

**MUTUAL LEGAL ASSISTANCE (EUROPEAN UNION)  
ACT 2005****Principal Act**

<b>Act. No. 2004-03</b>	<i>Commencement</i>	28.1.2004
	<i>Assent</i>	28.1.2004

Amending enactments	Relevant current provisions	Commencement date
Act. 2005-31	s.2	23.5.2005
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2007-02	s.2	19.4.2007
2007-17	s.2	14.6.2007
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**EU Legislation/International Agreements involved:**

Directive 76/308/EEC

Directive 2001/44/EC

Directive 2002/94/EC

Directive 2010/24/EU

Directive 2014/41/EU

**English sources:**

None cited

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<sup>1</sup> Notice of corrigenda LN. 2012/052

ARRANGEMENT OF SECTIONS

Section

**PART I  
PRELIMINARY**

1. Title.

**PART II  
MUTUAL LEGAL ASSISTANCE IN RESPECT OF  
COURT OR OTHER PROCEEDINGS**

2. Interpretation.
- 2A. Application.
3. Scope.
4. Judicial Authority.
5. Service of Schengen process in Gibraltar.
6. Service of Schengen process: supplementary.
7. General requirements for service of Gibraltar process in a Schengen State.
8. Service of process otherwise than by post.
9. Requests for assistance in obtaining evidence in a Schengen State.
10. Sending requests for assistance.
11. Use of evidence obtained.
12. Requests for assistance from overseas authorities.
13. Powers to arrange for evidence to be obtained.
14. Court to receive evidence.
15. Statutory search powers.
16. Seized evidence.
17. Powers under warrants.
18. Temporary transfer of prisoners.
19. Transit through Gibraltar.
20. Immunity of witnesses.
21. Transfer of judicial records.
22. Rules of court.
23. *Deleted.*

**PART III  
MUTUAL LEGAL ASSISTANCE IN MATTERS NOT  
FALLING WITHIN THE SCOPE OF PART II**

24. Interpretation.
25. Application of Part.
26. Administration of this Part.

*Exchange of Information*

27. Request for information.
28. Exchange of information without prior request.
29. Presence in administrative offices and participation in administrative enquiries.

*Assistance for the Notification of Documents*

30. Request for notification of certain documents relating to claims.
31. Means of notification.

*Recovery or Precautionary Measures*

32. Request for recovery.
33. Conditions governing a request for recovery.
34. Instrument permitting enforcement and other accompanying documents.
35. Execution of the request for recovery.
36. Disputes.
37. Amendment or withdrawal of the request for recovery assistance.
38. Request for precautionary measures.
39. Rules governing the request for precautionary measures.
40. Limits to the obligations on the competent authority.
41. Limitation periods.
42. Costs.

*General Rules Governing all types of Assistance Requests*

43. Standard forms and means of communication.
44. Use of languages.
45. Disclosure of information and documents.
46. Application of other agreements on assistance.
47. Reporting.
48. Rules of Court.
49. Regulations.

**SCHEDULE 1**

PROCEEDINGS UNDER SECTION 14

**SCHEDULE 2**

*Repealed.*

**SCHEDULE 3**

**2004-03**

**Mutual Legal Assistance (European Union)**

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AN ACT TO IMPLEMENT ARTICLE 48 TO 53 OF THE CONVENTION OF 19 JUNE 1990 APPLYING THE SCHENGEN AGREEMENT OF 14 JUNE 1985 RELATING TO MUTUAL LEGAL ASSISTANCE; TO MAKE FURTHER PROVISION FOR MUTUAL LEGAL ASSISTANCE BETWEEN GIBRALTAR AND OTHER JURISDICTIONS; TO ENABLE FURTHER PROVISION TO BE MADE BY REGULATION, MAKING ARRANGEMENTS FOR MUTUAL LEGAL ASSISTANCE IN FAVOUR OF THE UNITED KINGDOM AND OTHER MEMBER STATES; AND OTHER PROVISIONS IN THAT RESPECT.

**PART I**  
PRELIMINARY

**Title.**

1. This Act may be cited as the Mutual Legal Assistance (European Union) Act 2005.

**PART II**  
MUTUAL LEGAL ASSISTANCE IN RESPECT OF  
COURT OR OTHER PROCEEDINGS

**Interpretation.**

2. In this Part and unless the context otherwise requires –

“Central Authority” means the Minister or person from time to time appointed by the Minister by notice in the Gazette to carry out the function of central authority under this Act;

“civil proceedings” does not include proceedings relating to fiscal matters;

“court” includes a tribunal;

“criminal proceedings” means proceedings relating to an offence and include criminal proceedings outside Gibraltar in which a civil order may be made;

“evidence” includes information in any form, and articles, and giving evidence includes answering a question or producing any information or article;

“Minister” means the Minister responsible for justice;

“notice” means a notice in writing;

“offence” does not include a fiscal offence, other than an offence relating to excise duty, value added tax or customs duties;

“process” means any summons or order issued or made by a court and includes—

- (a) any other document issued or made by a court for service on parties or witnesses;
- (b) any document issued by a prosecuting authority outside Gibraltar for the purposes of criminal proceedings;

“the Schengen Convention” means the Convention implementing the Schengen Agreement of 14th June 1985 between the Government of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, as the same may be amended from time to time, and to the extent that individual provisions apply to Gibraltar;

“State” and “Schengen State” means a State party to the Schengen Convention;

“territory” means the territory of a Schengen State to which articles 48 to 53 of the Schengen Convention apply.

### **Application.**

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

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

### **Scope.**

3.(1) Unless otherwise stated, this Part shall apply in relation to—

- (a) criminal proceedings and investigations, in respect of any criminal proceedings excluding proceedings under military law;
- (b) criminal proceedings brought by the administrative authorities in a Schengen State or territory, including Gibraltar, in respect

of offences which are punishable either in Gibraltar or that State;

- (c) proceedings for compensation in respect of wrongful prosecution or conviction;
- (d) clemency proceedings;
- (e) communication of legal statements relating to the execution of a sentence or measure, the imposition of a fine or the payment of costs or proceedings;
- (f) measures relating to the suspension or delivery of a sentence or measure, conditional release or the postponement or suspension of execution of a sentence or measure;
- (g) civil proceedings joined to criminal proceedings, as long as the criminal court has not yet given a final ruling in the criminal proceedings.

(1A) This Part shall also apply to a request for assistance that—

- (a) relates to excise duties, value added tax or customs duties; and
- (b) the mutual 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.

(2) Assistance under this Part may be refused—

- (a) if the request for assistance concerns a political offence or an offence connected with a political offence;
- (b) if execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Gibraltar;
- (c) where the request relates to excise duties, value added tax or customs duties and the alleged amount of duty underpaid or evaded does not exceed 25,000 Euros or where the presumed value of the goods exported or imported without authorisation does not exceed 100,000 Euros, unless, given the circumstances or identity of the accused the case is deemed to be extremely serious by the requesting State.

(3) Requests for assistance under section 18, 19 or 21 shall be effected through the Ministry of Justice of the requesting State or territory.

**Judicial Authority.**

4. The Central Authority is a judicial authority for purposes connected with article 53 of the Schengen Convention.

**Service of Schengen process in Gibraltar.**

5.(1) An authority in a Schengen State may directly serve persons in Gibraltar by post with the following documents–

- (a) documents initiating or relating to court proceedings, including, but not limited to, summons, notices of hearings and adjournments;
- (b) witness summons;
- (c) judicial orders and judgments;
- (d) judicial documents relating to the enforcement of any judicial order or judgment.

(2) Where the process is to be served inside Gibraltar and is written in a language that the recipient may not understand, it shall–

- (a) be accompanied by a translation of the process, or at least the material parts, into English shall be translated into English; or
- (b) if that authority knows that the addressee understands only some other language the process, or at least the material parts, must be translated into that other language.

(3) The power conferred by subsection (4) is exercisable where the Central Authority receives any process or other document to which this section applies from an authority in a Schengen State, together with a request for the process or document to be served on a person in Gibraltar.

(4) The Central Authority may cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner of Police to cause it to be personally served on the person to whom the process or document is addressed.

(5) In respect of proceedings under section 3(1)(b), where an offence is punishable both under the law of Gibraltar and the law of the other Schengen State, the procedure for service of documents set out in subsection (4) shall be used.

**Service of Schengen process: supplementary.**



6.(1) No obligation to comply with the process is imposed by virtue of its service.

(2) The process shall be accompanied by a notice—

- (a) stating the effect of subsection (1);
- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the State where it was issued or made; and
- (c) indicating that under that law he may not be accorded the same rights and privileges as a party or as a witness as would be accorded to him in proceedings in Gibraltar.

(3) Where the Commissioner of Police causes any process or document to be served under section 5, he shall—

- (a) inform the Central Authority when and how it was served; and
- (b) (if possible) provide him with a receipt signed by the person on whom it was served.

(4) Where the Commissioner of Police is unable to cause any process or document to be served as directed, he shall at once inform the Central Authority of that fact and of the reason.

**General requirements for service of Gibraltar process in a Schengen State.**

7.(1) This section applies to any process issued or made by a court in Gibraltar for the purposes set out in section 3.

(2) The process may be issued or made in spite of the fact that the person on whom it is to be served is outside Gibraltar.

(3) Where the process is to be served outside Gibraltar and the person at whose request it is issued or made believes that the person on whom it is to be served does not understand English, he shall—

- (a) inform the court of that fact; and
- (b) provide the court with a copy of the process, or of so much of it as is material, translated into—

- (i) the official language of the State; or
- (ii) if it is known that the addressee understands only some other language, into that other language.

(4) Process served outside Gibraltar requiring a person to appear as a party or attend as a witness—

- (a) shall not include notice of a penalty; and
- (b) shall be accompanied by a notice giving any information required to be given by rules of court.

(5) If process requiring a person to appear as a party or attend as a witness is served outside Gibraltar, no obligation to comply with the process under the law of Gibraltar is imposed by virtue of the service.

(6) Accordingly, failure to comply with the process does not constitute contempt of court and is not a ground for issuing a warrant to secure the attendance of the person in question.

(7) But the process may subsequently be served on the person in question in Gibraltar (with the usual consequences for non-compliance).

(8) The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by the 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 proceedings before the Supreme Court.

**Service of process otherwise than by post.**

8. Process to which section 7 applies shall be sent by post but may, instead of being served by post, be served on a person outside Gibraltar in accordance with arrangements made by the Central Authority where the addressee's address is unknown or where the person requesting the service of process, or a court, requires it to be served in person.

**Requests for assistance in obtaining evidence in a Schengen State.**

9.(1) If it appears to any judge or justice of the peace in Gibraltar—

- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and
- (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated; or

- (c) that section 3 otherwise applies,

the judge or justice of the peace may request assistance under this section.

(2) The assistance that may be requested under this section is assistance in obtaining outside Gibraltar any evidence specified in the request for use in the proceedings or investigation.

(3) The Central Authority may request assistance under this section if–

- (a) it appears to it that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and
- (b) proceedings in respect of the offence in question have been instituted or it is being investigated; or
- (c) section 3 otherwise applies.

**Sending requests for assistance.**

10.(1) A request for assistance under section 9 may be sent–

- (a) to a court exercising jurisdiction in the place where the evidence is situated; or
- (b) to any authority recognised by the government of the State or territory in question as the appropriate authority for receiving requests of that kind.

(2) In cases of urgency, a request for assistance may be sent to the International Criminal Police Organisation, for forwarding to any court or authority mentioned in subsection (1).

**Use of evidence obtained.**

11.(1) This section applies to evidence obtained pursuant to a request for assistance under section 9.

(2) The evidence may not, without the consent of the appropriate overseas authority, be forwarded or used for any purpose other than that specified in the request.

(3) When the evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned

to the appropriate overseas authority, unless that authority indicates that it need not be returned.

(4) In this section, the appropriate overseas authority means the authority recognised by the government of the State in question as the appropriate authority for receiving requests of the kind in question.

**Requests for assistance from overseas authorities.**

12.(1) Where a request for assistance in obtaining evidence in Gibraltar is received by the Central Authority it may—

- (a) if the conditions in section 13 are met, arrange for the evidence to be obtained under section 14; or
- (b) direct that a search warrant be applied for under or by virtue of section 15.

(2) The request for assistance may be made only by—

- (a) a court exercising criminal jurisdiction, or a prosecuting authority, in a State or territory outside Gibraltar;
- (b) any other authority in such a State or territory which appears to the Central Authority to have the function of making such requests for assistance.

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

(4) Requests for assistance shall indicate as follows—

- (a) the authority making the request;
- (b) the object of and the reason for the request;
- (c) where possible, the identity and the nationality of the person concerned;
- (d) where necessary, the name and address of the person to be served; and
- (e) the offence or alleged offence and a summary of the facts.

(5) Requests under this Part may be sent and returned through the national central offices of the International Criminal Police Organisation.

**Powers to arrange for evidence to be obtained.**

13. The Central Authority may arrange for evidence to be obtained under section 14 if the request for assistance in obtaining the evidence is made in connection with proceedings or investigations covered by section 3 being carried on in a State or territory outside Gibraltar.

**Court to receive evidence.**

14.(1) A court in Gibraltar shall receive any evidence to which the request relates which appears to it to be appropriate for the purpose of giving effect to the request.

(2) The Schedule is to have effect in relation to proceedings under this section.

**Statutory search powers.**

15.(1) Sections 25, 26 and 27 of the Criminal Procedure Act shall have effect as if references to an offence in section 25(1) included any conduct which—

- (a) constitutes an offence under the law of a State or territory outside Gibraltar; and
- (b) would, if it occurred in Gibraltar, constitute an offence punishable by imprisonment for a period of at least six months.

(2) An application for a warrant or order by virtue of subsection (1) may be made only in pursuance of a direction given under section 12(1)(b).

**Seized evidence.**

16. Any evidence seized by a police officer under or by virtue of section 15 is to be sent to the court or authority which made the request for assistance.

**Powers under warrants.**

17. A court may not issue a warrant under section 15 in respect of any evidence if the court has reasonable grounds for believing that it consists of, or includes, items subject to legal privilege.

**Temporary transfer of prisoners.**

18.(1) The Central Authority shall petition the court for an order that a person in custody whose personal appearance as a witness or for purposes of

confrontation is applied for by the requesting State be temporarily transferred to the territory where the hearing is intended to take place, provided that -

- (a) he shall be sent back within the period stipulated by the requested State;
- (b) the person in custody consents;
- (c) his presence is not necessary at criminal proceedings pending in Gibraltar;
- (d) the transfer is not liable to prolong his detention; and
- (e) there are no other overriding grounds for not transferring him to the territory of the requesting State.

(2) In a case within section 13 or subsection (1) of this section, the Central Authority may arrange for the assistance to be given only if it is satisfied—

- (a) that an offence under the law of the State or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and that proceedings in respect of the offence have been instituted in that State or territory or that an investigation into the offence is being carried on there; or
- (b) that section 3 otherwise applies.

(3) For the purposes of this section and section 13, an offence includes an act punishable in proceedings brought by the administrative authorities in a Schengen State in respect of offences which are punishable either in Gibraltar or that State where the decision may give rise to proceedings before a criminal court.

(4) The Central Authority is to regard as conclusive a certificate as to the matters mentioned in subsection (2)(a) and (b) issued by any authority in the State or territory in question which appears to him to be the appropriate authority to do so.

(5) Evidence or documents transmitted pursuant to this Act shall not require any form of authentication.

(6) Where the Central Authority or the court refuses any request for assistance, reasons shall be provided.

#### **Transit through Gibraltar.**

19.(1) Transit through Gibraltar of a person being conveyed from an requested State to a requesting State, pursuant to a request for assistance falling within the scope of this Part shall be permitted where the Central Authority receives a request in that behalf from the requesting State and where the requesting State provides the Central Authority with the following information—

- (a) the nationality of the person and such other information as will enable the person to be identified by the Central Authority;
- (b) information showing that a request for assistance has been issued by the requesting State in respect of the person;
- (c) the nature and classification under the law of the issuing State of the offence to which the request relates; and
- (d) the circumstances in which the offence specified was committed or is alleged to have been committed, including the date and place of its commission.

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

(3)

- (a) This subsection applies to an aircraft that has taken off from a place (other than Gibraltar Airport) and that is scheduled to land in a place (other than Gibraltar Airport) and on board which there is a person who is being conveyed to a requesting State.
- (b) Where an aircraft to which this subsection applies lands (for whatever reason) in Gibraltar, the requesting State shall, upon its landing or as soon as may be after it lands, provide the Central Authority with the information referred to in subsection (1).
- (c) While an aircraft to which this subsection applies is in Gibraltar, a person referred to in paragraph (a) who is on board that aircraft shall be deemed to be in transit through Gibraltar and subsection (2) shall apply accordingly.

**Immunity of witnesses.**

20.(1) A witness or expert, whatever his nationality, may make his appearance before the judicial authorities of the requesting State conditional on a prior assurance being given to him that he will not be prosecuted, detained or subjected to any other restriction of his personal liberty in the territory of that State in respect of acts or convictions prior to his departure from Gibraltar.

(2) An accused person, whatever his nationality, may make his appearance before the judicial authorities of the requesting State conditional on a prior assurance being given to him that he will not be prosecuted, detained or subjected to any other restriction of his personal liberty in the territory of that State in respect of acts or convictions prior to his departure from Gibraltar and not specified in the summons.

(3) This section shall not apply when the witness or expert or accused person having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

#### **Transfer of judicial records.**

21.(1) The Registrar of the Supreme Court shall communicate extracts from and information relating to judicial records, requested by the judicial authorities of a Schengen State and needed in a criminal matter, to the same extent that these may be made available to a court in Gibraltar in a like case.

(2) In any case other than that provided for in subsection (1), the request shall be complied with subject to such conditions as the Chief Justice may deem appropriate.

(3) The Registrar of the Supreme Court shall inform any other Schengen States of all criminal convictions and subsequent measures in respect of nationals of those States, entered in the judicial records at least once a year. Where the person concerned is considered a national of two or more other Schengen States, the information shall be given to each of these States, unless the person is a British national.

#### **Rules of court.**

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

23. *Deleted.*



**PART III**  
**MUTUAL LEGAL ASSISTANCE IN MATTERS NOT**  
**FALLING WITHIN THE SCOPE OF PART II**

**Interpretation.**

24. In this Part and unless the context otherwise requires—

“applicant authority” means a central liaison office, a liaison office or a liaison department of a Member State which makes a request for assistance to the competent authority concerning a claim referred to in section 25 and which is authorised to make such a request pursuant to the Directive;

“by electronic means” means using electronic equipment for the processing, including digital compression, and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;

“competent authority” means such person as the Minister may, from time to time, designate by notice in the Gazette being such person as is authorised to make or receive a request for assistance in respect of a claim to which section 25 applies;

“CCN network” means the common platform based on the common communication network (CCN) developed by the European Union for all transmissions by electronic means between competent authorities in the area of customs and taxation;

“Directive” means Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, as amended from time to time;

“Minister” means the Minister with responsibility for public finance;

“person” means—

- (a) a natural person;
- (b) a legal person;
- (c) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person; or
- (d) any other legal arrangement of whatever nature and form, which has legal personality or not, owning or managing assets

which, including income derived therefrom, are subject to any of the taxes covered by this Part;

“requested authority” means a central liaison office, a liaison office or a liaison department of a Member State to which a request for assistance is made by the competent authority in respect of a claim referred to in section 25 and which is authorised to receive such a request pursuant to the Directive.

#### **Application of Part.**

25.(1) This Part applies to claims relating to the following—

- (a) taxes and duties of any kind levied by or on behalf of the Government, a Member State or its territorial or administrative subdivisions, including local authorities, or on behalf of the European Union;
- (b) refunds, interventions and other measures forming part of the system of total or partial financing of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), including sums to be collected in connection with these actions;
- (c) levies and other duties provided for under the common organisation of the market for the sugar sector;
- (d) administrative penalties, fines, fees and surcharges relating to the claims for which mutual assistance may be requested in accordance with paragraphs (a) to (c), imposed by the administrative authorities that are competent to levy the taxes or duties concerned or carry out administrative enquiries with regard to them, or confirmed by administrative or judicial bodies at the request of those administrative authorities;
- (e) fees for certificates and similar documents issued in connection with administrative procedures related to taxes and duties;
- (f) interest and costs relating to the claims for which mutual assistance may be requested in accordance with this subsection.

(2) This Part does not apply to—

- (a) compulsory social security contributions payable to the Government, a Member State, a subdivision of a Member State or to social security institutions established under public law;

- (b) fees not referred to in subsection (1);
- (c) dues of a contractual nature, such as consideration for public utilities;
- (d) criminal penalties imposed on the basis of a public prosecution or other criminal penalties not covered by subsection (1)(d).

Administration of this Part.

26.(1) Upon the coming into operation of these Regulations, the Minister shall appoint a competent authority for Gibraltar for the purposes of this Part and of the Directive.

(2) The Minister shall ensure that the European Commission is informed of the appointment and of any changes made thereto.

(3) The competent authority shall perform all the functions set out in Article 4 of the Directive within Gibraltar.

*Exchange of Information*

**Request for information.**

27.(1) At the request of an applicant authority the competent authority shall—

- (a) provide any information which is foreseeably relevant to the applicant authority in the recovery of its claims as referred to in section 25; and
- (b) arrange for the carrying-out of any administrative enquiries necessary to obtain such information.

(2) The competent authority shall not be obliged to supply information—

- (a) which it would not be able to obtain for the purpose of recovering similar claims arising in Gibraltar;
- (b) which would disclose any commercial, industrial or professional secrets; or
- (c) the disclosure of which would be liable to prejudice the security of, or be contrary to the public policy of, Gibraltar.

(3) Subsection (2) shall not be construed as permitting the competent authority to decline to supply information solely because this information is

held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

(4) Where the competent authority refuses a request for information it shall inform the applicant authority of the reasons for doing so.

**Exchange of information without prior request.**

28. Where a refund of taxes or duties, other than value-added tax, relates to a person established or resident in a Member State and not Gibraltar, the competent authority may inform the Member State of establishment or residence of such person of the upcoming refund.

Presence in administrative offices and participation in administrative enquiries.

29.(1) By agreement between an applicant authority and the competent authority, and in accordance with arrangements laid down by the competent authority, officials authorised by an applicant authority may, with a view to promoting mutual assistance under this Part—

- (a) be present in the offices where the competent authority carries out its duties;
- (b) be present during administrative enquiries carried out in Gibraltar;
- (c) assist during court proceedings in Gibraltar.

(2) In so far as it is permitted under Gibraltar law, the agreement referred to in subsection (1), in so far as it concerns the matters set out in subsection (1)(b), may provide that officials authorised by an applicant authority may interview individuals and examine records.

(3) Officials authorised by an applicant authority who make use of the rights accorded under this section shall at all times be able to produce written authority stating their identity and their official capacity.

*Assistance for the Notification of Documents*

Request for notification of certain documents relating to claims.

30.(1) This section applies only where an applicant authority is unable to notify, in accordance with the rules in its Member State governing the notification of such documents, or when such notification would give rise to disproportionate difficulties.

- (2) The following provisions apply–
- (a) at the request of an applicant authority, the competent authority shall notify to the addressee all documents, including those of a judicial nature, which emanate from the applicant authority's Member State and which relate to a claim, as referred to in section 25, or to its recovery; and
  - (b) a request for notification shall be accompanied by a standard form containing at least the following information–
    - (i) name, address and other data relevant to the identification of the addressee;
    - (ii) the purpose of the notification and the period within which notification should be effected;
    - (iii) a description of the attached document and the nature and amount of the claim concerned;
    - (iv) name, address and other contact details regarding the office responsible with regard to the attached document, and, if different, the office where further information can be obtained concerning the notified document or concerning the possibilities to contest the payment obligation.
- (3) The competent authority shall forthwith inform the applicant authority of any action taken on its request for notification including the date of notification of the document to the addressee.
- (4) The competent authority shall, when seeking the assistance of a requested authority, invoke the provisions of Article 8 of the Directive only where it is unable to notify the addressee in accordance with other statutory provisions in force in Gibraltar governing the notification of such documents or when such notification would give rise to disproportionate difficulties.

**Means of notification.**

31.(1) The competent authority shall ensure that all notifications in Gibraltar are effected in accordance with the laws, regulations and administrative practices in force in Gibraltar.

(2) Subsection (1) is without prejudice to any other form of notification made by the applicant authority in accordance with the rules in force in its Member State.

(3) The applicant authority may notify any document directly by registered mail or electronically to an addressee in Gibraltar.

*Recovery or Precautionary Measures*

**Request for recovery.**

32.(1) At the request of an applicant authority, the competent authority shall recover claims which are the subject of an instrument permitting enforcement in the applicant authority's Member State.

(2) The competent authority, when seeking the assistance of a requested authority to recover a claim, shall immediately forward to the requested authority any relevant information of which it is made aware relating to the matter which gave rise to the request for recovery.

**Conditions governing a request for recovery.**

33.(1) Save in cases where section 36(4)(d) applies, the competent authority—

- (a) shall not make a request for recovery to a requested authority if, and as long as, the claim or the instrument permitting its enforcement is contested in Gibraltar; and
- (b) shall not accept a request for recovery from an applicant authority if, and as long as, the claim or the instrument permitting its enforcement in the applicant authority's Member State is contested in that Member State.

(2) Except in the situations set out in subsection (3), before the competent authority makes a request for recovery, appropriate recovery procedures available in Gibraltar shall be applied.

(3) The situations set out in this subsection are—

- (a) where it is obvious that there are no assets for recovery in Gibraltar or that such procedures will not result in the payment in full of the claim, and the competent authority has specific information indicating that the person concerned has assets in the requested Member State;

- (b) where recourse to such procedures in Gibraltar would give rise to disproportionate difficulty.

(4) When it receives a request for recovery from an applicant authority, the competent authority shall ask the applicant authority to confirm that it has complied with Article 11 (2) of the Directive.

**Instrument permitting enforcement and other accompanying documents.**

34.(1) Any request for recovery in Gibraltar shall be accompanied by a uniform instrument permitting enforcement which—

- (a) shall reflect the substantial contents of the initial instrument permitting enforcement;
- (b) shall constitute the sole basis for the recovery and precautionary measures taken in Gibraltar; and
- (c) shall not be subject to any act of recognition, supplementing or replacement in Gibraltar.

(2) The uniform instrument permitting enforcement shall contain at least the following information—

- (a) information relevant to the identification of the initial instrument permitting enforcement, a description of the claim, including its nature, the period covered by the claim, any dates of relevance to the enforcement process, and the amount of the claim and its different components such as principal, interest accrued, etc.;
- (b) the name and other data relevant to the identification of the debtor;
- (c) the name, address and other contact details regarding the office responsible for the assessment of the claim, and, if different, the office where further information can be obtained concerning the claim or the possibilities for contesting the payment obligation.

(3) A request for recovery of a claim may be accompanied by other documents relating to the claim issued in the applicant authority's Member State.

**Execution of the request for recovery.**

35.(1) Any claim in respect of which a request for recovery in Gibraltar has been made shall be treated as if it was a claim by the Crown and the competent authority shall make use of all powers and procedures under Gibraltar law applying to such claims or, in the absence of such claims in Gibraltar, claims in relation to a similar tax or duty or to claims concerning the tax levied on personal income.

Provided that–

- (a) the obligation to grant other Member States' claims the preferences accorded to similar claims arising in Gibraltar shall apply only where agreement is reached between Gibraltar and that Member State to that effect or is otherwise provided for under the laws of Gibraltar ;
- (b) where agreement exists with one Member State as stated in paragraph (a), the same agreement shall be reached in respect of similar claims by other Member States on the same conditions;
- (c) claims shall be recovered in Sterling.

(2) The competent authority shall promptly inform the applicant authority of any action it has taken on the request for recovery.

(3) From the date on which the recovery request is received, the competent authority shall charge interest for late payment in accordance with the provisions of the Supreme Court Act.

(4) The competent authority may allow the debtor time to pay or authorise payment by instalments and it may charge interest in that respect. It shall subsequently inform the applicant authority of any such decision.

(5) Without prejudice to the provisions of this Part, the competent authority shall remit to the applicant authority the amounts recovered with respect to the claim and the interest referred to in subsections (3) and (4).

### **Disputes.**

36.(1) Any dispute concerning–

- (a) a claim or the validity of any instrument permitting enforcement, including the uniform instrument;
- (b) the validity of a notification made by the jurisdiction in which the authority requesting the recovery is situate,



shall fall within the competence of the competent bodies of the jurisdiction in which the authority requesting the recovery is situated.

(2) Where, in the course of a recovery procedure in Gibraltar, the claim, the initial instrument permitting enforcement in the applicant authority's Member State or the uniform instrument permitting enforcement in Gibraltar is contested by an interested party, the competent authority shall inform that party that he must bring such an action before the competent body of the applicant authority's Member State in accordance with the laws in force there.

(3) Any dispute concerning the enforcement measures taken in Gibraltar or concerning the validity of a notification made by the competent authority shall be brought before the Supreme Court.

(4) Where the competent authority has requested the recovery a claim to a requested authority and an action as referred to in subsections (1) and (2) has been brought in Gibraltar, the competent authority shall inform the requested authority thereof and shall indicate the extent to which the claim is not contested.

(5) Subject to subsection (7), where the competent authority has been informed by the applicant authority or by the interested party—

- (a) that an action as referred to in subsections (1) and (2) has been brought in its Member State; and
- (b) of the extent of the contested part of the claim,

the competent authority shall, upon receipt of that information, suspend the enforcement procedure in Gibraltar relating to the contested part of the claim, pending the decision of the body competent in the matter.

(6) At the request of an applicant authority, or where it otherwise deems it to be necessary, the competent authority may apply for an injunction or other precautionary measure to guarantee recovery in accordance with the laws of Gibraltar.

(7) The applicant authority may send a reasoned request to the competent authority asking it to recover a contested claim or the contested part of a claim, in so far as the relevant laws, regulations and administrative practices in force in Gibraltar allow such action.

(8) The competent authority may send a reasoned request to a requested authority of the nature described in subsection (7) and where the result of contestation is subsequently favourable to the debtor, the competent authority shall be liable for reimbursing any sums recovered, together with

any compensation due, in accordance with the laws in force in the requested authority's Member State.

(9) Where a mutual agreement procedure has been initiated by any of the competent authorities representing the jurisdictions involved in a claim and the outcome of the procedure may affect the claim in respect of which assistance has been requested, then, unless it concerns a case of immediate urgency because of fraud or insolvency, the recovery measures shall be suspended or stopped until that procedure has been terminated.

(10) Where the recovery measures are suspended or stopped, subsection (6) applies.

**Amendment or withdrawal of the request for recovery assistance.**

37.(1) The competent authority shall forthwith inform the requested authority of any subsequent amendment to its request for recovery or of the withdrawal of its request, indicating the reasons for amendment or withdrawal.

(2) Where an amendment of a request is caused by a decision of the competent body referred to in section 36(1), the competent authority shall communicate this decision together with a revised uniform instrument permitting enforcement in the requested Member State.

(3) Where Article 15(2) of the Directive applies, and a request for recovery has been made to the competent authority, the competent authority shall proceed with further recovery measures on the basis of the revised instrument.

(4) Where recovery or precautionary measures have already been taken in Gibraltar on the basis of the original uniform instrument permitting enforcement, those measures may be continued on the basis of the revised instrument, unless the amendment of the request is due to invalidity of the initial instrument permitting enforcement in the applicant authority's Member State or of the original uniform instrument permitting enforcement in Gibraltar.

(5) Sections 34 and 36 apply in relation to a revised instrument under this section.

**Request for precautionary measures.**

38.(1) Subject to subsection (2), the competent authority shall, at the request of an applicant authority, apply for an injunction or such other precautionary measures as are necessary to ensure recovery in circumstances where—

- (a) a claim or the instrument permitting enforcement in the applicant authority's Member State is contested at the time when the request is made; or
- (b) a claim is not yet the subject of an instrument permitting enforcement in the applicant authority's Member State,

(2) The competent authority shall act in accordance with subsection (1) only in so far as the injunction or other precautionary measure is also possible, in a similar situation, under the national law and administrative practices of the applicant authority's Member State.

(3) The document drawn up for permitting an injunction or other precautionary measures in the applicant authority's Member State and relating to the claim for which mutual assistance is requested, if any, shall be attached to the request for precautionary measures in Gibraltar.

(4) The document referred to in subsection (3) shall not be subject to any act of recognition, supplementing or replacement in Gibraltar.

(5) A request for an injunction or other precautionary measures may be accompanied by other documents relating to the claim issued in the applicant authority's Member State.

**Rules governing the request for precautionary measures.**

39. Sections 32(2), 35(1) and (2), 36, and 37 apply mutatis mutandis for the purpose of giving effect to section 38.

**Limits to the obligations on the competent authority.**

40.(1) The competent authority is not obliged to grant the assistance referred to in sections 32 to 38 where recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in Gibraltar.

- (2) The following provisions apply–
  - (a) the competent authority is not obliged to grant the assistance referred to in sections 27 and 29 to 38 where the initial request for assistance pursuant to sections 27, 29, 30, 32 or 38 is made in respect of claims which are more than 5 years old, starting from the due date of the claim in the applicant authority's Member State to the date of the initial request for assistance;

- (b) where a claim or initial instrument permitting enforcement in the applicant authority's Member State is contested, the 5-year period referred to in paragraph (a) is deemed to begin from the moment when it is established in the applicant authority's Member State that the claim or the instrument permitting enforcement may no longer be contested;
- (c) where a postponement of the payment or instalment plan is granted by the competent bodies of the applicant authority's Member State, the 5-year period referred to in paragraph (a) is deemed to begin from the moment when the entire payment period has come to its end,

but the competent authority is not obliged, in any event, to grant assistance in respect of claims which are more than 10 years old, counting from the due date of the claim in the applicant authority's Member State.

(3) Assistance need not be granted where the total amount of the claims covered by this Part, for which assistance is requested, is less than EUR1500.

(4) The competent authority shall inform the applicant authority of the grounds for refusing a request for assistance.

**Limitation periods.**

41.(1) Questions concerning periods of limitation are governed solely by the laws in force in the jurisdiction in which the authority requesting the recovery is situate.

(2) The following provisions apply in relation to the suspension, interruption or prolongation of the period of limitation—

- (a) any steps taken in the recovery of claims by the competent authority in pursuance of a request for assistance which have the effect of suspending, interrupting or prolonging the period of limitation according to the laws of Gibraltar shall be deemed to have the same effect in the applicant authority's Member State, provided the corresponding effect is provided for under the laws in force in the applicant authority's Member State; and
- (b) where suspension, interruption or prolongation of the period of limitation is not possible under the laws in force in the requested jurisdiction, any steps taken in the recovery of claims pursuant to a request for assistance which, if they had been carried out in the applicant jurisdiction, would have had the effect of suspending, interrupting or prolonging the period of

limitation according to the laws in force in the applicant jurisdiction, shall be deemed to have been taken in the latter jurisdiction, in so far as that effect is concerned.

(3) Subsection (2) does not affect the right of the competent authority in the applicant jurisdiction to take measures to suspend, interrupt or prolong the period of limitation.

(4) The authorities in the applicant and requested jurisdictions shall inform each other of any action which interrupts, suspends or prolongs the limitation period of the claim for which the recovery or precautionary measures were requested, or which may have this effect.

(5) For the avoidance of doubt, in this section the references to applicant jurisdiction and requested jurisdiction are references respectively to the jurisdiction in which the authority requesting recovery and the authority to which a request for recovery is situate.

## **Costs.**

42.(1) In addition to the amounts referred to in section 35(5), the competent authority shall seek to recover from the person concerned, and retain, the costs linked to the recovery that it has incurred.

(2) No costs shall be claimed from the applicant authority's Member State for the reimbursement of expenses arising from assistance granted pursuant to this Part, save that where, in any particular case, recovery creates a specific problem, concerns a very large amount in costs or relates to organised crime, the competent authority and the applicant authority may agree reimbursement arrangements specific to that case.

(3) Notwithstanding subsection (2), the applicant authority remains liable to the competent authority for any costs and any losses incurred as a result of actions held to be unfounded, as far as either the substance of the claim or the validity of the instrument permitting enforcement or precautionary measures issued by the applicant authority are concerned.

## *General Rules Governing all types of Assistance Requests*

### **Standard forms and means of communication.**

43.(1) Unless impracticable for technical reasons, requests for information pursuant to section 27(1), for notification pursuant to section 30(1), for recovery pursuant to section 32(1) or for an injunction or other precautionary measures pursuant to section 38(1) shall be sent by electronic means, using a standard form.

(2) The forms referred to in subsection (1) shall also be used, as far as possible, for any further communication with the regard to the requests referred to in that subsection.

(3) Unless impracticable for technical reasons, the uniform instrument permitting enforcement in the requested jurisdiction, the document permitting an injunction or other precautionary measure in the applicant jurisdiction and the other documents referred to in sections 34 and 38 shall also be sent by electronic means.

(4) Where appropriate, the standard forms may be accompanied by reports, statements and any other documents, or certified true copies or extracts thereof, which shall also be sent by electronic means, unless this is impracticable for technical reasons.

(5) The standard forms and communication by electronic means may also be used for the exchange of information pursuant to section 28 and Article 6 of the Directive.

(6) Subsections (1) to (5) do not apply to information and documentation obtained through the presence in administrative offices in a place other than Gibraltar or through the participation in administrative enquiries in a place other than Gibraltar, in accordance with section 29.

(7) Where communication is not made by electronic means or with use of standard forms, this shall not affect the validity of the information obtained or of the measures taken in the execution of a request for assistance.

#### **Use of languages.**

44.(1) All requests for assistance, standard forms for notification and uniform instruments permitting enforcement shall be sent in, or shall be accompanied by a translation into, English, but the fact that certain parts thereof are written in a language other than English, shall not affect their validity or the validity of the procedure, in so far as that other language is one agreed between the competent authority and the authority in the Member State concerned.

(2) The documents in respect of which notification is requested pursuant to section 30 may be sent to the competent authority in an official language of the applicant authority's Member State.

(3) Where a request is accompanied by documents other than those referred to in subsections (1) and (2), the competent authority may, where necessary, require from the applicant authority a translation of such documents into English, or into any other language agreed between them.

**Disclosure of information and documents.**

45.(1) Information communicated in any form pursuant to this Part is covered by the obligation of official secrecy and section 3 of the Income Tax Act 2010.

(2) Such information may be used for the purpose of applying enforcement or other precautionary measures with regard to claims covered by this Part and for the assessment and enforcement of compulsory social security contributions.

(3) Persons duly accredited by the Security Accreditation Authority of the European Commission may have access to this information only in so far as it is necessary for care, maintenance and development of the CCN network.

(4) The authority providing the information shall permit the use of such information in the jurisdiction receiving the information for purposes other than those referred to in subsection (2) where, under the law of the jurisdiction providing the information, the information may be used for similar purposes.

(5) Subject to subsection (6), where the competent authority considers that information obtained pursuant to this Part is likely to be useful for the purposes referred to in subsection (2) to a Member State other than the one which provided the information, the information may be transmitted to that other Member State, provided—

- (a) the transmission is in accordance with the rules and procedures laid down in this Part; and
- (b) the Member State of origin of the information is notified of the intention to share that information with another Member State.

(6) The competent authority shall not transmit information pursuant to subsection (5) if the Member State of origin of the information opposes the transmission within ten working days of receiving the notification referred to in subsection (5)(b).

(7) Permission to use information pursuant to subsection (4) which has been transmitted pursuant to subsections (5) and (6) may be granted only by the jurisdiction from which the information originates.

(8) Information communicated in any form pursuant to this Part or the Directive may be invoked or used as evidence by all authorities in Gibraltar on the same basis as similar information obtained within Gibraltar.

**Application of other agreements on assistance.**

46.(1) This Part is without prejudice to the fulfilment of any obligation to provide wider assistance ensuing from bilateral or multilateral agreements or arrangements, including for the notification of legal or extra-legal acts.

(2) The Minister shall ensure that, where bilateral or multilateral agreements or arrangements on matters covered by this Part, other than to deal with individual cases, become applicable to Gibraltar after the coming into operation of these Regulations, the European Commission is informed thereof without delay.

**Reporting.**

47.(1) The Minister shall ensure that the European Commission is informed annually, by 31 March, of the following—

- (a) the number of requests for information, notification and recovery or for precautionary measures which the competent authority sends to each Member State and which the competent authority receives from each Member State each year;
- (b) the amount of the claims for which recovery assistance is requested and the amounts recovered.

(2) The Minister may also ensure that there is provided any other information that may be useful for evaluating the provision of mutual assistance under this Part.

**Rules of Court.**

48. The Chief Justice may make rules of court in relation to any matter arising under this Part.

**Regulations.**

49.(1) The Minister may make regulations making provision for anything that may be provided for under this Part and generally to give effect to the provisions of this Part.

(2) Regulations made under subsection (1) may give effect to any agreement or arrangement that may be entered into by the Government with any country or in relation to any matter falling within the scope of this Part.



(3) Regulations made under subsection (1) may provide for the levying of such fees and the creation of such offences as the minister may deem appropriate.

**SCHEDULE 1****PROCEEDINGS UNDER SECTION 14**

Section 14

**Power to administer oaths.**

1. The court may take evidence on oath.

**Proceedings.**

2. Rules of court under section 22 may, in particular, make provision in respect of the persons entitled to appear or take part in the proceedings and for excluding the public from the proceedings.

**Privilege of witnesses.**

- 3.(1) A person cannot be compelled to give any evidence which he could not be compelled to give—

- (a) in criminal proceedings in Gibraltar; or
- (b) subject to sub-paragraph (2), in criminal proceedings in the State from which the request for the evidence has come.

(2) Sub-paragraph (1)(b) does not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court or authority which made the request.

(3) Where the person's claim is not conceded, he may be required to give the evidence to which the claim relates (subject to the other provisions of this paragraph); but the evidence may not be forwarded to the court or authority which requested it if a court in the State in question, on the matter being referred to it, upholds the claim.

(4) A person cannot be compelled to give any evidence if his doing so would be prejudicial to the security of Gibraltar. A certificate signed by or on behalf of the Governor to the effect that it would be so prejudicial for that person to do so is conclusive evidence of that fact.

(5) A person cannot be compelled to give any evidence in his capacity as an officer or servant of the Crown.

(6) Sub-paragraphs (4) and (5) are without prejudice to the generality of sub-paragraph (1).

**Forwarding evidence.**

4.(1) The evidence received by the court is to be given to the Central Authority for forwarding to the court or authority that made the request.

(2) So far as may be necessary in order to comply with the request—

(a) where the evidence consists of a document, the original or a copy is to be provided;

(b) where it consists of any other article, the article itself, or a description, photograph or other representation of it, is to be provided.

(3) The court may delay the forwarding of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings in Gibraltar.

(4) Any property, as well as original records or documents, shall be handed over in execution of a request on condition that it shall be returned as soon as reasonably possible unless the court waives the return thereof.

5. On the express request of the requesting State the Central Authority shall petition the court to state the date and place of execution of the request. Officials and interested persons may be present at such execution if the court deems it appropriate.

**Supplementary.**

6. The Bankers' Books Evidence Act 1879 applies to the proceedings as it applies to other proceedings before the court.

7. No order for costs may be made.

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**SCHEDULE 2**

*Repealed.*

**SCHEDULE 3**

## Section 2A

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

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