VERŻJONI ELETTRONIKA

L.N. 206 of 2022

CONDUCT CERTIFICATES ORDINANCE (CAP. 77)

Organisation and Content of the Exchange of Information Extracted from the Criminal Record between Malta and other Member States (Amendment) Regulations, 2022

IN EXERCISE of the powers conferred by article 10 of the Conduct Certificates Ordinance, the Minister responsible for the Police has made the following regulations:-

Citation.

1. The title of these regulations is the Organisation and Content of the Exchange of Information Extracted from the Criminal Record between Malta and other Member States (Amendment) Regulations, 2022 and these regulations shall be read and construed as one with the Organisation and Content of the Exchange of Information Extracted from the Criminal Record between Malta and other Member States Regulations, hereinafter referred to as "the principal regulations".

S.L. 77.01.

Amends regulation 1 of the principal regulations.

2. Sub-regulation (2) of regulation 1 of the principal regulations shall be substituted by the following:

"(2) These regulations transpose Directive (EU) 2019/884 of the European Parliament and of the Council of 17 April 2019 amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA.".

Amends regulation 2 of the principal regulations.

3. Regulation 2 of the principal regulations shall be amended as follows:

(a) immediately after the definition "conviction" there shall be added the following new definition:

" "convicting Member State" means the Member State where a conviction is handed down;";

(b) immediately after the definition "criminal record" there shall be added the following new definition:

" "ECRIS reference implementation" means the

software developed by the European Commission and made available to the Member States for the exchange of criminal records information through ECRIS;";

(c) immediately after the definition "the European Union" there shall be added the following new definitions:

" "facial image" means a digital image of a person's face;

"fingerprint data" means the data relating to plain and rolled impressions of the fingerprints of each of a person's fingers;";

(d) immediately after the definition "National Central Authority" there shall be added the following new definition:

" "third-country national" means a person who is not a citizen of the European Union within the meaning of Article 20(1) TFEU, or who is a stateless person or a person whose nationality is unknown;".

Amends regulation 3 of the principal regulations.

4. Sub-regulation (1) of regulation 3 of the principal regulations shall be substituted by the following:

"(1) The National Central Authority shall take the necessary measures to ensure that all convictions handed down within the Maltese territory are accompanied by information on the nationality or nationalities of the convicted person if the person is a national of another Member State or a third country national. Where a convicted person is of unknown nationality or stateless, the criminal record shall reflect this.".

Amends regulation 5 of the principal regulations.

5. Regulation 5 of the principal regulations shall be amended as follows:

(a) sub-regulation (3) thereof shall be substituted by the following:

"(3) Whenever a national of another Member State asks the National Central Authority for information on his own criminal record, the National Central Authority shall submit a request to the Central Authority of the Member State of the person's nationality for information and related data to be extracted from the criminal record and shall include such information and related data in the extract to be provided to the person concerned.";

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(b) Immediately after sub-regulation (3) thereof as substituted, there shall be added the following new sub-regulation:

"(3a) Where a third country national asks the National Central Authority for information on his own criminal record, that National Central Authority shall submit a request only to those central authorities of the Member States which hold information on the criminal record of that person for information and related data to be extracted from the criminal records and shall include such information and related data in the extract to be provided to the person concerned.".

Amends regulation 6 of the principal regulations.

6. Regulation 6 of the principal regulations shall be amended as follows:

(a) sub-regulation (4) thereof, shall be substituted by the following:

"(4) When information extracted from the criminal record on convictions handed down against a national of a Member State other than a Maltese national is requested, the National Central Authority shall transmit such information to the same extent as provided for in article 13 of the European Convention on Mutual Assistance in Criminal Matters:

Provided that if the National Central Authority is the requested Member State, the National Central Authority shall transmit its reply within twenty working days from the date the request was received.";

(b) immediately after sub-regulation (4) thereof as substituted, there shall be added the following new sub-regulation:

"(4a) When information extracted from the criminal record of a third-country national is requested, the National Central Authority shall transmit information on any conviction handed down in Malta and entered in the criminal records and on any conviction handed down in third countries and subsequently transmitted to the National Central Authority and entered into the criminal records:

Provided that where this information is requested for any purpose other than that of criminal proceedings sub-regulation (2) shall apply accordingly:

Provided further that if the National Central Authority is the requested Member State, the National Central Authority shall transmit its reply within twenty working days from the date the request was received.".

Amends regulation 9 of the principal regulations.

7. Regulation 9 of the principal regulations shall be amended as follows:

(a) in sub-paragraph (ii) of paragraph (c) of sub-regulation (1) thereof, the word "and" shall be deleted;

(b) in sub-paragraph (iii) of paragraph (c) of sub-regulation (1) thereof, the words "alias name(s):" shall be substituted by the words "alias name(s); and" and immediately thereafter there shall be added the following new sub-paragraph;

"(iv) facial image:";

(c) Immediately after sub-regulation (2) thereof there shall be added the following new sub-regulations:

"(3) The National Central Authority shall transmit the following information electronically using ECRIS and a standardised format in accordance with the standards to be laid down in the European Commission's implementing acts:

(a) information referred to in regulation 5;

(b) requests for information on convictions;

(c) replies to requests for information on convictions;

(d) other relevant information.

(4) If the mode of transmission referred to in sub-regulation (3) is not available, the National Central Authority shall transmit all information referred to in sub-regulation (3) by any means capable of producing a written record under conditions allowing the central authority of the receiving Member State to establish the authenticity of the information, taking the security of transmission into consideration.

(5) If the mode of transmission referred to in sub-regulation (3) is not available for an extended period of time, the National Central Authority shall inform the other Member States and the European Commission.".

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*
€0.36