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L.N. 145 of 2016

POLICE ACT
(CAP. 164)

Simplification of Exchange of Information or Intelligence between the Malta Police Force and other State Agencies of the Member States of the European Union having similar powers Regulations, 2016

IN EXERCISE of the powers conferred by article 107(1) of the Police Act, the Minister for Home Affairs and National Security has made the following regulations:-

Citation and scope.

1. (1) The title of these regulations is the Simplification of Exchange of Information or Intelligence between the Malta Police Force and other State Agencies of the Member States of the European Union having similar powers Regulations, 2016.

(2) These regulations transpose Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.

(3) The scope of these regulations is to simplify the exchange of already available information or intelligence between the Malta Police Force and the other state agencies of the Member States having similar powers where there are factual reasons to believe that the information or intelligence could assist in the detection, prevention or investigation of criminal offences.

Interpretation.

2. For the purpose of these regulations:

Cap. 164.

"Act" means the Police Act;

"Eurojust" shall have the same meaning assigned to it by Council Decision 2002/187/JHA on setting up Eurojust, as amended by Council Decision 2003/659/JHA, and Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust;

"the European Union" means the European Union as referred to in the Treaty;

"Europol" shall have the same meaning assigned to it by Council Decision 2009/371/JHA establishing the European Police Office of 6 April 2009;

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"Member State" means any one of the Member States of the European Union;

"State agencies having similar powers" means the Police, Customs Department or other authority that is authorised by national law to detect, prevent and investigate offences or criminal activities and to exercise authority and take coercive measures in the context of such activities and excludes authorities, bodies, agencies or units dealing especially with national security issues. For the purpose of these regulations, the European Police Office "Europol" and "Eurojust" shall be considered as state agencies having similar powers;

"the Data Protection Regulations" means the Data Protection (Processing of Personal Data in the Police Sector) Regulations and the Processing of Personal Data (Police and Judicial Cooperation in Criminal Matters) Regulations; S.L. 440.05 S.L. 440.06

"the Treaty" shall have the same meaning assigned to it by article 2 of the European Union Act. Cap. 460.

Exchange of information or intelligence with other state agencies.

3. (1) Without prejudice to any other provision under the Act or the Data Protection Regulations, the Police shall exchange information or intelligence already available to it with other state agencies of other Member States having similar powers as if these state agencies were established in Malta.

(2) Where the information or intelligence may, under any relevant provision of Maltese law, be accessed by the Police only pursuant to an agreement or authorisation of a judicial authority, the Police shall refrain from communicating the information or intelligence to the state agencies of other Member States having similar powers, unless the Attorney General agrees or authorises the communication of such information or intelligence. Such agreement or authorisation shall always be sought whenever the requesting agency requests access to information or intelligence related to any inquiry relating to the "*in genere*", or any inquest or "*repertus*" or whenever the information or intelligence is required for use as evidence.

Request for communication of information or intelligence by a State agency

4. (1) Where a request for communication of information or intelligence by a State agency in another Member State having similar powers requires the Police to respond within a given time limit, the Police shall reply within such time limit, unless the information or intelligence is not available or if there are justifications impeding such a response.

(2) The Police shall reply in writing informing the body

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making the request of the decision taken as to whether the request can be met or not.

(3) The Police may refrain to communicate information or intelligence only if there are factual reasons to assume that the communication would:

(a) harm essential national security interests of Malta; or

(b) jeopardise the success of a current investigation or a criminal intelligence operation or the safety of individuals; or

(c) clearly be disproportionate or irrelevant with regard to the purpose for which it has been requested.

(4) Where the request pertains to an offence punishable by a term of imprisonment of one year or less under any relevant provision of Maltese law, the Police may refrain from communicating such data.

(5) The Data Protection Regulations and other provisions on data protection shall apply to the exchange of information or intelligence depending on the chosen channel of communication.

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