VERŻJONI ELETTRONIKA

A 2104

I assent.

(L.S.) **MARIE-LOUISE COLEIRO PRECA**
President

18th December, 2018

ACT No. XLII of 2018

AN ACT to amend the Criminal Code, Cap. 9,the Prevention of Money Laundering Act, Cap. 373 and the Victims of Crime Act, Cap. 539, to transpose Directive 2017/541/EU of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

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.

1. The short title of this Act is the Criminal Laws (Terrorism) (Amendment) Act, 2018.

VERŻJONI ELETTRONIKA

PART I
Amendments to the Criminal Code

Amendments to the Criminal Code. Cap. 9.

2. This Part amends the Criminal Code, and it shall be read and construed as one with the Criminal Code, hereinafter in this part referred to as "the Code".

Amendment of article 23B of the Code.

3. In sub-article (3) of article 23B of the Code, the definition "property" shall be substituted by the following:

" "property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, and letters of credit;".

Amendment of article 328A of the Code.

4. Article 328A of the Code shall be amended as follows:

(a) paragraph (j) of sub-article (2) thereof shall be renumbered as paragraph (k) and immediately after paragraph (i) thereof there shall be added the following new paragraph:

"(j) illegal system interference as defined in article 337C(1)(ee) and illegal data interference as defined in article 337C(1)(g);";

(b) paragraph (k) as renumbered shall be substituted by the following:

"(k) threatening to commit any of the acts in paragraphs (a) to (j):".

Amendment of article 328B of the Code.

5. Article 328B of the Code shall be amended as follows:

(a) in the proviso to paragraph (a) of sub-article (3) thereof, the words "consists only of the acts mentioned in article 328A(2)(j)" shall be substituted by the words "consists only of the acts mentioned in article 328A(2)(k)";

(b) paragraph (a) of sub-article (3) thereof, excluding the proviso thereof, shall be substituted by the following:

"(a) where the said participation or involvement consists in directing the terrorist group, to the punishment of imprisonment of not less than fifteen (15) years but not exceeding thirty (30) years:".

VERŻJONI ELETTRONIKA

Amendment of article 328C of the Code.

6. Article 328C of the Code shall be amended as follows:

(a) in sub-article (1) thereof the words "Whosoever, with the intention of committing any of the acts listed in article 328A(2)(a) to (i) or in article 328B" shall be substituted by the words "Whosoever, with the intention of committing any of the acts listed in article 328A(2)(a) to (j) or in article 328B or in article 328C(2)(d)";

(b) paragraph (c) of sub-article (1) thereof shall be substituted by the following:-

"(c) commits an offence of forgery or any of the offences under sub-titles I and II of Title V,";

(c) at the end of sub-article (1) thereof the words "laid down in article 328A(3)." shall be substituted by the words "laid down in article 328A(3):" and immediately thereafter there shall be added the following new proviso:-

"Provided that for the offences referred to in this sub-article, it shall not be necessary to establish a link to another specific offence listed in this sub-title.";

(d) paragraph (a) of sub-article (2) thereof shall be substituted by the following:-

"(a) publicly provokes the commission of terrorist activities by any means including but not limited to the distribution, or otherwise making available by any means, whether online or offline, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed;";

(e) paragraph (d) of sub-article (2) thereof shall be substituted by the following:-

"(d) travels or attempts to travel within or outside the European Union, directly or by transiting through one or several Member States of the Union, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist activities or participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group or the providing or receiving of training in terrorist activities;";

VERŻJONI ELETTRONIKA

(f) immediately after paragraph (c) of sub-article (2) thereof there shall be added the following new sub-paragraph:

"(cc) receives training or instruction, from another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing or contributing to the commission of terrorist activities;";

(g) sub-article (4) thereof shall be substituted by the following:

"(4) For the commission of an offence under this article or article 328B, it shall not be necessary that terrorist activities be actually committed."; and

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

"(5) Where the offence referred to in paragraphs (b) and (c) of sub-article (2) is directed towards a child, the punishment shall be increased by one degree and shall not be awarded in its minimum.

(6) For the purpose of ensuring the prompt removal or blocking of online content constituting public provocation to commit a terrorist activities as defined in sub-article (2)(a), the provisions of sub-title V of Title I of Book Second, of sub-title VII of Title I of Book Second, of article 23 and of article 337G of this Code shall, *mutatis mutandis,* apply.".

Amendment of article 328D of the Code.

7. Article 328D of the Code shall be substituted by the following:-

"328D. Whosoever incites, aids or abets any offence under this sub-title shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence incited, aided or abetted.".

Amendment of article 328G of the Code.

8. In sub-article (2) of article 328G of the Code the words "laid down in article 328F(1)." shall be substituted by the words "laid down in article 328F(1):" and immediately thereafter there shall be added the following new proviso:-

"Provided that for the purposes of this article and of article 328F it shall not be necessary that the funds are in fact used, in full or in part, to commit or to contribute to any of the offences provided for, nor shall it be required that the offender knows for which specific offence the funds are to be used.".

VERŻJONI ELETTRONIKA

Amendment of article 328J of the Code.

9. In sub-article (2) of article 328J of the Code the words "in sub-article (1)." shall be substituted by the words "in sub-article (1):" and immediately thereafter there shall be added the following proviso:-

"Provided that notwithstanding the provisions of sub-article (1), nothing shall preclude the institution of criminal proceedings against the natural persons referred to in sub-article (1), who act as perpetrators, inciters or accessories in any of the offences under this sub-title.".

Amendment of article 328K of the Code.

10. Immediately after paragraph (c) of article 328K of the Code there shall be added the following new paragraphs:

"(d) exclusion from entitlement to public benefits or State aid;

(e) placing under judicial supervision:

Provided that for the purposes of sub-article (e), the judicial authorities may make use of the services offered by the Asset Recovery Bureau as established by law.".

Amendment of article 328M of the Code.

11. Immediately after the proviso to paragraph (f) of article 328M of the Code there shall be added the following new sub-article and proviso:-

"(g) Where the offence falls within the jurisdiction of Malta and any other Member State of the European Union and where such Member States can validly prosecute on the basis of the same facts, the said Member States shall cooperate in order to decide which one of them shall prosecute the offenders, having regard to the following factors:

(i) the Member State shall be that in the territory of which the offence was committed;

(ii) the Member State shall be that of which the offender is a national or resident;

(iii) the Member State shall be the country of origin of the victims;

(iv) the Member State shall be that in the territory of which the offender was found:

Provided that for the purposes of this paragraph cooperation between Member States of the European Union may be facilitated through recourse to Eurojust;

VERŻJONI ELETTRONIKA

"Eurojust" shall have the same meaning assigned to it by Council Decision 2002/187/JHA of 28 February 2002 of the European Union.".

Addition of new article 328MA to the Code.

12. Immediately after article 328M of the Code there shall be added the following new article:-

"Mitigation of punishment.

328MA. The punishment awarded under this sub-title may be reduced by up to two degrees if the offender:

(a) renounces terrorist activity; and

(b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:

(i) prevent or mitigate the effects of the offence;

(ii) identify or bring to justice the other offenders;

(iii) find evidence; or

(iv) prevent further offences referred to in articles 328A to 328D and 328F.".

PART II
Amendments to the Prevention of Money Laundering Act

Amendments to the Prevention of Money Laundering Act. Cap. 373.

13. This Part amends the Prevention of Money Laundering Act, and it shall be read and construed as one with the Prevention of Money Laundering Act, hereinafter in this part referred to as "the Act".

Amendment of article 27A of the Act.

14. Sub-article (1) of article 27A of the Act shall be substituted by the following:

"(1) In carrying out its functions under article 16(1)(k)(i), the Unit may exchange any information that may be relevant for the processing or analysis of information or to investigations regarding financial transactions or activities related to money laundering or the underlying criminal activity, or funding of terrorism and the persons involved:

Provided that the Unit shall apply and make use of appropriate, protected and secure channels, mechanisms and technologies, to cooperate and exchange information as provided in this sub-article.".

VERŻJONI ELETTRONIKA

PART III
Amendments to the Victims of Crime Act

Amendments to the Victims of Crime Act. Cap. 539.

15. This Part amends the Victims of Crime Act, and it shall be read and construed as one with the Victims of Crime Act, hereinafter in this part referred to as "the Act".

Amendment of article 12 of the Act.

16. Immediately after sub-paragraph (v) of paragraph (b) of article 12 of the Act there shall be added the following new sub-paragraphs:-

"(vi) medical treatment in accordance with the national healthcare system for as long as such treatment is necessary;

(vii) protection measures, paying particular attention to the risk of intimidation and retaliation and the need to protect the dignity and physical integrity, including during questioning and when testifying.".

Amendment of article 13 of the Act.

17. At the end of the proviso to sub-article (1) of article 13 of the Act the words ''offence committed against the victim.'' shall be substituted by the words "offence committed against the victim:" and immediately thereafter there shall be added the following new proviso:-

"Provided that the victim as defined in article 2 and residing within the territory of Malta, shall be given all the assistance and support as provided under this article even though the offence was committed in another Member State of the European Union.".

Passed by the House of Representatives at Sitting No. 181 of the 12th December, 2018.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€0.72