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L.N. 451 of 2020

**CRIMINAL CODE
(CAP. 9)**

**European Investigation Order
(Amendment) Regulations, 2020**

IN EXERCISE of the powers conferred by articles 628A and 628B of the Criminal Code, the Minister for Justice, Equality and Governance has made the following regulations:-

- Citation. **1.** The title of these regulations is the European Investigation Order (Amendment) Regulations, 2020 and these regulations shall be read and construed as one with the European Investigation Order Regulations, hereinafter referred to as "the principal regulations".
- S.L. 9. 25.
- Amends regulation 2 of the principal regulations. **2.** Regulation 2 of the principal regulations shall be amended as follows:
- (a) immediately before the definition "the Charter" there shall be added the following new definition:
- " "Certifying authority" means the Attorney General;"
- (b) in the definition "European Investigation Order" immediately after the words "to obtain evidence in accordance with" there shall be added the words "the Directive and";
- (c) the definition "executing authority" shall be substituted by the following new definition:
- " "executing authority" means an authority having competence to recognize an EIO and ensure its execution in accordance with the Directive, these regulations and the procedures applicable in a similar domestic case. In the event that the executing State is Malta, "executing authority" means a court of criminal jurisdiction and/or the Police;"
- (d) in the definition "executing State", the word "executed" shall be substituted by the words "carried out"; and
- (e) the definition "issuing authority" shall be substituted by the following new definition:

"issuing authority" means:

(a) a court of criminal jurisdiction, Attorney General; or Inquiring Magistrate and when the issuing authority is not Malta includes an investigating judge or a public prosecutor;

(b) the Police or any other competent authority in accordance with any law, acting in its capacity as an investigating authority in criminal proceedings with the competence to order the gathering of evidence in accordance with the applicable law:

Provided that the EIO shall be validated after examination of its conformity with the requirements for the issuing of an EIO under the Directive, in particular the conditions established in sub-regulation (1) of regulation 9, by an authority mentioned in paragraph (a) of this definition prior to the transmission of the EIO to the executing State:

Provided further that in the event that the EIO has been validated by a judicial authority other than a court of criminal jurisdiction in terms of paragraph (a) of this definition, the said judicial authority shall be regard as an issuing authority and the EIO shall be transmitted in terms of the Directive and these regulations."

3. Regulation 4 of the principal regulations shall be amended as follows:

Amends
regulation 4 of
the principal
regulations.

(a) sub-regulation (1) thereof shall be substituted by the following new sub-regulation:

"(1) An EIO received by Malta as an executing State shall be executed on the basis of the principle of mutual recognition and in accordance with these regulations."; and

(b) sub-regulation (2) thereof, shall be substituted with the following:

"(2) The issuing of EIO by Malta pursuant to these regulations may be requested by a suspected or accused person, or by a lawyer on his behalf, within the framework of applicable defence rights by the filing of an application before a court of criminal jurisdiction."

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Amends
regulation 5 of
the principal
regulations.

4. In regulation 5 of the principal regulations, the words "The EIO shall" shall be substituted by the words "An EIO issued pursuant to these regulations shall".

Substitutes
regulation 6 of
the principal
regulations.

5. Regulation 6 of the principal regulations shall be substituted by the following new regulation:

"Competent
authorities.

6. For the purposes of these regulations, the Attorney General shall be competent to receive and recognize any European Investigation Order issued by an issuing State and to transmit to the executing State any European Investigation Orders issued in Malta."

Amends
regulation 8 of
the principal
regulations.

6. Regulation 8 of the principal regulations shall be amended as follows:

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

"(3) When Malta is the executing State, the Maltese or the English languages may be used for completing or translating an EIO received by Malta."; and

(b) sub-regulation (4) thereof shall be substituted by the following new sub-regulation:

"(4) Where Malta is the issuing State, the issuing authority shall translate the EIO set out in the First Schedule into an official language of the executing State or into any other language indicated by the executing State in accordance with Article 5(2) of the Directive."

Amends
regulation 10 of
the principal
regulations.

7. Regulation 10 of the principal regulations shall be amended as follows:

(a) sub-regulation (2) thereof shall be substituted by the following new sub-regulation:

"(2) Any further official communication shall be made directly between the issuing authority and/or the Attorney General and/or the executing authorities in the executing State indicated in the EIO form itself.";

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

"(3) Without prejudice to regulation 6, the Attorney General shall be the authority competent to transmit and

receive European Investigation Orders in terms of the Directive and these regulations.";

(c) in sub-regulation (4) thereof, the words "The issuing authority may transmit EIOs" shall be substituted by the words "The Attorney General may transmit in terms of regulation 6"; and

(d) in sub-regulation (7) thereof, the words "All difficulties" shall be substituted by the words "Any difficulties".

8. In sub-regulation (2) of regulation 11 of the principal regulations, the words "executing authority" shall be substituted by the words "court of criminal jurisdiction or the Police".

Amends regulation 11 of the principal regulations.

9. Regulation 12 of the principal regulations shall be amended as follows:

Amends regulation 12 of the principal regulations.

(a) in sub-regulation (1) thereof, the words "executing authority" shall be substituted by the words "the court of criminal jurisdiction or the Police";

(b) in sub-regulation (2) thereof, the words "the issuing authority unless otherwise provided in these regulations and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State." shall be substituted by the words "the issuing authority in the issuing State unless otherwise provided in these regulations and provided that such formalities and procedures are not contrary to the fundamental principles of law of Malta";

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

"(2A) The Attorney General shall certify that the EIO was issued by a competent issuing authority in the issuing State."; and

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

"(3) Where a court of criminal jurisdiction or the Police as executing authority receives an EIO which has not been issued by an issuing authority as specified with sub-regulation (2), the court of criminal jurisdiction or the Police, as the case may be, shall return the EIO to the issuing State.".

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Amends
regulation 13 of
the principal
regulations.

10. Regulation 13 of the principal regulations shall be amended as follows:

(a) in the marginal note thereof, the word "Application" shall be substituted by the word "Recourse";

(b) in sub-regulation (1) thereof, the words "an application" shall be substituted by the words "recourse to";

(c) in sub-regulation (2) thereof, the words "of the executing State and shall under the authority of these regulations be available in Malta:" shall be substituted with the words "of Malta";

(d) in sub-regulation (3) thereof, the word "application" shall be substituted by the word "recourse"; and

(e) in sub-regulation (5) thereof, the words "under the law of the executing State" shall be substituted by the words "in terms of the laws of Malta".

Amends
regulation 19 of
the principal
regulations.

11. Regulation 19 of the principal regulations shall be amended as follows:

(a) sub-regulation (1) thereof shall be substituted by the following new sub-regulation:

"(1) The Attorney General shall receive the EIO and shall, without delay, and in any case within a week of the reception of the EIO, acknowledge reception of the EIO by completing and sending the form set out in the Second Schedule.";

(b) in sub-regulation (2) thereof, the words "the executing authority" shall be substituted by the words "the court of criminal jurisdiction or the Police"; and

(c) in sub-regulation (3) thereof, the words "the executing authority" shall be substituted by the words "the court of criminal jurisdiction or the Police".

Substitutes
regulation 20 of
the principal
regulations.

12. Regulation 20 of the principal regulations shall be

substituted by the following:

"Criminal liability regarding officials.

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20. When present in Malta, in the application of these regulations, officials from the issuing State shall be regarded as public officers of Malta in accordance with the provisions of the Criminal Code with respect to offences committed against them or by them."

13. Regulation 21 of the principal regulations shall be amended as follows:

Amends regulation 21 of the principal regulations.

(a) sub-regulation (1) thereof shall be substituted by the following new sub-regulation:

"(1) Where, in the application of these regulations, officials of a Member State are present in Malta, the Member State shall be liable for any damage caused by its officials during their operations.";

(b) sub-regulation (2) thereof shall be deleted;

(c) sub-regulations (3) and (4) thereof shall be renumbered as sub-regulations (2) and (3) respectively;

(d) in sub-regulation (2) thereof as renumbered, the words "the territory of another Member State" shall be substituted by the word "Malta"; and

(e) in sub-regulation (3) thereof as renumbered, the words "each Member State" shall be substituted by the words "the Government".

14. In sub-regulation (1) of regulation 24 of the principal regulations, the words "on the territory of the executing State" shall be substituted by the words "in Malta".

Amends regulation 24 of the principal regulations.

15. Regulation 25 of the principal regulations shall be amended as follows:

Amends regulation 25 of the principal regulations.

(a) in sub-regulation (1) thereof, the words "in the executing State" shall be substituted by the words "to Malta or from Malta to another Member State to which the Directive applies";

(b) in sub-regulation (4) thereof, the words "all necessary documents" shall be substituted by the words "the EIO,

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document attesting the identity of the person in custody and identity details of the officers accompanying the person.";

(c) in sub-regulation (5) thereof, the words "the territory of the executing State shall be agreed between the issuing State and the executing State" shall be substituted by the words "Malta shall be agreed between the issuing State and Malta";

(d) in sub-regulation (7) thereof, the words "the executing State" shall be substituted by the word "Malta"; and

(e) in sub-regulation (8) thereof, the words "a transferred person" shall be substituted by the words "a person transferred to Malta".

Amends
regulation 27 of
the principal
regulations.

16. Regulation 27 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, the words "the territory of the executing State" shall be substituted by the word "Malta";

(b) in sub-regulation (4) thereof, the words "executing authority has no access to technical means for a hearing held by video conference, such means may be made available to it" shall be substituted by the words "court of criminal jurisdiction or the Police have no access to technical means for a hearing held by video conference, such means may be available to them";

(c) sub-regulation (5) of the principal regulations shall be amended as follows:

(i) in paragraph (a) thereof, the words "the executing State" wherever they occur shall be substituted by the word "Malta" and the word "it" shall be substituted by the words "the court";

(ii) in paragraph (b) thereof, the words "the executing State" shall be substituted by the word "Malta"; and

(iii) in paragraph (d) thereof, the words "the executing State" shall be substituted by the word "Malta"; and

(d) in sub-regulation (7) thereof, the words "within its territory in accordance with this regulation and refuses to testify when under an obligation to testify or does not testify the truth, national law applies in the same way as if the hearing took place

in a national procedure." shall be substituted by the words "within Malta in accordance with this regulation and refuses to testify when under an obligation to testify or does not testify the truth, the provisions of the Criminal Code shall apply"..

17. Sub-regulation (1) of regulation 28 of the principal regulations shall be amended as follows:

Amends regulation 28 of the principal regulations.

(a) the words "the territory of one Member State" shall be substituted by the word "Malta"; and

(b) the word "latter" shall be deleted'.

18. In sub-regulation (1) of regulation 29 of the principal regulations, the words "the territory of the executing State" shall be substituted by the word "Malta".

Amends regulation 29 of the principal regulations.

19. In paragraph (b) of sub-regulation (1) of regulation 31 of the principal regulations, the words "on the territory of the executing State" shall be substituted by the words "in Malta".

Amends regulation 31 of the principal regulations.

20. Regulation 32 of the principal regulations shall be amended as follows:

Amends regulation 32 of the principal regulations.

(a) in sub-regulation (1) thereof, the words "the executing State" shall be substituted by the word "Malta";

(b) in sub-regulation (2) thereof, the words "the executing State" shall be substituted by the word "Malta"; and

(c) sub-regulation (4) thereof shall be substituted by the following new sub-regulation:

"(4) When covert investigations take place in Malta, such investigation shall take place in accordance with the laws and procedures of Malta. The right to act, to direct and to control the operation related to the covert investigation shall lie solely with the competent authorities of Malta. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the issuing State and Malta with due regard to the respective national laws and procedures."

21. Regulation 33 of the principal regulations shall be amended as follows:

Amends regulation 33 of the principal regulations.

(a) in sub-regulation (1) thereof, the words "the Member State" shall be substituted by the word "Malta";

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(b) sub-regulation (2) shall be substituted by the following new sub-regulation:

"(2) Where more than one Member State is in a position to provide the complete necessary technical assistance for the same interception of telecommunications, the Maltese issuing authority shall send the EIO to only to one Member State. Priority shall always be given to the Member State where the subject of the interception is or will be located."; and

(c) in sub-regulation (5) thereof, the words "The executing State" shall be substituted by the word "Malta".

Amends
regulation 34 of
the principal
regulations.

22. Regulation 34 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, the words "one Member State" shall be substituted by the word "Malta"; and

(b) in sub-regulation (3) thereof, the words "The competent authority of the notified Member States" shall be substituted by the words "Where (Malta's competent authority is the notified competent authority) it".