Verżjoni Elettronika

L.N. 67 of 2023

CRIMINAL CODE
(CAP. 9)

Addressing the Dissemination of Terrorist Content Online Regulations, 2023

IN EXERCISE of the powers conferred by article 697 of the Criminal Code, the Minister responsible for justice has made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is Addressing the Dissemination of Terrorist Content Online Regulations, 2023.

(2) These regulations shall come into force within two months from their publication in the Gazette.

Scope.

2. These regulations provide for the implementing provisions of Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online.

Interpretation.

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

"Charter"; means the Charter of Fundamental Rights of the European Union;

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"Code" means the Criminal Code;

"Court" means the Court of Magistrates as a Court of Criminal Judicature;

"Member State" means a Member State of the EU and the European Economic Area;

"Police" means the Malta Police Force;

"Regulation" means Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online.

Removal order.

4. (1) Upon application to the Court filed by a police officer not below the rank of inspector, a Magistrate may issue a removal orderin respect of a hosting service provider, in terms of Article 3 of the Regulation, requiring the hosting service provider in Malta or in another

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Member State to remove terrorist content or disable access to terrorist content in all Member States.

(2) Where a removal order has not been previously issued to the hosting service provider, the Police shall provide that hosting service provider with information on the applicable procedures and deadlines, at least twelve (12) hours before the issuing of the removal order;

Provided that a lesser period shall apply in urgent cases.

(3) The Police shall transmit the removal order to the contact point of the hosting service provider by electronic means capable of producing a written record under conditions that allow to establish the authentication of the sender, including the accuracy of the date and the time of sending and receipt of the order.

(4) Where the hosting service provider has its established or legal representative in another Member State, the Police shall simultaneously send a copy of the removal order to the competent authority of the Member State where the hosting service provider has its main establishment or legal representative.

(5) For the purposes of sub-article (6) of Article 3 of the Regulation, the hosting service provider shall, without undue delay, submit the form set out in Annex II of the Regulation by means of an application to the Court containing information on the removal of the terrorist content or the disabling of access to the terrorist content in all Member States, indicating, in particular, the time of that removal or disabling.

(6) For the purposes of sub-articles (7) and (8) of Article 3 of the Regulation, the hosting service provider shall submit the form set out in Annex III of the Regulation, where applicable, by means of an application to the Court.

(7) When the removal order becomes final with respect to a hosting service provider having its establishment or legal representative in another Member State, the Police shall inform the competent authority of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established, of that fact.

When a hosting service provider is exposed to terrorist content.

5. (1) For the purposes of article 5(4) of the Regulation , upon application to the Court filed by a Police officer not below the rank of inspector, the Magistrate shall hear submissions from the Police and the hosting service provider and, on the basis of objective factors, may decide that a hosting service provider is exposed to

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terrorist content and, in such case, notify the hosting service provider of the decision.

(2) If the Magistrate decides that the hosting service provider is exposed to terrorist content, the hosting service provider shall, within three (3) months from receipt of the decision and on an annual basis thereafter, report to the Police on the specific measures that it has taken in accordance with the provisions of article 5(5) of the Regulation.

(3) Where, based on the report referred to in sub-regulation (2) and, where relevant, any other objective factors, the Police, acting on the advice of the Critical Information Infrastructure Protection Unit, as defined in the Measures for High Common Level of Security of Network and Information Systems Order, consider that the specific measures taken do not comply with paragraphs (2) and (3) of Article 5 of the Regulation, the Police shall submit a report to the Court by means of an application filed by a police officer not below the rank of inspector. The Court shall hear submissions from the Police and the hosting service provider and may require the hosting service provider to take the necessary measures.

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(4) A hosting service provider may, at any time, request the Magistrate to review and, where appropriate, amend or revoke any decision referred to in sub-regulations (1) or (3).

(5) The Magistrate shall, within three (3) months from receipt of the request referred to in sub-regulation (4), adopt a reasoned decision on the request based on objective factors and notify the hosting service provider of that decision.

Preservation of content and related data.

6. The Magistrate or the Police may request a hosting service provider to preserve terrorist content and related data for a specified period further to that provided in Article 6 of the Regulation, for as long as necessary, for ongoing administrative or judi1cial review proceedings or for the purposes of complaint handling in accordance with Article 10 of the Regulation.

Receipt of the removal order by the Police.

7. (1) When the Police receive a copy of a removal order issued by the competent authority of another Member State against a hosting service provider established in Malta or having its legal representative in Malta, a Police officer not below the rank of inspector shall immediately, by means of an application, request the Court to decide whether it shall scrutinise the removal order in terms of the Regulation.

(2) Where, following a decision to scrutinise the removal order and the carrying out of such scrutiny, the Magistrate finds that the

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order seriously or manifestly infringes the provisions of the Regulation or the fundamental rights and freedoms guaranteed by the Charter, the Magistrate shall adopt a reasoned decision to that effect.

(3) Scrutiny of the removal order and, where applicable, adoption of the reasoned decision, shall be carried out within seventy-two (72) hours of receipt of the copy of the removal order by the Police.

(4) Hosting service providers and content providers shall have the right to submit, within forty-eight (48) hours of receiving a removal order, an application together with a reasoned request to the Court requesting scrutiny of the removal order as referred to in sub-regulation (1) of this regulation.

(5) The Magistrate shall, within seventy-two (72) hours of receiving the application referred to in sub-regulation (4), following scrutiny of the removal order, adopt a reasoned decision setting out its findings as to whether the removal order seriously or manifestly infringes the provisions of the Regulation, or the fundamental rights and freedoms guaranteed by the Charter.

(6) When the Magistrate, upon scrutiny of the removal order, decides that the removal order issued by the competent authority of another Member State is in accordance with the provisions of the Charter and of the Regulation, the Magistrate shall issue a reasoned decision requiring the hosting service provider to comply with the requirements of the removal order.

When a removal order becomes final.

8. A removal order shall become final upon the expiry of two (2) days where no appeal to the Court of Criminal Appeal, Inferior Jurisdiction, has been lodged, or upon confirmation following an appeal.

Penalties.

9. (1) A hosting service provider who fails to comply with one or more of the obligations set out in Article 3(3) and (6), Article 4(2) and (7), Article 5(1), (2), (3), (5) and (6), Articles 6, 7, 10 and 11, Article 14(5), Article 15(1) and Article 17 of the Regulation shall be guilty of an offence and shall be liable, on conviction, to the punishment of imprisonment for a term of not less than 6 (six) months and not more than two (2) years or to a fine (*multa*) not exceeding fifty thousand euro (€50,000) or to both such fine and imprisonment:

Provided that where the hosting service provider is a body corporate having a distinct legal personality, it shall be liable on conviction to a fine (*multa*) not exceeding three hundred thousand euro (€300,000):

Provided further that a hosting service provider that

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systematically or persistently fails to comply with the obligation set out in paragraph (3) of Article 3 of the Regulation shall, on conviction, be liable to the punishment of a fine (*multa*) not exceeding four percent (4%) of his global turnover of the preceding business year.

(2) When imposing punishment, the Court shall take into consideration Article 18(2) of the Regulation.

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