SUBSIDIARY LEGISLATION 77.01

ORGANISATION AND CONTENT OF THE EXCHANGE OF INFORMATION FROM THE CRIMINAL RECORD BETWEEN MALTA AND OTHER MEMBER STATES REGULATIONS

29th April, 2016

LEGAL NOTICE 135 of 2016, as amended by Legal Notices 206 of 2022 and 182 of 2024.

Citation and scope. *Amended by: L.N. 206 of 2022.*

1. (1) The title of these regulations is the Organisation and Content of the Exchange of Information Extracted from the Criminal Record between Malta and other Member States Regulations.

(2) These regulations transpose Directive (EU) 2019/884 of the European Parliament and of the Council of 17 April 2019 amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA.

(3) The scope of these regulations is to regulate the exchange of information extracted from the criminal records concerning natural persons between Malta and other Member States.

Interpretation. *Amended by: L.N. 206 of 2022; L.N. 182 of 2024.*

2. For the purpose of these regulations:

"conviction" means any final judgment of a court of criminal jurisdiction against a natural person in respect of a criminal offence, to the extent that these judgments are entered in the national register of the criminal records;

"convicting Member State" means the Member State where a conviction is handed down;

"criminal proceedings" means the pre-trial stage, the trial stage itself and the execution of the conviction;

"criminal record" means the national register of criminal records which records convictions in accordance with Maltese legislation;

"ECRIS reference implementation" means the software developed by the European Commission and made available to the Member States for the exchange of criminal records information through ECRIS;

"the European Union" means the European Union as referred to in the Treaty;

"facial image" means a digital image of a person’s face;

"fingerprint data" means the data relating to plain and rolled impressions of the fingerprints of each of a person’s fingers;

"Member State" means any one of the Member States of the European Union;

"National Central Authority" means the Director, Department of Justice within the Ministry responsible for Justice who by means of the Conducts and Criminal Records Office within the Department of Justice, is the designated central authority responsible for the national register of the criminal records;

"third-country national" means a person who is not a citizen of the European Union within the meaning of Article 20(1) TFEU, or who is a stateless person or a person whose nationality is unknown;

"the Treaty" shall have the same meaning assigned to it by article 2 of the European Union Act.

Cap. 460.

Obligations of the National Central Authority when Malta is the convicting Member State. *Amended by: L.N. 206 of 2022.*

3. (1) The National Central Authority shall take the necessary measures to ensure that all convictions handed down within the Maltese territory are accompanied by information on the nationality or nationalities of the convicted person if the person is a national of another Member State or a third country national. Where a convicted person is of unknown nationality or stateless, the criminal record shall reflect this.

(2) The National Central Authority shall, as soon as possible, inform the central authorities of the other Member States of any convictions handed down within the Maltese territory against the nationals of such other Member States, as entered in the criminal record:

Provided that if it is known that the convicted person is a national of several Member States, the National Central Authority shall transmit relevant information to each of these Member States, even if the convicted person is a Maltese national.

(3) Information on subsequent alteration or deletion of information contained in the criminal record shall be immediately transmitted by the National Central Authority to the central authority of the Member State of the person's nationality.

(4) The National Central Authority which has provided information in accordance with sub-regulations (2) and (3) shall communicate to the central authority of the Member State of the person's nationality, on the latter's request in individual cases, a copy of the convictions and subsequent measures as well as any other information relevant thereto in order to enable it to consider whether they necessitate any measure at national level.

Obligations of the National Central Authority.

4. (1) Any information transmitted by the central authorities of other Member States about convictions handed down within their territory against Maltese nationals shall be stored by the National Central Authority in accordance with regulation 9(2).

(2) Any alteration or deletion of information transmitted by the central authorities of other Member States to the National Central Authority shall entail identical alteration or deletion by the National Central Authority regarding information stored in accordance with sub-regulation (1) for the purpose of re-transmission.

(3) For the purpose of re-transmission, the National Central

Authority may only use information which has been updated in accordance with sub-regulation (2).

Request for information on convictions. *Amended by: L.N. 206 of 2022.*

5. (1) When information from the criminal record of a Member State is requested for the purposes of criminal proceedings against a person or for any other purposes other than that of criminal proceedings, the National Central Authority may, in accordance with Maltese legislation, submit a request to the central authority of another Member State for information and related data to be extracted from the criminal record.

(2) When a person asks for information on his own criminal record, the National Central Authority may, in accordance with these regulations, submit a request to the central authority of another Member State for information and related data to be extracted from the criminal record, provided the person concerned is or was a resident or a national of Malta or of the requested Member State:

Provided that if the National Central Authority is the requested Member State, the National Central Authority shall transmit its reply within twenty working days from the date the request was received.

(3) Whenever a national of another Member State asks the National Central Authority for information on his own criminal record, the National Central Authority shall submit a request to the Central Authority of the Member State of the person's nationality for information and related data to be extracted from the criminal record and shall include such information and related data in the extract to be provided to the person concerned.

(3a) Where a third country national asks the National Central Authority for information on his own criminal record, that National Central Authority shall submit a request only to those central authorities of the Member States which hold information on the criminal record of that person for information and related data to be extracted from the criminal records and shall include such information and related data in the extract to be provided to the person concerned.

(4) All requests for information and relevant data shall be submitted using the form set out in Schedule I.

Obligations of the National Central Authority when replying to the requests for information on convictions. *Amended by: L.N. 206 of 2022.*

6. (1) When information extracted from the criminal record of a Maltese national is requested from the National Central Authority, for the purposes of criminal proceedings, the National Central Authority shall transmit to the central authority of the requesting Member State information on:

(*a*) convictions handed down within the Maltese territory and entered in the criminal record;

(*b*) any convictions handed down in other Member States which were transmitted to the National Central Authority and entered in the criminal record;

(*c*) any convictions handed down in third countries and subsequently transmitted to the National Central

Authority and entered in the criminal record.

(2) When information extracted from the criminal record of a Maltese national is requested from the National Central Authority, for any purposes other than that of criminal proceedings, the National Central Authority shall in respect of convictions handed down within its territory, and of convictions handed down in third countries, which have been subsequently transmitted to it and entered in the criminal records, reply in accordance with Maltese legislation:

Provided that with regard to any information on a Maltese national regarding convictions handed down in another Member State, which has been transmitted to the National Central Authority, the latter shall in accordance with Maltese legislation transmit to the requesting Member State the information which has been stored in accordance with regulation 9(2) as well as the information which has been transmitted to it, and has been entered in its criminal record:

Provided also that when transmitting information in accordance with regulation 3, the National Central Authority may inform the central authority of the other Member State of the person's nationality that the information on convictions handed down in Malta and transmitted to the latter central authority may not be re-transmitted for any purposes other than that of criminal proceedings:

Provided further that when the central authority of the other Member State transmits information on Maltese nationals regarding convictions handed down in another Member State, the National Central Authority shall not re-transmit the information if the central authority of the other Member State informs the former that the information may not be transmitted for any purposes other than of criminal proceedings. In this case, the National Central Authority shall, in respect of such convictions, inform the requesting Member State which other Member State had transmitted such information so as to enable the requesting Member State to submit a request directly to the convicting Member State in order to receive information on such convictions.

(3) When information by a third country is requested from the criminal record of a Maltese national, the National Central Authority may reply in respect of convictions transmitted by another Member State only within the limitations applicable to the transmission to other Member States in accordance with sub-regulations (1) and (2).

(4) When information extracted from the criminal record on convictions handed down against a national of a Member State other than a Maltese national is requested, the National Central Authority shall transmit such information to the same extent as provided for in article 13 of the European Convention on Mutual Assistance in Criminal Matters:

Provided that if the National Central Authority is the requested

Member State, the National Central Authority shall transmit its reply within twenty working days from the date the request was received.

(4a) When information extracted from the criminal record of a third-country national is requested, the National Central Authority shall transmit information on any conviction handed down in Malta and entered in the criminal records and on any conviction handed down in third countries and subsequently transmitted to the National Central Authority and entered into the criminal records:

Provided that where this information is requested for any purpose other than that of criminal proceedings sub-regulation (2) shall apply accordingly:

Provided further that if the National Central Authority is the requested Member State, the National Central Authority shall transmit its reply within twenty working days from the date the request was received.

(5) The reply shall be made using the form set out in Schedule II. It shall be accompanied by a list of convictions, as provided for by Maltese legislation.

Deadline for replies and languages used.

7. (1) When information from the National Central Authority is requested for the purposes of criminal proceedings against a person or for any purposes other than that of criminal proceedings, the National Central Authority shall transmit its replies immediately and in any event within a period not exceeding ten working days from the date the request was received, as provided for by Maltese legislation, rules or practice, using the form set out in Schedule II:

Provided that, when the National Central Authority requires further information to identify the person involved in the request, it shall immediately consult the requesting Member State with a view to providing a reply within ten working days from the date the additional information is received.

(2) The National Central Authority shall reply to any requests either in Maltese or English, or in any other language accepted by the National Central Authority and the requesting State. When the National Central Authority is the requesting State, the language used shall be either Maltese or English.

Conditions for the use of personal data.

8. (1) Personal data provided by the central authorities of other Member States may be used by the National Central Authority only for the purposes of the criminal proceedings for which it was requested, as specified in the form set out in Schedule I.

(2) Personal data provided by the central authorities of other Member States for any purposes other than that of criminal proceedings may be used by the National Central Authority in accordance with Maltese legislation only for the purposes for which it was requested and within the limits specified in the form set out in Schedule I.

(3) Without prejudice to sub-regulations (1) and (2), personal

data provided by the central authorities of other Member States may be used for preventing an immediate and serious threat to public security.

(4) The National Central Authority shall take the necessary measures to ensure that personal data received from another Member State, if transmitted to a third country in accordance with regulation 6(3), is subject to the same usage limitations as those applicable in a requesting Member State in accordance with sub-regulation (2) of this regulation. The National Central Authority shall specify that personal data, if transmitted to a third country for the purposes of criminal proceedings, may be further used by that third country only for the purposes of criminal proceedings.

(5) This regulation does not apply to personal data obtained by a Member State under these regulations and originating from that Member State.

Obligations of the National Central Authority when transmitting information. *Amended by: L.N. 206 of 2022.*

9. (1) When transmitting information in accordance with regulation 3(2) and (3), the National Central Authority shall transmit the following information:

(*a*) information that shall always be transmitted, unless, in individual cases, such information is not known to the National Central Authority (obligatory information):

(i) information on the convicted person (full name, date of birth, place of birth (town and State), gender, nationality and - if applicable - previous name(s));

(ii) information on the nature of conviction (date of conviction, name of the court, date on which the judgment became final);

(iii) information on the offence giving rise to the conviction (date of the offence underlying the conviction and name or legal classification of the offence as well as reference to the applicable legal provisions); and

(iv) information on the contents of the conviction (notably the judgment as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the judgment);

(*b*) information that shall be transmitted if entered in the criminal record (optional information):

(i) the convicted person's parents' names;

(ii) the reference number of the conviction;

(iii) the place of the offence; and

(iv) disqualifications arising from the conviction;

(*c*) information that shall be transmitted, if available to the National Central Authority (additional information):

(i) the convicted person's identity number, or the type and number of the person's identification document;

(ii) fingerprints, which have been taken from that person;

(iii) if applicable, pseudonym and, or alias name(s); and

(iv) facial image:

Provided that the National Central Authority may transmit any other information concerning convictions entered in the criminal record.

(2) The National Central Authority shall store all information of the types listed in sub-regulation (1)(*a*) and (*b*), which it has received from other central authorities regarding convictions handed down in other Member States regarding offences committed by Maltese nationals for the purpose of re-transmission in accordance with regulation 6. For the same purpose, the National Central Authority may store the information of the types listed in sub-regulation (1)(*c*).

(3) The National Central Authority shall transmit the following information electronically using ECRIS and a standardised format in accordance with the standards to be laid down in the European Commission's implementing acts:

(*a*) information referred to in regulation 5;

(*b*) requests for information on convictions;

(*c*) replies to requests for information on convictions;

(*d*) other relevant information.

(4) If the mode of transmission referred to in sub-regulation (3) is not available, the National Central Authority shall transmit all information referred to in sub-regulation (3) by any means capable of producing a written record under conditions allowing the central authority of the receiving Member State to establish the authenticity of the information, taking the security of transmission into consideration.

(5) If the mode of transmission referred to in sub-regulation (3) is not available for an extended period of time, the National Central Authority shall inform the other Member States and the European Commission.

SCHEDULE I

[Regulations 5(4) and 8(1) and (2)]

Request for information extracted from the criminal record

The National Central Authority is to consult the Manual of Procedures for assistance in filling in this form correctly

(a) Information on the requesting Member State:

Member State:

Central authority:

Contact person:

Telephone (with STD code):

Fax (with STD code):

E-mail address:

Correspondence address:

File reference, if known:

(b) Information on the identity of the person concerned by the request (*):

Full name (forenames and all surnames):

Previous names:

Pseudonym and, or alias, if any:

Gender: M ☐ F ☐

Nationality:

Date of birth (in figures: dd/mm/yyyy):

Place of birth (town and State):

Father's name:

Mother's name:

Residence or known address:

Person's identity number of type and number of the person's identification document:

Fingerprints:

Other available identification information:

(c) Purpose of the request:

Please tick the appropriate box

(1) ☐ criminal proceedings (please identify the authority before which the proceedings are pending and, if available the case reference number) .....
.....

(2) ☐ request outside the context of criminal proceedings (please identify the authority before which the proceedings are pending and, if available, the case reference number, while ticking the relevant box):

(i) ☐ from a judicial authority .....
.....

(ii) ☐ from a competent administrative authority ...
.....

(iii) ☐ from the person concerned for information on own criminal record .....
.....

Purpose for which the information is requested:

Requesting authority:

☐ the person concerned does not consent for this information to be divulged (if the person concerned was asked for its consent in accordance with the law o f the requesting Member State).

Contact person for any further information needed:

Name:

Telephone:

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* To facilitate the identification of the person as much information as possible is to be provided.

E-mail address:

Other information (e.g. urgency of the request):

SCHEDULE II
[Regulations 6(5) and 7(1)]

Reply to the request

The National Central Authority is to consult the Manual of Procedures for assistance in filling in this form correctly

Information relating to the person concerned

Please tick the appropriate box

The undersigned authority confirms that:

☐ there is no information on convictions in the criminal record of the person concerned

☐ there is information on convictions entered in the criminal record of the person concerned; a list of conviction is attached

☐ there is other information entered in the criminal record of the person concerned; such information is attached (optional)

☐ there is information on convictions entered in the criminal record of the person concerned but the convicting Member State intimated that the information about these convictions may not be retransmitted for any purposes other than that of criminal proceedings. The request for more information may be sent directly to ..... (please indicate the convicting Member State)

☐ in accordance with the Maltese legislation of the requested Member State, requests made for any purposes other than that of criminal proceedings may not be dealt with.

Contact person for any further information needed:

Name:

Telephone:

E-mail address:

Other information (limitations of use of the data concerning requests outside the context of criminal proceedings:

Please indicate the number of pages attached to the reply form:

Done at:

On

Signature and official stamp (if appropriate):

Name and position/organisation:

If appropriate, please attach a list of convictions and send the complete package to the requesting Member State. It is not necessary to translate the form or the list into the language of the requesting Member State.