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L.N. 137 of 2014

CRIMINAL CODE
(CAP. 9)

Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Proceedings Regulations, 2014

IN exercise of the powers conferred by article 628A of the Criminal Code, the Minister for Justice, Culture and Local Government has made the following regulations -

Citation and scope.

1. (1) The title of these regulations is the Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Proceedings Regulations, 2014.

(2) These regulations transpose the provisions of Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings hereinafter referred to as "the Arrangement".

(3) The purpose of these regulations is to prevent parallel criminal proceedings in different Member States.

Interpretation.

2. For the purposes of these regulations unless the context otherwise requires -

"competent authority" means the means a judicial authority or another authority, which is competent, under the law of its Member State, to carry out the acts envisaged by Article 2(1) of the Arrangement

"contacted authority" means the competent authority of another Member State which the competent authority contacts to confirm the existence of parallel proceedings;

"contacting authority" means the competent authority of another Member State which contacts the competent authority to confirm the existence of parallel proceedings;

"Eurojust" shall have the same meaning assigned to it by Council Decision 2002/187/JHA on setting up Eurojust, as amended by Council Decision 2003/659/JHA, and Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust, hereinafter referred to as "the Eurojust Decision";

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

"parallel proceedings" means criminal proceedings both at a pre-trial and trial phase conducted by two or more Member States relating to the same facts and involving the same person;

"the European Judicial Network" means the European Judicial Network duly established by Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network;

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

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

Duty to contact.

3. (1) These regulations make provision for:

(a) the procedure for establishing contact between the competent authorities of Member States, with a view to confirming the existence of parallel criminal proceedings in respect of the same facts involving the same person;

(b) the exchange of information, through direct consultations, between the competent authorities of two or more Member States conducting parallel criminal proceedings in respect of the same facts involving the same person, in case they already have knowledge of the existence of parallel criminal proceedings, with a view to reaching consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings,

and shall apply to proceedings initiated after the 15th June 2012.

(2) All communications shall be made by any means capable of producing a written record.

Competent authorities.

4. For the purposes of these regulations the Attorney General shall be competent to contact the competent authority of another Member State and to be contacted by a contacting authority with a view to confirming the existence of parallel criminal proceedings in respect of the same facts involving the same person and to exchange information in accordance with the Arrangement.

Obligation to contact.

5. When the Attorney General has reasonable grounds to believe that parallel proceedings are being conducted in another

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Member State, it shall contact the competent authority of that other Member State to request confirmation of such existing proceedings to proceed to enter into direct consultations according to the provisions of regulation 9:

Provided that where the competent authority to be contacted in another Member State is unknown, the necessary inquiries shall be made including through the European Judicial Network:

Provided further that no contact need take place when the relevant competent authorities conducting such parallel proceedings have already been informed of the existence of these proceedings by any other means.

Obligation to reply.

6. (1) The Attorney General shall reply to a request submitted in accordance with regulation 4 within a reasonable deadline duly indicated by the contacting authority, or in the absence of such deadline, the Attorney General shall, without undue delay, inform the contacting authority whether parallel proceedings are taking place in Malta:

Provided that if it is confirmed that the suspected or accused person is being held in provisional detention or custody, the contacted authority shall treat this request with urgency.

(2) In the case where the Attorney General cannot provide such reply within the deadline set by the contacting authority, the contacting authority shall be promptly informed of the reasons thereof and furthermore an indication shall be given of another deadline within which such requested information shall be provided.

(3) In the case where an authority, other than the Attorney General is contacted, it shall without undue delay, transmit the request for information to the Attorney General and inform the previous contacting authority accordingly.

Request for information.

7. When the Attorney General submits a request in accordance with regulation 5, the following information shall be provided:

(a) the contact details of the competent authority;

(b) a description of the facts and the circumstances that are the subject of the criminal proceedings concerned;

(c) all the relevant details about the identity of the suspected or the accused person and, if possible, details about

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the victim and witnesses;

(d) the stage of the criminal proceedings, if applicable;

(e) any information about the detention or custody of the suspected or accused person; and

(f) any other information which it may deem relevant in relation to the criminal proceedings that are being conducted in Malta.

Minimum information to be provided in replies.

8. (1) All replies sent by the Attorney General in accordance with regulation 6 shall contain the following information:

(a) whether criminal proceedings are commenced or whether they have been conducted in respect of some or all of the same facts as those which are subject to criminal proceedings referred to in the request for information submitted by the contacting authority; and

(b) whether the same persons are involved.

(2) In the case where criminal proceedings are being or were conducted in respect of some or all of the same facts as those which are subject to criminal proceedings referred to in the request for information submitted by the contacting authority, and where the same persons are involved the reply shall also contain information on:

(a) the contact details of the competent authority; and

(b) the stage of the proceedings, or, where a final decision has been reached, the nature of that final decision.

(3) The Attorney General may provide such other relevant information relating to the criminal proceedings that are commenced or whether they have been conducted in Malta and particularly those related facts which are the subject of the proceedings in Malta.

Direct consultations.

9. (1) In the case where it is established that parallel proceedings exist, the competent authorities concerned shall enter into direct consultations in order to reach consensus on any effective and practical solutions.

(2) During any direct consultation, the competent authorities shall:

(a) keep each other informed of any important procedural measures which they may have taken during the

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proceedings;

(b) reply to requests of information emanating from other competent authorities also involved in such consultations:

Provided that no competent authority shall provide any information which could be considered as a threat to national security or which could jeopardise the safety of any individual.

(3) The competent authorities shall consider the facts and the merits of the case and all other factors which they consider relevant during all direct consultations entered into between them to reach consensus.

(4) All direct consultations shall be regulated by a language to be agreed upon between the competent authorities.

Consensus.

10. (1) In the case where it has not been possible to reach consensus in accordance with regulation 9(1), the matter shall, where appropriate, be referred to Eurojust where Eurojust is competent to act under Article 4(1) of the Eurojust Decision.

(2) When a consensus has been reached and the criminal proceedings are concentrated in Malta, the Attorney General shall inform all respective competent authorities of the outcome of proceedings.

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