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I assent.

(L.S.) **GEORGE VELLA**
President

7th April, 2020

ACT No. XVIII of 2020

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.

Addition of 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

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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 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:

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- 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.

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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.

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(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).

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(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 words "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) thereof 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 words "The requested person may elect to be assisted by the Advocate

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

Amendment of article 355AUJ of the Code.

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

Amendment of article 531 of the Code.

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".

Addition of new Title to the Code.

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

"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;

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"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 this 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.

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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 of 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;

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(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.

(3) The information referred to in sub-articles (1) and (2) 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:

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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

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(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:

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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.

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(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:

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(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.

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(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.

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;

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(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.

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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

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(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 Sub-title 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.".

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

Addition of new articles 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).".

Passed by the House of Representatives at Sitting No. 317 of the 1st April, 2020.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

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