

Mutual Legal Assistance (European Union)

EXCHANGE OF INFORMATION AND INTELLIGENCE BETWEEN EUROPEAN LAW ENFORCEMENT AUTHORITIES REGULATIONS 2014

2004-03

Revoked
Subsidiary
2014/222

Subsidiary Legislation made under s. 49 of Mutual Legal Assistance (European Union) Act 2005 as read with section 23(g)(i) of the Interpretation and General Clauses Act.

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Revoked by LN.2020/512 as from 1.1.2021

(LN. 2014/222)

Commencement **1.12.2014**

Transposing:

Framework Decision 2006/960/JHA

EU Legislation/International Agreements involved:

ARRANGEMENT OF REGULATIONS.

Regulation

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In exercise of the powers conferred upon it by section 49 of Mutual Legal Assistance (European Union) Act 2005 as read with section 23(g)(i) of the Interpretation and General Clauses Act and all other enabling powers, and in order to transpose Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Exchange of Information and Intelligence between European Law Enforcement Authorities Regulations 2014 and come into operation on 1 December 2014.

Interpretation.

2. In these regulations—

“the Framework Decision” means Council Framework Decision 2006/960/JHA of 18th December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union;

“Annex A” means Annex A in the Framework Decision;

“Annex B” means Annex B in the Framework Decision;

“competent authority” means an authority declared under article 2(a) of the Framework Decision (definitions) as a “competent law enforcement authority” in a Member State;

“Member State” means a—

- (a) Member State of the European Union; and
- (b) State party to the European Economic Area Agreement,

to which the Framework Decision applies;

“information” and “intelligence” have the meanings set out in article 2(d) of the Framework Decision;

“serious offence” means any offence referred to in article 2(2) of the Framework Decision 2001/584/JHA on the European arrest warrant;

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“competent authority in Gibraltar” means the Royal Gibraltar Police, Her Majesty’s Customs, the Gibraltar Co-ordinating Centre for Criminal Intelligence and Drugs (GCID) and the Gibraltar Financial Intelligence Unit (GFIU).

Duty to provide information or intelligence.

3.(1) Subject to regulation 4, a competent authority in Gibraltar which receives a request within its competence in accordance with the Framework Decision must ensure that information or intelligence is provided to the requesting competent authority in accordance with these regulations.

(2) A competent authority in Gibraltar must not apply conditions stricter than those applicable at national level for providing and requesting information or intelligence to a competent authority in accordance with these Regulations.

Time limits.

4. Subject to regulation 8–

(a) in an urgent case regarding a serious offence–

(i) a competent authority in Gibraltar must respond within eight hours of a request when the information or intelligence requested in accordance with the Framework Decision is held in a database directly accessible by the competent authority in Gibraltar; but

(ii) where the provision of the information or intelligence requested in accordance with the Framework Decision within the period of eight hours would put a disproportionate burden on the competent authority in Gibraltar, it–

(aa) may postpone the provision of the information or intelligence for up to three days;

(bb) must immediately inform the requesting competent authority of this postponement; and

(cc) must provide reasons on the form set out in Annex A;

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- (b) in a non-urgent case regarding a serious offence—
 - (i) a competent authority in Gibraltar must ensure that a request for information or intelligence in accordance with the Framework Decision is responded to within one week if the requested information or intelligence is held in a database directly accessible by the competent authority in Gibraltar; but
 - (ii) if the competent authority in Gibraltar is unable to respond within seven days, it must provide reasons for that on the form set out in Annex A; and
- (c) in all other cases—
 - (i) a competent authority in Gibraltar must ensure that the information requested in accordance with the Framework Decision is communicated to the requesting competent authority within 14 days; but
 - (ii) if the competent authority in Gibraltar is unable to respond within 14 days, it must provide reasons on the form set out in Annex A.

Requests for information or intelligence.

5. For the purpose of detection, prevention or investigation of an offence, a competent authority in Gibraltar—

- (a) must use Annex B for the purpose of requesting information and intelligence from a competent authority and such a request must contain at least the information set out in Annex B; and
- (b) must not request more information and intelligence or set narrower timeframes than necessary for the purpose of the request.

Spontaneous exchange of information or intelligence.

6. Subject to regulation 8, a competent authority in Gibraltar must, without the need for any prior request, provide such relevant information or intelligence to a competent authority where the competent authority in Gibraltar has reasonable grounds to believe that such information or intelligence could assist in the detection, prevention or investigation of a serious offence.

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Requirements for the sharing of information or intelligence.

7.(1) A competent authority in Gibraltar must use information or intelligence provided in accordance with the Framework Decision only for the purposes for which, and subject to the conditions on which, it has been supplied unless–

- (a) such use may assist in preventing an immediate and serious threat to public security; or
- (b) processing for other purposes is authorised by the Member State which has provided the information or intelligence.

(2) When providing information or intelligence to a competent authority in accordance with the Framework Decision, a competent authority in Gibraltar may impose conditions–

- (a) on the use of the information or intelligence; and
- (b) on reporting the result of the criminal investigation or criminal intelligence operation for which the provision of information and intelligence has taken place.

(3) Where–

- (a) a receiving competent authority is not bound by the conditions imposed by the competent authority in Gibraltar under paragraph (2); and
- (b) the national law of the competent authority lays down that the restrictions on use are waived for judicial authorities, legislative bodies or any other independent body established by law and made responsible for supervising the competent authority, the competent authority in Gibraltar may make representations to the competent authority concerning the use of the information or intelligence.

(4) Where, on receiving information or intelligence, a competent authority in Gibraltar is not bound by the conditions imposed by a competent authority because the law in Gibraltar provides that the restrictions on use are waived for judicial authorities, legislative bodies or any other independent body established by law and made responsible for supervising the competent authority in Gibraltar, the competent authority in Gibraltar must consult the Member State from whom it has received the

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information or intelligence and take into account, so far as possible, its representations before so using the information or intelligence.

(5) A competent authority in Gibraltar which receives information or intelligence from a competent authority must give the competent authority which provided the information or intelligence information about the use and further processing of the transmitted information or intelligence if requested to do so by the competent authority.

(6) A competent authority in Gibraltar which provides information or intelligence to a competent authority may request information about the use and further processing of the transmitted information or intelligence.

Reasons to withhold information or intelligence.

8.(1) A competent authority in Gibraltar may refuse to provide information or intelligence only where it has reasonable grounds to believe that the provision of information or intelligence would—

- (a) harm essential national security interests of Gibraltar;
- (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 purposes for which it has been requested.

(2) Where a request pertains to an offence punishable by a term of imprisonment of one year or less under the law of Gibraltar, the competent authority in Gibraltar may refuse to provide the requested information or intelligence.

(3) A competent authority in Gibraltar may refuse to transmit under the Framework Decision information or intelligence received from a Member State or third country where it does not have the consent of that Member State or third country to do so.

(4) A competent authority in Gibraltar may refuse to transmit under the Framework Decision information or intelligence where otherwise prohibited by law.