VERŻJONI ELETTRONIKA

L.N. 312 of 2021

CRIMINAL CODE
(CAP. 9)

Facilitating the Use of Financial and other Information for the Prevention, Detection, Investigation or Prosecution of certain Criminal Offences Regulations, 2021

IN EXERCISE of the powers conferred by article 701 of the Criminal Code, the Minister responsible for justice, has made the following regulations:-

Citation and scope.

1. (1) The title of these regulations is the Facilitating the Use of Financial and other Information for the Prevention, Detection, Investigation or Prosecution of certain Criminal Offences Regulations, 2021.

(2) The scope of these regulations 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 2000/632/JHA.

Interpretation.

2. In these regulations, unless the context otherwise requires:

"designated authorities" 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.

"financial analysis" means the results of operational and strategic analysis that has already been carried out by the Unit in the pursuance of its tasks and functions under article 16(1) and (f) of the Prevention of Money Laundering Act; Cap. 373.

"financial information" means any type of information or date, such as data on financial assets, movements 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 of the Prevention of Money Laundering Act; Cap. 373.

"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, 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 the designated authorities according to the provisions of any other law applicable to them;

"serious criminal offences" means the forms of crime listed in Annex I to Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, tax evasion, and any other offence under the National Interest (Enabling Powers) Act;

Cap. 365.

"Unit" means the Financial Intelligence Analysis Unit established in accordance with article 15 of the Prevention of Money Laundering Act;

Cap. 373.

Processing of information received from the Unit by the designated authorities.

3. The designated authorities may process the financial information and financial analysis received from the Unit for the specific purpose of preventing, detecting, investigating or prosecuting serious criminal offences other than the purposes for which personal data are collected in accordance with Article 4(2) of Directive (EU) 2016/680.

Requests of information by the Unit to the designated authorities.

4. (1) The Unit may request law enforcement information from the designated authorities where the information is necessary for the prevention, detection and combating of money laundering, associate predicate offences and terrorist financing.

(2) The designated authorities shall respond, on a case-by-case basis, in a timely manner to requests for law enforcement information made by the Unit.

Exchange of information with counterpart designated authorities.

5. (1) The designated authorities may exchange financial information or financial analysis obtained from the Unit, upon request and on a case by case basis, with a designated authority in another Member State, where the financial information or financial analysis is necessary for the prevention, detection and combating of money laundering, associate predicate offences and terrorist financing.

(2) The designated authorities may impose conditions and

restrictions on the use of exchanged information as they may determine in order to ensure that the financial information or financial analysis exchanged is used only for the purpose for which it was sought or provided.

(3) Any dissemination of financial information or financial analysis obtained by the designated authorities from the FIU of another Member State to any other authority, agency or department or any use of the information for purposes other than those originally approved is subject to the obtaining of prior consent of the FIU providing the information.

(4) The designated authorities shall apply and make use of dedicated secure electronic communications ensuring high level of data security when transmitting requests and responses for exchange of information.

Records of information requests.

6. (1) The designated authorities shall maintain records relating to requests for information.

(2) The records shall contain:

(a) the name and contact details of the organisation and of the staff member requesting the information and, if possible, of the recipient of the results of the query or search;

(b) the reference to the case in relation to which the information is requested;

(c) the subject matter of the request; and

(d) any executing measures of such requests.

(3) The records shall be kept for a period of five (5) years after their creation and shall be used solely for the purpose of checking the lawfulness of the processing of personal data:

Provided that these records shall be made available to the Unit upon its request.

Statistical data.

7. (1) The designated authorities shall keep the following statistical data:

(a) number of requests issued by each designated authority, the follow-up given to the requests, the number of cases investigated, the number of persons prosecuted and the number of persons convicted for serious criminal offences, where such information is available;

(b) data measuring the time it takes for an authority to respond to a request after the receipt of the request issued by a designated authority and the time a designated authority takes to respond to requests;

(c) data measuring the cost of human or IT resources dedicated to domestic and cross-border requests falling under these regulations, if available.

(2) The statistical data shall be compiled on an annual basis.

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