rogatory shall be mainly:
- a) locating and identifying persons and articles; hearing defendants, injured parties and other parties, witnesses and experts, as well as confrontation; searches, seizure of articles and documents, sequestration and special confiscation; on-site investigations and reconstruction; expert opinions, technical-scientific findings and forensic findings; transmission of information needed in a particular proceeding, audio and video interception and recording, examination of archive documents and specialized files, and other such procedural steps;
 - b) transmission of articles to be produced in evidence;
 - c) transmission of documents or records.
- (2) Where the requesting State wishes for the witnesses or experts to take an oath, it shall expressly so request, and Romania shall comply with the request if Romanian law does not prohibit it.
- (3) Romania shall send only certified copies or certified photostat copies of documents or records requested. Where the requesting State expressly requests the transmission of originals, every effort shall be made to comply with the request.

#CIN

) In accordance with [Article II](#) (39) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(1\) of Article 174](#) (1), [sub-paragraph a\)](#) shall read as follows:*

#M1

"a) locating and identifying persons and articles; hearing suspects, defendants, injured parties, civil parties, civil liability parties, witnesses and experts, as well as confrontation; searches, seizure of articles and documents, sequestration and special or extended confiscation; on-site investigations and reconstruction; expert opinions, transmission of information needed in a particular proceeding, audio and video interception, examination of archive documents and specialized files, and other such procedural steps;"

#B

ARTICLE 175

The date and venue of the letters rogatory

- (1) On the express request of the requesting State, Romania shall state the date

and venue of the letters rogatory. Officials and interested persons mentioned by the requesting State may assist and collaborate in the letters rogatory, within the limits allowed by Romanian law.

- (2) Paragraph (1) shall apply accordingly where assistance is requested by Romanian judicial authorities.

#M1

ARTICLE 176

Seizure of articles and documents and conducting searches

- (1) *In view of identifying and collecting evidence existing in the territory of other States, the competent Romanian judicial authority may request the foreign authorities to seize articles and documents or to perform searches and to return the articles or documents surrendered or collected during the search. When house search is requested, in the request prepared in accordance with [Article 172](#), the Romanian judicial authority shall specify and confirm the issuance by the competent judge of the closure whereby the search has been approved.*
- (2) *In enforcing paragraph (1), seizure of articles and documents and the performance of searches shall be conducted in accordance with the law of the requested State.*
- (3) *When Romania is the requested State, the request submitted by the competent foreign authorities shall comprise the information provisioned by [Article 172](#), as well as:*
- a) the full name and features of the person investigated by the Romanian authorities, identification of the traces that the offence was committed or other articles allegedly existing at the location to be searched;*
 - b) reason underlying the request for the search to be performed;*
 - c) indication of legal classification, description of the summary of facts, evidence or data revealing that the location where the search is requested to be performed harbours the person investigated by the foreign authorities or evidence may be revealed relating to the offence which was committed;*
 - d) if appropriate, indication of the evidence or data revealing a reasonable suspicion in relation to the perpetration of an offence or of articles and documents forming the object of the offence;*
 - e) indication of the location where the search will be performed.*
- (4) *The request referred to in paragraph (3) shall be admitted, provided that the following conditions are met:*

- a) *the offence forming the object of the criminal proceedings conducted in the requesting State would have amounted, if committed in Romanian territory, an offence and its author liable to be punished. If the measure was applied for several offences, the condition shall be checked for each and every offence;*
 - b) *the penalty stipulated in the Romanian law and the law of the requesting State for the offence committed by the person investigated by the requesting State is of at least one year imprisonment.*
- (5) *The conditions provisioned by paragraph (4) may activate the reciprocity rule.*
- (6) *When Romania is the requested State, the seizure of articles and documents and the search shall be ordered and conducted in accordance with the Code of Penal Procedure, in reliance upon the prosecutor's ordinance or the closure of the judge, and as regards house searches, in accordance with the authorisation issued by the competent Romanian judge. In the case of house searches, the condition to initiate the criminal prosecution specified by the Code of Penal Procedure shall not apply.*

#B

ARTICLE 177

Handing over of property and documents

- (1) Romania may delay the handing over of any property, records or documents requested, if it requires them in connection with pending criminal proceedings.
- (2) Any property, as well as original records or documents, handed over in execution of letters rogatory shall be returned to Romania as soon as possible unless Romania waives the return thereof.

ARTICLE 178*)

Hearing by videoconference

- (1) If a person is in Romanian territory and has to be heard as a witness or expert by the judicial authorities of a foreign State, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in the following paragraphs.
- (2) Such a request may be accepted by Romania provided that it is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing by videoconference.
- (3) Requests for a hearing by video conference shall contain, in addition to the information referred to in [Article 172](#), the reason why it is not desirable or

possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

(4) The witness or expert shall be summoned according to Romanian law.

#M1

(5) *The judicial authorities competent to execute the requests submitted by the authorities of other States shall be the courts of appeals, during court proceedings, respectively the prosecutor's offices attached to courts of appeal, during criminal prosecution.*

#B

(6) With reference to hearing by video conference, the following rules shall apply:

- a) the competent Romanian judge or prosecutor shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of Romanian law. If he is of the view that during the hearing the fundamental principles of Romanian law are being infringed, the judge or prosecutor shall immediately take the necessary measures to ensure that the hearing continues in accordance with the Romanian law;
- b) measures for the protection of the witness or expert shall be agreed, where necessary, between the competent Romanian authorities and those of the requested State;
- c) the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting State in accordance with its own law;
- d) the witness or expert may be assisted, where appropriate, by an interpreter, under Romanian law;
- e) the witness or expert may claim the right not to testify which would accrue to him or her under the law of either Romania or the requesting State.

(7) Without prejudice to any measures agreed for the protection of witnesses, the Romanian judicial authority shall draw up minutes indicating the date and place of the hearing, the identity of the person heard, any oaths taken and the technical conditions under which the hearing took place. The minutes shall be forwarded to the competent authority of the requesting State.

(8) The provisions of the [Code of Penal Procedure](#) shall apply accordingly.

(9) This Article may also apply for the hearing of accused or defendants, where

the person concerned consents and there is an agreement in this respect between the Romanian judicial authorities and those of the requesting State.

- (10) Costs relating to establishing a video link, those related to the making available of this link in the requesting State, the remuneration of interpreters and the indemnities paid to witnesses and experts, as well as travelling expenses shall be reimbursed by the foreign requesting State to Romania, unless the latter expressly waived the reimbursement of all or part of such costs.

#M1

- (11) *The statements of the accused or of the defendant, of the other parties in the criminal trial or of the expert, found abroad, may be taken by videoconference whenever not appropriate or impossible for that person to personally visit the Romanian territory. The person held in custody in the territory of another State shall also be deemed impossible to personally visit the Romanian territory. In this respect, the prosecutor conducting or supervising the criminal prosecution or the court reviewing the case for settlement shall prepare and deliver, directly or through the central authorities referred to in [Article 10](#), the request for international judicial assistance in criminal matters. The provisions of paragraph (3) and (9) shall apply accordingly.*

#CIN

) In accordance with [Article II](#) (40) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraphs \(9\) and \(11\) of Article 178](#) shall read as follows:*

#M1

- "(9) This Article may also apply for the hearing of suspects or defendants, where the person concerned consents and there is an agreement in this respect between the Romanian judicial authorities and those of the requesting State.*

.....

- (11) The statements of the suspect or of the defendant, of the other parties in the criminal trial or of the expert, found abroad, may be taken by videoconference whenever not appropriate or impossible for that person to personally visit the Romanian territory. The person held in custody in the territory of another State shall also be deemed impossible to personally visit the Romanian territory. In this respect, the prosecutor conducting or supervising the criminal prosecution or the court reviewing the case for settlement shall prepare and deliver, directly or through the central authorities referred to in [Article 10](#), the request for international judicial assistance in criminal matters. The provisions of paragraph (3) and (9) shall apply accordingly."*

#B

ARTICLE 179

Spontaneous exchange of information

- (1) Romanian judicial authorities may, without prior request, forward to the competent authorities of a foreign State information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the receiving State in initiating criminal proceedings, or might lead to a request for judicial assistance by that State.
- (2) Romania may impose conditions on the use of the information sent, according to paragraph (1). The receiving State shall be bound by the conditions imposed.

ARTICLE 180

Controlled delivery

- (1) Romanian judicial authorities shall authorize, upon request, under the conditions provided in Romanian law, controlled deliveries, within the framework of criminal proceedings relating to offences for which extradition is granted.
- (2) Controlled deliveries shall take place in accordance with Romanian law.
- (3) This Article shall apply accordingly where assistance is requested by Romanian judicial authorities.

ARTICLE 181*

Undercover investigations

- (1) Romania and a foreign State may agree to assist one another in the conduct of investigations by officers undercover or false identity.
- (2) The competent Romanian authorities shall decide, in each individual case, according to Romanian law.
- (3) The actual modalities of carrying out the investigation and the legal status of the officers concerned shall be agreed between the Romanian and foreign judicial authorities, under Romanian law.

#CIN

**) In accordance with Article II (41) and Article IV of Law no. 300/2013 (#M1), starting with 1 February 2014 (the effective date of Law no. 286/2009 on the Penal Code and Law no. 135/2010 on the Code of Penal Procedure), Article 181 shall read as follows:*

#M1

"ARTICLE 181

Using undercover investigators

- (1) *The Romanian State may agree with a foreign State to grant mutual assistance to conduct investigations by undercover investigators.*
- (2) *The competent Romanian authorities shall decide, on a case-by-case basis, in accordance with the Romanian law.*
- (3) *In the conditions stipulated in the Romanian law, the Romanian and foreign judicial authorities shall decide on the concrete methods for conducting the investigation and the legal status of agents."*

#B

ARTICLE 182

Joint investigation teams

#M1

- (1) *Joint investigation teams may be set up and may operate in the territories of Romania and of other States for the purpose of facilitating the performance of criminal investigations. The procedures governing the operation of such teams, such as the composition, duration, location, organisation, functions, purpose and conditions of participation by the members of a team to investigation activities, shall be decided by mutual agreement. The national member of Eurojust or the deputy thereof may take part in the activities conducted by the joint investigation team. In the relationship with the Member States of the European Union, the agreement shall be concluded between the head prosecutor or the general prosecutor of the prosecutor's office of the prosecutor conducting or supervising the criminal prosecution or, when there is no criminal proceedings in progress in Romanian territory, irrespective of the nature of the offence, by the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or by the prosecutor appointed by the latter. In the relationship with non-EU Member States, the agreement shall be concluded by the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or by the prosecutor appointed by the latter.*

#B

- (2) A joint investigation team may, in particular, be set up where:
 - a) pending proceedings with the requesting State require difficult and demanding investigations having links with both States;
 - b) a number of States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the States concerned.

- (3) A request for the setting up of a joint investigation team may be made by any of the States involved. The team shall be set up in one of the States in which the investigations are expected to be carried out.
- (4) Requests for the setting up of a joint investigation team shall include proposals for the composition of the team.
- (5) The members of the team who are designated by Romanian authorities shall be referred to as "members", while members from the foreign State shall be referred to as "seconded members".
- (6) A joint investigation team shall operate in the territory of Romania under the following general rules:
 - a) the leader of the team shall be a representative of the competent Romanian judicial authority;
 - b) the team shall carry out its operations according to Romanian law. The members and seconded members of the team shall carry out their tasks under the leadership of the person in (a).
- (7) Seconded members of the joint investigation team shall be entitled to be present when any procedural steps are taken, unless the leader of the team decides otherwise.

#M1

- (8) *Whenever the activity of the joint investigation team is conducted in the territory of another State, if deemed necessary in the performance of certain investigation actions in Romanian territory, the prosecutor who is a member of the joint investigation team may request the Romanian authorities to conduct such actions, without the other participating States submitting a request for judicial co-operation, save where it is requested to arrest a person in view of extradition or surrender, as the case may be. The procedures necessary for that activity in Romania shall be those governing criminal investigation, in accordance with the Romanian law.*

#B

- (9) A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the State which has seconded him or her for the purpose of the criminal investigations conducted by the team.
- (10) Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the States involved may be used for the following purposes:
 - a) for the purposes for which the team has been set up;

- b) subject to the consent of the State where the information was obtained, for detecting, investigating or prosecuting other criminal offences;
- c) for preventing an immediate and serious threat to public security, and without prejudice to the provisions of b);
- d) for other purposes to the extent that this is agreed between the States setting up the team.

(11) In the case of joint investigation teams operating in the Romanian territory, the seconded members of the team shall be assimilated to the Romanian members in relation to the offences committed against or by them.

ARTICLE 183*)

Cross-border observations

- (1) Subject to any contrary provisions existing in the convention applicable in relation to that State, the agents of a foreign State who, within the framework of a judicial investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the abovementioned person, shall be authorized to continue their observation in the territory of Romania, based on a request for judicial assistance which has been previously submitted. On request, the observation may be entrusted to the competent Romanian authorities.
- (2) The request for judicial assistance referred to in paragraph (1) must be sent to the Prosecutor's Office attached to the High Court of Cassation and Justice and contain all the relevant information on the case, according to the provisions of the applicable convention. Through its authorization, the Prosecutor's Office attached to the High Court of Cassation and Justice may impose certain conditions.
- (3) When, for particularly urgent reasons, prior authorization of Romania cannot be requested, the foreign officers conducting the observation within the framework of a criminal investigation shall be authorized to continue in Romanian territory the observation of a person presumed to have committed any of the offences listed in paragraph (5), provided that the following conditions are met :
 - a) the crossing of the border shall be notified at once, during the observation, to the Prosecutor's Office attached to the High Court of Cassation and Justice, as well as to the structure of the Border Police operating within the border crossing point;
 - b) a request for judicial assistance submitted in accordance with paragraph

- (1) and outlining the grounds for crossing the border without prior authorization shall be submitted without delay.
- (4) The observation referred to in paragraphs (1) and (2) shall be carried out only under the following conditions:
- a) the officers conducting the observation must observe this Article and Romanian law;
 - b) subject to the situations in paragraph (3), the officers shall, during the observation, carry a document certifying that authorization has been granted;
 - c) The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity;
 - d) The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by Prosecutor's Office attached to the High Court of Cassation and Justice through the authorization; their use shall be prohibited save in cases of legitimate self-defence;
 - e) Entry into private homes and places not accessible to the public shall be prohibited;
 - f) The officers conducting the observation may neither stop and question, nor arrest, the person under observation;
 - g) All operations shall be the subject of a report to the Prosecutor's Office attached to the High Court of Cassation and Justice, which may require that the officers conducting the observation appear in person;
 - h) The authority of the State from which the observing officers have come shall, when requested by the competent Romanian authority, assist the enquiry subsequent to the operation in which they took part, including legal proceedings;
 - i) the authorities of the State from which the observing officers have come shall, at the request of the Romanian authorities, contribute to the proper course of the investigation subsequent to the operation in which they took part, including legal proceedings.
- (5) The observation in paragraph (3) may take place only for one of the following acts:
- a) homicide, assassination and murder;
 - b) serious sexual offences, including rape and sexual abuse of children;

- c) destruction and aggravated destruction, committed through arson, explosion or any other such means;
 - d) counterfeiting and forgery of means of payment;
 - e) aggravated theft and robbery, as well as receiving stolen goods;
 - f) extortion;
 - g) kidnapping;
 - h) traffic in human beings and related offences;
 - i) traffic in narcotic drugs or precursors;
 - j) breach of the laws on arms, ammunition, explosives, nuclear materials and other radioactive substances;
 - k) illegal carriage of toxic and dangerous waste;
 - l) smuggling of aliens;
 - m) blackmail.
- (6) The observation in paragraph (3) shall cease where the authorization has not been obtained within 5 hours of the border being crossed, as well as at the request of the Prosecutor's Office attached to the High Court of Cassation and Justice.

#CIN

) In accordance with [Article II](#) (42) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(5\) of Article 183](#) shall read as follows:*

#M1

"(5) The supervision provisioned by paragraph (3) may only take place for the following acts:

- a) homicide and murder;*
- b) serious sexual offences, including rape and sexual abuse of children;*
- c) destruction and aggravated destruction, committed through arson, explosion or any other such means;*
- d) counterfeiting and forgery of means of payment;*
- e) aggravated theft and robbery, as well as receiving stolen goods;*
- f) embezzlement;*
- g) illegal deprivation of liberty;*
- h) offences of trafficking in human beings, trafficking of children, using the services of an exploited person, child pornography;*
- i) traffic in narcotic drugs or precursors;*
- j) breach of the laws on arms, ammunition, explosives, nuclear materials and other radioactive substances;*
- k) illegal carriage of toxic and dangerous waste;*
- l) smuggling of aliens, facilitating illegal stay in Romania;*
- m) blackmail."*

#B

ARTICLE 184

Interception and recording of conversations and communications

- (1) In view of solving a criminal case, the judicial authorities of the requesting State or the competent authorities thus designated by the requesting State may make a request to the Romanian authorities for judicial assistance relating to the interception of telecommunications and their immediate transmission to the requesting State or to the interception of the recording and of the subsequent transmission of the recording of telecommunications to the requesting State, where the prosecuted person:
 - a) is in the territory of the requesting State and the latter needs technical assistance to intercept communications from the target;
 - b) is in Romanian territory, in the event that the communications from the target can be intercepted by Romania;
 - c) is in the territory of a third State, which has been informed and if the requesting State needs technical assistance for intercepting communications from the target.
- (2) Requests made under this Article must meet the following conditions:
 - a) specify and confirm the issuing of an order or a warrant for interception and recording, within the framework of criminal proceedings;
 - b) contain information that would allow the target of the interception to be identified;
 - c) specify the criminal acts that are the object of the criminal investigation;
 - d) mention the duration of interception;
 - e) if possible, contain sufficient technical data, in particular the number for connecting to the network, in order to allow the processing of the request.
- (3) Where the request is made under paragraph (1) (b), it must contain also a description of the facts. The Romanian judicial authorities may require any other additional information needed for establishing whether the requested measure would have been taken in a similar national case.

#M1

ARTICLE 185

Identification of products and instruments of offences

- (1) *In order to collect data relating to the existence, location, nature, legal status, value or circulation of products or instruments originating from the perpetration of offences or other articles relating to the offence forming the object of criminal investigation and prosecution, court proceedings or execution, the criminal investigation authority, the prosecutor or the court of law may request the authorities of other States for data and information in that regard.*
- (2) *The assistance requested by receivable recovery offices or other authorities having similar powers in the Member States of the European Union shall take place in accordance with the procedure described in [Government Decision no. 32/2011](#) on the appointment of the Office for crime prevention and co-operation with the receivable recovery offices in the Member States of the European Union within the Ministry of Justice, as national office for the recovery of receivables in the field of prosecution and identification of the articles originating from the perpetration of offences or other articles related to the offences.*
- (3) *In its activity, the authority provisioned by paragraph (2) shall process and deliver to other receivable recovery offices or authorities holding similar powers data and information referring to identified and identifiable natural persons, in observance of the legal provisions relating to the processing of personal data.*

#M1

ARTICLE 186

Specialty principle

- (1) *Evidence or information collected by the Romanian judicial authorities in reliance upon requests for international judicial assistance executed by the authorities of other States may not be used in criminal cases other than the one specified in the request, without the prior consent of the competent authority of the requested State.*
- (2) *The provisions of paragraph (1) shall also apply in relation to the evidence or information collected by Romanian judicial authorities in reliance upon requests for international judicial assistance executed by the Romanian authorities. The judiciary authority having executed the request or the central authority, as the case may be, shall specify this, on the date when evidence or information is delivered.*

#B

ARTICLE 187

Preventive measures

At the request of the requesting State, the preventive measures provided in Romanian law may be taken for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests.

ARTICLE 188*)

Appearance of witnesses or experts

- (1) Where the personal appearance of a witness or expert is needed before the Romanian judicial authorities, the requesting judicial authority shall make a mention in this respect, in the request for service of summons.
- (2) In the case in paragraph (1), the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable. The Romanian judicial authority that ordained the summoning may, through the request, ask the requested State to grant the witness or expert an advance, the amount of which shall be refunded from the specially allocated fund for judicial expenses.
- (3) If the appearance in person of a witness or expert is requested to the Romanian authorities by a foreign State, where the witness or expert declares that he/she will appear in person, the latter may request the payment of an advance from the amount of the travelling and subsistence expenses. The court shall specify in a conclusion the amount of money requested by the witness or expert, the banking unit where the amount of money is to be deposited in the name of the witness or expert, and at the disposal of the competent Romanian judicial authority. The court's conclusion and the written statement by the witness or expert shall both be sent to the requesting State, through any of the channels in [Article 11](#) or [Article 12](#).

#CIN

) In accordance with [Article II](#) (43) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraphs \(2\) and \(3\) of Article 188](#) shall read as follows:*

#M1

- "(2) In the case in paragraph (1), the request or the summons shall indicate the approximate value of allowances payable for travelling, maintenance, lodging and other necessary expenses incurred for appearing before the judicial authorities. The Romanian judicial authority that ordained the summoning may, through the request, ask the requested State to grant the witness or expert an advance, the amount of which shall be refunded from the specially allocated fund for judicial expenses.*
- (3) If the appearance in person of a witness or expert is requested to the Romanian authorities by a foreign State, where the witness or expert declares that he/she will appear in person, the latter may request the payment of an advance from the amount of the expenses incurred for appearing before the judicial authorities. The court shall specify in a conclusion the amount of money requested by the witness or expert, the banking unit where the amount of money is to be deposited in the*

name of the witness or expert, and at the disposal of the competent Romanian judicial authority. The court's conclusion and the written statement by the witness or expert shall both be sent to the requesting State, through any of the channels in [Articles 11](#) or [12](#)."

#B

ARTICLE 189*

The amount of costs

The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by Romania as a requesting State shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place.

#CIN

) In accordance with [Article II](#) (44) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [Article 189](#) shall read as follows:*

#M1

"ARTICLE 189

Level of expenses

Refunded expenses for travelling, maintenance, lodging and other necessary expenses incurred for appearing before the judicial authorities, to be refunded to the witness or expert by the requesting Romanian State, shall be calculated from the residence thereof and shall be payable at levels at least equal to those indicated in the fees and regulations in force in the State where the hearing will take place."

#B

ARTICLE 190

Non-appearance by a witness or expert

A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of Romania as the requesting State and is there again duly summoned.

ARTICLE 191

Refusal to testify

Where a witness who complies with the summons and appears before the Romanian judicial authority, refuses either partially or totally to testify, he may not be subjected to any measure of restraint or prevented in any other way to leave

Romania, even if, under Romanian law, such refusal would be an offence or could entail coercive measures.

ARTICLE 192

Immunities

- (1) A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of Romania as the requesting State shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of Romania in respect of acts or convictions anterior to his departure from the territory of the requested State.
- (2) If during the proceedings a witness could be arrested who is suspected of having committed an offence in relation to his testimony before the judicial authorities of Romania as the requesting State, other than that of having refused to testify, one shall take into consideration whether the interests of justice would be better protected by entrusting the prosecution, if possible, to the requested foreign State.
- (3) A person, whatever his nationality, summoned before the judicial authorities of Romania as the requesting State to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested State and not specified in the summons.
- (4) The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the Romanian judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

ARTICLE 193*)

Temporary transfer of detained persons into the territory of the Requesting State

- (1) A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting judicial authorities shall be temporarily transferred to the territory of that State, provided that he shall be sent back within the period stipulated by the requested judicial authority and subject to the provisions of Article 192 in so far as these are applicable.
- (2) For applications with the Romanian judicial authorities, the competence to solve the application shall belong to the court that has venue over the place of detention. To this end, the court shall ordain that the person in custody be heard, in the presence of a lawyer chosen or appointed ex officio, as well as of an interpreter, where appropriate, in the council chamber, with the

participation of the prosecutor. The person in custody shall be informed of the object of the request and asked to state whether he agrees to be temporarily transferred into the territory of the requesting State in view of being heard as a witness. His statement shall be recorded in minutes signed by the president of the judgment panel, the court clerk, the interpreter and the defendant.

- (3) Where the person in custody does not consent, the court shall ordain dismissal of the application. Such order shall be final and served to the Ministry of Justice within 48 hours from its pronouncement.
- (4) Where the person in custody consents to the temporary transfer, the court shall check whether the conditions in paragraph (6) are met, and shall ordain acceptance or dismissal of the request, as appropriate. The order may be appealed against on points of law, within 24 hours from its pronouncement, by the competent prosecutor. The appeal shall be solved within 3 days.
- (5) The order in paragraph (4) shall be served to the Ministry of Justice within 24 hours from its becoming final. The Ministry of Justice shall inform the central authority of the requesting State about the decision of the Romanian judicial authority. The court order of temporary transfer of the person in custody shall be served on the Ministry of Administration and the Interior, which shall ensure the surrender under escort of the person in custody, under paragraph (8).
- (6) Transfer may be refused:
 - a) if his presence is necessary at criminal proceedings pending in the territory of Romania;
 - b) if transfer is liable to prolong his detention;
 - c) if there are other overriding grounds for not transferring him to the territory of the requesting State.
- (7) The person transferred shall remain in custody in the territory of the requesting State and, if appropriate, in the territory of the State requested for transit, unless the Romanian competent judicial authority requests his release, under the conditions of the [Code of Penal Procedure](#).
- (8) The place where the detainee is to be surrendered to the requesting State and the place where he is to be taken over from the requesting State shall be a Romanian border checkpoint. The detainee shall be surrendered and taken over under escort. The Ministry of Administration and the Interior shall ensure the surrender and take-over, while keeping the Ministry of Justice informed.
- (9) Paragraph (7) shall apply accordingly where Romania is the requesting State.

- (10) In the event of applications submitted by Romanian judicial authorities, subject to [Article 167](#) (2) (a) and (b), transit of the territory of a third State by the person in custody shall be granted at the request made by the Ministry of Justice to the central authority of the State requested for transit. Such request must be accompanied by all the necessary documents.

#CIN

) In accordance with [Article II](#) (45) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(4\) of Article 193](#) shall read as follows:*

#M1

"(4) Where the person in custody consents to the temporary transfer, the court shall check whether the conditions in paragraph (6) are met, and shall ordain, through a closure, to admit or dismiss the request, as appropriate. The closure may be appealed against by a statement of opposition, within 24 hours from its pronouncement, by the competent prosecutor. The statement of opposition shall be solved within 3 days."

#B

ARTICLE 194

Temporary transfer of detained persons into the territory of the requested State

- (1) Where a request for judicial assistance sent to the requested State presupposes the taking of certain procedural steps that require the presence of a person who is in custody in Romania, the Romanian requesting judicial authority may temporarily transfer this person into the territory of the State where the investigation is to take place, provided that between the Romanian authorities and those of the requested State there is an agreement in this respect. The means for temporarily transferring the person and the time limit by which he needs to be sent back to Romania shall be set forth in that agreement.
- (2) The person transferred shall remain in custody in the territory of the requested State and, if appropriate, in the territory of the State requested for transit, unless the Romanian competent judicial authority requests his release.
- (3) The period spent in custody in the territory of the requested State shall be deducted from the duration of detention to be served by that person in Romanian territory.

ARTICLE 195

Personal appearance by transferred sentenced persons

[Articles 193](#) and [194](#) shall apply accordingly to persons who are in custody in Romania, following their transfer in view of serving a penalty imposed in the territory of the sentencing State, when personal appearance in view of revision of trial is requested by the sentencing State.

ARTICLE 196

Protection of witnesses

Witnesses heard according to this Title shall enjoy protection as appropriate, according to the legislation in force.

ARTICLE 197

Service of procedural documents

- (1) Procedural documents shall be served under this Title and in accordance with the provisions of the relevant international treaties.
- (2) Procedural documents shall mean, mainly, summons to parties or witnesses, indictment, other documents of criminal prosecution, court judgments, applications for judicial review or documents relating to the execution of a penalty, the payment of a fine or the payment of legal expenses.
- (3) Requests for judicial assistance relating to the service of procedural documents, submitted to the Romanian judicial authorities, shall be fulfilled at the stage of trial by the first instance court that has venue over the domicile or place of detention of the person who is to receive the documents, and at the stage of criminal prosecution by the prosecutor's office attached to that court.

ARTICLE 198

Service and proof of service

- (1) Service of procedural documents may be performed by simple transmission to the person to be served. If the requesting State expressly so requests, service shall be effected by Romania in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.
- (2) Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the Romanian requested authority that service has been performed and stating the form and date of such service. One or other of these documents shall be sent immediately to the requesting State. Romania shall, if the requesting State so requests, state whether service has been performed in accordance with Romanian law. If service cannot be performed, the reasons shall be communicated immediately by Romania to the requesting State.

ARTICLE 199

Time required for process service

The summons to appear addressed to a prosecuted person who is in Romanian territory, shall be sent to the Romanian competent authorities no later than 40 days before the date set for appearance. This time shall be taken into account when the date of appearance is being fixed and when the summons is being transmitted.

ARTICLE 200

Service by post

- (1) The Romanian judicial authorities may directly address, by post, procedural documents and judicial decisions, to persons who are in the territory of any other State, provided that the international legal instrument applicable in relation to that State provides this.
- (2) In the case in paragraph (1), procedural documents and judicial decisions shall be accompanied by a report stating that the addressee may obtain information from the issuing authority, regarding his or her rights and obligations.

ARTICLE 201

Service of documents and data

- (1) Romania shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a requesting foreign State and needed in a criminal matter, to the same extent that these may be made available to Romanian judicial authorities in like case.
- (2) In any case other than that provided for in paragraph (1), the request shall be complied with in accordance with the conditions provided for by Romanian law.

ARTICLE 202

Transmission of information

- (1) Romania shall inform a foreign State of all criminal convictions and subsequent measures in respect of nationals of that foreign State, entered in the judicial records. Such information shall be communicated at least once a year.
- (2) Where the person concerned is a national of two or more States, the information shall be given to each of the States concerned, unless the person is a national of Romania.

- (3) Romania shall send to any foreign State concerned, at its request, in special cases, a copy of the convictions and measures in paragraph (1), as well as any other information pertaining to these, in order to allow it to determine whether domestic measures are required.

ARTICLE 203

The competent Romanian authority

- (1) The information referred to in [Article 200](#) shall be sent via the Ministry of Justice.
- (2) The information of the same kind, received from the competent authorities of foreign States within the framework of the information exchange, shall be received by the Ministry of Justice, which shall send them to the competent authorities, in view of proceeding according to their powers in what regards the recognition and, respectively, the registration of foreign penal decisions.

CHAPTER II

Provisions on judicial assistance that apply in relation to the Member States of the European Union

SECTION 1

Provisions for the implementation of the [Convention](#) from 19 June 1990 applying the Schengen [Agreement](#) of 14 June 1985 on the gradual abolition of checks at common borders, Schengen, 19 June 1990

ARTICLE 204

Granting of assistance

According to this Section, mutual assistance shall be granted also:

- a) in proceedings brought by the administrative authorities, in respect of acts which are punishable in Romania or the requesting State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
- b) in proceedings for claims for damages arising from wrongful prosecution or conviction;
- c) in proceedings in non-litigation matters;
- d) in civil actions joined to criminal proceedings, as long as the criminal court has not yet taken a final decision in the criminal proceedings;
- e) in the service of judicial documents relating to the enforcement of a

sentence or preventive measure, the imposition of a fine or the payment of costs for proceedings;

- f) in respect of measures relating to the deferral of delivery or suspension of enforcement of a sentence or a preventive measure, to conditional release or to a stay or interruption of enforcement of a sentence or a preventive measure.

ARTICLE 205

Assistance in matters of fees and excise duty

- (1) Romania shall grant, according to the provisions of the European [Convention](#) of 20 April 1959 on mutual assistance in criminal matters, judicial assistance as regards infringements of the laws and regulations on excise duties, value added tax and customs duties.
- (2) Where Romania is the requesting State, it shall not forward or use information or evidence obtained from requested State for investigations, prosecutions or proceedings other than those referred to in its request, without the prior consent of the requested State.
- (3) The judicial assistance provided in this Article may be refused where the alleged amount of duty underpaid or evaded does not exceed EUR 25,000 or the RON equivalent thereof, or where the presumed value of the goods exported or imported without authorization does not exceed EUR 100,000 or the RON equivalent thereof, unless, given the circumstances or the identity of the accused, the case is deemed to be extremely serious by the requesting State.
- (4) The provisions of this Article shall apply also when the judicial assistance requested concerns acts punishable only by a fine by virtue of being infringements of the rules of law in proceedings brought by the administrative authorities, where the request for assistance was made by a judicial authority.

[ARTICLE 206*](#))

Search and seizure

- (1) [Article 176](#) (1) shall not apply in relation to the States-party to the Convention applying the Schengen Agreements.
- (2) In relation to the States in paragraph (1), the execution of letters rogatory for search or seizure may however be made dependent on the following conditions:
 - a) the act giving rise to the letters rogatory is punishable under Romanian legislation and that of the requested State by a penalty involving

deprivation of liberty or a detention order of a maximum period of at least six months, or is punishable under the law of one of the two Parties by an equivalent penalty and under the law of the other Party by virtue of being an infringement of the rules of law which is prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

- b) execution of the letters rogatory is consistent with Romanian law.

#CIN

) In accordance with [Article II](#) (46) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), paragraph (2) [a](#)) of [Article 206](#) shall read as follows:*

#M1

"a) the act giving rise to the letters rogatory is punishable under Romanian legislation and that of the requested State by a penalty involving deprivation of liberty or a safety measure involving deprivation of liberty of a maximum period of at least six months, or is punishable under the law of one of the two Parties by an equivalent penalty and under the law of the other Party by virtue of being an infringement of the rules of law which is prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in criminal matters;"

#B

ARTICLE 207

Transmission by post of procedural documents

- (1) In the event of transmission by post of procedural documents, where there is a reason to believe that the addressee does not understand the language in which the document is drafted, the document, or at least the important passages in it, must be translated into (one of) the language(s) of the Member State in the territory of which the addressee is staying. If the authority forwarding the document knows that the addressee speaks only some other language, the document, or at least the important passages thereof, must be translated into that other language.
- (2) An expert or witness who has failed to answer a summons to appear, sent to him by post, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of constraint, unless subsequently he voluntarily enters into the territory of Romania and is here again duly summoned. The authority sending a summons to appear by post shall ensure

that this does not involve a notice of penalty.

- (3) If the act on which the request for assistance is based is punishable under the law of both States by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters, the procedure outlined in paragraph (1) must in principle be used.
- (4) Procedural documents may be forwarded via the judicial authorities of the requested Member State, where the addressee's address is unknown or where a formal service is required.

ARTICLE 208

Cross-border observation

In applying this Section, the list in [Article 183](#) (5) is hereby supplemented with the following acts:

- a) manslaughter;
- b) serious fraud;
- c) money laundering;
- d) illicit traffic in nuclear and radioactive substances;
- e) participation in criminal organizations, mentioned in the Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organization in the Member States of the European Union;
- f) offences of terrorism provided in the [Framework Decision 2002/475/JHA](#) of 13 June 2002 on combating terrorism.

ARTICLE 209

Liability of foreign officers

- (1) During the operations and activities mentioned in [Article 208](#), the foreign officers undertaking prosecution in the Romanian territory shall be equated with the persons who have the same capacity in Romania in what concerns the offences committed against them or by them.
- (2) In the event that, in the course of the operations in [Article 208](#), the foreign officers cause damage, the State whence they came shall be liable for this damage, according to Romanian law.
- (3) The State whose officers have caused damage to any person in the territory of Romania shall reimburse the latter in full any sums paid to the victims or persons entitled on their behalf.

- (4) Without prejudice to the exercise of its rights related to third parties and with the exception of paragraph (3), Romania shall refrain in the case provided for in paragraph (2) from requesting reimbursement of damages it has sustained from another State.

SECTION 2

Provisions for enforcing the Convention of 29 May 2000 on mutual judicial assistance in criminal matters between Member States of the European Union and the Protocol thereto of 16 October 2001

ARTICLE 210

Information about bank accounts

- (1) At the request of the authorities of a Member State of the European Union, the Romanian authorities shall ordain the taking of the requisite steps in view of identifying bank accounts, whatever their nature, which are controlled or held in a bank unit in Romania, by a natural or legal person who is under criminal investigation, and shall provide to them the numbers of the bank accounts, as well as any other details. The information shall also include data on the accounts for which the person under investigation has a mandate, to the extent that such information was expressly requested and may be provided within a reasonable time.
- (2) The data in paragraph (1) shall be provided only to the extent that the information is available to the bank where the accounts are.
- (3) The data in paragraph (1) shall be provided only if the criminal investigations concerns, as appropriate:
 - a) an offence punishable by a custodial penalty or a warrant for service of imprisonment for a maximum period of at least 4 years, in the requesting State, and at least 2 years in the requested State, or
 - b) an offence mentioned in Article 2 of the Convention on the establishment of a European Police Office (the Europol Convention) of 1995 or the annex thereto, or
 - c) to the extent that the offence is not provided in the Europol Convention, an offence provided in the Convention of 1995 on the Protection of the European Communities' Financial Interests, in the Additional Protocol of 1996 or in the Second Additional Protocol of 1997.
- (4) Where the information in paragraph (1) is requested, the requesting authority shall mention the following in its request:
 - a) the reasons for which the information requested is believed to have

- substantial value in the investigation of that offence;
- b) the elements based on which it was established that banks in Romanian territory have or control those bank accounts and, to the extent of availability, the names of the banks involved;
 - c) any other available data that may facilitate the execution of the request.
- (5) A request submitted under paragraph (1) shall be subject to the following conditions:
- a) execution of the request must be compatible with Romanian law;
 - b) the act that is under criminal investigation must be an offence according to Romanian law.
- (6) In the event of requests submitted by Romanian authorities, this Article shall apply accordingly.

ARTICLE 211

Information on bank transactions

- (1) Upon request, Romanian authorities shall provide details on the bank accounts specified by the requesting foreign authorities, as well as on the bank transactions that passed, during a certain period, through one or more of the bank accounts specified in the request, including details on any sender or recipient of account.
- (2) The data in paragraph (1) shall be provided only to the extent that it is available to the bank holding those accounts.
- (3) Where the information in paragraph (1) is requested, the requesting authority shall show in its request the reasons for which the information requested is considered to have substantial value in the investigation of that offence.
- (4) A request submitted under paragraph (1) shall be subject to the following conditions:
- a) execution of the request must be compatible with Romanian law;
 - b) the act that is under criminal investigation must be an offence according to Romanian law.
- (5) In the event of requests submitted by Romanian authorities, this Article shall apply accordingly.

ARTICLE 212

Monitoring bank transactions

- (1) Romanian authorities shall, at the request of the authorities of a Member State of the European Union, ensure the monitoring, for a determinate period, of bank transactions passing through one or more of the bank accounts specified by the requesting authorities.
- (2) Where the information in paragraph (1) is requested, the requesting authority shall show in its request the reasons for which the information requested is considered to have substantial value in the investigation of that offence.
- (3) The competent Romanian judicial authorities shall authorize, under the conditions set forth in Romanian law, the monitoring of bank accounts. The Romanian and foreign judicial authorities shall establish according to Romanian law how the actual monitoring is to take place.

ARTICLE 213

Confidentiality

Banks shall observe confidentiality, both with regard to the transmission of the information to the requesting authorities, and to the ongoing criminal investigation, and they may not reveal such information to the client or to any other person.

ARTICLE 214

Obligation to provide information

- (1) The Romanian requested authority shall inform the requesting State without delay where, during the execution of a request, additional investigations are needed which could not be foreseen or specified by the requesting authority in its initial request.
- (2) After it is informed, according to paragraph (1), the requesting State may submit an additional request, under [Article 215](#).
- (3) Paragraph (1) shall apply also where the additional investigations need to be performed by the authorities of a different Member State or of a third State.

ARTICLE 215

Additional requests

- (1) Where the authorities of the requesting State submit an additional request, it shall include only the data needed to identify the initial request, as well as other additional data needed.
- (2) Whenever the requesting authorities are taking part alongside Romanian

authorities in the execution of the request for assistance, they may present the additional request in paragraph (1) directly to the requested Romanian authority. A copy thereof shall be sent to the Ministry of Justice or to the Prosecutor's Office attached to the High Court of Cassation and Justice, as appropriate.

ARTICLE 216

Bank secrecy

Bank secrecy may not be called upon as grounds for refusing cooperation relating to requests for assistance submitted by the authorities of a Member State of the European Union.

ARTICLE 217

Transmission of decisions of refusal

Decisions of refusal of judicial assistance shall be transmitted to the Secretariat of the Council of the European Union and the Eurojust.

ARTICLE 218

Central authorities

- (1) In respect of judicial assistance requests referred to in Article 6 (8) of the Convention of 29 May 2000 on mutual judicial assistance in criminal matters among the Member States of the European Union and any other request for judicial assistance in the trial or penal decision enforcement stage in the case specified under Article 6 (3) of the above-mentioned convention and in other situations where direct contact is impossible, the central authority shall be the Ministry of Justice. Nevertheless, direct communication between Romanian judicial authorities and the central authorities appointed by other Member States is also possible.
- (2) For the judicial assistance requests in the criminal investigation and prosecution stage in the case specified under Article 6 (3) of the Convention of 29 May 2000 on mutual judicial assistance in criminal matters among the Member States of the European Union and in other cases where direct contact is impossible, the central authority shall be the Prosecutor's Office attached to the High Court of Cassation and Justice. Nevertheless, direct communication is also possible between Romanian judicial authorities and the central authorities appointed by the United Kingdom of Great Britain and Northern Ireland and by Ireland.
- (3) The Prosecutor's Office attached to the High Court of Cassation and Justice is appointed as the central authority competent to receive judicial assistance requests referred to in Articles 18, 19 and Article 20 (1)–(5) of the Convention of 29 May 2000 on mutual judicial assistance in criminal matters among the Member States of the European Union, the judicial authority competent to settle the request

being the competent court, in accordance with the law to authorize telecommunication interception.

SECTION 3

Provisions referring to cooperation among Member States of the European Union in enforcing Council [Framework Decision 2003/577/JHA](#) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence

PARAGRAPH 1

General Provisions

ARTICLE 219

Meaning of certain terms or phrases

- (1) Freezing order shall mean any measure taken during the penal trial by a judicial authority of a Member State consisting of provisionally freezing a property, in order to prevent any operation of destruction, transformation, moving, transfer or disposal thereof.
- (2) The term property shall mean any property, of any description, corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property, which the issuing competent judicial authority considers:
 - a) is the proceeds of an offence referred to in [Article 223](#), or equivalent to either the full value or part of the value of such proceeds; or
 - b) constitutes the instrumentalities or the objects of such an offence.
- (3) The term evidence shall mean objects, documents or data which could be produced as evidence in criminal proceedings concerning an offence referred to in [Article 223](#).
- (4) Issuing State shall mean the Member State in which a judicial authority has issued, validated or confirmed a freezing order in the framework of criminal proceedings.
- (5) Executing State shall mean the Member State in whose territory the property or evidence is located.
- (6) Framework Decision shall mean Council [Framework Decision 2003/577/JHA](#) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, published in Official Journal of European Union no. L 196 of 2 August 2003.

ARTICLE 220

Object of regulation

The provisions of this section apply to freezing orders issued in accordance with the framework decision in order to protect evidence or subsequent seizure of property.

ARTICLE 221

Certificate

- (1) The certificate shall be prepared in accordance with the standard form provided in [Annex no. 2](#) and shall be signed by the judicial authority having ordered the measure stipulated in [Article 219](#) (1). At the same time, the contents of the certificate shall be certified by the competent issuing judicial authority.
- (2) The certificate issued by a Romanian judicial authority shall be translated into the official language or one of the official languages of the executing Member State or in another language allowed in the relevant Member State.
- (3) The certificate delivered for execution to the Romanian judicial authorities shall be translated into Romanian.

ARTICLE 222

Competent authorities

- (1) The freezing orders shall be issued by the prosecutor, during the criminal prosecution stage, and by the court of law, during the court proceedings.
- (2) The freezing order shall be enforced by the prosecutor's office attached to the tribunal, in the criminal prosecution stage, and by the tribunal, during court proceedings, under whose jurisdiction the property for which the freezing order was issued is located.
- (3) If the freezing order refers to several items of property located in the territorial jurisdiction of two or more Romanian legal authorities, the competence to recognize and to execute the freezing order shall lie, depending on the stage of the proceedings, with the Prosecutor's Office attached to the Tribunal of Bucharest or with the Tribunal of Bucharest.
- (4) If the freezing order refers to a property forming the object of a criminal trial pending settlement or settled by the rendition of a final decision, the competence shall lie with the prosecutor's office attached to the tribunal, during the criminal prosecution stage, and with the tribunal, during the court proceedings, irrespective of the jurisdiction level of the Romanian judicial authority vested to settle the case or having rendered the decision.

ARTICLE 223*)

Scope

(1) The following offences, whatever their name in the laws of the issuing State, and if they are punishable under the law of the issuing State by a custodial sentence of a maximum period of at least three years shall not be subject to verification of the double criminality of the act:

1. participation in a criminal organization;
2. terrorism;
3. trafficking in human beings;
4. sexual exploitation of children and child pornography;
5. illicit trafficking in narcotic drugs and psychotropic substances;
6. illicit trafficking in weapons, munitions and explosives;
7. corruption;
8. fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the Protection of the European Communities' Financial Interests;
9. laundering the proceeds of crime;
10. counterfeiting currency, including of the euro;
11. computer-related crime;
12. environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
13. facilitation of unauthorized entry and residence;
14. murder, grievous bodily injury;
15. illicit trade in human organs and tissue;
16. kidnapping, illegal restraint and hostage-taking;
17. racism and xenophobia;
18. organized and armed robbery;
19. illicit trafficking in cultural goods, including antiques and works of art;
20. swindling;
21. racketeering and extortion;
22. counterfeiting and piracy of products;
23. forgery of administrative documents and trafficking therein;
24. forgery of means of payment;
25. illicit trafficking in hormonal substances and other growth promoters;
26. illicit trafficking in nuclear and radioactive materials;
27. trafficking in stolen vehicles;
28. rape;
29. arson;
30. crimes within the jurisdiction of the International Criminal Tribunal;
31. unlawful seizure of aircraft/ships;
32. sabotage.

(2) For instances other than the ones stipulated under paragraph (1), in case of a freezing order issued in order to secure evidence, the recognition and execution of such an order shall be subject to the condition that the offence for which the order was issued to be deemed an offence, in accordance with the Romanian law,

irrespective of the constituent elements or the legal classification in the law of the issuing State.

- (3) For instances other than the ones stipulated under paragraph (1), in case of a freezing order issued in order to subsequently seize the property, the recognition and execution of such an order shall be subject to the condition that the offence for which the order was issued to constitute an offence that, in accordance with the Romanian law, may lead to this type of freezing, irrespective of the constituent elements or the legal classification in the law of the issuing State.
- (4) In terms of taxes and levies, customs and currency exchange, the execution of a freezing order may not be refused based on the reason that the Romanian law does not impose the same type of taxes or levies or does not contain the same type of regulations in terms of taxes or levies, customs and currency exchange as the law of the issuing State.

#CIN

) In accordance with [Article II](#) (47) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [paragraph \(1\) of Article 223](#) shall read as follows:*

#M1

"(1) The following offences, irrespective of the name specified in the law of the issuing State, if they are punishable in the issuing State by a custodial sentence of a maximum of at least three years, shall not be subject to examination as to the fulfilment of the double incrimination condition:

1. 1. participation in a criminal organization,
2. terrorism,
3. trafficking in human beings,
4. sexual exploitation of children and child pornography,
5. illicit trafficking in narcotic drugs and psychotropic substances,
6. illicit trafficking in weapons, munitions and explosives,
7. corruption,
8. fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
9. laundering of the proceeds of crime,
10. counterfeiting currency, including of the euro,
11. computer-related crime,
12. environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
13. facilitation of unauthorized entry and residence,
14. murder, grievous bodily injury,
15. illicit trade in human organs and tissue,

16. *kidnapping, illegal restraint and hostage-taking,*
17. *racism and xenophobia,*
18. *organized or armed robbery,*
19. *illicit trafficking in cultural goods, including antiques and works of art,*
20. *swindling,*
21. *racketeering and extortion,*
22. *counterfeiting and piracy of products,*
23. *forgery of administrative documents and trafficking therein,*
24. *forgery of means of payment,*
25. *illicit trafficking in hormonal substances and other growth promoters,*
26. *illicit trafficking in nuclear or radioactive materials,*
27. *trafficking in stolen vehicles,*
28. *rape,*
29. *arson,*
30. *crimes within the jurisdiction of the International Criminal Court,*
31. *unlawful seizure of aircraft/ships,*
32. *sabotage."*

#B

PARAGRAPH 2

Procedure for issuing and transmitting freezing orders

ARTICLE 224

Issuance and transmission of freezing orders

- (1) The document whereby the freezing order is issued, as defined under [Article 219 \(1\)](#), shall be drawn up in accordance with the appropriate provisions of the [Code of Penal Procedure](#).
- (2) The freezing order, together with the certificate drawn up in observance of the provisions of [Article 221](#), shall be transmitted by the Romanian judicial authority which issued it directly to the competent judicial authority from the executing State. Transmission shall be performed by any means capable of producing written record, under conditions allowing the executing judicial authority to establish the authenticity of the document and of the certificate.
- (3) The freezing order shall be delivered together with:
 - a) an evidence remittal request; or
 - b) a seizure request, requiring either the execution of a freezing order issued by the competent Romanian judicial authority, or the seizure and subsequent execution of such an order. Such requests shall be drawn up in accordance with the provisions applicable in the area of judicial assistance in criminal matters and the rules applicable to international cooperation in matters of seizure.

- (4) If the freezing order is not accompanied by one of the requests specified in paragraph (3), the certificate stipulated in Article 221 may contain an instruction relating to the property being maintained in the executing State until the receipt of the request referred to in paragraph (3) (a) or (b). The issuing Romanian judicial authority shall specify in the certificate the date when it estimates that such request would be transmitted.
- (5) As an exception, in the case of Member States which, through the statements notified to the European Commission, submitted to the General Secretariat of the Council of the European Union, reserved the right to receive and to deliver the freezing order together with the certificate stipulated in [Article 221](#) through the central authorities appointed by the former, the transmission shall take place in accordance with the statements of the Member States at issue.
- (6) If the issuing Romanian judicial authority is not aware of the executing authority, the former shall request assistance from Romania's contact points to the European Judicial Network, in order to obtain information in this respect.
- (7) If the issuing Romanian judicial authority revokes the measure provided in [Article 219](#) (1), it shall immediately notify the judicial authority of the executing State accordingly.
- (8) If, further to the execution of a freezing order issued by a Romanian judicial authority, the executing authority indemnified any person concerned, including good faith third parties, the Romanian State shall reimburse to the executing State the amount granted as compensation.

PARAGRAPH 3

Procedure for the execution of freezing orders by the Romanian authorities

ARTICLE 225

Joint provisions

- (1) The Romanian judicial authority, irrespective of the stage of the proceedings, shall recognize any freezing order without requiring any other formality and shall immediately adopt the measures necessary for its immediate execution, in the same manner as if the measure laid down in [Article 219](#) (1) were ordered by a Romanian judicial authority, except for the case where one of the non-recognition or non-execution reasons provided in [Article 230](#) or one of the postponement reasons stipulated in [Article 231](#) is applicable.
- (2) If it is necessary to guarantee that the evidence obtained is valid, the executing Romanian judicial authority shall comply with the formalities and procedures expressly indicated by the issuing judicial authority, provided that such formalities and procedures do not infringe the constitutional principles.

- (3) A report regarding the execution of the freezing order drawn up by the executing Romanian judicial authority, based on the memorandum prepared by the judicial body having given effect to the freezing order, shall be immediately transmitted to the executing Romanian judicial authority, and the latter shall deliver the same to the issuing judicial authority by any means capable of producing written record.
- (4) Any additional coercive measure required in order to give effect to the freezing order shall be taken in accordance with the relevant provisions of the [Code of Penal Procedure](#).

ARTICLE 226

Preliminary measures

- (1) Whenever a Romanian judicial authority received a freezing order, the latter has to verify, within 24 hours as of the receipt date, whether the order is accompanied by the certificate provided under [Article 221](#) or by any other document equivalent thereto, as well as by the translation into Romanian.
- (2) If the documents referred to in paragraph (1) are not translated, the Romanian judicial authority shall request the issuing judicial authority to deliver the translation within no more than 3 days. After the translation having been received, the Romanian judicial authority shall verify competence within no more than 24 hours after the date of receipt.
- (3) If the Romanian judicial authority deems that it is not competent to recognize and take the measures necessary to execute the freezing order, it shall immediately deliver, *ex officio*, the freezing order to the Romanian judicial authority competent to execute the same and shall inform the judicial authority of the issuing State in this respect. If the freezing order does not contain information sufficient to determine the competence, the Romanian judicial authority may request the issuing judicial authority to deliver additional information, and shall set a deadline of no more than 3 days for this purpose.
- (4) In the stage of court proceedings, the allocation of the case shall occur in accordance with the relevant legal provisions applicable in this area, and the court hearing date shall not be later than 5 days.
- (5) The procedure stipulated in paragraphs (1)–(3) shall be confidential.

ARTICLE 227

Recognition and execution during the stage of criminal prosecution

- (1) During the stage of criminal prosecution, the competent prosecutor shall order by means of an ordinance, within no more than 5 days after expiry of the periods stipulated in [Article 226](#).

- (2) The ordinance whereby the prosecutor decided to recognize the freezing order may be challenged through a complaint by any person concerned, including good faith third parties, if it prejudiced its lawful interests. The complaint shall be submitted within 5 days after service of the copy of the ordinance.
- (3) The substantive reasons having underlain the issuance of the freezing order cannot be subject to the complaint, and they may only be challenged before a court of the issuing State.
- (4) The complaint shall be submitted to the tribunal under whose territorial jurisdiction the prosecutor's office within which the prosecutor having ordered the freezing order to be recognized operates is located. In judging the complaint, attendance by the prosecutor is mandatory.
- (5) The file shall be delivered by the prosecutor's office to the competent tribunal, within two days after having received the letter requesting the same.
- (6) The complaint shall be settled in public session, within 5 days, by final closure. The submission of the complaint shall not stay the freezing order from being given effect. In settling the complaint, the court of law shall verify the prosecutor's ordinance, based on the material in the case file and on any documents filed, and shall render one of the following solutions:
 - a) the court may dismiss the complaint for late submission or inadmissibility, upholding the challenged ordinance;
 - b) the court may admit the complaint, quash the challenged ordinance and order the freezing measure to be revoked.
- (7) The freezing order shall be enforced by the prosecutor having ordered that it be recognized by means of the ordinance.

ARTICLE 228*)

Recognition and execution during the stage of court proceedings

- (1) The court of law shall settle the case, by means of a closure, rendered in the chamber, by a panel consisting of one judge. Judgment shall be made with emergency and with priority.
- (2) The decision may be challenged by second appeal, within 5 days after rendition or service, as appropriate, by any person concerned, including good faith third parties, if it prejudiced the lawful interests thereof. The provisions of [Article 227](#) shall apply accordingly.

- (3) The file shall be delivered to the second appeal court within 24 hours after the submission of the second appeal. The second appeal shall be settled within 5 days, by the competent court of appeal, based on the material in the case file and any other documents submitted.
- (4) The second appeal shall not stay the execution of the freezing order.
- (5) The freezing order shall be executed by the appointed prosecutor within the prosecutor's office attached to the competent tribunal

#CIN

) In accordance with [Article II \(48\)](#) and [Article IV](#) of Law no. 300/2013 (#M1**), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [Article 228](#) shall read as follows:*

#M1

"ARTICLE 228

Recognition and execution in the court proceedings stage

- (1) The court of law shall settle the case, by closure, rendered in the Council Chamber, by a panel consisting of a single judge. Judgment shall be rendered as a matter of emergency and with priority.*
- (2) The closure may be challenged by statement of opposition, within 5 days after ruling or service, as the case may be, by any interested person, including good-faith third parties, if it caused a prejudice against their lawful interests. [Article 227](#) shall apply accordingly.*
- (3) The file shall be forwarded to the higher-ranking court within 24 after the submission of the statement of opposition. The statement of opposition shall be settled within 5 days, in reliance upon the material in the case file and any other documents submitted.*
- (4) The statement of opposition shall not stay the enforcement of the freezing order.*
- (5) The freezing order shall be enforced by the appointed prosecutor within the prosecutor's office attached to the competent tribunal."*

#B

ARTICLE 229

Duration of the freezing and subsequent treatment of the frozen property

- (1) The property shall remain frozen until the final settlement of the requests stipulated in [Article 224](#) (3).
- (2) Nevertheless, the competent Romanian judicial authority may, after consulting the

issuing judicial authority, in accordance with the Romanian law and practice applicable in this field and depending on the circumstances of the case, order that the property be frozen for a shorter period of time.

- (3) If the competent Romanian authority intends to revoke the freezing measure, the former shall inform the issuing judicial authority, allowing the latter the possibility to submit remarks. In addition, when the judicial authority of the issuing State informs the executing Romanian authority of the revocation of the freezing order, the latter shall have the obligation to revoke the measure in the shortest time practicable.
- (4) The requests provided under [Article 224](#) (3) shall be executed in accordance with the rules applicable to legal assistance in criminal matters and with the rules applicable to international cooperation in matters of seizure.
- (5) Nevertheless, by derogation from the rules in the field of judicial assistance laid down in paragraph (4), the competent Romanian judicial authority may not refuse the requests indicated in [Article 224](#) (3) a), invoking the absence of double criminality, if such requests refer to the offences listed in [Article 223](#) (1), and these offences shall be punishable under the law of the issuing State by at least 3 years imprisonment.

ARTICLE 230

Grounds for non-recognition or non-execution

- (1) Aside from the cases indicated in [Article 223](#) (2) and (3), the competent Romanian judicial authorities may refuse to recognize or execute the freezing order only if:
 - a) the certificate provided for in [Article 221](#) is not produced, is incomplete or manifestly does not correspond to the freezing order;
 - b) there is an immunity or privilege under the Romanian law which makes it impossible to execute the freezing order;
 - c) it is instantly clear from the information provided in the certificate that the settlement of a request for judicial assistance having as its object the delivery of evidence or the seizure for the offence in forming the object of the penal trial would infringe the non bis in idem principle.
- (2) In the case stipulated in paragraph (1) a), the Romanian judicial authority may:
 - a) specify a deadline of no more than 3 days for the presentation, completion or correction of the certificate;
 - b) accept an equivalent document; or

- c) exempt the issuing judicial authority from the requirement of it considers that the information provided is sufficient.
- (3) Any decision to refuse recognition or execution shall be taken and notified forthwith to the competent judicial authorities of the issuing State by any means capable of producing a written record.
- (4) If it is in practice impossible to execute the freezing order for the reason that the property or evidence have disappeared, have been destroyed, cannot be found in the location indicated in the certificate or the location of the property or evidence has not been indicated in a sufficiently precise manner, even after consultation with the competent judicial authority of the issuing State, the latter shall be immediately notified in this respect.

ARTICLE 231

Grounds for postponement of execution

- (1) The competent Romanian judicial authority may postpone the execution of a freezing order if:
- a) its execution might prevent or hinder an ongoing criminal trial. The postponement shall be ordered for a period deemed by the executing Romanian judicial authority necessary for the appropriate performance of the penal trial;
 - b) the property or evidence concerned have already been subjected to a freezing order in criminal proceedings, the postponement being decided until that measure is lifted;
 - c) the freezing order was issued with a view to subsequently seize property already subject to a measure adopted in the course of a penal trial in Romania; in this case, the postponement is ordered until the time when such measure is lifted. However, this case shall only apply where such a freezing order would have priority over subsequent measures adopted by the Romanian judicial bodies, in criminal proceedings, under national law.
- (2) A report on the postponement of the execution of the freezing order, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be delivered forthwith to the competent judicial authority of the issuing State by any means capable of producing a written record.
- (3) As soon as the ground for postponement has ceased to exist, the executing Romanian judicial authority shall forthwith take the necessary measures for the execution of the freezing order and inform the issuing judicial authority in this respect by any means capable of producing a written record.

- (4) The executing Romanian judicial authority shall inform the issuing judicial authority about any other restraint measure to which the property concerned may be subjected.

ARTICLE 232 Reimbursement

- (1) Without prejudice to the provisions of [Article 227](#) (3), where the Romanian State is responsible for injury caused to one of the stakeholders, including good faith third parties, by the execution of a freezing order transmitted for execution purposes to a Romanian judicial authority, the Romanian State shall request from the issuing State any amount paid in damages to the said party, except if and to the extent that the injury or any part of it is exclusively due to the conduct of the Romanian authorities.
- (2) The provisions of paragraph (1) shall not prejudice the national legal provisions on claims by natural or legal persons for compensation or damage.

SECTION 4
Provisions referring to cooperation with the Members States of the European Union in applying Council [Framework Decision 2005/214/JHA](#) of 24 February 2005 on the application of the principle of mutual recognition to financial penalties

PARAGRAPH 1 Joint provisions

ARTICLE 233 Definitions

For the purpose of this section:

#M1

- (1) *Decision shall mean, irrespective of its name, such as closure, judgment, decision, ordinance, resolution or ascertaining protocol, a final decision issued by a criminal prosecution authority, a court, as well as by other authorities which, in accordance with the law, are deemed to be judicial or by an administrative authority, whereby a natural or legal person was compelled to pay a financial penalty, when the decision was adopted by:*
- a) *a judicial authority, following the perpetration of an offence which, in accordance with the law of the issuing State, amounts to an offence;*
 - b) *an authority, other than judicial, in relation to an offence that, in accordance with the law of the issuing State, amounts to an offence, if the sanctioned natural or legal person had the possibility to request the case to be tried before a judicial authority also competent in criminal matters;*

- c) *an authority, other than judicial, in relation to an offence that, in accordance with the law of the issuing State, amounts to a breach of rules of law, if the sanctioned natural or legal person had the possibility to request the case to be tried before a judicial authority also competent in criminal matters;*
- d) *a judicial authority also competent in criminal matters, when the decision was made in relation to a decision referred to in sub-paragraph c).*

(2) *** Repealed

#B

- (3) issuing State shall mean Member State in which a decision within the meaning of the Framework Decision was delivered;
- (4) executing State shall mean the Member State to which a decision has been transmitted for the purpose of enforcement;
- (5) Framework Decision shall mean [Council Framework Decision 2005/214/JHA](#) of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, published in Official Journal of the European Union no. L 76 of 22 March 2005.

#M1

ARTICLE 234

Competent authorities

- (1) *In the case of decisions rendered in other member States, the Ministry of Justice, through its relevant department, shall be competent to receive the decision and deliver it, in view of execution, to the local court having jurisdiction over the domicile or registered offices of the person against whom the sanction was imposed, save where the amount of money to be paid by the latter is lower than EUR 70 or the RON equivalent thereof, in which case the documents delivered by the issuing State shall be returned accompanied by a reasoned report.*
- (2) *In the case of decisions rendered by Romanian judicial or administrative authorities, the certificate shall be filled in by the authority having imposed the financial penalty and delivered, in Romanian and the foreign language, together with the decision whereby such sanction was imposed, to the competent authority of the executing State.*

#M1

ARTICLE 234¹

Conditions relating to the execution of financial penalties

- (1) *The execution of a financial penalty imposed for the natural or legal person's having breached rules of criminal law or other rules of law shall be performed in reliance upon the provisions hereof, provided that the financial penalty is a sum of at least EUR 70 or the RON equivalent thereof:*
- a) *the payment of which has been imposed against the natural or legal person by an enforceable decision, as penal or administrative fine, as the case may be; or*
 - b) *representing indemnification granted, through the same enforceable decision, to the damaged party who did not become a civil party to the trial, when the court exercised its competence in criminal matters;*
 - c) *the payment of which has been imposed against the natural or legal person as legal or administrative expenses;*
 - d) *to be delivered to a public fund or the fund of a victim assistance organisation, the payment of which has been imposed against the natural or legal person through the same enforceable decision.*
- (2) *The execution of the following provisions shall not fall under the scope of this section:*
- a) *in relation to the confiscation of instruments or proceeds of the offences;*
 - b) *civil, deriving from an action for claims and restitution and which are enforceable in accordance with [Regulation \(EC\) no. 44/2001](#) of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.*

#B

PARAGRAPH 2

Procedure for transmission of decisions

ARTICLE 235

Transmission of decisions

#M1

- (1) *The decision, together with the certificate prepared in accordance with paragraph (2), may be delivered by the Romanian authorities stipulated in [Article 234](#) directly to the competent execution authority in the Member State where the natural or legal person holds assets or a source of revenue or where they have ordinary legal residence, in the case of legal persons – the registered offices.*

- (2) *The certificate shall be prepared in accordance with the standard form provisioned by [Annex no. 3](#). The certificate shall be signed, and its contents certified as true copy by the Romanian issuing authority.*

#B

- (3) The decision or a certified copy thereof, together with the certificate, shall be transmitted directly to the competent authority in the executing State by any means which produces a written record, under conditions allowing the executing State to establish its authenticity. The original of the decision, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.
- (4) The issuing State shall only transmit a decision to one executing State at any one time.
- (5) If the competent authority in the executing State is not known to the issuing Romanian judicial authority, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network in order to obtain the required information from the executing State.

ARTICLE 236

Termination of enforcement

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

ARTICLE 237

Consequences of transmission of a decision

- (1) Subject to the provisions of paragraph (2), the Romanian State may not proceed with the execution of a decision transmitted by the issuing Romanian judicial authorities.
- (2) The right to enforce a decision shall revert to the Romanian State:
- a) upon it being informed by the executing State of the total or partial non-execution or the non-recognition or the non-enforcement of the decision in the cases stipulated in [Article 241](#), except for the one referred to in [Article 241](#) (2) (a), and in the case referred to in [Article 245](#) (1) hereof, as well as in the case referred to in [Article 20](#) (3) of the Framework Decision; or
 - b) when the decision has been withdrawn from the executing State in accordance with [Article 236](#).

- (3) If, after transmission of a decision, a Romanian authority received any sum of money which the sentenced person has paid voluntarily in respect of the decision, such authority shall inform the competent authority in the executing State without delay. The provisions of [Article 243](#) (2) shall apply accordingly.

ARTICLE 238

Languages used

- (1) The certificate transmitted to the Romanian authorities shall be translated into Romanian.
- (2) The execution of the decision may be stayed for the time necessary to obtain its translation, at the expense of the executing State.
- (3) The issuing Romanian judicial authorities shall translate the certificate into the official language or one of the official languages of the executing State or in any other languages accepted by the latter, in accordance with the statements notified to the General Secretariat of the European Union Council.

PARAGRAPH 3

Procedure for enforcing the decision

[ARTICLE 239](#)

Scope

- (1) The following offences, if they are punishable in the issuing State and as they are defined by the law of the issuing State, shall, under the terms of the Framework Decision and without verification of the double criminality of the act, give rise to recognition and enforcement of decisions:
1. participation in a criminal organization,
 2. terrorism,
 3. trafficking in human beings,
 4. sexual exploitation of children and child pornography,
 5. illicit trafficking in narcotic drugs and psychotropic substances,
 6. illicit trafficking in weapons, munitions and explosives,
 7. corruption,
 8. fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
 9. laundering of the proceeds of crime,
 10. counterfeiting currency, including of the euro,
 11. computer-related crime,
 12. environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
 13. facilitation of unauthorized entry and residence,

14. murder, grievous bodily injury,
15. illicit trade in human organs and tissue,
16. kidnapping, illegal restraint and hostage-taking,
17. racism and xenophobia,
18. organized or armed robbery,
19. illicit trafficking in cultural goods, including antiques and works of art,
20. swindling,
21. racketeering and extortion,
22. counterfeiting and piracy of products,
23. forgery of administrative documents and trafficking therein,
24. forgery of means of payment,
25. illicit trafficking in hormonal substances and other growth promoters,
26. illicit trafficking in nuclear or radioactive materials,
27. trafficking in stolen vehicles,
28. rape,
29. arson,
30. crimes within the jurisdiction of the International Criminal Court,
31. unlawful seizure of aircraft/ships,
32. sabotage,
33. conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods,
34. smuggling of goods,
35. infringements of intellectual property rights,
36. threats and acts of violence against persons, including violence during sport events,
37. criminal damage,
38. theft,
39. offences established by the issuing State and serving the purpose of implementing obligations arising from international instruments adopted under the [Treaty](#) establishing the European Community or under [Title VI](#) of the EU Treaty.

#M1

- (2) *For offences other than as provided in paragraph (1), the execution of the financial penalty shall be subordinated to the condition that the offence referred to in the decision of the foreign judicial or administrative authority is also provided for in the Romanian law.*

#B

*) Through the [Lisbon Treaty](#), [the Treaty](#) establishing the European Community was renamed as the "Treaty on the Functioning of the European Union" and provided that the terms "Community" or the "European Community" be replaced by "Union", the words the "European Community" or "of EEC" shall be replaced by "(of) the European Union".

ARTICLE 240

Recognition and execution of decisions

- (1) The executing Romanian judicial authorities shall recognize a decision without any further formality being required and shall forthwith take all the necessary measures for its execution, unless the competent authority decides to invoke one of the grounds for non-recognition or non-execution provided for in [Article 241](#).
- (2) If the Romanian judicial authority having received a decision is not competent to recognize and take the necessary measures for its execution, the former shall deliver the decision, ex officio, to the competent authority and shall accordingly inform the competent authority in the issuing State in such respect.

ARTICLE 241

Grounds for non-recognition and non-execution

- (1) The executing Romanian judicial authorities may refuse to recognize and execute the decision if the certificate provided for in [Annex no. 3](#) is not produced, if such certificate is incomplete or manifestly does not correspond to the decision.
- (2) Save for the case stipulated in [Article 239](#) (2), the executing Romanian judicial authority may also refuse to recognize and execute the decision if it is established that:
 - a) decision against the sentenced person in respect of the same acts has been delivered in Romania or in any State other than the issuing State and, in the latter case, that decision has been executed;
 - b) the execution of the decision is statute-barred according to the Romanian law, and the decision related to acts which fall within the jurisdiction of the Romanian courts;
 - c) the decision relates to acts which:
 - (i) are regarded by the Romanian law as having been committed in whole or in part in the Romanian territory or in a place treated as such; or
 - (ii) have been committed outside the Romanian territory, and the Romanian law does not allow prosecution for the same offences when committed outside Romanian territory;
 - d) there is immunity under the Romanian law, which makes it impossible to execute the decision;

- e) the decision has been imposed on a natural person who, under the Romanian law, due to his or her age could not yet have been held criminally liable for the acts in respect of which the decision was rendered;

#M1

- f) according to the certificate provided for in Annex no. 3, the natural or legal person subject to penalty:
- (i) *in the case of written procedure, was not informed personally or by a competent representative in accordance with the law of the same State, of its right to challenge the decision rendered against them and the time limit until which they may initiate legal action, in accordance with the law of the issuing State; or*
 - (ii) *in the case of verbal procedure, they did not attend in person, save where the issuing authority informed that, in accordance with the law of the issuing State:*
 - *the person has been timely notified, by written subpoena handed in person or by telephone notification, fax, e-mail or by any other such means, in relation to the day, month, year or venue where they should appear and of the legal consequences in case of non-attendance; or*
 - *being aware of the day, month, year and venue where they should appear, the person instructed their chosen attorney or the attorney appointed ex officio to represent them, and judicial representation before the court of law has actually been performed by the attorney; or*
 - *after the sentencing decision has been personally handed over and they were informed that, in accordance with the law, the case may be re-tried or that the decision may be subject to legal action and that it may be checked, including based on new evidence, and if any legal action is admitted, it may be quashed, the sentenced person either expressly waived to have the case re-tried or to take legal action, or did not request the case to be re-tried or did not initiate, within the period provided by law, that legal action;*
 - (iii) *the person failed to appear in person, save where the issuing authority informs that, in accordance with the law of the issuing State, although they were expressly informed of the proceedings initiated against them, and of the possibility to attend in person, they expressly waived the right to verbal proceedings and stated that they do not challenge the case;*

#B

- g) the financial penalty is below EUR 70 or the RON equivalent to that amount.
- (3) In the cases referred to in paragraphs (1) and (2) (b) and (f), before deciding not to recognize and to execute a decision, either totally or in part, the executing Romanian judicial authority shall consult the competent authority in the issuing

State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.

ARTICLE 242

Determination of the amount to be paid

- (1) Where it is established that the decision is related to acts which were not carried out within the territory of the issuing State, the executing Romanian judicial authority may decide to reduce the amount of the penalty enforced to the maximum amount provided for acts of the same kind under the Romanian law, when the acts fall within the jurisdiction of Romanian courts.
- (2) The executing Romanian judicial authority shall, if necessary, convert the penalty into the currency of the executing State, at the rate of exchange valid on the day when the penalty was imposed.

ARTICLE 243

Law governing enforcement

- (1) Without prejudice to the provisions of [Article 244](#), the enforcement of the decision shall be governed by the Romanian law in the same way as a financial penalty imposed by a Romanian court of law. The Romanian authorities alone shall be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for termination of enforcement.
- (2) In the case where the sentenced person is able to furnish proof of a payment, totally or in part, in any State, the executing Romanian judicial authority shall consult the competent authority of the Issuing State in the way provided for in [Article 241](#) (3). Any part of the penalty recovered in whatever manner in any State shall be deducted in full from the amount, which is to be enforced in Romania.

ARTICLE 244*)

Substitution of the financial penalty

Where it is not possible to enforce a decision, either totally or in part, the executing Romanian judicial authority may order the substitution of the fine, subject to the conditions of [Article 63¹](#) of the Penal Code.

#CIN

**) In accordance with [Article II](#) (49) and [Article IV](#) of Law no. 300/2013 (#M1), starting with 1 February 2014 (the effective date of [Law no. 286/2009](#) on the Penal Code and [Law no. 135/2010](#) on the Code of Penal Procedure), [Article 244](#) shall read as follows:*

#M1

"ARTICLE 244

Substitution of the financial penalty

Where it is not possible to enforce a decision, either totally or in part, the executing Romanian judicial authority may order the substitution of the fine, subject to [Article 63](#) or [64](#) of the Penal Code."

#B

ARTICLE 245

Amnesty, pardon and review of sentence

- (1) Amnesty and pardon may be granted by the issuing State and also by the Romanian State.
- (2) Without prejudice to the provisions of [Article 244](#), only the issuing State may determine any application for review of the decision.

ARTICLE 246

Destination of monies obtained from enforcement of decisions and expenses

- (1) Monies obtained from the enforcement of the decisions by the executing Romanian judicial authorities shall accrue to the State budget, unless otherwise agreed between the issuing State and the Romanian State, in particular in the cases referred to in [Article 233](#) (2) (b).
- (2) Expenses incurred by the Romanian authorities in enforcing this section shall be borne by the Romanian State.

ARTICLE 247

Information

The executing Romanian judicial authority shall without delay inform the competent authority of the issuing State by any means producing a written record:

- a) of the transmission of the decision to the competent authority;
- b) of any decision not to recognize and execute a decision, together with the reasons for the decision;
- c) of the total or partial non-execution of the decision and the reasons for that decision;
- d) of the execution of the decision as soon as the execution has been completed;
- e) of the application of alternative sanction to the financial penalty.

SECTION a 5-a

Provisions referring to the cooperation with the Member States of the European Union in enforcing [Framework Decision 2006/783/JHA](#) of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

PARAGRAPH 1

General provisions

ARTICLE 248

Definitions

- (1) Confiscation order shall mean a final penalty or measure imposed by a court following proceedings in relation to a criminal offence or offences, resulting in the definitive deprivation of property.
- (2) Property shall mean property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which the court in the issuing State has decided:
 - a) is the proceeds of an offence, or equivalent to either the full value or part of the value of such proceeds; or
 - b) constitutes the instrumentalities of such an offence;

#M1

- c) may be confiscated in reliance upon the confiscation competences extended in accordance with the right of the issuing State.*

#B

- (3) The proceeds of an offence shall mean any economic advantage derived from criminal offences. It may consist of any form of property having arisen as a result of the offence being committed.
- (4) Instrumentalities of an offence shall mean any property used or intended to be used, in any manner, wholly or in part, to commit an offence or offences.
- (5) Cultural objects forming part of the national cultural heritage shall mean the property defined under [Article 63](#) of Law no. 182/2000 on the protection of the movable national cultural heritage, republished, as subsequently amended and supplemented, transposing Article 1 (1) of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.
- (6) Where the criminal proceedings leading to a confiscation order involve a predicate offence as well as money laundering, the offence mentioned in [Article 262](#) (1) (f) shall mean the predicate offence.

- (7) Issuing State shall mean the Member State in which a court has issued a confiscation order within the framework of criminal proceedings.
- (8) Executing State shall mean the Member State to which a confiscation order has been transmitted for the purpose of execution.
- (9) Framework Decision shall mean [Framework Decision 2006/783/JHA](#) of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, published in Official Journal of the European Union no. L 328 of 24 November 2006.

ARTICLE 249

Confiscation order and certificate

- (1) A confiscation order shall be issued in the form and in observance of the law of the issuing State and shall be accompanied by the certificate provided for in paragraph (3).

#M1

- (2) *When Romania is the issuing State, confiscation order shall mean the measure imposed by a court in relation to one or more offences having as their result the final dispossession of that asset.*

#B

- (3) The certificate shall be prepared in accordance with the standard form provided for in [Annex no. 4](#) and shall be signed and sealed by the judicial authority having ordered the confiscation. The contents of the certificate shall also be certified by the issuing judicial authority.

ARTICLE 250

Competent Romanian authorities

- (1) The Romanian authorities competent to issue a confiscation order shall be the courts of law.
- (2) In case of a confiscation order issued by a judicial authority of a Member State, the execution competence shall lie with the tribunal under whose jurisdiction the property subject to confiscation is located. If the confiscation order related to:
 - a) several items of movable property located under the jurisdiction of different tribunals, the competence shall lie with the Tribunal of Bucharest;
 - b) several items of movable property and one item of immovable property, the competence shall lie with the tribunal under whose jurisdiction the immovable property is located;

- c) several items of immovable property, located under the jurisdiction of different tribunals, the competence shall lie with the tribunal under whose jurisdiction the item of immovable property with the highest value is located.
- (3) In the case of multiple confiscation orders, transmitted by several issuing Member States, for the same items of property, the competence shall lie with the tribunal that was notified first.
- (4) The central Romanian authority in enforcing [Article 3](#) (2) of the Framework Decision shall be the Ministry of Justice, having the role to assist the courts of law and to transmit and receive the confiscation orders where direct contact is impossible.

ARTICLE 251

Scope

- (1) If the acts giving rise to the confiscation order constitute one or more of the following offences, irrespective of the name specified in the law of the issuing State, and are punishable in the issuing State by a custodial sentence of a maximum of at least three years, the confiscation order shall give rise to execution without verification of the double criminality of the acts:
 - 1. participation in a criminal organization,
 - 2. terrorism,
 - 3. trafficking in human beings,
 - 4. sexual exploitation of children and child pornography,
 - 5. illicit trafficking in narcotic drugs and psychotropic substances,
 - 6. illicit trafficking in weapons, munitions and explosives,
 - 7. corruption,
 - 8. fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
 - 9. laundering of the proceeds of crime,
 - 10. counterfeiting currency, including of the euro,
 - 11. computer-related crime,
 - 12. environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
 - 13. facilitation of unauthorized entry and residence,
 - 14. murder, grievous bodily injury,
 - 15. illicit trade in human organs and tissue,
 - 16. kidnapping, illegal restraint and hostage-taking,
 - 17. racism and xenophobia,
 - 18. organized or armed robbery,
 - 19. illicit trafficking in cultural goods, including antiques and works of art,
 - 20. swindling,

21. racketeering and extortion,
 22. counterfeiting and piracy of products,
 23. forgery of administrative documents and trafficking therein,
 24. forgery of means of payment,
 25. illicit trafficking in hormonal substances and other growth promoters,
 26. illicit trafficking in nuclear or radioactive materials,
 27. trafficking in stolen vehicles,
 28. rape,
 29. arson,
 30. crimes within the jurisdiction of the International Criminal Court,
 31. unlawful seizure of aircraft/ships,
 32. sabotage.
- (2) For offences other than those covered by paragraph (1), recognition and execution of the confiscation order is subject to the condition that the acts giving rise to the confiscation order constitute an offence which permits confiscation under the Romanian law, irrespective of its constituent elements and the legal classification in the issuing State and irrespective of the description of such offence in the law of such State.

ARTICLE 252

Amnesty, pardon and review of confiscation orders

- (1) Amnesty and pardon may be granted by the issuing State and also by the executing State.
- (2) Only the issuing State may determine any application for review of the confiscation order.

PARAGRAPH 2

Procedure for the Romanian authorities transmitting confiscation orders and the certificate

ARTICLE 253

Transmission of confiscation orders and the certificate

- (1) A confiscation order, together with the certificate provided for in [Article 249](#), together with the translation into the official language or official languages of the executing Member State or in another language accepted by the latter, shall be transmitted by the issuing judicial authority directly to the competent authority of the executing State, by any means producing a written record and under conditions allowing the competent authority of the executing State to establish authenticity thereof. The translation shall be made at the expense of the issuing judicial authority.

- (2) The original of the confiscation order and the original of the certificate shall be transmitted to the executing State, upon request.
- (3) If the issuing judicial authority does not know the authority competent to recognize and execute the confiscation order, the latter shall request the executing State, through Romania's contact points to the European Judicial Network, to provide information in that respect.
- (4) The direct transmission stipulated in paragraph (1) is not allowed where a Member State appointed a central authority for the transmission or receipt of confiscation orders.
- (5) All communications relating to the recognition and execution of the confiscation order shall be made directly between the issuing authority and the competent authority of the executing State, subject to the provisions of paragraph (4).

ARTICLE 254

Determination of the Member State competent to execute the confiscation order

- (1) The confiscation order and the certificate referred to in [Article 249](#) may be transmitted:
 - a) if the confiscation order refers to the confiscation of a sum of money, to the competent authority of the Member State where the issuing judicial authority has reasonable grounds to believe that the natural or legal person against which the confiscation was imposed holds property or income;
 - b) if the confiscation order refers to the confiscation of certain parts of property, to the competent authority of the Member State where the issuing judicial authority has reasonable grounds to believe that the property subject to confiscation is located.
- (2) If there are no reasonable grounds which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted, the confiscation order may be transmitted to the competent authority of the Member State where the natural or legal person against whom the confiscation order has been issued is normally resident or has its registered seat respectively.

ARTICLE 255

Transmission of a confiscation order to one or more executing States

- (1) The confiscation order may be transmitted to only one executing State, save for the cases mentioned in paragraphs (2) and (3).
- (2) The confiscation order concerning specific items of property may be transmitted to more than one executing State, at the same time, in cases where:

- a) the issuing judicial authority has reasonable grounds to believe that different items of property covered by the confiscation order are located in several different executing States;
 - b) the confiscation of a specific item of property covered by the confiscation order involves action in more than one executing State or the issuing judicial authority has reasonable grounds to believe that a specific item of property covered by the confiscation order is located in one or two or more specified executing States.
- (3) A confiscation order concerning an amount of money may be transmitted to more than one executing State, at the same time, where the issuing judicial authority deems there is specific need to do so, for example, where the property concerned has not been frozen under [Council Framework Decision 2003/577/JHA](#) or the value of the property which may be confiscated in Romania, as issuing State, and in any one executing States is not likely to be sufficient for the execution of the full amount covered by the confiscation order.

ARTICLE 256

Consequences of transmission of confiscation orders

- (1) The transmission of a confiscation order to one or more executing States does not restrict the right of the Romanian judicial authority to order the execution of the confiscation, in accordance with the [Romanian Code of Penal Procedure](#).
- (2) In the case of transmission of a confiscation order concerning an amount of money to one or more executing States, the value derived from its execution may not exceed the maximum amount specified in the confiscation order.
- (3) The issuing judicial authority shall immediately inform the competent authority of any executing State:
- a) if it considers, for instance, on the basis of information notified to it by each of the executing States, that there is a risk that execution beyond the maximum amount specified in the confiscation order may occur. If the issuing judicial authority was informed that the execution of the confiscation order was postponed, the latter shall immediately inform the competent authority of the executing State whether the risk referred has ceased to exist;
 - b) if all or part of the confiscation order has been executed in Romania or in one of the executing States. In the case of partial confiscation, the issuing judicial authority shall specify the amount for which the confiscation order has not yet been executed;

- c) if, after transmission of a confiscation order, a Romanian authority receives any sum of money which the person concerned in the confiscation order paid voluntarily in respect of such confiscation order. If the proceeds of the offence were confiscated, any part of the amount shall be deducted from the amount that has to be confiscated in the executing State. In this case, the issuing judicial authority shall specify the amount for which the confiscation order has not yet been executed.
- (4) If, following the execution of a confiscation order issued by a Romanian judicial authority, the executing authority indemnified any person concerned, including good-faith third parties, the Romanian State shall reimburse to the executing State the amount of such compensation.
- (5) If the executing authority informs that the execution of the confiscation order involves large or excessive expenses, the issuing Romanian judicial authority may take into consideration the proposal to share expenses based on a detailed payment specifications submitted by the executing authority.

ARTICLE 257

Termination of execution of the confiscation

The issuing Romanian judicial authority shall forthwith inform the competent authority of the executing State, by any means capable of producing a written record, of any decision or measure as a result of which the confiscation order ceases to be enforceable or shall be withdrawn, for any reason.

PARAGRAPH 3

Procedure for the Romanian authorities executing the confiscation orders

ARTICLE 258

Preliminary measures

- (1) When the court receives a confiscation order, it shall verify within no more than 24 hours after the receipt, whether the order is accompanied by a Romanian translation.
- (2) If the confiscation order is not translated, the court shall request the competent authority of the issuing State to deliver a translation, within no more than 5 days.
- (3) The distribution of the case shall be made in accordance with the relevant legal provisions applicable in this area, to a panel consisting of only one judge, and the court hearing date shall not be later than 5 days.
- (4) If the court deems that it does not hold the competence required to recognize and to take the measures necessary for executing the confiscation order, it shall forward the confiscation order, *ex officio*, to the court competent to recognize and

to execute the same and shall inform the competent authority of the issuing State in such respect. If the confiscation order does not contain information sufficient for establishing competence, the court may request the competent authority of the issuing State to provide additional information or the certificate specified in [Article 249](#), if the latter has not been initially transmitted, and shall set a deadline of no more than 5 days for the competent authority of the issuing State to provide such documents.

ARTICLE 259

Rules for the recognition and execution of confiscation orders

- (1) The confiscation order issued by a competent authority of a Member State shall be recognized without further formality, unless one of the non-recognition reasons specified in [Article 262](#) is applicable.
- (2) The confiscation order issued by a competent authority of a Member State, recognized by the court of law, shall be executed without delay, save where one of the reasons for postponement specified in [Article 263](#) is applicable.
- (3) In case of refusal to recognize a confiscation order, the court shall analyze the possibility to consult with the competent authority of the issuing State, prior to delivering a decision to that effect. If the refusal is based on the grounds indicated in [Article 262](#) (1) (a), (b), (e), (f) or (g), consultation is mandatory. In addition, consultation is mandatory in the case stipulated in [Article 262](#) (1) (d), if the competent authority of the issuing State was not informed in accordance with [Article 267](#) (3).
- (4) If the person against whom the confiscation order was rendered may evidence confiscation, in whole or in part, in any State, the court shall consult the competent authority of the executing State. In case the proceeds of the offence are confiscated, any part of the amount that is recovered in accordance with the confiscation order from any States, other than the Romanian State, shall be fully deducted from the amount to be confiscated by the court of law.
- (5) The court may only order alternative measures to the confiscation order, including imprisonment or other custodial sentences, if the competent authority of the issuing State expressed its written consent in this respect.
- (6) If the confiscation order concerns an amount of money, the court shall, if necessary, convert the amount to be confiscated into the national currency at the rate of exchange valid on the date when the confiscation order was issued.
- (7) If the execution of the confiscation order gives rise to large or excessive expenses, the executing Romanian judicial authority may inform the competent authority of the issuing State in such respect and propose to share such expenses based on a detailed payment specifications prepared to such effect.

ARTICLE 260
Governing law

The execution of confiscation orders shall be governed by the Romanian law, the Romanian authorities being the only ones competent to decide on the execution of the confiscation, including in relation to the measures to be adopted in this respect.

ARTICLE 261
Confiscation in special cases

- (1) Where a confiscation order refers to a certain item of property, provided that the issuing authority consents and that such a possibility is allowed by the law of both States, the court may order confiscation by money equivalent corresponding to the value of the property covered by the confiscation order.
- (2) Where the confiscation order concerns an amount of money, if such amount of money cannot be fully retrieved, the court may order confiscation of any item of available property.

ARTICLE 262
Reasons for non-recognition and non-execution

- (1) Save for the case referred to in Article 251 (2), recognition and execution of the confiscation order may be refused if:
 - a) the certificate referred to in Article 249 is not enclosed therein, is incomplete or manifestly does not correspond to the confiscation order;
 - b) the execution of the confiscation order would be contrary to the principle of *non bis in idem*;
 - c) the Romanian law provides immunity or privilege rendering execution of the confiscation order impossible;
 - d) the rights of any interested party, including the rights of good-faith third parties, make it impossible to execute the confiscation order, including where this is a consequence of the application of the provisions stipulated for the legal protection of rights in accordance with Article 267;

#M1

- e) *the person did not attend the proceedings in person, save where the certificate provisioned by Annex no. 4 reveals that:*
 - (i) *the person has been timely notified, by written subpoena handed in person or by telephone notification, fax, e-mail or by any other such*

means, in relation to the day, month, year or venue where they should appear and of the legal consequences of non-attendance; or

- (ii) being aware of the day, month, year and venue where they should appear, the person instructed their chosen attorney or the attorney appointed ex officio to represent them, and judicial representation and defence before the court of law have actually been performed by the attorney; or*
- (iii) after the sentencing decision has been personally handed over and they were informed that, in accordance with the law, the case may be re-tried or that the decision may be subject to legal action and that it may be checked, including based on new evidence, and if the legal action is admitted, it may be quashed, the sentenced person either expressly waived to have the case re-tried or to take legal action, or did not request the case to be re-tried or did not initiate, within the period provided by law, that legal action;*

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- f) the confiscation order is based on criminal proceedings in respect of offences which:
 - under the Romanian law, are regarded as having been committed, wholly or partly, within the territory of the Romanian State; or
 - were committed outside the territory of the issuing State, and the Romanian law does not permit legal proceedings to be taken in respect of such offences where they are committed outside the Romanian territory;
- g) the execution of the confiscation order may infringe the principles of the Constitution;
- h) the execution of the confiscation order is barred by statutory time limitations under the Romanian law, provided that the acts fall within the jurisdiction of Romanian authorities under the domestic penal law;

#M1

- i) *the confiscation decision was rendered based on the extended confiscation competence that is not compatible with the provisions of the applicable Romanian law. In this case, the confiscation decision may be executed at least to the extent provisioned by the Romanian law.*

#B

- (2) In the case referred to in paragraph (1) (a), the court may establish a time limit for the delivery or supplementation or rectification of the certificate.

- (3) Any decision to refuse the recognition or execution shall be made and notified forthwith to the competent authorities of the issuing State.
- (4) If, in practice, it is impossible to execute the confiscation order for the reason that the property to be confiscated has disappeared, has been destroyed, cannot be found in the location indicated in the certificate or the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the court shall immediately inform the competent authority of the issuing State in such respect.

ARTICLE 263

Postponement of execution of the confiscation order

- (1) The court may postpone the execution of a confiscation order transmitted:
 - a) if, in the case of a confiscation order concerning an amount of money, the former deems that there is a risk that the total value derived from its execution may exceed the amount specified in the confiscation order because of simultaneous execution of the confiscation order in more than one Member State;
 - b) in the case of legal remedies referred to in [Article 267](#);
 - c) where the former deems that the immediate execution of the confiscation order might damage ongoing criminal proceedings; the postponement shall be ordered until such time when the execution becomes possible;
 - d) where the property forming the object of the confiscation order has already been the subject of confiscation in proceedings according to national penal laws.
- (2) The court shall, for the duration of the postponement, take all the measures it would take in a similar domestic case to prevent the property from no longer being available for the purpose of execution of the confiscation order.
- (3) In the case of postponement in accordance with paragraph (1) (a), the court shall inform the competent authority of the issuing State, immediately by any means capable of producing a written record.
- (4) In the cases referred to in paragraph (1) (b) and (c), the court shall prepare a report on the grounds for the postponement, including, if possible, the expected duration of the postponement, report to be delivered to the competent authority of the issuing State.

(5) As soon as the grounds for postponement have ceased to exist, the court shall forthwith take the necessary measures for the execution of the confiscation order and inform the competent authority of the issuing State.

ARTICLE 264

Multiple confiscation orders

If the court is processing:

- a) two or more confiscation orders concerning an amount of money, which have been issued against the same natural or legal person, and the person concerned does not have sufficient means in Romania to enable all orders to be executed; or
- b) two or more confiscation orders concerning the same specific item of property, the former shall take into account all the circumstances, including the involvement of frozen assets, the seriousness and the place of the offence, the dates when such orders were issued and the date when they were transmitted, in order to decide which of the confiscation orders is or are to be executed.

ARTICLE 265

Disposal of confiscated property

- (1) The Romanian State, through its competent bodies, shall dispose of the money obtained from the execution of a confiscation orders as follows:
 - a) if the amount of money obtained from the execution of a confiscation order is below EUR 10,000 euro or the RON equivalent of that amount, the amount shall accrue to the State budget;
 - b) in all other cases, 50% of the amount which has been obtained from the execution of a confiscation order shall be transferred to the issuing State.
- (2) For property other than money, confiscation shall be executed in one of the following methods:
 - a) the confiscated property may be sold, in accordance with the legal provisions, and in this case, the proceeds of the sale shall be disposed of in accordance with the provisions of paragraph (1); or
 - b) the confiscated property may be transferred to the issuing State. If the confiscation order covers a part of the value of the order, the property may only be transferred to the issuing State, if the competent authority of such State gives its consent in this respect;

- c) when it is not possible to apply the provisions of letters (a) or (b), the confiscated property may be disposed of in any other way, in accordance with the provisions of Romanian law.
- (3) Cultural objects forming part of the national cultural heritage subject to confiscation may not be sold or transferred.
 - (4) The provisions of paragraph (1)–(3) shall apply unless otherwise agreed between the Romanian State and the issuing State.

ARTICLE 266

Information on the result of the execution

The executing authority shall inform the competent authority of the issuing State, without delay:

- a) of the transmission of a confiscation order to the competent Romanian court, in accordance with [Article 258](#) (4);
- b) of any decision not to recognize the confiscation order, together with the reasons for the decision;
- c) of the total or partial non-execution of the order for the reasons referred to in [Article 252](#), [Article 259](#) (3), [Article 260](#) and [264](#);
- d) as soon as the execution of the order has been completed;
- e) of the application of alternative measures to the confiscation order, according to [Article 259](#) (5).

ARTICLE 267

Compensation

- (1) Any interested party, including good-faith third parties, has the right to receive compensation, under the conditions of the law, in case of violation of his/her rights by the recognition or execution of a confiscation order.
- (2) The substantial grounds having underlain the issuance of the confiscation order may not be challenged before the executing Romanian court.
- (3) If legal remedy proceedings are initiated before the Romanian court, the latter shall inform the competent authority of the issuing State.

ARTICLE 268

Reimbursement

- (1) Without prejudice to the provisions of [Article 267](#) (2), where the Romanian State is responsible for injury caused to one of the interested parties, including good-faith third parties, by the execution of a confiscation order transmitted to a Romanian judicial authority in order to be executed, the former shall claim from the issuing State any amount of money paid as compensation to the person concerned, save

where and to the extent that the injury or any part of it is exclusively due to the conduct of the Romanian authorities.

- (2) The provisions of paragraph (1) shall not prejudice the national legal provisions on claims by natural or legal persons for compensation or damage.

TITLE VIII

Final provisions

ARTICLE 269

On the effective date of this law*) the following shall be repealed:

- a) [Law no. 296/2001](#) on extradition, published in Official Gazette of Romania, Part I, no. 326 of 18 June 2001;
- b) [Law no. 704/2001](#) on international judicial assistance in criminal matters, published in Official Gazette of Romania, Part I, no. 807 of 17 December 2001;
- c) [Law no. 756/2001](#) on the transfer of convicted persons abroad, published in Official Gazette of Romania, Part I, no. 2 of 4 January 2002;
- d) [Government Ordinance no. 69/1999](#) to facilitate the enforcement of international conventions regarding the transfer of convicted persons, to which Romania is a party, as regards the surrender-take-over of convicted persons, as approved by [Law no. 113/2000](#), published in Official Gazette of Romania, Part I, no. 415 of 30 August 1999;
- e) [Articles 519 - 521](#) of the Code of Penal Procedure;
- f) any other contrary provisions.

*) This law was published in Official Gazette of Romania, Part I, no. 594 of 1 July 2004.

ARTICLE 270

- (1) This law*) shall become effective within 60 days after its publication in the Official Gazette of Romania, Part I, save for the provisions of [Chapter IV](#) of Title II, of the provisions of [Title III](#), of [Chapter III](#) of Title IV and of [Chapter II](#) of Title VII, to become effective on the date when Romania accedes to the European Union.
- (2) Starting with the date of Romania's accession to the European Union, the provisions of [Title III](#) shall replace, as regards the relationship with the Member States of the European Union, the provisions governing extradition, save where the Member State on whose territory the pursued person is located submitted statements in the meaning of non-enforcing the [Council Framework Decision of 13](#)

June 2002 on the European Arrest Warrant and the surrender procedures between Member States of the European Union for offences committed prior a certain date.

*) This law was published in the Official Gazette of Romania, Part I, no. 594 of 1 July 2004.

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ARTICLE 271

Annexes no. 1 - 10 shall form an integral part hereof.

#M1

*

This law transposes in the national legislation the provisions of the framework decisions of the European Union in the field of judicial cooperation in criminal matters, as follows:

1. Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States, as published in Official Journal of the European Union no. L 190 of 18 July 2002;
2. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, as published in Official Journal of the European Union no. L 196 of 2 August 2003;
3. Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, as published in Official Journal of the European Union no. L 76 of 22 March 2005;
4. Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, as published in Official Journal of the European Union no. L 328 of 24 November 2006;
5. Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as published in Official Journal of the European Union series L no. 327 of 5 December 2008;
6. Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, as published in Official Journal of the European Union series L no. 294 of 11 November 2009;
7. Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, as published in Official Journal of the European Union series L no. 337 of 16 December 2008;
8. Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to

decisions rendered in the absence of the person concerned at the trial, as published in Official Journal of the European Union series L no. 81 of 27 March 2009;

9. [Council Framework Decision 2009/948/JHA](#) of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, as published in Official Journal of the European Union series L no. 328 of 15 December 2009.

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NOTE:

This is a reproduction of the provisions in [Article III](#) of Law no. 300/2013 (**#M1**).

#M1

"ARTICLE III

Requests pending settlement on the effective date of the provisions of [Article I](#) shall be settled by the competent courts of law, in accordance with the law in force on the date when proceedings began. If a legal action is admitted, and if the court ordains the cancellation or, as the case may be, the quashing of the decision and re-trial of the case, it shall be tried by the competent court in accordance with this law. Transfer of sentenced persons under escort in the Member States of European Union in relation to whom, on the effective date of the provisions of [Article I](#), requests are pending settlement or detention orders have been issued in accordance with [Article 131](#) paragraph (4) of Law no. 302/2004, republished, as subsequently amended and supplemented by [Article I](#)."

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ANNEX 1

EUROPEAN ARREST WARRANT *1)

*1) This warrant shall be supplemented or translated into one of the official languages of the executing Member State, when that State is known, or in one of any of the languages allowed in that State.

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered to the judicial authorities for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

a) Information referring to the identity of the requested person

Name:
Forename(s):
Maiden name (where applicable):
Aliases (where applicable):
Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address:

.....

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

.....

Distinctive marks/description of the requested person:

.....

.....

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person who may be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

b) Decision on which the warrant is based

1. Arrest warrant or final judicial decision to the same effect:

.....

Type:

2. Final and enforceable judgment:

.....

.....

Reference:

.....

c) Indications on the length of the sentence:

1. Maximum length of the penalty or the preventive measure of deprivation of freedom which may be imposed for the offence(s):

.....

.....

2. Length of the penalty or the preventive measure depriving of freedom imposed:

.....

.....

3. Remaining sentence to be served:

.....

.....

#M1

d) Please specify whether the person attended in person the trial following which the decision was ruled:

1. yes, the person attended in person the trial following which the decision was ruled

2. No, the person was did not attend the trial following which the decision was ruled.

3. If you checked the box at item 2, kindly confirm the existence of one of the

following elements

3.1a. The person was summoned in person on ... (day/month/year) and, therefore, they were informed of the date and location set for the trial following which the decision was ruled and they were informed that a decision may be issued even if they do not attend the trial;

or

3.1b. The person was not summoned in person, but they actually received, by other means official information on the date and location set for the trial following which the decision was ruled and therefore it was established beyond any reasonable doubt that the person was aware of the trial and they were informed that a decision may be issued even if they do not attend the trial;

or

3.2. being aware of the trial, an attorney was instructed either by the relevant person, or ex officio, to defend them in the trial and they were indeed defended by that attorney in the trial;

or

3.3. the person was personally delivered the decision on ... (day/month/year) and was expressly informed in relation to the right to have the case re-tried or to a legal action, which they are entitled to attend and which allows that the summary of facts of the case, including new evidence, is re-examined and which may lead to the initial decision being quashed; and the person expressly indicated that that they do not challenge such decision

the person did not request the case to be re-tried or a legal action to be promoted in the appropriate period of time;

or

3.4. the person was not personally delivered the decision, however:

- the decision shall be personally delivered immediately after the surrender; and
- upon the delivery of the decision, the person shall be expressly informed of their right to have the right re-tried or to a legal action, during which they have the right to attend court and allowing the summary of facts of the case, including new evidence, to be re-examined and which may lead to the initial decision being quashed; and
- the person shall be informed in relation to the period of time during which they have to request the case to be re-tried or a legal action being initiated, which shall be of ... days.

4. If you checked the box at item 3.1b, 3.2 or 3.3, kindly provide information in relation to the fulfilment of the relevant condition:

#B

e) Offence(s)

This warrant relates to in total..... offence(s).

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

.....
.....

.....
Nature and legal classification of the offence(s) and the applicable statutory provision/code:
.....
.....

I. Tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order to a maximum of at least 3 years, as defined by the laws of the issuing Member State:

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

II. Full descriptions of offence(s) not covered by section I above:

.....
.....

f) Other relevant circumstances (optional information):

(NB This could cover remarks on extraterritoriality, interruption of periods of time limitation or the consequences of the offence.)

g) This warrant pertains also to the seizure and handing over of property which may be required as evidence.

This warrant pertains also to the handing over of property held by the requested person for committing the offence.

Description and location of the property (if known):

h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by life detention penalty or warrant:

– the legal provisions of the issuing Member State that stipulate the review of the penalty applied or regarding parole, after service of at least 20 years of the penalty applied, which may determine non-service of the penalty or measure;

and/or

– the legal provisions of the issuing Member State that stipulate the application of measures of clemency to which the person requested is entitled, according to the law or practice of the issuing Member State, which may determine non-service of the penalty or measure.

i) The judicial authority which issued the warrant

Official name:

Name of its representative:

Post held (title/grade):

File reference:

Address:

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

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

E-mail:

Address of the contact person (competent for the performance of the actual surrender):

Where a central authority has been made responsible for the transmission and reception of European Arrest Warrants

Name of the central authority:

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

Address:

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

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

E-mail:

Contact details of the person to contact to make necessary practical arrangements for the surrender:

Where a central authority has been made responsible for the administrative transmission and reception of European Arrest Warrants

Name of the central authority:

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

Address:

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

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

E-mail:

Signature of the issuing judicial authority, its representative or both:

Name:

Post held (title/grade):

Date:

Official stamp (if available)

ANNEX 2

CERTIFICATE

a) The judicial authority which issued the freezing order

Official name:

Name of its representative:

Position held (title/grade):

File reference:

Address:

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

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

E-mail:

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

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

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

Official name:
Name of its representative:
Position held (title/grade):
.....
File reference:
Address:
Tel: (country code) (area/city code):
Fax: (country code) (area/city code):
E-mail:
Languages in which it is possible to communicate with the judicial authority competent for the enforcement:
.....

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

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

- Authority mentioned under point (a)
- Authority mentioned under point (b)

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

Name of the central authority:
Contact person, if applicable (title/grade and name):
Address:
Reference number:
Tel: (country code) (city code) (...):
Fax: (country code) (city code) (...):
E-mail:

e) The freezing order

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

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

Description of property or evidence and location

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

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

1. Natural persons:

Name:

Forename(s):

Maiden name (where applicable):

Aliases (where applicable):

Sex:

Nationality:

Date of birth:

Place of birth:

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

.....

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

2. Legal persons

Name:

Form of legal person:

Registration number:

Registered headquarters:

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

Confiscation

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

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

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

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

.....
or