VERŻJONI ELETTRONIKA

I assent.

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

20th July, 2021

ACT No. XLIII of 2021

AN ACT to provide for the amendment of various laws to facilitate the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and to make ancillary and consequential provisions thereto.

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 scope.

1. (1) The short title of this Act is the Various Laws relating to the Facilitating of the Use of Financial and other Information (Amendment) Act, 2021.

(2) The scope of this Act is to transpose Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA.

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 518 of the Code.

3. In the proviso to article 518 of the Code, the words "in article 695." shall be substituted by the words "in article 695:" and immediately thereafter there shall be added the following new proviso:

"Provided further that any designated competent national authority designated in terms of any Directive or Regulation of the European Union which has access to the acts and documents of the courts of criminal justice may, if the requirements established in the Directive or Regulation of the European Union are fulfilled, transmit copies of such acts and documents of the court of criminal justice to the requesting authority.".

Amendment of article 550A of the Code.

4. Immediately after sub-article (4) of article 550A of the Code there shall be added the following new sub-article:

"(5) The Magistrate may, upon a request made by the Financial Intelligence Analysis Unit, on a case by case basis and where the information is necessary for the prevention, detection and combating of money laundering, associate predicate offences and terrorist financing, give access to the record of the proceedings of the inquest and to all documents and material objects exhibited in the course of the inquest including the reports of the experts and deposition of witnesses:

Provided that this information shall only be used by the Financial Intelligence Analysis Unit for the purpose for which it was provided.".

Addition of new article to the Code.

5. Immediately after article 701 of the Code there shall be added the following new article:

"Power of the Minister to make regulations.

702. The Minister responsible for justice may make regulations to give effect to any arrangement, including any treaty, convention, agreement or understanding, to which Malta is a party or is otherwise applicable to Malta and which make provision for sharing of information between competent authorities.".

PART II

Amendments to the Prevention of Money Laundering Act

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

6. 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 principal Act".

Amendment to article 14 of the principal Act.

7. In article 14 of the principal Act, immediately after the definition "competent authority" there shall be added the following new definitions:

" "designated authority" means the Executive Police, the Attorney General and any Magistrate conducting inquiries relating to the "*in genere*" in terms of article 546 of the Criminal Code; Cap. 9.

"Europol" has the same meaning as assigned to it by Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016;

"financial analysis" means the results of operational and strategic analysis that has already been carried out by the Unit in pursuance of its tasks and functions under article 16(1)(a) and (f);

"financial information" means any type of information or data, such as data on financial assets, movement of funds or financial business relationships, which is already held by the Unit to prevent, detect, and effectively combat money laundering and terrorist financing, other than information or data gathered or held by the Unit in relation to its supervisory function under article 16(1)(c), article 16(1)(k)(ii), and article 26;

"law enforcement information" means any type of information or data, including but not limited to information on investigations, freezing or seizure of assets or other investigative or provisional measures, and information on convictions and on confiscation and criminal records, which is already held by:

(a) any designated authority in the context of preventing, detecting, investigating, or prosecuting criminal offences; and

(b) public authorities or private entities in the context of preventing, detecting, investigating or

prosecuting criminal offences, and which is available to designated authorities in line with the provisions of any other law applicable to them;".

Amendment of article 27A of the principal Act.

8. Article 27A of the principal Act shall be amended as follows:

(a) in the proviso to sub-article (1) thereof, the words "Provided that the Unit" shall be substituted by the words "Provided further that the Unit"; and

(b) immediately before the proviso to sub-article (1) thereof, there shall be added the following new proviso:

"Provided that the Unit may, in exceptional and urgent circumstances and subject to operational limitations, promptly exchange financial information or financial analysis relevant for the processing or analysis of information related to terrorism or organised crime associated with terrorism, with any authority, body, or agency of a Member State considered to have functions equivalent or analogous to those of the Unit under article 16(1)(a) and (b):".

Addition of new articles to the principal Act.

9. Immediately after article 27B of the principal Act there shall be added the following new articles:

"Co-operation with designated authorities.

27C. (1) The Unit shall, in accordance with the applicable provisions of this Act, and without prejudice to the provisions of article 34(3), co-operate with any designated authority and reply in a timely manner, on a case-by-case basis, to reasoned requests made by such designated authorities for financial information and, or financial analysis, where such information is necessary for the prevention, detection, investigation or prosecution of serious criminal offences:

Provided that, for the purposes of this article, the term "serious criminal offence" shall mean the offences listed in Annex I to Regulation (EU) 2016/794, tax evasion, and any other offence under the National Interest (Enabling Powers) Act:

Cap. 365.

Provided further that the provisions of article 34(4) shall *mutatis mutandis* apply in relation to any financial information or financial analysis disclosed by the Unit in terms of this sub-article.

(2) The Unit may refuse to disclose any financial information or financial analysis pursuant to sub-article (1) on the grounds as laid down under article 34(2)(b) to (f), and it shall provide an explanation for such a refusal.

(3) Any request received by the Unit pursuant to sub-article (1) shall be recorded by the Unit, which record shall include:

(a) the name and contact details of the authority and of the officer or employee requesting the information;

(b) the recipients of the results of the query or search, in so far as possible;

(c) the case reference number that the requesting authority assigns to the case in relation to which the request for information is made;

(d) the subject matter of the request; and

(e) the manner in which the request was executed, including the method used for the dissemination of information or analysis requested, whenever such request has been acceded to.

(4) Records referred to in sub-article (3) shall be kept for a period of five (5) years from the date on which the request was received and shall be used solely for the purpose of checking the lawfulness of the processing of personal data.

(5) The Unit shall, upon a request from the Information and Data Protection Commissioner, make available any record as referred to in sub-article (3).

(6) In addition and without prejudice to the powers of the Unit under articles 30 and 30A, the Unit may request, and designated authorities shall disclose on a case-by-case basis, any law enforcement information necessary for the prevention, detection and combating of money laundering, underlying criminal activity and terrorist financing.

Co-operation with Europol.

27D. (1) Without prejudice to any restriction which the Unit may be subject to, the Unit shall, upon receipt of duly justified requests made by Europol within the limits of its responsibility in the performance of its tasks and on a case-by-case basis, exchange any financial information and, or financial analysis as if the request was received from a foreign authority, body or agency having functions equivalent or analogous to those of the Unit under article 16(1)(a) and (b):

Provided that, in addition to the grounds as laid down under article 34(2)(b) to (f), the Unit may refuse to disclose any financial information or financial analysis if:

(a) the provision of such information or analysis would be contrary to the essential interests of the security of Malta;

(b) the provision of such information or analysis would jeopardise the safety of an individual; or

(c) the provision of such information would disclose information relating to the organisations or specific intelligence activities in the field of national security.

(2) Where the Unit refuses to disclose information in terms of sub-article (1), an explanation shall be provided.

(3) The provisions of article 27C(3), (4) and (5) shall *mutatis mutandis* apply in relation to the record keeping of requests for information received by the Unit from Europol pursuant to this article.".

Amendment of article 34 of the principal Act.

10. Sub-article (2) of article 34 of the principal Act shall be substituted by the following new sub-article:

"(2) Without prejudice to the provisions of article 27A, the Unit shall not be obliged to provide any information or disclose any documents, and may refuse to do so if:

(a) such information or document was received by the Unit in carrying out its functions under article 16(1)(a), (b) and (k); or

(b) there are reasonable grounds to consider that such disclosure could impede an inquiry, investigation or any other proceeding in course in Malta; or

(c) providing such information or disclosing such document may, in the opinion of the Unit, prejudice any analysis; or

(d) due to exceptional circumstances, such disclosure would be clearly disproportionate to the legitimate interests of Malta or of a natural or legal person; or

(e) such disclosure would not be in accordance with fundamental principles of Maltese law; or

(f) such disclosure would be irrelevant with regard to the purpose for which it has been requested:

Provided that any refusal under this sub-article shall be clearly explained to the body or authority requesting the disclosure of the document or information.".

Passed by the House of Representatives at Sitting No. 487 of the 12th July, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

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