**L.N. 397 of 2007**

# CRIMINAL CODE
# (CAP. 9)

## Freezing Orders (Execution in the European Union) Regulations, 2007

IN exercise of the powers conferred by article 628A of the Criminal Code, the Deputy Prime Minister and Minister for Justice and Home Affairs has made the following regulations:-

Citation.

**1.** The title of these regulations is Freezing Orders (Execution in the European Union) Regulations, 2007.

Definitions.

**2.** In these regulations, unless the context otherwise requires -

"the Arrangement" means the Council Framework Decision 2003/577/JHA of the 22nd July, 2003 on the execution in the European Union of orders freezing property or evidence;

"certificate" means the certificate set out in Schedule 2 to these regulations;

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

"evidence" means objects, documents or data which could be produced as evidence in criminal proceedings concerning an offence referred to in Schedule 1 to these regulations;

"executing State" means the Member State in whose territory the property or evidence is located;

"freezing order" means any order purporting to provisionally attach:

(a) property that could be subject to confiscation; or

(b) evidence;

"issuing State" means the Member State in which a judicial authority, as defined in the national law of the issuing State, has made, validated or in any way confirmed a freezing order in the framework of criminal proceedings;

"property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to, or interest in such property, which the competent judicial authority in the issuing State considers:

(a) is the proceeds of a relevant offence or equivalent to either the full value or part of the value of such proceeds, or

(b) constitutes the instrumentalities or the objects of a relevant offence;

"relevant offence" means:

(a) a scheduled offence; or

(b) any other offence liable to the punishment of imprisonment or of detention for a term of more than one year;

"scheduled offence" is any offence in the list of offences set out in Schedule 1 to these regulations;

"the Treaty" shall have the same meaning assigned to it by Article 2 of the European Union Act. Cap. 460.

**3.** These regulations shall be limited to the transmission of freezing orders between Malta and a Member State of the European Union and shall apply to orders issued after the 2nd August 2005. Limitation.

**4.** For purposes of these regulations: Competent authorities.

(a) the Attorney General shall be competent to receive freezing orders issued in the issuing State and to transmit to the executing State freezing orders issued in Malta by the Criminal Court;

(b) the Criminal Court shall be competent to issue freezing orders.

**5**. A freezing order shall be transmitted with the certificate provided for in Schedule 2 to these regulations and containing the information prescribed therein, by any means capable of producing a written record under conditions allowing the executing State to establish authenticity. Transmission.

Details of freezing orders.

**6.** (1) A freezing order shall contain a statement that the order relates to:

(a) conduct which:-

(i) is a scheduled offence; and

(ii) carries a sentence of imprisonment or another form of detention of a maximum period of at least three years in the issuing Sate:

Provided that in such cases there shall be no verification of the double criminality of the act; or

(b) conduct which:-

(i) would constitute an offence under the law of Malta if it occurred in Malta;

(ii) is punishable under the laws of Malta with imprisonment or another form of detention for a term of twelve months or a greater punishment.

(2) In determining for the purposes of this regulation whether an offence falls within the requirements of paragraph (b)(i) of sub-regulation (1):

(a) the description of the offence shall not be regarded as material if the offence under the law of Malta and the law of the issuing State are substantially of the same nature;

(b) if the conduct relates to a tax or duty, it is immaterial that the law of Malta does not impose the same kind of tax or duty or does not contain rules of the same kind as those of the law of the issuing State;

(c) if the conduct relates to customs or exchange, it is immaterial that the law of Malta does not contain rules of the same kind as those of the law of the issuing State.

(3) A freezing order shall indicate whether the order has been issued for the purpose of:

(a) securing evidence; or

(b) the subsequent confiscation of property.

(4) The freezing order must be accompanied by:

(a) a request for the evidence to be transferred to the issuing State; or

(b) a request for confiscation requiring either enforcement of a confiscation order that has been issued in the issuing State or confiscation in the executing State and subsequent enforcement of any such order; or

(c) an instruction in the certificate that the property shall remain in the executing State pending a request referred to in paragraph (a) or (b) and the (estimated) date for submission of this request shall also be indicated.

(5) Requests referred to in sub-regulation (4)(a) and (b) shall be submitted and processed in accordance with the rules applicable to mutual assistance in criminal matters and the rules applicable to international co-operation relating to confiscation.

Certificate by Attorney General.

**7.** (1) Where the Attorney General receives a freezing order within the meaning of these regulations the Attorney General shall, in his own individual judgement and subject to the provisions of regulations 9 and 10, issue a certificate to the effect that the authority which issued a freezing order has the function of issuing freezing orders in the issuing State and such certificate shall be conclusive of its contents.

(2) Where the competent judicial authority of the issuing State has expressly indicated the formalities and procedures to be observed in the execution of the freezing order, the Attorney General shall direct the executing officer under regulation 10(2) to comply with these formalities and procedures unless the Attorney General is of the opinion that those formalities and, or procedures are contrary to the fundamental principles of law in Malta.

(3) The certificate issued under sub-regulation (1) together with the freezing order to which it refers shall be communicated to the Commissioner of Police for execution as provided in regulation 10.

Grounds for non-recognition.

**8.** (1) Subject to the provisions of sub-regulation (4), a freezing order shall not be recognized by the Attorney General if:

(a) the certificate provided for in Schedule 2 to these regulations is not produced, is incomplete or manifestly does not correspond to the freezing order;

(b) there is an immunity or privilege under the law of Malta which makes it impossible to execute the freezing order;

(c) on the face of the record it appears that extending assistance in response to a request mentioned in regulation 6(4) would infringe the *ne bis in idem* principle;

(d) the act on which the freezing order is based is not one falling within the list of scheduled conduct and does not constitute an offence under the law of Malta.

(2) Any decision to refuse recognition or execution received in terms of these regulations, shall be taken and notified to the competent judicial authorities of the issuing State by any means capable of producing a written record.

(3) In the event that execution of the freezing order is impossible due to the fact that the property or evidence has disappeared, been destroyed, cannot be found in the location indicated in the certificate or the location of the property or evidence has not been indicated in a sufficiently precise manner, the competent judicial authorities of the issuing state shall be notified.

(4) Notwithstanding the provisions of sub-regulation (1)(a) the Attorney General may:

(a) accept an equivalent document to the certificate;

(b) exempt the issuing judicial authority from producing the certificate if he considers the information provided as sufficient; or

(c) specify a deadline for the presentation, completion or correction of the certificate.

Grounds for postponement of execution.

**9.** (1) The Attorney General may postpone the execution of a freezing order transmitted in accordance with regulation 5 in the following cases:-

(a) where its execution might damage an ongoing criminal investigation, until such time as he deems reasonable;

(b) where the property or evidence concerned have already been subjected to a freezing order in criminal proceedings, and until that freezing order is lifted;

(c) where, in the case of an order freezing property in criminal proceedings with a view to its subsequent confiscation, that property is already subject to an order made in the course of other proceedings in Malta and until that order is lifted.

(2) If a postponement is deemed necessary, the Attorney General shall inform the issuing judicial authority of this fact and of the grounds for the postponement and, if possible, the expected duration of the postponement.

(3) Once the grounds for postponement have ceased to exist, the provisions of regulations 7 and 10 shall apply and the Attorney General shall inform the issuing State accordingly.

Execution after issue of certificate.

**10**. (1) Where a certificate has been issued by the Attorney General under regulation 7, the provisions of this regulation shall apply.

(2) Without the need of any further authority other than the authority conferred by this regulation the order shall be executed by a police officer not below the rank of Inspector.

Effect of freezing order.

**11.** (1) The following provisions of this regulation shall apply where a freezing order is executed by the police under regulation 10.

(2) The freezing order shall have the same effect as an order as is referred to in article 22A(1) of the Dangerous Drugs Ordinance, hereinafter in these regulations referred to as "the Ordinance", and the provisions of the said article 22A of the Ordinance shall, subject to the provisions of sub-regulation (3) of this regulation, apply *mutatis mutandis* to the freezing order.

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(3) The provisions of article 24C(2) to (5) of the Ordinance shall apply to a freezing order executed under this regulation as if it were an order made under the said article 24C.

(4) Any person who acts in contravention of a freezing order mentioned in these regulations shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding five thousand liri, or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and the court may order the person so found guilty to deposit in a bank to the credit of the accused the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

Issue of freezing orders.

**12.** (1) Where a person is charged with a relevant offence, the Attorney General may apply to the Criminal Court for a freezing order,

and such an order shall have the same effect as an order as is referred to in article 22A(1) of the Ordinance, and the provisions of the said article shall *mutatis mutandis* apply to an order issued by virtue of this sub-regulation.

(2) A freezing order shall contain a statement indicating that the order has been issued for the purpose of:

(a) securing evidence; or

(b) the subsequent confiscation of property.

Appendices to the order.

**13.** (1) Upon the issue of a freezing order by the Criminal Code, the Attorney General shall append to the order:

(a) a request for the evidence to be transferred to Malta; or

(b) a request for confiscation requiring either enforcement of a confiscation order that has been issued in Malta or confiscation in the executing State and subsequent enforcement of any such order; or

(c) instructions in the certificate that the property shall remain in the executing State pending a request referred to in paragraph (a) or (b) and the (estimated) date for submission of this request shall also be indicated.

(2) The Attorney General shall sign and certify as authentic the contents of the certificate.

## Schedule 1

(Regulation 6)

– participation in a criminal organisation,

– terrorism,

– trafficking in human beings,

– sexual exploitation of children and child pornography,

– illicit trafficking in narcotic drugs and psychotropic substances,

– illicit trafficking in weapons, munitions and explosives,

– corruption,

– fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,

– laundering of the proceeds of crime,

– counterfeiting currency, including of the euro,

– computer-related crime,

– environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,

– facilitation of unauthorised entry and residence,

– murder, grievous bodily injury,

– illicit trade in human organs and tissue,

– kidnapping, illegal restraint and hostage-taking,

– racism and xenophobia,

– organised or armed robbery,

– illicit trafficking in cultural goods, including antiques and works of art,

– swindling,

– racketeering and extortion,

– counterfeiting and piracy of products,

– forgery of administrative documents and trafficking therein,

– forgery of means of payment,

– illicit trafficking in hormonal substances and other growth promoters,

– illicit trafficking in nuclear or radioactive materials,

– trafficking in stolen vehicles,

– rape,

– arson,

– crimes within the jurisdiction of the International Criminal Court,

– unlawful seizure of aircraft/ships,

– sabotage.

## Schedule 2

(Regulation 5)

(a) The judicial authority which issued the freezing order:

Official name:

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Name of its representative:

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Post held (title/grade):

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File reference:

.....

Address:

.....

.....

Tel. No.: (country code) (area/city code) (...)

.....

Fax No. (country code) (area/city code) (...)

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E-mail

.....

Languages in which it is possible to communicate with the issuing judicial authority.....

Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence. (if applicable):

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(b) The authority competent for the enforcement of the freezing order in the issuing State (if the authority is different from the authority under point (a)):

Official name:

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Name of its representative:

.....

Post held (title/grade):

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File reference:

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Address:

.....

.....

Tel. No.: (country code) (area/city code) (...)

.....

Fax No. (country code) (area/city code) (...)

.....

E-mail

.....

Languages in which it is possible to communicate with the authority competent for the enforcement .....

Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence (if applicable):

.....

.....

(c) In the case where point (a) and point (b) have been filled, this point must be filled in order to indicate which/or both of these two authorities must be contacted:

– Authority mentioned under point (a)
– Authority mentioned under point (b)

(d) Where a central authority has been made responsible for the transmission and administrative reception of freezing orders (only applicable for Ireland and the United Kingdom):

Name of the central authority:

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.....

Contact person, if applicable (title/grade and name):

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Address:.....

.....

File reference..... .....

Tel. No.: (country code) (area/city code)

.....

Fax No.: (country code) (area/city code)

.....

E-mail:

.....

(e) The freezing order:

1. Date and if applicable reference number
2. State the purpose of the order
2.1 Subsequent confiscation
2.2 Securing evidence
3. Description of formalities and procedures to be observed when executing a freezing order concerning evidence (if applicable).

(f) Information regarding the property or evidence in the executing State covered by the freezing order:

Description of the property or evidence and location:

1. (a) Precise description of the property and, where applicable, the maximum amount for which recovery is sought (if such maximum amount is indicated in the order concerning the value of proceeds)

(b) Precise description of the evidence

2. Exact location of the property or evidence (if not known, the last known location)

3. Party having custody of the property or evidence or known beneficial owner of the property or evidence, if different from the person suspected of the offence or convicted (if applicable under the national law of the issuing State).

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(g) Information regarding the identity of the (1) natural or (2) legal person(s), suspected of the offence or convicted (if applicable under the national law of the issuing State) or/and the person(s) to whom the freezing order relates (if available):

1. Natural persons

Name:

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Forename(s):

.....

Maiden name, where applicable:

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Aliases, where applicable:

.....

Sex:

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Nationality:

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Date of birth:

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Place of birth:

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Residence and/or known address, if not known state the last known address:

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Language(s) which the person understands (if known):

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2. Legal persons

Name:

.....

Form of legal person:.....

Registration number:

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Registered seat:

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(h) Action to be taken by the executing State after executing the freezing order

Confiscation

1.1. The property is to be kept in the executing State for the purpose of subsequent confiscation of the property

1.1.1. Find enclosed request regarding enforcement of a confiscation order issued in the issuing State on . (date)

1.1.2. Find enclosed request regarding confiscation in the executing State and subsequent enforcement of that order

1.1.3. Estimated date for submission of a request referred to in 1.1.1 or 1.1.2.

or

Securing of evidence

2.1. The property is to be transferred to the issuing State to serve as evidence

2.1.1. Find enclosed a request for the transfer

or

2.2. The property is to be kept in the executing State for the purpose of subsequent use as evidence in the issuing State.

2.2.2. Estimated date for submission of a request referred to in 2.1.1.

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(i) Offences:

Description of the relevant grounds for the freezing order and a summary of facts as known to the judicial authority issuing the freezing order and certificate:

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Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the freezing order was made:

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1. If applicable, tick one or more of the following offences to which the offence(s) identified above relate(s), if the offence(s) are punishable in the issuing State by a custodial sentence of a maximum of at least three years:

- participation in a criminal organisation;

- terrorism;

- trafficking in human beings;

- sexual exploitation of children and child pornography;

- illicit trafficking in narcotic drugs and psychotropic substances;

- illicit trafficking in weapons, munitions and explosives;

- corruption;

- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;

- laundering of the proceeds of crime;

- counterfeiting currency, including of the euro;

- computer-related crime;

- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;

- facilitation of unauthorised entry and residence;

- murder, grievous bodily injury;

- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.

2. Full descriptions of offence(s) not covered by section 1 above:

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(j) Legal remedies against the freezing order for interested parties, including bona fide third parties, available in the issuing State.

Description of the legal remedies available including necessary steps to take

Court before which the action may be taken

Information as to those for whom the action is available

Time limit for submission of the action.

Authority in the issuing State who can supply further information on procedures for submitting appeals in the issuing State and on whether legal assistance and translation is available:

Name

Contact person (if applicable):

Address:

.....

Tel. No.: (country code) (area/city code)

.....

Fax No. (country code) (area/city code)

.....

E-mail

.....

(k) Other circumstances relevant to the case (optional information):

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(l) The text of the freezing order is attached to the certificate.

Signature of the issuing judicial authority and/or its representative certifying the content of the certificate as accurate:

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Name:

.....

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Post held (title/grade):

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Date:

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Official stamp (if available)