

**Nru. 117**

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28. 02. 2020

**MALTA**

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**KAMRA TAD-DEPUTATI**

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**HOUSE OF REPRESENTATIVES**

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ABBOZZ ta' Liġi mressaq mill-Onorevoli Edward Zammit Lewis, M.P., Ministru għall-Ġustizzja, l-Ugwaljanza u l-Governanza, u moqri għall-Ewwel darba fis-Seduta tas-26 ta' Frar 2020.

A BILL introduced by the Honourable Edward Zammit Lewis, M.P., Minister for Justice, Equality and Governance, and read the First time at the Sitting of the 26th February 2020.

**ATT li jkompli jemenda l-Kodiċi Kriminali, Kap. 9.**

**AN ACT to further amend the Criminal Code, Cap. 9.**

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RAYMOND SCICLUNA  
*Skrivan tal-Kamra tad-Deputati*

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RAYMOND SCICLUNA  
*Clerk of the House of Representatives*



**ABBOZZ TA' LIĠI**  
**msejjah**

*ATT li jkompli jemenda l-Kodiċi Kriminali, Kap. 9.*

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati mlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'liġi dan li ġej:-

**1.** (1) It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2020 li jemenda l-Kodiċi Kriminali (Emenda Nru 2), u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Kodiċi Kriminali, minn hawn 'il quddiem imsejjah "il-Kodiċi".

Titolu fil-qosor u bidu fis-sehħ.  
Kap. 9.

(2) Dan l-Att għandu jidhol fis-sehħ f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista' permezz ta' avviż fil-Gazzetta jistabbilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal dispożizzjonijiet u għanijiet differenti ta' dan l-Att.

**2.** Minnufih wara s-Sub-titolu II tat-Titolu V tal-Parti II tal-Ewwel Ktieb tal-Kodiċi għandu jiżdied is-Subtitolu ġdid li ġej:

Żieda ta' Sub-titolu ġdid fil-Kodiċi.

"Sub-titolu III

**DWAR IL-FRODI KONTRA L-INTERESSI FINANZJARJI  
TAL-UNJONI EWROPEA**

Il-miżuri f'dan is-Sub-titolu jittrasponu d-dispożizzjonijiet tad-Direttiva (UE) 2017/1371 tal-Parlament Ewropew u tal-Kunsill tal-5 ta' Lulju 2017 dwar il-ġlieda kontra l-frodi tal-interessi finanzjarji tal-Unjoni permezz tal-liġi kriminali..

Għan u applikabbiltà.

190A.(1) Dan is-Sub-titolu jistabbilixxi regoli dwar il-ġlieda kontra l-frodi u attivitajiet illegali oħra li jaffettwaw l-interessi finanzjarji tal-Unjoni Ewropea.

(2) Fir-rigward ta' dhul li jirrizulta mir-riżorsi proprji tal-VAT, dan is-Sub-titolu għandu japplika biss f'każijiet ta' reati serji kontra s-sistema komuni tal-VAT. Għall-finijiet ta' dan is-Sub-titolu, reati kontra s-sistema komuni tal-VAT għandhom jiġu meqjusa bħala serji fejn l-atti jew ommissjonijiet intenzjonali definiti fil-paragrafu (d) tal-artikolu 190<sup>C</sup> huma konnessi mat-territorju ta' Malta u Stat Membru ieħor jew Stati Membri tal-Unjoni Ewropea u jinvolvu ħsara totali ta' mill-inqas għaxar miljun euro (€10,000,000).

(3) L-ebda haġa f'dan is-Sub-titolu ma għandha taffettwa l-istruttura u l-funzjonament tal-amministrazzjoni tat-taxxa ta' Malta.

(4) Is-sanzjonijiet għal reati skont dan is-Sub-titolu għandhom ikunu mingħajr preġudizzju għall-eżerċizzju tal-poteri dixxiplinari mill-awtoritajiet kompetenti kontra l-uffiċjali pubbliċi.

(5) L-applikazzjoni ta' miżuri, penali u multi amministrattivi kif stabbiliti fil-liġi tal-Unjoni Ewropea, b'mod partikolari dawk fis-sens tal-Artikoli 4 u 5 tar-Regolament (KE, Euratom) Nru 2988/95, jew fil-liġi nazzjonali adottata b'konformità ma' obbligu speċifiku skont il-liġi tal-Unjoni Ewropea, għandha tkun mingħajr preġudizzju għal dan is-Sub-titolu. Kull proċediment kriminali mibdi abbażi ta' dan is-Sub-titolu ma għandux jaffettwa b'mod mhux xieraq l-applikazzjoni korretta u effettiva ta' miżuri, penali u multi amministrattivi li ma jistgħux jitqabblu ma' proċedimenti kriminali, stabbiliti fil-liġi tal-Unjoni Ewropea jew dik nazzjonali.

Tifsir.

190B. Għall-finijiet ta' dan is-Sub-titolu, kemm-il darba r-rabta tal-kliem ma teħtieġx xort'oħra, it-tifsir li ġej għandu japplika:

"uffiċjal pubbliku" għandu jkollu l-istess tifsira kif mogħtija lilu fl-artikolu 92 u għandu jinkludi ukoll:

(a) Uffiċjal tal-Unjoni jew uffiċjal nazzjonali ta' Stat Membru tal-Unjoni Ewropea minbarra Malta u kull uffiċjal nazzjonali ta' pajjiż terz;

(i) "Uffiċjal tal-Unjoni" tfisser persuna li hi:

- uffiċjal jew impjegat iehor ingaġġati b'kuntratt mill-Unjoni Ewropea fis-sens tar-Regolamenti tal-Persunal għall-Uffiċjali tal-Unjoni Ewropea u l-Kondizzjonijiet tal-Impjeg Applikabbli għall-Aġenti l-Oħra tal-Unjoni Ewropea stabbiliti fir-Regolament tal-Kunsill (KEE, Euratom, KEFA) Nru 259/68 (ir-‘Regolamenti tal-Persunal’), jew

- issekondata lill-Unjoni Ewropea minn Stat Membru jew kull korp pubbliku jew privat, li twettaq funzjonijiet ekwivalenti għal dawk mwettqa minn uffiċjali jew impjegati oħra tal-Unjoni:

Iżda, mingħajr preġudizzju għad-dispożizzjonijiet dwar privileġġi u immunitajiet li jinsabu fil-Protokoll Nru 3 u Nru 7 annessi mat-Trattat tal-Unjoni Ewropea u t-Trattat dwar il-Funzjonament tal-Unjoni Ewropea, Membri tal-istituzzjonijiet, korpi, uffiċċji u aġenziji tal-Unjoni Ewropea, stabbiliti skont it-Trattat u l-persunal ta' dawn il-korpi għandhom jiġu assimilati għal uffiċjali tal-Unjoni, sa fejn ir-Regolamenti tal-Persunal ma japplikawx għalihom;

(ii) "uffiċjal nazzjonali" għandu jinkludi kull persuna li tokkupa kariga eżekuttiva, amministrattiva jew ġudizzjarja fuq livell nazzjonali, reġjonali jew lokali. Kull persuna li tokkupa kariga leġiżlattiva fuq livell nazzjonali, reġjonali jew lokali għandha tiġi assimilata għal uffiċjal nazzjonali;

"l-interessi finanzjarji tal-Unjoni Ewropea" għandha tfisser kull dħul, nefqa jew assi koperti minn, miksuba permezz, jew dovuti lill-:

(a) baġit tal-Unjoni Ewropea;

(b) baġits tal-istituzzjonijiet, korpi, uffiċċji u aġenziji tal-Unjoni Ewropea stabbiliti skont it-Trattati jew baġits immaniġġjati u sorveljati b'mod dirett jew indirett minnhom.

Frodi li jaffettwa l-interessi finanzjarji tal-Unjoni.

190Ċ.(1) Kull min iwettaq frodi li taffettwa l-interessi finanzjarji tal-Unjoni Ewropea intenzjonalment għandu jehel, meta jinstab hati, il-piena ta' prigunerija minn sitt (6) xhur sa erba' (4) snin.

(2) Għall-finijiet ta' dan is-Sub-titolu, dan li ġej għandu jitqies bħala frodi li jaffettwa l-interessi finanzjarji tal-Unjoni Ewropea:

(a) fir-rigward ta' spiza mhux relatata mal-akkwist, kull att jew ommissjoni relatati ma':

(i) l-użu jew il-prezentazzjoni ta' dikjarazzjonijiet u dokumenti foloz, żbaljati jew mhux kompluti, li jkollhom bħala effett il-miżapproprijazzjoni jew iż-żamma bla dritt ta' fondi jew assi mill-baġit tal-Unjoni Ewropea jew minn baġits immaniġġjati mill-Unjoni Ewropea, jew f'isimha;

(ii) nuqqas ta' żvelar ta' informazzjoni bi ksur ta' obbligu speċifiku, bl-istess effett; jew

(iii) applikazzjoni żbaljata ta' dawn il-fondi jew assi għal finijiet għajr dawk li għalihom ingħataw oriġinarjament;

(b) fir-rigward ta' spiza relatata mal-akkwist, għallinqas meta din issir biex jinkiseb vantaġġ illegali għall-awtur tar-reat jew persuna oħra permezz ta' telf ikkawżat għall-interessi finanzjarji tal-Unjoni Ewropea, kull att jew ommissjoni relatati ma':

(i) l-użu jew il-prezentazzjoni ta' dikjarazzjonijiet u dokumenti foloz, żbaljati jew mhux kompluti, li jkollhom bħala effett il-miżapproprijazzjoni jew iż-żamma bla dritt ta' fondi jew assi mill-baġit tal-Unjoni Ewropea jew minn baġits immaniġġjati mill-Unjoni Ewropea, jew f'isimha;

(ii) nuqqas ta' żvelar ta' informazzjoni bi ksur ta' obbligu speċifiku, bl-istess effett; jew

(iii) applikazzjoni żbaljata ta' dawn il-fondi jew assi għal finijiet għajr dawk li għalihom ingħataw oriġinarjament, li jagħmlu ħsara lill-interessi finanzjarji tal-Unjoni Ewropea;

(ċ) fir-rigward ta' dħul għajr dak li jirriżulta mir-riżorsi proprji tal-VAT msemmi fil-paragrafu (d), kull att jew ommissjoni relatati ma':

(i) l-użu jew il-preżentazzjoni ta' dikjarazzjonijiet u dokumenti foloz, żbaljati jew mhux kompluti, li jkollhom bħala effett it-tnaqqis illegali tar-riżorsi tal-baġit tal-Unjoni Ewropea jew tal-baġits immanigġjati mill-Unjoni Ewropea, jew f'isimha;

(ii) nuqqas ta' żvelar ta' informazzjoni bi ksur ta' obbligu speċifiku, bl-istess effett; jew

(iii) applikazzjoni żbaljata ta' benefiċċju miksub legalment, bl-istess effett;

(d) fir-rigward ta' dħul li jirriżulta mir-riżorsi proprji tal-VAT, kull att jew ommissjoni magħmula fi skemi frodulenti transkonfinali b'rabta ma':

(i) l-użu jew il-preżentazzjoni ta' dikjarazzjonijiet u dokumenti relatati mal-VAT foloz, żbaljati jew mhux kompluti, li jkollhom bħala effett it-tnaqqis tar-riżorsi tal-baġit tal-Unjoni Ewropea;

(ii) nuqqas ta' żvelar ta' informazzjoni relatata mal-VAT bi ksur ta' obbligu speċifiku, bl-istess effett; jew

(iii) il-preżentazzjoni ta' dikjarazzjonijiet relatati mal-VAT korretti sabiex b'mod qarrieqi jinħbew in-nuqqas ta' ħlas jew il-ħolqien b'mod illegali ta' drittijiet għar-rifużjonijiet tal-VAT.

Pieni.

190D.(1) Kull ufficjal pubbliku li, direttament jew permezz ta' intermedjarju, jirrikjedi jew jirċievi vantaġġ ta' kull tip għalih jew għal parti terza, jew jaċċetta wegħda ta' tali vantaġġ, biex jaġixxi jew iżomm lura milli jaġixxi skont id-dmirijiet tiegħu jew fl-eżerċizzju tal-funzjonijiet tiegħu b'mod li jagħmlu ħsara jew jistgħu jagħmlu ħsara lill-interessi finanzjarji tal-Unjoni Ewropea għandu jeħel, meta jinstab ħati, il-piena ta' prigunerija minn sitt (6) xhur sa erba' (4) snin.

(2) Kull min iwiegħed, joffri jew jagħti, direttament jew permezz ta' intermedjarju, vantaġġ ta' kull tip għalih jew għal parti terza, jew jaċċetta wegħda ta' tali vantaġġ, biex jaġixxi jew iżomm lura milli jaġixxi skont idmirijiet tiegħu jew fl-eżerċizzju tal-funzjonijiet tiegħu b'mod li jagħmlu ħsara jew jistgħu jagħmlu ħsara lill-interessi finanzjarji tal-Unjoni Ewropea għandu jeħel, meta jinstab ħati, il-piena ta' prigunerija minn sitt (6) xhur sa erba' (4) snin.

Miżappropriazzjoni kontra l-interessi finanzjarji tal-Unjoni Ewropea.

190E. Kull uffiċjal pubbliku li hu direttament jew indirettament fdat bl-immanigġjar ta' fondi jew assi, u li jwettaq jew juża fondi jew jawtorizza jew juża l-assi kuntrarju għall-iskop li għalih kienu intenzjonati b'kull mod li jagħmel ħsara lill-interessi finanzjarji tal-Unjoni Ewropea, għandu jeħel, meta jinstab ħati, il-piena ta' prigunerija minn tliet (3) xhur sa tmintax (18)-il xahar.

Instigar, għajnunha u kompliċità u attentat.

190F. Kull min jinstiga, jgħin, ikun kompliċi jew jipprova jwettaq kull reat skont l-artikoli 190Ċ, 190D jew 190E, jkun ħati ta' reat u għandu jkun soġġett għall-kastig stabbilit għar-reat li jkun għen, kien kompliċi fih jew instiga biex jitwettaq.

Responsabbiltà ta' korp magħqud għal reati skont dan is-Sub-titolu.

190G.(1) Fejn kull reat skont dan is-Sub-titolu jitwettaq għall-benefiċċju, parzjalment jew kompletament, ta' korp magħqud minn persuna li taġixxi waħedha jew bħala parti minn organu tal-korp magħqud, u li jkollha pożizzjoni tat-tmexxija fi ħdan il-korp magħqud, ibbażata fuq:

(a) il-poter ta' rappreżentazzjoni tal-korp magħqud;

(b) l-awtorità li tiegħu deċiżjonijiet f'isem il-korp magħqud, jew

(ċ) l-awtorità li teżerċita kontroll fuq il-korp magħqud,

tali korp magħqud għandu jkun soġġett li jhallas multa ta' mhux inqas minn għoxrin elf euro (€20,000) u mhux aktar minn żewġ miljun euro (€2,000,000), liema multa tista' tiġi rkuprata bħala dejn ċivili u s-sentenza tal-Qorti għandha tikkostitwixxi titolu eżekuttiv għall-intenzjonijiet u l-finijiet kollha tal-Kodiċi tal-Organizzazzjoni u Proċedura Ċivili.

Kap. 12.



(2) Kwalunkwe korp magħqud għandu wkoll jinżamm responsabbli għal reat skont dan is-Sub-titolu fejn in-nuqqas ta' sorveljanza u kontroll minn persuna li saret referenza għaliha fis-subartikolu (1) għenet biex jitwettaq ir-reat, minn kwalunkwe persuna taħt l-awtorità tagħha, għall-benefiċċju tal-korp magħqud, li għandu jehel, meta jinstab ħati, għall-piena stabbilita fis-subartikolu (1).

(3) Ir-responsabbiltà ta' korp magħqud skont is-subartikoli (1) u (2) ma għandux jeskludi l-possibbiltà ta' proċedimenti kriminali kontra persuni fiżiċi li huma ħatja tar-reati kriminali msemmija fl-artikoli 190Ċ, 190D jew 190E jew li huma kriminalment responsabbli taħt l-artikolu 190F.

(4) Mingħajr preġudizzju għall-applikazzjoni tal-pieni skont is-subartikoli (1) u (2), fejn korp magħqud jinżamm responsabbli skont dan l-artikolu, is-sanzjonijiet li ġejjin jistgħu japplikaw fl-istess ħin:

(a) esklużjoni minn intitolament għal benefiċċji u għajjnuna pubblika;

(b) esklużjoni temporanja jew permanenti minn proċeduri ta' sejhiet pubbliċi għall-offerti;

(ċ) is-sospensjoni jew il-kancellazzjoni ta' kull liċenzja, permess jew awtorità oħra biex tkun involuta f'kull attività oħra ta' negozju jew kummerċjali;

(d) tqegħid taħt sorveljanza ġudizzjarja;

(e) il-likwidazzjoni obligatorja tal-korp magħqud; jew

(f) l-għeluq temporanju jew permanenti tal-istabbilimenti li ntużaw għat-twettiq tar-reat kriminali.

(5) Dan l-artikolu ma għandux japplika għal Stati jew korpi pubbliċi li jeżerċitaw l-awtorità Statali, jew għal organizzazzjonijiet internazzjonali pubbliċi.

Ħsara jew  
vantagġ  
konsiderevoli.

190H.(1) Fejn ir-reati msemmija fl-artikoli 190Ċ, 190D, 190E u 190F jinvolvu ħsara jew vantagġ konsiderevoli, it-trasgressur għandu jehel, meta jinstab ħati, il-piena ta' prigunerija minn erba' (4) sa tmien (8) snin.

(2) Il-ħsara jew vantaġġ li jirriżultaw minn reati kriminali msemmija fl-Artikolu 190Ċ(2)(a), (b) u (ċ) u fl-artikolu 190D għandhom jitqiesu bħala konsiderevoli fejn il-ħsara jew il-vantaġġ jinvolvu iktar minn mitt elf euro (€100,000).

(3) Il-ħsara jew vantaġġ li jirriżultaw minn reati kriminali msemmija fl-artikolu 190Ċ(2)(d) u fir-rigward tal-artikolu 190A(2) dejjem għandhom jitqiesu bħala konsiderevoli.

Ċirkostanzi  
aggravanti.

190I. Il-piena għar-reati msemmija fl-artikoli 190Ċ, 190D, 190E u 190F għandha tiżdied bi grad jew tnejn fejn ir-reat twettaq fi ħdan il-qafas ta' organizzazzjoni kriminali fis-sens tad-Deċiżjoni-Kwadru tal-Kunsill 2008/841/JHA tal-24 ta' Ottubru 2008 dwar il-ġlieda kontra l-kriminalità organizzata.

Ġurizdizzjoni.

190J. (1) L-artikolu 121Ċ għandu japplika *mutatis mutandis* għar-reati skont dan is-Sub-titolu.

(2) Mingħajr preġudizzju għall-ġeneralità tas-subartikolu (1), il-qradi Maltin għandu jkollhom ukoll ġurizdizzjoni fuq ir-reati stabbiliti f'dan is-Subtitolu fejn l-awtur tar-reat jkun suġġett għar-Regolamenti tal-Persunal għall-Uffiċjali tal-Unjoni Ewropea fiż-żmien li jitwettaq ir-reat kriminali, u dik il-persuna tkun fl-istess hin ċittadin jew persuna residenti permanenti f'Malta fis-sens tal-artikolu 5(1)(d):

Iżda l-applikazzjoni ta' dan is-subartikolu għandu jirrispetta bis-sħiħ il-prinċipju ta' *ne bis in idem*.

Irkupru.

190K.(1) Dan is-Sub-titolu għandu jkun mingħajr preġudizzju għall-irkupru ta' kwalunkwe VAT mhux imħallas fil-kuntest tat-twertiq tar-reati msemmija fl-artikolu 190Ċ(2)(d) jew fl-artikoli 190D, 190E jew 190F.

(2) Dan is-Sub-titolu għandu jkun mingħajr preġudizzju għall-applikazzjoni ta' kwalunkwe miżuri, penali jew multi amministrattivi stabbiliti fil-liġi, u kull proċediment kriminali mibdi skont dan is-Sub-titolu ma għandux jaffettwa b'mod mhux xieraq l-applikazzjoni proprja u effettiva ta' tali miżuri, penali u multi amministrattivi."

Emenda tal-  
artikolu 355AT  
tal-Kodiċi.

**3. L-artikolu 355AT tal-Kodiċi għandu jiġi emendat kif ġej:**

(a) fis-subartikolu (1) tiegħu, minnufih wara l-kliem "6 ta' Novembru 2013 (L294/1)" għandu jiżdied dan li ġej "u d-dispożizzjonijiet tad-Direttiva 2016/1919/UE tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ottubru 2016 dwar għajjnuna legali għal persuni ssuspettati u akkużati fi proċedimenti kriminali

u għal persuni rikjesti fi proċedimenti ta' mandat ta' arrest Ewropew."; u

(b) minnufih wara s-subartikolu (4) tiegħu, għandu jizjed is-subartikolu ġdid li ġej:

"(5) Għall-fini ta' dan is-Subtitolu, l-espressjoni "għajnuna legali" tfisser finanzjament mill-Ministru, tal-assistenza ta' avukat, li jippermetti l-eżerċizzju tad-dritt għall-aċċess għal avukat".

4. L-artikolu 355AU tal-Kodiċi għandu jiġi emendat kif ġej:

Emenda tal-artikolu 355AU tal-Kodiċi.

(a) Is-subartikoli (4) u (5) tal-artikolu 355AU għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (5) u (6);

(b) minnufih wara s-subartikolu (3) tiegħu, għandu jizjed is-subartikolu ġdid li ġej:

"(4) Id-dispożizzjonijiet relatati mal-għajnuna legali skont dan is-Sub-titolu għandhom japplikaw:

(a) għal għal persuni ssuspettati u akkużati f'proċedimenti kriminali li għandhom dritt għall-aċċess għal avukat skont dan is-Subtitolu u li huma:

(i) mcaħħda mil-libertà;

(ii) meħtieġa li jiġu assistiti minn avukat skont il-liġi jew

(iii) meħtieġa jew permessi li jattendu att ta' investigazzjoni jew ta' ġbir ta' provi, inkluż mill-inqas dawn li ġejjin:

(A) ringiela ta' persuni suspettati għal finijiet ta' identifikazzjoni;

(B) konfrontazzjonijiet;

(Ċ) rikostruzzjonijiet tal-post tar-reat; u

(b) għal persuna mfittxija malli tiġi arrestata taħt l-artikolu 355AUT(2)(c) persuni li għandhom id-dritt għall-aċċess għal avukat skont dan is-Sub-titolu;

(c) taħt l-istess kundizzjonijiet kif provdut fil-paragrafu (a), għal persuni li inizjalment ma kienux persuni suspettati jew akkużati iżda li jsiru persuni suspettati jew

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akkużati matul l-interrogazzjoni mill-pulizija jew awtorità tal-infurzar tal-liġi oħra."

Emenda tal-artikolu 355AUH tal-Kodiċi.

**5.** Fis-subartikolu (1) tal-artikolu 355AUH tal-Kodiċi minnufih wara l-kliem "mandat ta' arrest Ewropew." għandu jiżdied il-kliem li ġej "Il-persuna mfittxija tista' tagħzel li tingħata għajjnuna mill-Avukat għall-Għajjnuna Legali f'liema każ l-Avukat għall-Għajjnuna Legali għandu jassenja avukat għall-dan l-iskop."

Emenda tal-artikolu 355AUJ tal-Kodiċi.

**6.** Fis-subartikolu (1) tal-artikolu 355AUJ tal-Kodiċi minnufih wara l-kliem "suspetti vulnerabbli," għandu jiżdied il-kliem "persuni mfittxija vulnerabbli".

Żieda ta' Titolu ġdid mal-Kodiċi.

**7.** Minnufih wara t-**Titolu VI**, Sub-**titolu III**, **Parti I**, it-**Tieni Ktieb ta' dan il-Kodiċi**, għandu jiżdied it-**Titolu ġdid** li ġej:

## "Titolu VII

### DWAR ID-DRITTIJET TA' TĦAL LI HUMA PERSUNI SUSPETTATI JEW AKKUŻATI

Il-miżuri f'dan it-**Titolu** jipprovdu għat-traspożizzjoni tad-**Direttiva (UE) 2016/800** tal-Parlament Ewropew u tal-Kunsill tal-11 ta' **Mejju 2016** dwar il-garanziji proċedurali għal tĦal li huma suspettati jew li huma persuni akkużati fi proċedimenti kriminali.

Regoli dwar ċerti drittijiet tat-tĦal.

**534AGA.** Dan it-**Titolu** jistabbilixxi r-regoli li jikkonċernaw ċerti drittijiet tat-tĦal li huma:

(a) persuni suspettati jew akkużati fi proċedimenti kriminali; jew

(b) soġġetti għal proċedimenti ta' mandat ta' arrest Ewropew skont id-**Deċiżjoni Kwadru 2002/584/JHA** (minn hawn 'il quddiem msejja "persuni mfittxija").

Għan.

**534AGB.** Għall-fini ta' dan it-**Titolu**, l-**espressjoni**:

"tifel" tfisser persuni taħt l-età ta' tmintax (18) -il sena:

Izda fejn hemm inċertezza dwar jekk il-persuna għalqitx tmintax-il (18) sena, dik il-persuna għandha titqies bħala tifel;

"detentur tar-responsabbiltà tal-ġenituri" tfisser kull persuna li għandha r-responsabbiltà tal-ġenituri fuq tĦal;

"Ministru" tfisser il-**Ministru responsabbli** għall-gustizzja;

"responsabbiltà tal-ġenituri" tfisser kull drittijiet u dmirijiet relatati mal-persuna jew il-proprjetà ta' tfal li jingħataw lil persuna fiżika jew legali b'sentenza, bl-operat tal-liġi jew permezz ta' ftehim li jkollu effett ġuridiku, inkluż drittijiet ta' kustodja u d-drittijiet ta' aċċess.

Tifsir.

534AGC.(1) Dan it-Titolu japplika għal tfal li huma persuni suspettati jew akkużati fi proċedimenti kriminali, sad-deċiżjoni finali tal-mistoqsija dwar jekk il-persuna suspettata jew akkużata tkunx wettqet reat kriminali jew le, inkluż, fejn applikabbli, l-għoti tas-sentenza u r-riżoluzzjoni ta' kwalunkwe appell.

(2) Dan it-Titolu japplika għal tfal li huma persuni rikjesti mill-mument tal-arrest tagħhom fl-Istat Membru li jeżegwih, skont l-artikolu 534AGP.

(3) Bl-eċċezzjoni tal-artikolu 534AGE, artikolu 534AGH(3)(b), u l-artikolu 534AGN, inkwantu li dawn id-dispożizzjonijiet jirreferu għal detentur tar-responsabbiltà tal-ġenituri, id-dispożizzjonijiet ta' dan it-Titolu għandu japplika għal persuni kif imsemmija fis-subartikoli (1) u (2), fejn tali persuni kienu tfal meta ġew soġġetti għal dawn il-proċedimenti, iżda sussegwentement laħqu l-età ta' tmintax-il (18) sena, u l-applikazzjoni ta' dan it-Titolu, jew ċerti dispożizzjonijiet tiegħu, hija xierqa fid-dawl ta' ċirkostanzi kollha tal-każ, inklużi l-maturità u l-vulnerabilità tal-persuna kkonċernata:

Iżda dan it-Titolu ma japplikax għal persuni li laħqu l-età ta' wieħed u għoxrin (21) sena fi kwalunkwe stadju tal-proċedimenti.

(4) L-ebda haġa f'dan it-Titolu ma għandha:

(a) taffettwa l-applikazzjoni tad-dispożizzjonijiet fit-Titolu II, Parti I, l-Ewwel Ktieb li jiddeterminaw l-età tar-responsabbiltà kriminali;

(b) tippregudika d-dritt għall-aċċess għal avukat skont is-Sub-titolu IX tat-Titolu I tal-Parti I, it-Tieni Ktieb.

(5) Is-subartikoli (4) u (5) tal-artikolu 355AU għandhom japplikaw *mutatis mutandis* għal dan it-Titolu.

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Dritt għall-  
informazzjoni.

534AGD.(1) Meta t-tfal jkunu mgħarrfa li huma persuni suspettati jew akkużati fi proċeduri kriminali, huma jiġu infurmati fil-pront dwar id-drittijiet tagħhom skont it-Titolu VI, parti I, it-Tieni Ktieb u dwar aspetti generali tal-iżvolġiment tal-proċedimenti.

(2) L-informazzjoni msemmija fis-subartikolu (1) għandha tingħata:

(a) fil-pront malli t-tfal jiġu mgħarrfa li jkunu persuni ssuspettati jew akkużati, fir-rigward ta’:

(i) id-dritt li d-detentur tar-responsabbiltà tal-ġenituri jiġi mgħarraf, kif provdut fl-artikolu 534AGE;

(ii) id-dritt li jiġu assistiti minn avukat, kif provdut fl-artikolu 534AGF;

(iii) id-dritt għall-protezzjoni tal-privatezza, kif provdut fl-artikolu 531;

(iv) id-dritt li jkunu akkumpanjati mid-detentur tar-responsabbiltà tal-ġenituri waqt stadji tal-proċedimenti għajr seduti tal-qorti, kif provdut fl-artikolu 534AGN(4);

(b) fl-ewwel stadju xieraq tal-proċedimenti, fir-rigward ta’:

(i) id-dritt għal valutazzjoni individwali, kif provdut fl-artikolu 534AGG;

(ii) id-dritt għal eżami mediku, inkluż id-dritt għal assistenza medika, kif provdut fl-artikolu 534AGH;

(iii) id-dritt għal limitazzjoni ta’ ċaħda tal-libertà u tal-użu ta’ mizuri alternattivi, inkluż id-dritt għal rieżami perjodiku tad-detenzjoni, kif provdut fl-artikoli 10 u 1534AGJ u 534AGK;

(iv) id-dritt li jkunu akkumpanjati mid-detentur tar-responsabbiltà tal-ġenituri waqt is-seduti tal-qorti, kif provdut fl-artikolu 534AGN(1);

(v) id-dritt li jkunu fiżikament preżenti waqt il-proċess, kif provdut fl-artikolu 534AGO;

(vi) id-dritt għal rimedji effettivi;

(ċ) malli jiġu mcaħħda mil-libertà fir-rigward tad-dritt għal trattament speċifiku matul iċ-ċaħda tal-libertà, kif provdut fl-artikolu 534AGL.

(3) L-informazzjoni msemmija fis-subartikoli (2) u (3) tkun mogħtija bil-miktub, bil-fomm jew bit-tnejn, b'lingwaġġ sempliċi u aċċessibbli, u tali informazzjoni mogħtija tiġi registrata, bl-użu tal-proċedura ta' registrazzjoni permessa mil-liġi.

(4) Meta t-tfal jingħataw Ittra tad-Drittijiet skont it-*Titolu VI, Parti I, it-Tieni Ktieb*, tali Ittra tkun tinkludi referenza għad-drittijiet tagħhom skont dan it-*Titolu*.

Dritt tat-tifel li d-detentur tal-awtorità tal-ġenituri jiġi mgharraf.

534AGE.(1) Il-pulizija eżekuttiva jew kwalunkwe awtorità tal-infurzar tal-liġi jew ġudizzjarja oħra, skont il-każ, għandha tipprovdi d-detentur tar-responsabbiltà tal-ġenituri, malajr kemm jista' jkun, bl-informazzjoni li t-tifel għandu dritt jirċievi, skont l-artikolu 534AGD.

(2) L-informazzjoni msemmija fis-subartikolu (1) għandha tingħata lil persuna adulta oħra xierqa nominata mit-tifel u aċċettata bħala tali mill-Pulizija jew minn kwalunkwe awtorità tal-infurzar tal-liġi jew ġudizzjarja oħra, skont il-każ, meta li dik l-informazzjoni tingħata lid-detentur tar-responsabbiltà tal-ġenituri:

(a) ikun imur kontra l-aħjar interessi tat-tifel;

(b) ma jkunx possibbli minħabba li, wara li jkunu saru sforzi raġonevoli, l-ebda detentur tar-responsabbiltà tal-ġenituri ma jkun jista' jintlaħaq jew l-identità tiegħu jew tagħha ma tkunx magħrufa; jew

(ċ) ikun jista', abbażi ta' ċirkostanzi oġġettivi u fattwali, sostanzjalment jippreġudika l-proċedimenti kriminali:

Iżda fejn it-tifel ma jkunx innomina persuna adulta xierqa oħra, jew fejn l-adult li jkun gie nnominat mit-tifel ma jkunx aċċettabbli għall-Pulizija jew kwalunkwe awtorità tal-infurzar tal-liġi jew ġudizzjarja oħra, skont il-każ, din tal-aħħar għandha, waqt li tiegħu kont tal-aħjar interessi tat-tifel, taħtar persuna oħra u tagħtiha l-informazzjoni. Dik il-persuna tkun tista' wkoll tkun ir-rappreżentant ta' awtorità jew ta' istituzzjoni oħra responsabbli għall-protezzjoni jew il-benesseri tat-tifel.

(3) Meta ċ-ċirkostanzi li wasslu għall-applikazzjoni tas-subartikolu (2)(a), (b) jew (ċ) ma jibqgħux jeżistu, kwalunkwe informazzjoni li t-tifel jirċievi f'konformità mal-artikolu 534AGD, u li tkun għadha rilevanti matul il-proċedimenti, għandha tingħata lid-detentur tar-responsabbiltà tal-ġenituri.

Assistenza  
minn avukat.

534AGF.(1) It-tfal li huma persuni suspettati jew akkużati f'proċedimenti kriminali għandu jkollhom id-dritt ta' aċċess għal avukat f'konformità mad-dispożizzjonijiet tas-Subtitolu IX tat-Titolu I tal-Parti I tat-Tieni Ktieb. Xejn f'dan it-Titolu, b'mod partikolari f'dan l-artikolu, m'għandu jaffettwa dak id-dritt.

(2) Mingħajr preġudizzju għall-ġeneralità tas-subartikolu (1), id-drittijiet msemmija fl-artikoli 355AUA (1), (2) (8)(b), (ċ) u (e) u 355AUB għandhom japplikaw *mutatis mutandis* għal tfal li huma persuni suspettati jew akkużati skont dan it-Titolu:

Iżda fejn l-assistenza minn avukat ma tkunx proporzjonata fid-dawl taċ-ċirkostanzi tal-każ, waqt li titqies il-gravità tal-allegat reat kriminali, il-kumplessità tal-każ u l-miżuri li jistgħu jittieħdu fir-rigward ta' tali reat, id-dritt għall-aċċess għal avukat jista' jiġi derogat sakemm dan jikkonforma mad-dritt għal smiġħ xieraq, bl-intendiment li l-aħjar interessi tat-tifel għandhom dejjem ikunu kunsiderazzjoni primarja:

Iżda wkoll id-deroga fil-kondizzjoni preċedenti ma għandhiex tapplika u t-tfal għandhom dejjem ikunu assistiti minn avukat fil-każijiet li ġejjin:

(a) meta jitressqu quddiem qorti kompetenti jew imħallef sabiex tittieħed deċiżjoni dwar detenzjoni fi kwalunkwe stadju tal-proċedimenti fi ħdan il-kamp ta' applikazzjoni ta' din id-Direttiva; u

(b) matul id-detenzjoni:



Iżda wkoll iċ-ċaħda tal-libertà ma tiġix imposta bħala sentenza kriminali, sakemm it-tifel ma jkunx ġie assistit minn avukat b'tali mod li jippermetti li t-tifel jeżerċita d-drittijiet tiegħu ta' difiża b'mod effikaċi u, fi kwalunkwe każ, waqt is-seduti tal-proċess quddiem qorti.

(3) Meta t-tifel jiġi assistit minn avukat f'konformità ma' dan it-Titolu iżda ebda avukat ma jkun preżenti, il-Pulizija Eżekuttiva jew kwalunkwe awtorità tal-infurzar tal-liġi jew ġudizzjarja oħra għandha tipposponi l-interrogazzjoni tat-tifel, jew atti investigattivi jew atti ta' ġbir ta' provi oħra kif provduti fl-artikolu 355AUA(8)(e), għal perjodu ta' żmien raġonevoli biex jippermettu l-wasla tal-avukat jew, fejn it-tifel ma qabbadx avukat, biex iqabbdhu avukat għat-tifel.

(4) F'ċirkostanzi eċċezzjonali u biss fl-istadju ta' qabel il-proċess, tista' tapplika deroga temporanja mill-applikazzjoni tad-drittijiet provduti fl-artikolu 355AUA(2) sa fejn dan ikun ġustifikat fid-dawl ta' ċirkostanzi partikolari tal-każ, abbażi ta' waħda mir-raġunijiet imperattivi li ġejjin:

(a) meta jkun hemm hteġa urgenti li jiġu evitati konsegwenzi serji kontra l-ħajja, il-libertà jew l-integrità fiżika ta' persuna;

(b) meta azzjoni immedjata mill-awtoritajiet investigattivi tkun essenzjali biex jiġi evitat li l-proċedimenti kriminali rigward reat kriminali serju jiġu preġudikati b'mod sostanzjali:

Iżda għall-finijiet ta' dan is-subartikolu, l-espressjoni "l-istadju ta' qabel il-proċess" ikollha l-istess tifsira bħal dik mogħtija lilha fl-artikolu 355AUA(13).

(5) Fl-applikazzjoni tas-subartikolu (4), għandhom jiġu kkunsidrati l-aħjar interessi tat-tifel, u deċiżjoni li titkompla l-interrogazzjoni fin-nuqqas ta' avukat skont is-subartikolu (4) tista' tittiehed biss abbażi ta' każ b'każ mill-Pulizija jew minn kwalunkwe awtorità tal-infurzar tal-liġi jew ġudizzjarja oħra skont il-każ:

Iżda din id-deċiżjoni tista' tiġi appellata mid-detentur tar-responsabbiltà tal-ġenituri jew persuna adulta xierqa oħra kif imsemmija fl-Artikolu 534AGE quddiem il-Qorti tal-Appell (Ġurisdizzjoni Inferjuri) fi tnaħ-il (12) gurnata minn tali deċiżjoni.

Dritt għal  
valutazzjoni  
individwali.

534AGG.(1)Fl-applikazzjoni tad-dispożizzjonijiet ta' dan it-Titolu, il-ħtiġijiet speċifiċi tat-tfal rigward il-protezzjoni, l-edukazzjoni, it-taħriġ u l-integrazzjoni soċjali għandhom jiġu kkunsidrati.

(2) Għall-finijiet tas-subartikolu (1), it-tfal li huma persuni suspettati jew akkużati fi proċedimenti kriminali għandhom ikunu valutati individwalment. Il-valutazzjoni individwali għandha, b'mod partikolari, tqis il-personalità u l-maturità tat-tifel, l-isfond ekonomiku, soċjali u familjari tat-tifel, kif ukoll kwalunkwe vulnerabilitajiet speċifiċi li jista' jkollu t-tifel:

Iżda il-firxa u d-dettall tal-valutazzjoni individwali jistgħu jvarjaw skont iċ-ċirkostanzi tal-każ, il-miżuri li jistgħu jittieħdu jekk it-tifel jinstab ħati tal-allegat reat kriminali, u jekk it-tifel fil-passat reċenti kienx is-suġġett ta' valutazzjoni individwali.

(3) Il-valutazzjoni individwali għandha sservi biex tiġi stabbilita u reġistrata, skont il-proċedura ta' reġistrazzjoni permessa mil-liġi, tali informazzjoni dwar il-karatteristiċi u iċ-ċirkostanzi individwali tat-tifel li jistgħu jkunu utli għall-Qorti meta:

(a) jkun qed jiġi determinat jekk għandhiex tittiehed kwalunkwe miżura speċifika li tibbenefika lit-tifel;

(b) ikunu qed jiġu valutati l-adekwatezza u l-effikaċja ta' kwalunkwe miżura ta' prekawzjoni fir-rigward tat-tifel;

(ċ) tkun qed tittiehed kwalunkwe deċiżjoni jew azzjoni fil-proċedimenti kriminali, inkluż meta tingħata s-sentenza.

(4) Il-valutazzjoni individwali għandha titwettaq fl-ewwel stadju xieraq tal-proċedimenti u, soġġett għas-subartikolu (5), qabel it-tifel jiġi akkużat b'reat kriminali.

(5) Fin-nuqqas ta' valutazzjoni individwali, tifel jista' madankollu jiġi akkużat b'reat kriminali sakemm dan ikun fl-aħjar interessi tat-tifel u sakemm il-valutazzjoni individwali hija fi kwalunkwe każ disponibbli fil-bidu tas-seduti tas-smiġħ tal-proċess quddiem qorti.

(6) Il-valutazzjonijiet individwali għandhom jitwettqu bl-involvement mill-qrib tat-tifel. Dawn għandhom jitwettqu minn persunal kwalifikat, li jsegwi, sa fejn hu possibbli, approċċ multidixxiplinari u li jinvolvi, fejn ikun xieraq, id-detentur tar-responsabbiltà tal-ġenituri, jew persuna adulta xieraq oħra kif imsemmija fl-artikoli 534AGE u 534AGN, u/jew professjonista speċjalizzata.

(7) Jekk l-elementi li jiffurmaw il-bażi tal-valutazzjoni individwali jinbidlu b'mod sinifikanti matul il-proċedimenti kriminali, il-Qorti għandha tordna li l-valutazzjoni individwali tkun aġġornata matul il-proċedimenti kriminali.

(8) Il-Pulizija Eżekuttiva jew kwalunkwe awtorità tal-infurzar tal-liġi jew ġudizzjarja oħra, skont il-każ, wara konsultazzjoni mad-Direttur għad-Dipartiment għal Standards fil-Ħarsien Soċjali, tista' tidderoga mill-obbligu li twettaq valutazzjoni individwali abbażi ta' każ b'każ fejn tali deroga tkun ġustifikata miċ-ċirkostanzi tal-każ, u sakemm dan ikun kompatibbli mal-aħjar interessi tat-tifel.

Dritt għal eżami mediku.

534AGH.(1)Tfal li jiġu mċaħħda mil-libertà għandu jkollhom id-dritt għal eżami mediku mingħajr dewmien żejjed b'mod partikolari bl-għan li tiġi valutata l-kundizzjoni mentali u fiżika ġenerali tagħhom. L-eżami mediku għandu jkun kemm jista' jkun mhux invażiv u għandu jitwettaq minn tabib jew professjonist kwalifikat ieħor.

(2) Ir-rizultati tal-eżami mediku għandhom jitqiesu meta jkun qed jiġi determinat jekk it-tifel ikunx kapaċi li jiġi soġġett għal interrogazzjoni, atti oħra investigattivi jew ta' ġbir tal-provi, jew kwalunkwe miżura meħuda jew maħsuba kontra t-tifel.

(3) Tali eżami mediku għandu jitwettaq jew fuq l-inizjattiva tal-Qorti, b'mod partikolari meta indikazzjonijiet speċifiċi tas-saħħa jirrikjedu tali eżami, jew fuq talba ta' dawn li ġejjin:

(a) it-tifel;

(b) id-detentur tal-awtorità tal-ġenituri jew persuna adulta xierqa oħra kif imsemmi fl-artikoli 534AGE u 534AGN;

(ċ) l-avukat tat-tifel.

(4) Il-konklużjoni tal-eżami mediku għandha tkun reġistrata bil-miktub u, fejn ikun meħtieġ, għandha tingħata assistenza medika:

Iżda eżami mediku ieħor għandu jsir fejn iċ-ċirkostanzi jitolbu dan.

*Recording*  
awdjoviżiv tal-  
interrogazzjoni.

534AGI.(1)L-interrogazzjoni tat-tfal mill-Pulizija Eżekuttiva jew minn awtorità tal-infurzar tal-liġi jew ġudizzjarja oħra matul il-proċedimenti kriminali għandha tiġi *recorded* b'mod awdjoviżiv fejn dan ikun proporzjonat fiċ-ċirkostanzi tal-każ, waqt li jitqies, *inter alia*, jekk avukat ikunx preżenti jew le u jekk it-tifel ikunx imċaħħad mil-libertà jew le, sakemm l-aħjar interessi tat-tifel huma dejjem kunsiderazzjoni primarja.

(2) Fl-assenza ta' *recording* awdjoviżiv, l-interrogazzjoni għandha tiġi *recorded* b'mod xieraq ieħor, bħal permezz ta' teħid ta' minuti bil-miktub, li jiġu verifikati kif xieraq

(3) Kull *recording* awdjoviżiv jew rekords dwar l-interrogazzjoni tat-tfal fi kwalunkwe mod ieħor għandha tinzamm kunfidenzjali u ma għandhiex tixxerred b'mod pubbliku.

(4) Dan l-artikolu għandu jkun mingħajr preġudizzju għall-possibilità li jsiru mistoqsijiet għall-iskop uniku tal-identifikazzjoni tat-tifel mingħajr reġistrazzjoni awdjoviżiva.

Ċaħda tal-  
libertà.

534AGJ.(1) Iċ-ċaħda tal-libertà tat-tifel, b'mod partikolari d-detenzjoni, f'kull stadju tal-proċedimenti għandha tkun imposta biss bħala l-aħjar alternattiva u għandha tkun limitata għall-iqsar perjodu ta' żmien possibbli, filwaqt li jitqiesu l-età u s-sitwazzjoni individwali tat-tifel, u iċ-ċirkostanzi partikolari tal-każ.

(2) Kwalunkwe detenzjoni tat-tifel tkun ibbażata fuq deċiżjoni motivata, li tkun soġġetta għall-appell.

(3) Id-deċiżjoni msemmija fis-subartikolu (2) għandha tkun soġġetta għal sħarriġ perjodiku mill-Qorti li taħdem *ex officio*, li jibda mhux iktar minn sitt (6) xhur wara li giet adottata d-deċiżjoni li timponi iċ-ċaħda tal-libertà u tkompli kull sitt (6) xhur wara dan, sakemm id-deċiżjoni tibqa' fis-seħħ:

Iżda, mingħajr preġudizzju għall-indipendenza ġudizzjarja, kwalunkwe deċiżjoni li tittieħed skont dan is-subartikolu għandha tittieħed mingħajr dewmien żejjed.

Miżuri alternattivi.

534AGK. Il-Pulizija Eżekuttiva jew kwalunkwe awtorità tal-infurzar tal-liġi jew ġudizzjarja oħra, skont il-każ, għandha, fejn possibbli, tirrikorri għal miżuri alternattivi minn dik ta' detenzjoni.

Trattament speċifiku fil-każ ta' każda tal-libertà.

534AGL.(1) It-tfal li jinsabu taħt detenzjoni għandhom jinżammu separatament mill-adulti, sakemm ma jkunx meqjus li huwa fl-aħjar interess tat-tifel li dan ma jseħħ.

(2) Tfal li jinżammu fil-kustodja tal-pulizija għandhom jinżammu separatament mill-adulti, sakemm:

(a) jiġi kkunsidrat li huwa fl-aħjar interessi tat-tifel li ma jsirx hekk; jew

(b) f'ċirkostanzi eċċezzjonali, ma jkunx possibbli fil-prattika li jsir dan, sakemm it-tfal jinżammu flimkien mal-adulti b'tali mod li dan ikun kompatibbli mal-aħjar interessi tat-tifel.

(3) Mingħajr preġudizzju għas-subartikolu (1), meta tifel taħt detenzjoni jilhaq l-età ta' tmintax (18)-il sena, dik il-persuna taħt detenzjoni tista' tibqa' miżmuma separatament mill-adulti taħt detenzjoni fejn ikun meħtieġ, waqt li jitqiesu ċ-ċirkostanzi tal-persuna kkonċernata, sakemm dan ikun kompatibbli mal-aħjar interessi tat-tfal li jkunu detenuti ma' dik il-persuna.

(4) Mingħajr preġudizzju għas-subartikolu (1), u waqt li jitqies is-subartikolu (3), it-tfal jistgħu jiġu miżmuma maż-żgħażaġħ, sakemm dan ma jmurx kontra l-aħjar interessi tat-tfal.

(5) Meta t-tfal huma taħt detenzjoni, l-awtoritajiet tad-detenzjoni għandhom jieħdu miżuri xierqa biex:

(a) jiżguraw u jippreżervaw is-saħħa u l-iżvilupp fiżiku u mentali tagħhom;

(b) jiżguraw id-dritt tagħhom għall-edukazzjoni u t-taħriġ, inkluż fejn it-tfal għandhom diżabilitajiet fiżiċi, sensorji jew tat-tagħlim;

(ċ) jiżguraw l-eżerċizzju effettiv u regolari tad-dritt għal haġja familjari tagħhom;

(d) jiżguraw l-aċċess għal programmi li jrawmu l-iżvilupp tagħhom u r-reintegrazzjoni tagħhom fis-soċjetà; u

(e) jiżguraw ir-rispett għal-libertà ta' reliġjon jew twemmin:

Iżda l-miżuri meħuda skont dan is-subparagrafu għandhom ikunu proporzjonati u xierqa għall-perjodu ta' detenzjoni.

(6) Il-paragrafi (a) u (e) tas-subartikolu (5) għandhom japplikaw ukoll għal sitwazzjonijiet ta' ċaħda tal-libertà minbarra d-detenzjoni. Il-miżuri meħuda għandhom ikunu proporzjonati u xierqa għal tali sitwazzjonijiet ta' ċaħda tal-libertà.

(7) Il-paragrafi (b), (ċ), u (d) tas-subartikolu (5) għandhom japplikaw għal sitwazzjonijiet ta' ċaħda tal-libertà minbarra detenzjoni biss sa fejn dak ikun xieraq u proporzjonat fid-dawl tan-natura u t-tul ta' tali sitwazzjonijiet.

(8) Tfal li jiġu mċaħħda mil-libertà jkunu jistgħu jiltaqgħu mad-detentur tar-responsabbiltà tal-ġenituri malajr kemm jista' jkun, fejn tali laqgħa tkun kompatibbli mar-rekwiżiti investigattivi u operattivi, mingħajr preġudizzju għan-nomina jew il-ħatra ta' persuna adulta xierqa oħra skont l-artikolu 534AGE jew l-artikolu 534AGN.

Trattamento  
f'waqtu u  
diligenti tal-  
kawżi.

534AGM.(1) Il-Pulizija u awtoritajiet tal-infurzar tal-liġi jew ġudizzjarji oħrajn għandhom jiżguraw li proċedimenti kriminali li jinvolve t-tfal jiġu trattati b'urgenza u bid-diligenza dovuta.

(2) Il-Pulizija u awtoritajiet tal-infurzar tal-liġi jew ġudizzjarji oħrajn għandhom jiżguraw li t-tfal jiġu dejjem trattati b'mod li jipproteġi d-dinjità tagħhom u xieraq għall-età, l-maturità u l-livell ta' fehma tagħhom, filwaqt li jitqiesu l-ħtiġijiet speċjali tagħhom, inkluż kwalunkwe diffikultajiet li jista' jkollhom fil-komunikazzjoni.

Dritt tat-tifel li jiġi akkumpanjat mid-detentur tar-responsabbiltà tal-ġenituri waqt il-proċedimenti.

534AGN.(1) It-tfal għandu jkollhom id-dritt li jkunu akkumpanjati mid-detentur tar-responsabbiltà tal-ġenituri waqt is-seduti ta' smiġh tal-qorti li jkunu involuti fihom.

(2) It-tifel għandu d-dritt li jkun akkumpanjat minn persuna adulta xierqa oħra, li hija nominata mit-tifel u aċċettata bhala tali mill-Qorti fejn il-preżenza tad-detentur tar-responsabbiltà tal-ġenituri li jakkumpanja lit-tifel matul seduta ta' smiġh tal-qorti

(a) ikun imur kontra l-aħjar interessi tat-tifel;

(b) ma tkunx possibbli minhabba li, wara li jkunu saru sforzi raġonevoli, l-ebda detentur tar-responsabbiltà tal-ġenituri ma jkun jista' jintlaħaq jew l-identità tiegħu jew tagħha ma tkunx magħrufa; jew

(ċ) tkun tista', abbażi ta' ċirkostanzi oġġettivi u fattwali, sostanzjalment tippregudika l-proċedimenti kriminali:

Iżda fejn it-tifel ma jkunx innomina persuna adulta xierqa oħra, jew fejn l-adult li jkun ġie nominat mit-tifel ma jkunx aċċettabbli għall-Qorti, il-Qorti għandha, waqt li tqis l-aħjar interessi tat-tifel, taħtar persuna oħra biex takkumpanja lit-tifel. Dik il-persuna tkun tista' tkun ukoll ir-rappreżentant ta' awtorità jew ta' istituzzjoni oħra responsabbli għall-protezzjoni jew il-benesseri tat-tfal.

(3) Meta ċ-ċirkostanzi li jkunu wasslu għal applikazzjoni ta' paragrafi (a), (b) jew (ċ) tas-subartikolu (2) ma jibqgħux jeżistu, it-tifel għandu jkollu d-dritt li jkun akkumpanjat mid-detentur tar-responsabbiltà tal-ġenituri waqt is-seduti ta' smiġh tal-qorti li jkun fadal.

(4) Minbarra d-dritt provdut skont is-subartikolu (1), it-tfal għandu jkollhom id-dritt li jkunu akkumpanjati mid-detentur tar-responsabbiltà tal-ġenituri jew minn persuna adulta xierqa oħra kif imsemmi fis-subartikolu (2), matul stadji oħra tal-proċedimenti għajr seduti ta' smiġh tal-qorti li t-tifel ikun preżenti għalihom fejn l-awtorità tal-infurzar tal-liġi kompetenti tqis li:

(a) huwa fl-aħjar interessi tat-tifel li jkun akkumpanjat minn dik il-persuna; u

(b) il-preżenza ta' dik il-persuna ma tippregudikax il-proċedimenti kriminali.

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Dritt tat-tfal li jkunu fiżikament prezenti, u li jiehdu sehem, fil-kawża tagħhom. 534AGO.(1) It-tfal għandu jkollhom id-dritt li jkunu fiżikament prezenti u jippartecipaw b'mod effettiv waqt il-kawża tagħhom, inkluż billi tingħatalhom l-opportunità li jinstemghu u li jesprimu l-opinjoni tagħhom.

(2) It-tfal li ma kienux prezenti waqt il-kawża tagħhom, għandu jkollhom id-dritt għal proċess ġdid jew għal rimedju legali ieħor, f'konformità ma' u skont il-kondizzjonijiet stabbiliti fis-Sub-titolu XII tal-Parti I tat-Tieni Ktieb.

Proċedimenti ta' mandat ta' arrest Ewropew. 534AGP. Id-drittijiet imsemmija fl-artikoli 534AGD, 534AGE, 534AGF u 534AGH, l-artikoli 534AGJ sa 534AGN u l-artikolu 570 għandhom japplikaw *mutatis mutandis* fir-rigward ta' tfal li huma persuni rikjesti fil-mument tal-arrest tagħhom skont dawk il-proċedimenti ta' mandat ta' arrest Ewropew fl-Istat Membru ta' eżekuzzjoni.

Tahriġ. 534AGQ.(1) Il-Ministru responsabbli għall-affarijiet interni għandu jiżgura li l-persunal tal-awtoritajiet tal-infurzar tal-ligi u tal-facilitajiet ta' detenzjoni li jittrattaw kawżi li jinvolvu t-tfal, jirċievu taħriġ speċifiku sa livell xieraq għall-kuntatt tagħhom mat-tfal fir-rigward tad-drittijiet tat-tfal, it-tekniki adattati għall-interrogazzjoni, il-psikologija tat-tfal u l-komunikazzjoni b'lingwaġġ adattat għat-tifel.

(2) Mingħajr preġudizzju għall-indipendenza tal-ġudikatura, il-Ministru responsabbli għall-ġustizzja għandu jiehu l-miżuri xierqa biex jiżgura li l-imħallfin u l-prosekuturi li jittrattaw il-proċedimenti kriminali li jinvolvu t-tfal ikollhom kompetenza speċifika f'dan il-qasam, aċċess effettiv għal taħriġ speċifiku, jew it-tnejn li huma.

(3) Il-Ministru responsabbli għall-ġustizzja għandu jiehu l-miżuri xierqa biex jippromwovi l-għoti ta' taħriġ speċifiku kif imsemmi fis-subartikolu (2) għall-avukati li jittrattaw proċedimenti kriminali li jinvolvu t-tfal."

Emenda tal-artikolu 531 tal-Kodiċi.

7. Fis-subartikolu (1) tal-artikolu 531 tal-Kodiċi, minnufih wara l-kliem "bil-bibien magħluqa" għandhom jiżdiedu l-kliem "fil-każijiet kollha li jinvolvu t-tfal taħt l-età ta' tmintax-il (18) sena jew".

Żieda ta' artikoli godda mal-Kodiċi.

8. Minnufih wara l-artikolu 572 tal-Kodiċi għandhom jiżdiedu l-artikoli godda li ġejjin:



Avukat  
assenjat biex  
jiġi mibdul.

572A. Il-qorti tista', fuq ir-rikjesta ta' persuna suspettata, akkużata jew rikjesta msemmija fl-artikolu 355AT(2)(ċ), fejn iċ-ċirkostanzi jiġġustifika dan, tordna li jinbidel l-avukat assenjat lill-persuna.

Persuni  
suspettati  
vulnerabbli,  
persuni  
akkużati  
vulnerabbli u  
persuni  
vulnerabbli.

572B.(1) Il-Pulizija Eżekuttiva u kwalunkwe awtorità tal-infurzar tal-liġi jew ġudizzjarja oħra għandha tiżgura li l-ħtiġijiet partikolari ta' persuni vulnerabbli suspettati, akkużati jew li huma soġġetti għal proċedimenti ta' mandat ta' arrest Ewropew skont id-Deciżjoni Kwadru 2002/584/JHA jiġu kkunsidrati fl-applikazzjoni tad-dispożizzjonijiet ta' dan is-Sub-titolu.

(2) Għall-finijiet ta' dan is-Sub-titolu, l-esspressjoni "persuna vulnerabbli" għandu jkollha l-istess tifsira kif mogħtija lilha fl-artikolu 208AĊ(2)."

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### Għanijiet u Raġunijiet

L-għanijiet u r-raġunijiet ta' dan l-Abbozz huma sabiex jittrasponu:

- id-Direttiva 2016/1919/UE tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ottubru 2016 dwar għajnuna legali għal persuni ssuspettati u akkużati fi proċedimenti kriminali u għal persuni rikjesti fi proċedimenti ta' mandat ta' arrest Ewropew; u
- id-Direttiva (UE) 2017/1371 tal-Parlament Ewropew u tal-Kunsill tal-5 ta' Lulju 2017 dwar il-ġlieda kontra l-frodi tal-interessi finanzjarji tal-Unjoni permezz tal-liġi kriminali u d-Direttiva (UE) 2016/800 tal-Parlament Ewropew u tal-Kunsill tal-11 ta' Mejju 2016 dwar il-garanziji proċedurali għal tfal li huma suspettati jew li huma persuni akkużati fi proċedimenti kriminali.

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**A BILL  
entitled**

*AN ACT to further amend the Criminal Code, Cap. 9.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives in this present Parliament assembled, and by the authority of the same as follows:-

Short title and commencement.  
Cap. 9.

**1.** (1) The short title of this Act is the Criminal Code (Amendment No. 2) Act 2020, and this Act shall be read and construed as one with the Criminal Code, hereinafter referred to as "the Code".

(2) This Act shall come into force on such date as the Minister responsible for justice may by notice in the Gazette establish, and different dates may be so established for different provisions and different purposes of this Act.

Adds new Sub-title to the Code.

**2.** Immediately after Sub-Title II of Title V of Part II of Book First of the Code there shall be added the following new Sub-Title:

"Sub-title III

**OF FRAUD AGAINST THE EUROPEAN UNION'S  
FINANCIAL INTERESTS**

The measures in this Sub-title transpose the provisions of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.

Scope and applicability.

190A.(1) This Sub-title establishes rules concerning the combating of fraud and other illegal activities affecting the European Union's financial interests.

(2) In respect of revenue arising from VAT own resources, this Sub-Title shall apply only in cases of serious offences against the common VAT system. For the purposes of this Sub-title, offences against the common VAT system shall be considered to be serious where the intentional acts or omissions defined in paragraph (d) of article 190C are connected with the territory of Malta and another Member State or Member States of the European Union and involve a total damage of at least ten million euro (€10,000,000).

(3) Nothing in this Sub-title shall affect the structure and functioning of the tax administration of Malta.

(4) The sanctions for the offences under this Sub-Title shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officers.

(5) The application of administrative measures, penalties and fines as laid down in European Union law, in particular those within the meaning of Articles 4 and 5 of Regulation (EC, Euratom) No 2988/95, or in national law adopted in compliance with a specific obligation under European Union law, shall be without prejudice to this Sub-title. Any criminal proceedings initiated on the basis of this Sub-title shall not unduly affect the proper and effective application of administrative measures, penalties and fines that cannot be equated to criminal proceedings, laid down in European Union or national law.

Interpretation.

190B. For the purposes of this Sub-title the following definitions, unless the context otherwise requires, shall apply:

""public officer"" shall have the same meaning as is assigned to it in article 92 and shall also include:

(a) a Union official or a national official of a Member State of the European Union other than Malta and any national official of a third country;

(i) "Union official" means a person who is:

- an official or other servant engaged under contract by the European Union within the meaning of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (the 'Staff Regulations'), or

- seconded to the European Union by a Member State or by any public or private body, who carries out functions equivalent to those performed by Union officials or other servants:

Provided that, without prejudice to the provisions on privileges and immunities contained in Protocols No 3 and No 7 annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Members of the European Union institutions, bodies, offices and agencies, set up in accordance with the Treaties and the staff of such bodies shall be assimilated to Union officials, inasmuch as the Staff Regulations do not apply to them;

(ii) "national official" shall include any person holding an executive, administrative or judicial office at national, regional or local level. Any person holding a legislative office at national, regional or local level shall be assimilated to a national official;

"European Union's financial interests" shall mean all revenues, expenditure and assets covered by, acquired through, or due to:

(a) the European Union budget;

(b) the budgets of the European Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored by them;

Fraud affecting  
the Union's  
financial  
interests.

190C.(1) Whosoever intentionally commits fraud affecting the European Union's financial interests shall, be liable, on conviction, to imprisonment for a term of six (6) months to four (4) years.

(2) For the purposes of this Sub-title, the following shall be regarded as fraud affecting the European Union's financial interests:

(a) in respect of non-procurement-related expenditure, any act or omission relating to:

(i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the European Union budget or budgets managed by the European Union, or on its behalf;

(ii) non-disclosure of information in violation of a specific obligation, with the same effect; or

(iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted;

(b) in respect of procurement-related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the European Union's financial interests, any act or omission relating to:

(i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the European Union budget or budgets managed by the European Union, or on its behalf;

(ii) non-disclosure of information in violation of a specific obligation, with the same effect; or

(iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the European Union's financial interests;

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(c) in respect of revenue other than revenue arising from VAT own resources referred to in paragraph (d), any act or omission relating to:

(i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the European Union budget or budgets managed by the European Union, or on its behalf;

(ii) non-disclosure of information in violation of a specific obligation, with the same effect; or

(iii) misapplication of a legally obtained benefit, with the same effect;

(d) in respect of revenue arising from VAT own resources, any act or omission committed in cross-border fraudulent schemes in relation to:

(i) the use or presentation of false, incorrect or incomplete VAT-related statements or documents, which has as an effect the diminution of the resources of the European Union budget;

(ii) non-disclosure of VAT-related information in violation of a specific obligation, with the same effect; or

(iii) the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds.

Penalties.

190D.(1) Any public officer who, directly or through an intermediary, requests or receives advantages of any kind for himself or for a third party, or accepts a promise of such an advantage, to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the European Union's financial interests shall, be liable, on conviction, to imprisonment for a term of six (6) months to four (4) years.

(2) Whosoever promises, offers or gives, directly or through an intermediary, an advantage of any kind to a public officer for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the European Union's financial interests shall on conviction be liable to a term of imprisonment of six (6) months to four (4) years.

Misappropriation against the European Union's financial interests.

190E. Any public officer who is directly or indirectly entrusted with the management of funds or assets, and who commits or disburses funds or appropriates or uses assets contrary to the purpose for which they were intended in any way which damages the European Union's financial interests shall, be liable, on conviction, to imprisonment, for a term of three (3) to eighteen (18) months.

Incitement, aiding and abetting and attempts.

190F. Whosoever incites, aids, abets or attempts any offence under articles 190C, 190D or 190E, shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence aided, abetted or instigated.

Corporate liability for offences under this Sub-title.

190G.(1) Where any offence under this Sub-title is committed for the benefit, in part or in whole, of a body corporate by a person acting individually or as part of an organ of the body corporate, and having a leading position within the body corporate, based on:

- (a) a power of representation of the body corporate,
- (b) an authority to take decisions on behalf of the body corporate, or
- (c) an authority to exercise control within the body corporate,

such body corporate shall be liable to the payment of a fine (*multa*) of not less than twenty thousand euro (€20,000) and not more than two million euro (€2,000,000), which fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.

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(2) A body corporate shall also be held liable for an offence under this Sub-title where the lack of supervision or control by a person referred to in sub-article (1) has made possible the commission of the offence, by any person under its authority, for the benefit of that body corporate, which shall upon conviction be liable to the punishment laid down in sub-article (1).

(3) Corporate liability pursuant to sub-articles (1) and (2) shall not exclude the possibility of criminal proceedings against natural persons who are perpetrators of the criminal offences referred to in articles 190C, 190D or 190E or who are criminally liable under article 190F.

(4) Without prejudice to the application of the punishments under sub-articles (1) and (2), where a body corporate is held liable pursuant to this article the following sanctions may simultaneously be applied:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent exclusion from public tender procedures;

(c) the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity;

(d) placing under judicial supervision;

(e) the compulsory winding up of the body corporate; or

(f) the temporary or permanent closure of establishments which have been used for the commission of the criminal offence.

(5) This article shall not apply to States or public bodies exercising State authority, or to public international organisations.

Considerable damage or advantage.

190H.(1) Where the offences referred to in articles 190C, 190D, 190E and 190F involve considerable damage or advantage, the offender shall, be liable, on conviction, to imprisonment, for a term of four (4) to eight (8) years.

(2) The damage or advantage resulting from the criminal offences referred to in article 190C(2)(a), (b) and (c) and in article 190D shall be presumed to be considerable where the damage or advantage involves more than one hundred thousand euro (€100,000).



(3) The damage or advantage resulting from criminal offences referred to in article 190C(2)(d) and in respect of article 190A(2) shall always be deemed to be considerable.

Aggravating circumstances.

190I. The punishment for the offences referred to in articles 190C, 190D, 190E and 190F shall be increased by one to two degrees where the offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/ 841/ JHA of 24 October 2008 on the fight against organised crime.

Jurisdiction.

190J.(1) Article 121C shall apply *mutatis mutandis* to the offences under this Sub-title.

(2) Without prejudice to the generality of sub-article (1), the Maltese courts shall also have jurisdiction over the offences laid down in this Sub-title where the offender is subject to the Staff Regulations of Officials of the European Union at the time of commission of the criminal offence, and that person is at the same time a citizen or permanent resident in Malta within the meaning of article 5(1)(d):

Provided that the application of this sub-article shall fully respect the principle of *ne bis in idem*.

Recovery.

190K.(1) This Sub-title shall be without prejudice to the recovery of any VAT not paid in the context of the commission of the offences referred to in article 190C(2)(d) or in articles 190D, 190E or 190F.

(2) This Sub-title shall be without prejudice to the application of any administrative measures, penalties and fines laid down in law, and any criminal proceedings initiated pursuant to this Sub-Title shall not unduly affect the proper and effective application of such administrative measures, penalties and fines."".

**3.** Article 355AT of the Code shall be amended as follows:

Amendment of article 355AT of the Code.

(a) in sub-article (1) thereof immediately after the words "6 November 2013 (L294/1)" there shall be added the following "and the provisions of Directive 2016/1919/EU of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings."; and

(b) immediately after sub-article (4) thereof there shall be added the following new sub-article:

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"(5) For the purpose of this Sub-title, the expression "legal aid" means funding by the Minister, of the assistance of a lawyer, enabling the exercise of the right of access to a lawyer."

Amendment of  
article 355AU  
of the Code.

**4.** Article 355AU of the Code shall be amended as follows:

(a) sub-articles (4) and (5) of article 355AU shall be renumbered as sub-articles (5) and (6);

(b) immediately after sub-article (3) thereof there shall be added the following new sub-article:

"(4) The provisions relating to legal aid under this Sub-Title shall apply:

(a) to suspects and accused persons in criminal proceedings who have a right of access to a lawyer pursuant to this Sub-Title and who are:

(i) deprived of liberty;

(ii) required to be assisted by a lawyer by law  
or

(iii) required or permitted to attend an investigative or evidence-gathering act, including as a minimum the following:

(A) identity parades;

(B) confrontations;

(C) reconstructions of the scene of a  
crime; and

(b) to a requested person upon an arrest under article 355AUT(2)(c) persons who have a right of access to a lawyer under this Sub-title;

(c) under the same conditions as provided for in paragraph (a), to persons who were not initially suspects or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority."

Amendment of  
article 355AUH  
of the Code.

**5.** In sub-article (1) of article 355AUH of the Code immediately after the words "European arrest warrant." there shall be added the following words "The requested person may elect to be assisted by the

Advocate for Legal Aid in which case the Advocate for Legal Aid shall assign a lawyer for this purpose."

6. In sub-article (1) of article 355AUJ of the Code immediately after the words "vulnerable suspects," there shall be added the following "vulnerable requested persons".

Amendment of article 355AUJ of the Code.

7. Immediately after Title VI, Sub-Title III, Part I, Book Second of the Code there shall be added the following new Title:

Addition of new Title to the Code.

"Title VII

OF THE RIGHTS OF CHILDREN WHO ARE  
SUSPECTS OR ACCUSED PERSONS

The measures in this Title provided for the transposition of Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

Rules concerning certain rights of children.

534AGA. This Title lays down rules concerning certain rights of children who are:

(a) suspects or accused persons in criminal proceedings; or

(b) subject to European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA (hereinafter referred to as "requested persons").

Scope.

534AGB. For the purpose of this Title, the expression:

"child" means a person below the age of eighteen (18):

Provided that where it is uncertain whether a person has reached the age of eighteen (18), that person shall be presumed to be a child;

"holder of parental responsibility" means any person having parental responsibility over a child;

"Minister" means the Minister responsible for justice;

"parental responsibility" means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effects, including rights of custody and rights of access;

Interpretation. 534AGC.(1) This Title applies to children who are suspects or accused persons in criminal proceedings, until the final determination of the question on whether the suspect or accused person has committed a criminal offence, including, where applicable, sentencing and the resolution of any appeal.

(2) This Title applies to children who are requested persons from the time of their arrest in the executing Member State, in accordance with article 534AGP.

(3) With the exception of article 534AGE, article 534AGH(3)(b), and article 534AGN, insofar as those provisions refer to a holder of parental responsibility, the provisions of this Title shall apply to persons as referred to in sub-articles (1) and (2), where such persons were children when they became subject to the proceedings but have subsequently reached the age of (eighteen) 18, and the application of this Title, or certain provisions thereof, is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned:

Provided that this Title shall not apply to persons who have reached the age of twenty-one (21) at any stage of the proceedings.

(4) Nothing in Title shall:

(a) affect the application of the provisions in Title II, Part I, Book First which determine the age of criminal responsibility;

(b) prejudice the right of access to a lawyer in accordance with Sub-title IX of Title I of Part I, Book Second.

(5) Sub-articles (4) and (5) of article 355AU shall apply *mutatis mutandis* to this Title.

Right to information.

534AGD.(1) When children are made aware that they are suspects or accused persons in criminal proceedings, they shall be informed promptly of their rights in accordance with Title VI, Part I, Book Second and in accordance with this Title, and about the general aspects of the conduct of the proceedings.

(2) The information referred to in sub-article (1) shall be provided:

(a) promptly when children are made aware that they are suspects or accused persons, in respect of:

(i) the right to have the holder of parental responsibility informed, as provided for in article 534AGE;

(ii) the right to be assisted by a lawyer, as provided for in article 534AGF;

(iii) the right to protection of privacy, as provided for in article 531;

(iv) the right to be accompanied by the holder of parental responsibility during stages of the proceedings other than court hearings, as provided for in article 534AGN(4);

(b) at the earliest appropriate stage in the proceedings, in respect of:

(i) the right to an individual assessment, as provided for in article 534AGG;

(ii) the right to a medical examination, including the right to medical assistance, as provided for in article 534AGH;

(iii) the right to limitation of deprivation of liberty and to the use of alternative measures, including the right to periodic review of detention, as provided for in articles 534AGJ and 534AGK;

(iv) the right to be accompanied by the holder of parental responsibility during court hearings, as provided for in article 534AGN(1);

(v) the right to appear in person at trial, as provided for in article 534AGO;

(vi) the right to effective remedies;

(c) upon deprivation of liberty, in respect of the right to specific treatment during deprivation of liberty, as provided for in article 534AGL.

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(3) The information referred to in sub-articles (2) and (3) shall be given in writing, orally or both, in simple and accessible language, and such information shall be noted, using the recording procedure permitted by law.

(4) Where children are provided with a Letter of Rights pursuant to Title VI, Part I, Book Second, such a Letter shall include a reference to their rights under this Title.

Right of the child to have the holder of parental responsibility informed.

534AGE.(1)The Executive Police or any other law enforcement or judicial authority, as the case may be, shall provide the holder of parental responsibility, as soon as possible, with the information that the child has a right to receive, in accordance with article 534AGD.

(2) The information referred to in sub-article (1) shall be provided to another appropriate adult who is nominated by the child and accepted as such by the Police or by any other law enforcement or judicial authority, as the case may be, where providing that information to the holder of parental responsibility:

(a) would be contrary to the child's best interests;

(b) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown; or

(c) could, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings:

Provided that where the child has not nominated another appropriate adult, or where the adult who has been nominated by the child is not acceptable to the Police or other law enforcement or judicial authority, as the case may be, the latter shall, taking into account the child's best interests, designate, and provide the information to, another person. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.

(3) Where the circumstances which led to the application of sub-article (2)(a), (b) or (c) cease to exist, any information that the child receives in accordance with article 534AGD, and which remains relevant in the course of the proceedings, shall be provided to the holder of parental responsibility.

Assistance by a lawyer.

534AGF.(1) Children who are suspects or accused persons in criminal proceedings shall have the right of access to a lawyer, in accordance with the provisions of Sub-title IX of Title I of Part I of Book Second. Nothing in this Title, in particular in this article, shall affect that right.

(2) Without prejudice to the generality of sub-article (1), the rights referred to in articles 355AUA (1), (2), (8)(b), (c) and (e) and 355AUB shall *mutatis mutandis* apply to children who are suspects or accused persons under this Title:

Provided that where assistance by a lawyer is not proportionate in the light of the circumstances of the case, taking into account the seriousness of the alleged criminal offence, the complexity of the case and the measures that could be taken in respect of such an offence, the right to assistance by a lawyer may be derogated from insofar as this complies with the right to a fair trial, it being understood that the child's best interests shall always be a primary consideration:

Provided further that the derogation in the preceding proviso shall not apply and children shall always be assisted by a lawyer in the following cases:

(a) when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Title; and

(b) during detention:

Provided further that deprivation of liberty shall not be imposed as a criminal sentence, unless the child has been assisted by a lawyer in such a way as to allow the child to exercise the right of defence effectively and, in any event, during the trial hearings before a court.

(3) Where the child is to be assisted by a lawyer in accordance with this Title but no lawyer is present, the Executive Police or any other law enforcement or judicial authority, as the case may be, shall postpone the questioning of the child, or other investigative or evidence-gathering acts as provided for in article 355AUA(8)(e), for a reasonable period of time in order to allow for the arrival of the lawyer or, where the child has not nominated a lawyer, to arrange a lawyer for the child.

(4) In exceptional circumstances, and only at the pre-trial stage, a temporary derogation from the application of the rights provided for in article 355AUA(2), to the extent justified in the light of the particular circumstances of the case, may be applied on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence:

Provided that for the purposes of this sub-article the expression "pre-trial stage" shall have the same meaning as is assigned to it in article 355AUA(13).

(5) In the application of sub-article (4) the child's best interests shall be taken into account, and a decision to proceed with questioning in the absence of a lawyer under sub-article (4) shall be taken on a strictly case-by-case basis either by the Police or by any other law enforcement or judicial authority as the case may be:

Provided that such decision may be appealed by the holder of parental responsibility or another appropriate adult as referred to in article 534AGE before the Court of Appeal (Inferior Jurisdiction) within twelve (12) days from such a decision.

Right to individual assessment.

534AGG.(1) In the application of the provisions of this Title, the specific needs of children concerning protection, education, training and social integration shall be taken into account.



(2) For the purposes of sub-article (1), children who are suspects or accused persons in criminal proceedings shall be individually assessed. The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have:

Provided that the extent and detail of the individual assessment may vary depending on the circumstances of the case, the measures that can be taken if the child is found guilty of the alleged criminal offence, and whether the child has, in the recent past, been the subject of an individual assessment.

(3) The individual assessment shall serve to establish and to note, in accordance with the recording procedure permitted by law, such information about the individual characteristics and circumstances of the child as might be of use to the Court when:

(a) determining whether any specific measure to the benefit of the child is to be taken;

(b) assessing the appropriateness and effectiveness of any precautionary measures in respect of the child;

(c) taking any decision or course of action in the criminal proceedings, including when sentencing.

(4) The individual assessment shall be carried out at the earliest appropriate stage of the proceedings and, subject to sub-article (5), before the child is charged with a criminal offence.

(5) In the absence of an individual assessment, a child may nevertheless be charged with a criminal offence provided that this is in the child's best interests and that the individual assessment is in any event available at the beginning of the trial hearings before a court.

(6) Individual assessments shall be carried out with the close involvement of the child. They shall be carried out by qualified personnel, following, as far as possible, a multidisciplinary approach and involving, where appropriate, the holder of parental responsibility, or another appropriate adult as referred to in articles 534AGE and 534AGN, and, or a specialised professional.

(7) If the elements that form the basis of the individual assessment change significantly in the course of the criminal proceedings, the Court shall order that the individual assessment is updated throughout the criminal proceedings.

(8) The Executive Police or other law enforcement or judicial authority, as the case may be, following consultation with the Director of the Department for Social Welfare Standards, may derogate from the obligation to carry out an individual assessment on a case by case basis where such a derogation is warranted in the circumstances of the case, provided that it is compatible with the child's best interests.

Right to a  
medical  
examination.

534AGH.(1) Children who are deprived of liberty shall have the right to a medical examination without undue delay with a view, in particular, to assessing their general mental and physical condition. The medical examination shall be as non-invasive as possible and shall be carried out by a physician or another qualified healthcare professional.

(2) The results of the medical examination shall be taken into account when determining the capacity of the child to be subject to questioning, other investigative or evidence-gathering acts, or any measures taken or envisaged against the child.

(3) The medical examination shall be carried out either on the initiative of the Court, in particular where specific health indications call for such an examination, or on a request by any of the following:

- (a) the child;
- (b) the holder of parental responsibility, or another appropriate adult as referred to in articles 534AGE and 534AGN;
- (c) the child's lawyer.

(4) The conclusion of the medical examination shall be recorded in writing and, where required, medical assistance shall be provided:

Provided that another medical examination shall be carried out where the circumstances so require.

Audiovisual  
recording of  
interrogation.

534AGI.(1) Questioning of children by the Executive Police or other law enforcement or judicial authorities during criminal proceedings shall be audio-visually recorded where this is proportionate in the circumstances of the case, taking into account, *inter alia*, whether a lawyer is present or not and whether the child is deprived of liberty or not, provided that the child's best interests are always a primary consideration.

(2) In the absence of audiovisual recording, questioning shall be recorded in another appropriate manner, such as by written minutes which are duly verified.

(3) Any audiovisual recording or records of questioning of children in any other manner shall be kept confidential and shall not be publicly disseminated.

(4) This article shall be without prejudice to the possibility to ask questions for the sole purpose of the identification of the child without audiovisual recording.

Deprivation of  
liberty.

534AGJ.(1) The deprivation of liberty of a child, in particular detention, at any stage of the proceedings shall be imposed only as a measure of last resort and shall be limited to the shortest appropriate period of time, taking due account of the age and individual situation of the child, and of the particular circumstances of the case.

(2) Any detention of a child shall be based on a reasoned decision, which shall be subject to appeal.

(3) The decision referred to in sub-article (2) shall be subject to periodic review by the Court acting *ex officio*, commencing no later than six (6) months after the decision imposing deprivation of liberty was adopted and every six (6) months thereafter, for as long as the decision remains in force:

Provided that, without prejudice to judicial independence, any decisions to be taken pursuant to this sub-article shall be taken without undue delay.

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Alternative measures.

534AGK. The Executive Police and any other law enforcement or judicial authority, as the case may be, shall, where possible, have recourse to measures alternative to detention.

Specific treatment in the case of deprivation of liberty.

534AGL.(1) Children who are detained shall be held separately from adults, unless it is considered to be in the child's best interests not to do so.

(2) Children who are kept in police custody shall be held separately from adults, unless:

(a) it is considered to be in the child's best interests not to do so; or

(b) in exceptional circumstances, it is not possible in practice to do so, provided that children are held together with adults in a manner that is compatible with the child's best interests.

(3) Without prejudice to sub-article (1), when a detained child reaches the age of eighteen (18), that person may continue to be held separately from other detained adults where warranted, taking into account the circumstances of the person concerned, provided that this is compatible with the best interests of children who are detained with that person.

(4) Without prejudice to sub-article (1), and taking into account sub-article (3), children may be detained with young adults, unless this is contrary to the child's best interests.

(5) When children are detained, the detention authorities shall take appropriate measures to:

(a) ensure and preserve their health and their physical and mental development;

(b) ensure their right to education and training, including where the children have physical, sensory or learning disabilities;

(c) ensure the effective and regular exercise of their right to family life;

(d) ensure access to programmes that foster their development and their reintegration into society; and

(e) ensure respect for their freedom of religion or belief:

Provided that the measures taken pursuant to this sub-article shall be proportionate and appropriate to the duration of the detention.

(6) Paragraphs (a) and (e) of sub-article (5) shall also apply to situations of deprivation of liberty other than detention. The measures taken shall be proportionate and appropriate to such situations of deprivation of liberty.

(7) Paragraphs (b), (c), and (d) of sub-article (5) shall apply to situations of deprivation of liberty other than detention only to the extent that is appropriate and proportionate in the light of the nature and duration of such situations.

(8) Children who are deprived of liberty shall be allowed to meet with the holder of parental responsibility as soon as possible, where such a meeting is compatible with investigative and operational requirements, without prejudice to the nomination or designation of another appropriate adult pursuant to article 534AGE or article 534AGN.

Timely and diligent treatment of cases.

534AGM.(1) The Police and other law enforcement and judicial authorities shall ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence.

(2) The Police and other law enforcement and judicial authorities shall ensure that children are always treated in a manner which protects their dignity and which is appropriate to their age, maturity and level of understanding, and which takes into account any special needs, including any communication difficulties, that they may have.

Right of the child to be accompanied by holder of parental responsibility during the proceedings.

534AGN.(1) Children shall have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved.

(2) A child shall have the right to be accompanied by another appropriate adult who is nominated by the child and accepted as such by the Court where the presence of the holder of parental responsibility accompanying the child during court hearings:

(a) would be contrary to the child's best interests;

(b) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown; or

(c) would, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings:

Provided that where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the Court, the Court shall, taking into account the child's best interests, designate another person to accompany the child. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.

(3) Where the circumstances which led to an application of paragraphs (a), (b) or (c) of sub-article (2) cease to exist, the child shall have the right to be accompanied by the holder of parental responsibility during any remaining court hearings.

(4) In addition to the right provided for under sub-article (1), children shall have the right to be accompanied by the holder of parental responsibility, or by another appropriate adult as referred to in sub-article (2), during stages of the proceedings other than court hearings at which the child is present where the competent law enforcement or judicial authority considers that:

(a) it is in the child's best interests to be accompanied by that person; and

(b) the presence of that person will not prejudice the criminal proceedings.

Right of children to appear in person at, and participate in, their trial.

534AGO.(1) Children shall have the right to be present at their trial and to participate effectively in the trial, including the opportunity to be heard and to express their views.

(2) Children who were not present at their trial shall have the right to a new trial or to another legal remedy, in accordance with, and under the conditions set out in Subtitle XII of Part I of Book Second.

European arrest warrant proceedings.

534AGP. The rights referred to in articles 534AGD, 534AGE, 534AGF and 534AGH, articles 534AGJ to 534AGN and article 570 shall apply *mutatis mutandis*, in respect of children who are requested persons, upon their arrest pursuant to European arrest warrant proceedings in the executing Member State.

Training.

534AGQ.(1) The Minister responsible for home affairs shall ensure that staff of law enforcement authorities and of detention facilities who handle cases involving children, receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child.

(2) Without prejudice to the independence of the judiciary, the Minister responsible for justice shall take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field, effective access to specific training, or both.

(3) The Minister responsible for justice shall take appropriate measures to promote the provision of specific training as referred to in sub-article (2) to lawyers who deal with criminal proceedings involving children."

7. In sub-article (1) of article 531 of the Code, immediately after the words "with closed doors" there shall be added the words "in all cases involving children below the age of eighteen (18) or".

Amendment of article 531 of the Code.

8. Immediately after article 572 of the Code there shall be added the following new articles:

Addition of new article 572A to the Code.

"Advocate assigned to be replaced.

572A. The court may upon the request of a suspect, accused persons or of a requested persons referred to in article 355AT(2)(c), where the circumstances so justify, order that the advocate assigned to them be replaced.

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Vulnerable suspects, vulnerable accused persons and vulnerable persons.

572B.(1) The Executive Police and any other law enforcement or judicial authority shall ensure that the particular needs of vulnerable suspects, vulnerable accused persons and vulnerable persons who are the subject of European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA are taken into account in the application of the provisions of this Sub-title.

(2) For the purposes of this Sub-title, the expression "vulnerable person" shall have the same meaning as is assigned to it by article 208AC(2)."

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### Objects and Reasons

The objects and reasons of this Bill are to transpose:

- Directive 2016/1919/EU of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceeding; and
- Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law and Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.